



# GENERAL ORDER

# No. 213

Subject: <b>Use of Force</b>		
Issuing Authority: Chief of Police, F. Michael Catalano	Effective Date:10/30/2019	Supercedes:GO 213 Dated:05/22/12 and GO 214 Dated:07/01/2016
	Issued Date:10/30/2019	
Accreditation Standards: NYSLEAP-Standard(s)20.1	Cross Reference: NYS Penal Law-Article 35	

## I. PURPOSE:

The purpose of the Cortland Police Department Use of Force Policy is to provide guidelines on the reasonable and legitimate use of force for officers of the Department as part of their sworn duty to protect and serve the public of the City of Cortland. The policies set forth are operational guides and the Department’s policy shall also include the standards, techniques and requirements contained within the instruction provided to officers as part of their basic, in-service, and on-the-job training. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

## II. POLICY:

The Department and this Policy recognize and respect the value and sanctity of human life and the dignity to be accorded to the citizens the Department is sworn to protect. This Policy equally protects the welfare and safety of the Department’s officers who place themselves in danger on a daily basis. Vesting officers with the authority to use reasonable force and to protect the public welfare and themselves requires monitoring, evaluation and a careful balancing of these interests.

## III. DEFINITIONS:

- A. Physical Force** – A degree of physical contact that includes, but is not limited to striking, kicking, pushing and biting. In addition, any force used to disable, by means of an electronic control device, chemical agent or impact munitions, when such force is unlikely to result in serious physical injury or death.
- B. Objectively Reasonable** – An objective standard used to judge an officer’s actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.
- C. Deadly Physical Force** – Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- D. Physical Injury** – Impairment of physical condition or substantial pain.

- E. Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. <sup>6</sup>
- F. Reasonable Belief-** Those facts and circumstances within the knowledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.

**IV. GENERAL GUIDELINES:**

- A.** Any use of force by officers shall be consistent with the governing legal and constitutional standards set forth in the Supreme Court's decision in *Graham v. Connor*.
- B.** This Policy shall be interpreted consistently with the provisions set forth in Article 35 of the N.Y.S. Penal Law
- C.** Officers shall use only the amount of force that is objectively reasonable and under the circumstances for the officer involved to affect an arrest, prevent an escape, or defend themselves or others.
- D.** The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident, rather than with the 20/20 vision of hindsight. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.
- E.** Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
- F.** It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- G.** While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this Policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

**V. DUTY TO INTERCEDE:**

- A. Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another officer use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

**VI. MEDICAL TREATMENT/EVALUATION:**

- A. Officers shall assess and observe subjects for injuries as soon as reasonably practical, and feasible, following the use of force.
- B. Officers shall promptly request medical assistance for subjects who exhibit signs or symptoms of injury or illness, or otherwise request medical assistance as soon as reasonably practical and feasible, following the use of force.

Officers shall render emergency first aid within the limits of their individual skills, training and available equipment until professional medical care providers arrive on the scene, if necessary and feasible under the circumstances.

**VII. FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE:**

- A. When determining whether to apply force, a number of factors should be taken into consideration to determine the existence of a threat, as time and circumstances permit. These factors include, but are not limited to:
  1. the immediacy and severity of the threat to officers or others;
  2. the seriousness of the suspected offense or reason for contact with the subject;
  3. whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer;
  4. the conduct of the subject being confronted, as reasonably perceived by the officer at the time;
  5. dynamics between the officer and subject (e.g., age, size, physical condition, skill level, injuries sustained, level of exhaustion or fatigue, the length or duration of the encounter, the number of officers available vs. subjects, etc.);
  6. whether the subject exhibits any pre-assault indicators, such as verbal aggression, posture change, physiological changes consistent with stressor events, target glance, undirected over-compliance, aggression directed at another person or an inanimate object, kinetic body movements, physical non-compliance, defensive or offensive physical posturing, or any combination;
  7. a subject's escalation of verbal, physical, or emotional response;
  8. the relative physical leverage, or position of physical advantage or disadvantage, created by the proximity or positioning of the officer and subject;
  9. nature and/or location of the incident, including whether a domestic disturbance or dispute is involved;
  10. whether the subject exhibits any effects of drug or alcohol use;

