

# PORT JERVIS CITY POLICE DEPARTMENT

<b>GENERAL ORDER</b> <b>GO-335-19</b> <b>GO-340-19</b>	<b>SUBJECT</b> <b>Use of Physical Force</b> <b>Use of Deadly Physical Force</b>	<b>EFFECTIVE DATE</b> <b>12/15/2019</b>
<b>AMENDS</b> <b>GO-335-12</b> <b>GO-340-12</b>	<b>CROSS REFERENCE</b> <b>Art. 35 NYS Penal Law</b> <b>GO-123-09, GO-300-12</b> <b>GO-341-12, GO-334-12</b> <b>MPTC Model Use of Force Policy and Reporting</b>	<b>PAGE</b> <b>1 OF 20</b>

## I. Purpose:

The purpose of this General Order is to provide members of the City of Port Jervis Police Department with guidelines for the use of deadly and non-deadly physical force within the limits established by Article 35 of the New York State Penal Law, the requirements of Executive Law Section 840(4)(d)(3), MPTC Model Use of Force Policy and consistent with training provided by this department. It is the responsibility of each member to be aware of the requirements of Article 35 and to guide his/her actions based upon that law and department policy governing the Use of Force.

## II. Background: Use of Force

The City of Port Jervis Police Department recognizes and respects the value and integrity of each human life. Protecting innocent human life is our most important mission. As public servants we recognize and accept the profound responsibility that accompanies our lawful authority to use physical and deadly physical force. Officers use the amount of force reasonably necessary to protect life and enforce the law under guidelines established by the Constitution of the United States, the Constitution of the State of New York, established state and federal law, and as articulated in department policy and procedures.

## III. Definitions:

Refer to Annex A attached to this General Order for a listing of applicable definitions.

## IV. Policy:

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. Under the Fourth Amendment of the United States Constitution, the amount of force that is used by the officers shall be the amount of force that is objectively reasonable under the circumstances for the officer involved to effect an arrest, prevent an escape, or in defense of themselves or others. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

As the Supreme Court has recognized, this reasonableness inquiry embodies “allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.” This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

The practice and courtesy extended in public contacts encourages understanding and cooperation. Lack of courtesy and respect arouses resentment and often physical resistance. Simple, verbal directions which are complied with while you accompany the subject are by far the most desirable method of dealing with an arrest situation. Control may be achieved through asking, advice, persuasion, and warnings before resorting to actual physical force. This should not be construed to suggest that officers should ever relax and lose control of a situation, thus endangering personal safety or the safety of others.

- A) All use of physical force and deadly physical force complies with all Federal and State laws and this General Order.
- B) Officers use only the **MINIMUM** force reasonable and necessary to accomplish our lawful objectives.
- C) This General Order governs the use of physical force and deadly physical force by whatever means including, but not limited to, firearms, other weapons, or empty hand tactics (see attached Use of Force Continuum/ Levels of Resistance Matrix).
  - 1. Any use of a weapon complies with this General Order as well as any other General Order governing the use of weapons or physical force.
- D) This Order applies to use of physical force and deadly physical force by sworn members of this agency while on duty. It also applies to off-duty uses of physical force and deadly physical force in the following circumstances:
  - 1. When the officer is acting pursuant to his/her authority as a PJPD Police Officer.
  - 2. When the officer is using a weapon, which is being carried pursuant to his/her police officer status.
  - 3. When the officer is using any department-issued weapon, ammunition, or other equipment.
- E) In using physical force or deadly physical force, officers avoid creating an **unreasonable** risk of injury to bystanders or persons other than the intended subject of the force or use force in a reckless manner.

## **V. Procedures:**

- A) Use of Force Considerations
  - 1. It is important to remember that almost all incidents faced by officers are not scripted, easy to understand, or predictable as to outcome. Officers use their best effort to determine the threat level and apply the corresponding response.
  - 2. Time permitting, officers must use care in evaluating a suspect's actions and perceived threat level. If there is reasonable doubt and time permits, seek assistance before acting.
  - 3. Justification for the use of force and deadly force must be limited to what is known or reasonably perceived by the officer at the time of the incident. Facts unknown at the time force is used should not be considered later to determine whether the force was justified.

4. Officers may not intentionally use more force than is necessary and reasonable under the circumstances.
  5. Officers may never use force in response to mere verbal provocation or abusive language directed at the officer.
  6. Officers must never use deadly force, except to protect his/her life, or the life of other human beings.
- B) Officers may only use the physical force reasonably necessary to accomplish the lawful objectives set forth below:
1. Self-Defense or Defense of Another Person:
    - a) An officer may use physical force when and to the extent he/she reasonably believes it to be necessary to defend himself/herself or a third person from what he/she reasonably believes to be the use or imminent use of unlawful physical force.
  2. To Effect an Arrest or Prevent an Escape:
    - a) An officer, may use physical force when and to the extent he/she reasonably believes it to be necessary to effect or attempt to effect a lawful arrest or searches, to overcome resistance to such arrests or searches, or to lawfully prevent or attempt to prevent the escape from custody of a person whom the officer reasonably believes to have committed an offense.
    - b) Before using physical force against a suspect to make an arrest, officers must ensure that sufficient probable cause exists to support an arrest. Officers should state their intentions to arrest the suspect, the reason for the arrest, and ensure that their identification as a police officer is known, unless exigent circumstances exist.
  3. Prevention of Suicide or Prevent a Person from Injuring Him/Herself:
    - a) An officer acting under a reasonable belief that another person is about to attempt suicide or to inflict physical injury upon himself may use physical force upon such person only to the extent that he reasonably believes it necessary to prevent such result.
  4. Protection of Property and Premises:
    - a) An officer may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to protect property, or prevent or interrupt an intrusion on, or interference with the lawful possession of property.
  5. Prevent roaming at large by obviously made or vicious animals to protect the officer, members of the public or other domestic animals.
  6. An officer may use physical force when and to the extent he or she reasonably believes it to be necessary under circumstances not defined above but consistent with Federal and State law and the goals of this department.

C) Other Use of Force Considerations

1. Officers use physical strength and skill, restraint devices, chemical weapons, electronic weapons, or impact weapons, or other means to apply non-deadly force when reasonable and necessary.
2. Officers have no obligation to retreat or back down before resorting to approved use of force, including deadly physical force. Officers may consider retreat or withdrawal where delay could make a more peaceable arrest, likely if such tactics would not increase risk to self or others. In some cases, an increased show of force may reduce the amount of force necessary to accomplish the officer's objective.
3. Officers may not attempt to affect arrests alone if there is substantial risk to self from the arrestee or another party unless there are no available reasonable alternatives.
4. Officers use handcuffs or other restraining devices on all arrestees unless it is obviously unnecessary or impractical (e.g. the elderly, young juveniles, amputees, subjects who are physically disabled, injured, or other applicable subjects). Officers must take reasonable precautions to protect arrestees from injury caused by handcuffs or other restraining devices. Only restraining devices and techniques approved by this department may be used.
5. Officers may use chemical weapons for self-protection or to subdue a person unlawfully resisting arrest. Any person whom a chemical weapon has been used must be treated or decontaminated for exposure to the chemical agent as soon as practical and thereafter monitored for possible latent effects.
6. Officers may use approved electronic weapons in accordance with this policy. An electronic weapon is only to be used to protect persons from assault or to subdue persons unlawfully resisting arrest.