11. the subject's mental state or capacity;
12. the subject's proximity of weapons or dangerous improvised devices;
13. the degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained;
14. the availability of other options and their possible effectiveness;
15. the training and experience of the officer;
16. the potential for injury to officers and others;
17. the risk and reasonably foreseeable consequences of escape;
18. the apparent need for immediate control of the subject or a prompt resolution of the situation;
19. whether the subject's conduct no longer reasonably appears to pose an imminent threat to the officer or others;
20. environmental factors;
21. whether the subject is known to have a propensity for violence;
22. any other exigent circumstances, which include such circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts; and/or
23. any other circumstances, which a reasonable officer perceives as a result of training or experience to pose a threat of harm.

#### **VIII. DE-ESCALATION:**

- A.** "De-escalation" is communicating, verbally or non-verbally, or through physical contact or action in response to a potential threat in an attempt to stabilize the situation or reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation. De-escalation may include the use of such techniques as command presence, advisements, verbal commands or warnings, verbal persuasion, tactical repositioning, or any tactic or force option that in the officer's reasoned judgment is likely to result in a lower level of force being used to accomplish the objective at hand. When reasonable and safe under the totality of circumstances, officers should attempt to de-escalate potential threats. Officers should use de-escalation techniques consistent with his/her training whenever feasible and appropriate. Officers are not expected to compromise personal safety in order to de-escalate a situation if it is likely to result in harm to the officer or others.

#### **IX. USE OF FORCE AUTHORIZATION AND LIMITATIONS:**

- A.** Officers are authorized to use objectively reasonable force to accomplish lawful objectives, including but not limited to:
1. effecting an arrest or preventing the escape from custody of a subject whom the officer reasonably believes has committed an offense;
  2. effecting an investigatory stop or detention where there is reasonable suspicion to believe that criminal conduct has occurred or is ongoing;
  3. where there is a reasonable basis to believe the subject poses a physical threat to an officer or others, including the subject;

4. taking subjects into protective custody, including civil custody, when authorized by law, such as persons who are a danger to themselves or others or persons incapacitated by intoxicating agents;
5. preventing a subject from committing suicide or inflicting serious physical injury upon themselves;
6. assisting a licensed medical provider in providing necessary medical treatment; or
7. overcoming resistance to a police order.

**B.** The authorized use of physical force should cease when the officer reasonably perceives that the purpose necessitating the use of force has ceased.

**X. DRAWING OR DISPLAYING WEAPONS:**

**A.** Officers may only draw and display firearms where there is a reasonable belief that there is a possibility of danger to the officer or others, or to ensure the safety of any person.

**XI. DEADLY FORCE AUTHORIZATIONS AND LIMITATIONS:**

- A.** An officer is authorized to use Deadly Physical Force when it is objectively reasonable under the totality of the circumstances. Use of Deadly Physical Force is reasonable when:
1. the officer reasonably believes or perceives the subject has a weapon or is attempting to access a weapon and it is reasonable to believe the subject intends to use it against the officer or third person(s);
  2. the officer reasonably believes or perceives the subject is capable of causing serious physical injury or death to the officer or third person(s) even in the absence of a weapon and it is reasonable to believe the subject intends to do so;
  3. it is necessary to protect the officer or third person(s) from what is reasonably believed or perceived to be an immediate threat of death or serious physical injury; or
  4. it is necessary to prevent the escape of a fleeing subject when the officer has probable cause to believe that the subject has committed, or intends to commit, a felony involving serious physical injury or death and the officer reasonably believes that there is an imminent risk of serious physical injury or death to the officer or third person(s) if the subject is not immediately apprehended.
- B.** Officers shall warn of their intent to use Deadly Physical Force where feasible.
- C.** The use of Deadly Physical Force against subjects to prevent the destruction of property is not authorized.
- D.** An officer's intentional discharge of a firearm is presumed to be the use of deadly physical force.
- E.** The use of other weapons and/or force, including but not limited to impact weapons, may, under certain circumstances, also constitute the use of deadly

physical force depending on the manner in which such weapon or force is used.