D) The use of a weapon or instrument by a police officer is also the use of force. Officers may carry only those weapons or instruments when properly trained to do so and authorized by the Chief of Police. The following are the only weapons or instruments that are authorized for carry by officers of this department:

1. Primary and off duty Firearms
2. Department approved Shotguns
3. Department approved Rifles
4. Department approved Oleoresin Capsicum (OC Spray)
5. Department approved police baton or expandable baton
6. Police Canine\*
7. Department issued CED (Taser)

E) Use of Deadly Physical Force:

1. This agency authorizes the use of deadly physical force only when such use is:
  - a) Reasonable and Necessary
  - b) Authorized by Article 35 of the New York State Penal Law; and
  - c) Consistent with New York State or Federal Laws; and
  - d) Not used in a reckless manner

2. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
3. Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these rules and procedures, a police officer may use deadly force as an emergency measure to avoid the imminent unlawful use of deadly force which is about to occur by reason of a situation occasioned or developed through no fault of the officer; and, which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding such injury clearly outweighs the desirability of avoiding the conduct sought to be prevented by these rules and procedures.
4. The use of deadly physical force is the sole responsibility of the officer that uses such force or the commanding officers ordering such use.
5. The fact that a police officer is justified in using deadly physical force does not allow reckless conduct by the police officer if the use of deadly physical force may injure innocent persons.

F) Deadly Physical Force May Be Used to Stop a Fleeing Suspect Where:

1. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
3. Where feasible, some warning should be given prior to the use of deadly physical force.

G) Use of Firearms - General Provisions:

1. Warning shots are not permitted.
2. Shots are not to be fired to halt any person who simply runs away to avoid arrest.
3. Shots are not to be fired merely to prevent the destruction or theft of property.
4. Dry firing or snapping the action of a firearm is forbidden except when authorized during firearms training programs.
5. Moving Vehicles: Officers are prohibited from discharging firearms from a moving vehicle or at a moving vehicle unless the occupant(s) of that vehicle are using or are about to use deadly physical force against the officer or another person. Therefore, shooting at a fleeing vehicle or a vehicle that is moving away from the officer and is no longer a threat to anyone is prohibited.
6. Drawing or Exhibiting Firearms: An officer does not draw or exhibit his/her firearm unless there is reason to believe that circumstances exist, which may justify the use of deadly physical force under this General Order or reason to believe such may be necessary for the safety of the officer or others (e.g., conducting building searches, felony vehicle stops, confronting a person who may be armed or dangerous, dealing with an injured or dangerous animal, etc.).

7. Intentional Discharge of Firearm: An officer does not intentionally discharge a firearm unless:
    - a) The officer reasonably believes that circumstances exist which justify the use of deadly physical force under this General Order;
    - b) The officer reasonably believes that circumstances exist justifying the use of a firearm against an injured or dangerous animal under this General Order; or
    - c) The discharge is part of department-authorized training.
    - d) All intentional discharges of a firearm are reported in a "Firearms Incident Report" and investigated as a deadly physical force incident. This does not apply to training activities or those occasions when the firearms discharge was for the purpose of destroying a severely injured or dangerous animal.
  8. Accidental Discharge of Firearm:
    - a) Officers exercise due care to handle and store firearms properly and safely and to prevent an accidental discharge.
    - b) Officers involved in an accidental discharge of a firearm, whether on-duty or off-duty, report the incident to the on-duty Shift Supervisor immediately.
    - c) Shift Supervisor notifies the duty Lieutenant and/or the Chief of Police to advise them of the incident.
  9. Destruction of Animals: **Refer to General Order 300-12-Animal Control**
    - a) An officer may use his firearm to destroy an animal when the officer reasonably believes that the animal is presenting a danger or threat of injury to the officer, another person, or a domesticated animal, or in certain instances, to relieve a badly injured animal from suffering that cannot reasonably survive from injuries during transport for medical treatment causing prolonged suffering as per the provisions of **GO 300-12 "Animal Control"**.
  10. When a firearm is discharged, (except while lawfully hunting, during target practice, test firing a weapon, or conducting a ballistic examination) at another person or an animal by a member of this department, a "Report of Discharge of Firearms" Form is completed by the officer, reviewed by a supervisor, and forwarded to the Chief of Police or his/her designee.
- H) Neck Restraints: Carotid Control Holds, Choke Holds or other neck restraints, designed to restrict oxygen and/or blood flow, are prohibited unless an officer or another person is in imminent danger of death or serious physical injury and all other measures to reasonably stop or repel the attack have been exhausted.
  - I) Verbal Warnings: If a situation arises in which an officer is authorized to use deadly physical force, the officer should attempt to identify themselves and issue a verbal warning if feasible to the suspect before using deadly physical force. This identification or verbal warning need not be issued when the officer reasonably believes that doing so would increase the danger to the officer or another person.
  - J) Equipment and Techniques: In using physical force or deadly physical force, an officer generally uses department-issued equipment and department-approved techniques. However, in cases in which the officer reasonably believes it is necessary to preserve human life and prevent serious injury, the officer may utilize any readily available weapon, instrument, or technique provided

the level and nature of such force is legally justifiable and consistent with their use of force training.

## **VI. Use of Non-Lethal Weapons: Oleoresin Capsicum - OC Spray**

- A) Only approved equipment is carried on duty and used when applying physical force, except in an emergency when the officer may reasonably use other resources at his or her disposal.
- B) **Oleoresin Capsicum (OC)** is an alternative use of force in those situations where the potential for injury to an officer, suspect, or a third party exists. The use of OC is limited to that degree of force which is necessary to provide protection for the officer, a third party, in preventing an escape of a person from custody and/or to effect a legal arrest.
- C) OC Spray is an effective tool against non-compliant subjects, including those who are under the influence of drugs and/or alcohol, those who are enraged, and serves as an effective self-defense technique to be deployed against attacking and aggressive animals such as dogs, cats, and raccoons.
- D) When a person has been sprayed with OC, officer(s):
  - 1. Check the person exposed to OC and verify they are all right and breathing normally. Remove subject to an area of uncontaminated air.
  - 2. When possible, transport the subject to Police Headquarters immediately.
  - 3. During the transportation of the subject, the front windows of the police car are open to allow for a maximum amount of airflow to the subject. During the summer months and or warm weather, the vehicle's air conditioner may be turned on and placed at its coldest setting with the blower on high.
  - 4. Ensure that the suspect subjected to OC Spray is breathing appropriately while secured in custody and during transport to Police Headquarters. The transporting officer is to ensure that the person is seated properly in an upright position and if necessary, seatbelt the person to maintain the upright position. This allows the officer to observe the person and observe if the person is experiencing any breathing difficulty or suffering from any abnormal affects to the OC spray.
  - 5. When the subject is no longer combative, the subject is provided with copious amounts of cold water to flush the face and eyes and other contaminated areas. Contact lenses must be removed to facilitate the decontamination of the eyes. Contact lenses must be flushed with water before the subject places them back into their eyes. Soap can also be provided to complete and aid in decontamination. Do not apply salves, creams, oils or lotions, which can trap the irritant.
  - 6. Mild soap may be necessary to remove OC residue as well as wet towels.
  - 7. Decontamination spray bottles or wet towels may be used for locations where soap and water are not available.
  - 8. An officer remains with the subject until the effect of the OC Spray reach a level where the subject can see and the effects are wearing off normally.

9. If a subject is violent or threatening, when possible, the subject is locked in a cell with a supply of cold water provided and refreshed as necessary to ensure proper decontamination.
10. Officers should be aware that not every person exposed to OC Spray may be capable of self-decontamination and may require assistance in the process.
11. If irritation persists, or if a person appears to be suffering abnormal affects to the OC such as breathing difficulty and/or complaining of pain, officers seek medical attention for the subject as soon as those affects are observed.
12. Officers should not utilize OC Spray on elderly persons, young children, or persons “known” or “likely” to have emphysema or asthmatic, and people known to have heart disease. These conditions must be known to the officer. If there is any question concerning the subject’s reaction to OC, he/she should be transported to a medical treatment facility for treatment.
13. Officers review and complete the attached OC Administrative Warning with any person exposed to Oleoresin Capsicum (OC).