**XII. SHOOTING AT OR FROM MOVING VEHICLES:**

A. Discharging a firearm at or from a moving vehicle is prohibited unless an officer reasonably believes or perceives that any occupant(s) of the vehicle are using or are about to use deadly physical force against the officer or another person, and the officer reasonably believes there are no other reasonable means available to avert the threat posed by the vehicle or its occupants.

1. When confronted by an oncoming vehicle, officers should not position themselves into the path of the vehicle, and should make every attempt to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

2. Officers should not discharge their firearm at a vehicle when it is reasonable to believe that the vehicle may contain an innocent occupant or when it is reasonably foreseeable that doing so may cause the vehicle to careen out of control and injure an innocent bystander.

3. Officers should not discharge their firearms at any part of a vehicle in an attempt to disable the vehicle.

**XIII. WARNING SHOTS:**

A. Officers shall not fire warning shots.

**XIV. CHOKEHOLD:**

A. "Chokeholds" shall be defined as any techniques that use mechanical or physical force to restrain, incapacitate or disable a person by applying force or pressure to an individual's neck which creates a substantial risk of restricting breathing (airflow) or circulation of blood to and from the brain.

B. Officers shall not use chokeholds unless it is reasonable to believe there is an imminent threat of serious physical harm or death to an officer or a third person.

**XV. DEADLY PHYSICAL FORCE AGAINST AN ANIMAL:**

A. Deadly physical force may be used against an animal, when:

1. an animal is attacking or otherwise presenting an imminent threat to the safety of the officer or another person;
2. an animal is badly injured, diseased, threatening, or destructive; or
3. the animal is preventing an officer from accomplishing a lawful objective.

**XVI. PROHIBITED USES OF FORCE:**

A. Force shall not be used by an officer for the following reasons:

1. to extract an item from the body or cavity of a subject without a warrant, except where exigent circumstances are present (refer to GO 441 Prisoner Processing Procedures).
  2. to coerce a confession from a subject;
  3. to obtain physical evidence from a subject for the purpose of scientific testing absent a court order; or
- B.** Force shall not be used against subjects who are handcuffed or restrained unless it is necessary to prevent injury or escape, or to otherwise overcome resistance posed by the subject.
- C.** Force shall never be used to torture, unlawfully coerce or punish a subject.

**XVII. CONCEALMENT OF EVIDENCE ORALLY OR BY INGESTION:**

- A.** In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, while officers may use reasonable force to prevent a person from swallowing evidence or contraband, once the subject has placed the potential evidence in his/her mouth, officers may not use physical force to attempt to remove or extract the evidence. Once a subject has ingested potentially harmful evidence such as narcotics, an officer shall request immediate medical attention.

**XVIII. TRAINING:**

- A.** The Training Officer shall design and implement training programs relative to the legal standards and generally accepted police practices and techniques governing the use of force as part of police work. The Training Officer will ensure that each officer receives in-service training annually on the Department's "use of force" related policies and procedures, and demonstrates proficiency with the weapon(s) each officer is assigned and authorized to use. Use of force training may include such topics as firearms qualification and training, defensive tactics, constitutional use of force principles, threat assessment, reality-based training, Taser training, and verbal and non-verbal communication skills.

**XIX. USE OF FORCE REPORTING AND EVALUATION:**

- A.** Compliance with the standards contained within this policy shall be monitored by the Office of the Chief of Police.

In accordance with New York State Executive Law 840, this policy is conspicuously posted on the department's website.