## **VII. Use of Non-Lethal Weapons: Police Baton / Expandable Baton**

- A) Only approved equipment is carried on duty and used when applying physical force, except in an emergency when the officer may reasonably use other resources at his or her disposal.
1. A baton may be used as an alternative force in those situations where potential for injury to the officer or third party exists, but where the application for deadly physical force would be considered extreme.
  2. The use of a baton is limited to that degree of force which is reasonably necessary to provide protection for the officer, a third party from assault, preventing an escape of a person from custody, and/or to effect a legal arrest of a person who unlawfully and violently resists arrest if lesser methods have failed, or if circumstances warrant the immediate use of the baton. Circumstances may include:
    - Officer being outnumbered
    - A suspect may be larger and has demonstrated superior skills and ability
    - Physical stature of the suspect as compared to the officer
    - The need for immediate control of the suspect or situation due to a tactical consideration
    - Officer’s perception of the suspect’s knowledge or apparent knowledge of a martial art or other specialized fighting skill
    - Suspect assumes aggressive stance
    - Suspect’s inability to be controlled by lesser means due to the influence of alcohol and or drugs
  3. Officers give loud, verbal commands (e.g., “Stop Resisting Now”) if reasonably practical.
  4. Officers avoid baton strikes that are capable of inflicting serious bodily injury unless deadly physical force is justified and reasonable and necessary.
  5. Officers do not raise the baton above the head to strike someone, or use the baton as a club or bludgeon.



6. Officers deliver only short, snappy body strikes to vulnerable areas in order to temporarily incapacitate subjects.
7. Officers do not deliberately strike persons with a baton in areas such as the head, neck, throat, groin, face, spine, knees, elbows, kidney area, collarbone, and solar plexus, unless officers are in reasonable fear of serious physical injury or death or to protect another from suffering serious physical injury or death. Strikes to these areas may likely result in serious physical trauma and death to a subject and should be avoided.
8. Medical attention is provided in a timely manner with such use, if required.
9. Officers not trained with impact weapons are not authorized to use flashlights or other similar devices as substitutes, except in extreme, life-threatening emergencies.

### **VIII. Use of Force Continuum – Levels of Resistance Matrix:**

- A) A number of factors are taken into consideration when an officer selects force options and when evaluating whether the officer has used reasonable force. The department recognizes that officers are expected to make split-second decisions and that the amount of time available to evaluate and respond to a situation may impact the officer's decision. By establishing a policy that includes a use of force continuum, the department hopes to provide additional guidance to officers making those split-second decisions.
- B) Use of force or deadly force is controlled by the basic elements of a reasonable officer's perception and a reasonable officer's response. Officers are required to use the least amount of force that is reasonably necessary to stop the perceived threat and affect an arrest.
- C) Any force options used must be both reasonable and necessary and as soon as resistance has ceased and the person is in secure custody, the use of force must cease.
- D) Force must never be used to punish a prisoner for resisting or as a response to verbal insults.
- E) It is unrealistic to attempt to categorize and define all use of force situations. However, it is reasonable to categorize the levels of force that may be used in various situations. The option of force used should escalate/de-escalate as individual circumstances dictate. In order to control situations within the Fourth Amendment's objectively reasonable standard, officers should continually evaluate the circumstances of each incident.
- F) To better understand and explain use of force and force issues, officer perceptions and officer force options are illustrated in the Use of Force Continuum or force continuum that is located on the last page of this policy. This circular chart places the officer in the center a circle with all of the force options equally available. The preferred means of using force are set forth below in order from least to the most drastic measures. Officers must be familiar with, and know how to apply and explain this continuum. Refer to the Use of Force Continuum, attached at the end of this policy.
- G) Actions of subjects(s) as reasonably perceived by the officer or based on the officer's reasonable perceptions. A subject's demeanor and actions are instrumental factors in an officer's decision of what level of force is appropriate to take control of a situation.
- H) Refer to Annex A- Use of Force- Levels of Resistance and Response Matrix.

## **IX. Determining the Objective Reasonableness of Force:**

- A) When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- B) Factors that may be used in determining the reasonableness of force include, but are not limited to:
  - 1. The severity of the crime or circumstance
  - 2. The level and immediacy of threat or resistance posed by the suspect;
  - 3. The potential for injury to citizens, officers, and suspects;
  - 4. The risk or attempt of the suspect to escape
  - 5. The knowledge, training, and experience of the officer
  - 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects
  - 7. Other environmental conditions or exigent circumstances.
- C) Additional factors that may be used in determining the reasonableness of force include:
  - 1. Influence of drugs or alcohol
  - 2. Known history of violence by subject
  - 3. Proximity and availability of weapons, subject in possession of weapon
  - 4. Whether the subject can be recaptured at a later time
  - 5. Whether evidence is likely to be destroyed
  - 6. Availability of other options
  - 7. Special knowledge of martial arts, wrestling, boxing, etc.
  - 8. Number of officers present or available
  - 9. Immediate reaction in the case of a sudden attack
  - 10. Weapons or restraint devices available to the officer
  - 11. Legal requirements and agency policy and procedures
  - 12. Relevant actions by any third party
  - 13. Opportunity and actual ability of the suspect to injure the officer, him/herself, or others
  - 14. Nature and seriousness of the risk of injury to the officer and others

## **X. Duty to Intervene:**

- A) Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B) An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a supervisor.

## **XI. Prohibited Uses of Force:**

- A) Force shall not be used by an officer for the following reasons:
  - 1. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;

2. To coerce a confession from a subject in custody;
3. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
4. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

## **XII. Medical Care:**

- A) Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.

## **XIII. Investigation of Firearms Discharges - No Resulting Injury or Death to Officer or Person:**

- A) Discharges of firearms by officers in the performance of their duties constitutes a Use of Deadly Physical Force. This does not include discharges of firearms during training, qualifications, target practice, test firing or ballistic examinations. Regardless of the outcome of the use of such force, (Injury, Death or Neither), the incident is investigated by this department as follows:
  1. Whenever a firearm is discharged by an officer accidentally or otherwise, on or off duty (except during training, off duty firearms practice, or to destroy an animal) the officer discharging the firearm immediately notifies the shift supervisor. The shift supervisor notifies the Chief of Police or his/her designee.
  2. The officer discharging the firearm protects the weapon for investigation and does not alter its condition. As soon as possible after the incident, the officer completes a detailed written report of the incident.
  3. Each officer who witnessed the incident or responded to the scene must a complete written report. These witness reports must be completed no later than the conclusion of the shift in which the incident occurred and filed with the shift supervisor.
  4. Shift supervisor immediately goes to the scene and begins a preliminary investigation. If the shift supervisor is below the rank of sergeant, he/she secures the scene and notifies a Lieutenant, who responds and conducts an investigation.
  5. If the discharge was unintentional and not caused by a criminal incident, the supervisor conducts an investigation into the circumstances of the firearms discharge and prepares a detailed report, determining the cause of the discharge. The supervisor submits the report within twenty-four hours of the incident to the Chief of Police or his/her designee.
  6. If the firearm was discharged while the officer was investigating a criminal incident regardless whether anyone was injured or killed, the officer secures the weapon, not altering it, nor adds or removes ammunition. The shift supervisor immediately proceeds to the scene and secures the weapon. The shift supervisor immediately notifies a commanding officer and the Chief of Police and other investigative personnel needed.

7. The Chief of Police and Lieutenants determine if the firearms discharge is within the provisions of department policy and the New York State Penal Law. The Chief of Police may choose to delay an internal investigation pending the completion of an investigation by another agency.

#### **XIV. Investigation of Use of Force Incidents resulting in Death or Serious Physical Injuries- Orange County District Attorney's Office Protocol for Critical Incidents**

- A) Employees adhere to the provisions and procedures proscribed in **General Order 334-12** for incidents involving the on-duty or off-duty use of deadly physical force by a member of this department or other member of service upon another person that results in serious physical injury or death; or
- B) When a person uses deadly physical force upon a member of this department, on or off duty, that results in serious physical injury or death to the officer;
- C) Refer to General Order 334-12 for specific guidelines.

#### **XV. Reporting and Reviewing Use of Force:**

- A) Officer(s) who deploy force on a person immediately notifies their direct supervisor and reports the application of force.
- B) Complete reports by officers using force should include: a description of the events leading to the use of force, original offense or probable cause for the stop or action, accurate description of the incident and reasons for employing force, description of the weapon, device or method of resistance used and the manner in which it was used, description of injuries suffered and the treatment provided or received, list of all participants and witnesses to the incident and a copy of all incident reports compiled because of the incident.
- C) In incidents involving the use of force, members shall notify their supervisor as soon as practical and cooperate with the supervisor's inquiry of the incident. The shift supervisor is responsible to conduct an initial inquiry into the use of force and ensure that all reports are detailed, approved and filed in a timely manner.
- D) Officers are required to complete a written report fully documenting the circumstances surrounding the use of force incident in a case report and a Department Approved Use of Force Form.
- E) The following incidents of involving the use of force require a Use of Force report:
  1. Use of force that results in a physical injury or use of force incidents that a reasonable person would believe is likely to cause an injury.
  2. Incidents involving the use of force to overcome resistance to include restraints, defensive tactics, or a forcible take down of another person.
  3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.

4. Incidents where a conducted energy device (CED) was intentionally displayed, discharged or accidentally discharged after being displayed.
5. Incidents where a firearm was displayed or discharged at a subject.
6. Foot Pursuits and Vehicle Pursuits.

F) Use of Force Reports: File and Review Process

1. Use of Force Reports filed in accordance with this policy are forwarded to the Operations Lieutenant or his/her designee for executive review to ensure that the officer's use of force complied with appropriate laws and this policy, determine if the officer's use of force indicates a need for special counseling, training or disciplinary action, and evaluate the need for additional or future training.

G) Officers are required to complete a department "Discharge of Firearms" form and provide a detailed written report in the case or blotter narrative during incidents involving the discharge of a departmental firearm.

H) Shift Supervisors ensure that officers complete the above reports in a detailed and timely manner.

**XVI. Procedures for Investigating Use of Force Incidents:**

- A) Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.
- B) A supervisor that is made aware of a force incident shall ensure the completion of a Use of Force Report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
- C) Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D) The Patrol/Operations Lieutenant will receive the report and will review.
- E) Officers found failing to adhere to use of force guidelines will be potentially subjected to training remedies or agency disciplinary protocols as governed by the City of Port Jervis/PBA collective bargaining agreement depending on the specific facts and circumstances of the incident.

**XVII. Administrative Duty:**

- A) When an officer(s) is involved in a shooting or use of force incident that results in serious physical injury or death, the Chief of Police or his/her designee may assign that member to administrative duty for a period of time as determined by the Chief of Police or his/her designee. This assignment to administrative duty does not imply that the officer has not acted properly nor does it imply any civil or criminal liability of the officer involved.
- B) While on administrative duty, the officer remains available at all times for official department interviews and statements regarding the use of force incident.

- C) Administrative duty does not place the officer in a position where the use of force is likely.
- D) When an officer is assigned to administrative duty, the officer;
  - 1. Refrains from routine exercise of police arrest and intervention powers
  - 2. Refrains from any public discussion of his/her administrative assignment or circumstances related to his or her use of force.
  - 3. Retains all rights, privileges and employee benefits
  - 4. Retains responsibility for compliance with all laws, Department Rules and Regulations, General Orders, and directives governing department personnel not specifically exempted by this order except as in Section D(1) above.
- E) In cases where any person has been injured or killed as a result of the use of deadly physical force or a firearm discharge by a police officer, the involved officer undergoes an emotional debriefing with a department furnished psychologist within seven days of the incident. The debriefing is not in furtherance of any departmental investigation of the incident and nothing discussed in the debriefing may be reported to the department.

#### **XVIII. Training:**

- A) All officers should receive training and demonstrate their understanding on the proper application of force.
- B) Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.
- C) This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real-world application of the concepts discussed within this policy.

#### **XIX. Distribution:**

This General Order shall be distributed to all sworn members and be effective December 15, 2019 by order of:

William J Worden  
Chief of Police

## Annex A – Definitions

- ***Authorized weapon*** – A weapon approved by The City of Port Jervis Police Department and sanctioned for use by its employees. No weapon is authorized for carry or use unless the agency expressly approves it and the employee has demonstrated proficiency with the weapon type in accordance with agency guidelines.
- ***Auxiliary weapons of availability*** – An employee may become separated from their agency issued firearm or other authorized weapons. Should this occur, the employee might have access to a *weapon of opportunity*, including but not limited to a flash light, citation holder, handcuffs, tools, lumber, or any object that could be used as a weapon in the defense of self or another.
- ***Baton or expandable baton*** – An impact weapon capable of inflicting bodily injury by striking with a portion of the weapon. Only batons authorized by the agency are carried or used. Carrying or using saps, *Billy clubs*, or *slapjacks* is prohibited.
- ***Chemical weapon*** – Weapons capable of temporarily incapacitating a person through the controlled release of some chemical irritant or agent.
- ***Certification with weapon*** – Officer has demonstrated proficiency with a particular weapon and been tested in its safe care and use. The officer is thereby authorized to carry and use this weapon in the performance of his/her official duties regardless of whether the officer is on-duty or off-duty. Without such certification, the officer may not carry or use this or a similar weapon.
- ***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.
- ***Electronic Control Device [ECD]*** – A *non-deadly force* weapon designed to stop an attack; subdue fleeing, belligerent, or potentially dangerous subjects; or stop a perceived threat of suicide or self-inflicted injury. The device used may be hand-held, shoulder fired munitions, or a hand discharged device. In most configurations such devices are an electroshock weapon that uses electrical current to disrupt voluntary control of muscles. Sometimes called an *electronic stun device* in general; also commonly referred to as a TASER™ irrespective of the actual maker due to this manufacturer's high-profile presence in the market.
- ***Exigent circumstances*** – Conditions that are of such urgency and seriousness as to justify a warrantless entry, search, or seizure by officers.
- ***Firearm*** – Any device designated, made, or adapted to expel a projectile through a barrel by using energy generated by rapidly expanding gases or any device readily convertible to that use; including all handguns, rifles, and shotguns.
- ***Force or Non-Deadly Force*** – Actions not calculated under the circumstances to cause death or serious bodily injury.

- ***Knife*** – Any edged weapon that is designed to inflict serious bodily injury or death by stabbing, cutting, slicing, whether legal or illegal, and including swords, daggers, axes, hatchets, etc.
- ***Lateral vascular neck restraint [LVNR]*** – A method or manner of restraining or controlling a person by physically restraining the person's neck from behind. The technique involves the initial restraint of a person through contact and control methods which may ultimately be used to incapacitate the person by rendering the person temporarily unconscious where the person refuses to submit to lesser levels of control.
- ***Non-Deadly Force*** – Procedures or weapons designed to provide *force*, but force not intended to kill. The *non-deadly* force concept is also commonly referred to as *less than deadly*, or *less than lethal* force. Regardless of the application name, reasonable officers know that – although unlikely – any force, especially when applied under, *tense, uncertain, and rapidly evolving situations*, may cause injury, or death, despite the best intentions of the officer.
- ***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.
- ***Physical injury*** – Impairment of physical condition or substantial pain.
- ***Physical strength and skill*** – Any physical actions by one or more officers (e.g., holding, restraining, pushing, and pulling) which may include special skills (e.g., boxing, karate, and judo) but do not include the use of *deadly force* or any weapon.
- ***Probable cause*** – Sufficient reason, based upon known facts, to believe a crime has been committed or that certain property is connected with a crime. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, search without a warrant, or seize property in the belief the items were evidence of a crime. *Probable cause* is often subjective, but if the officer's belief or even hunch was correct, finding stolen goods, the hidden weapon, or drugs may be claimed as self-fulfilling proof of probable cause. Technically, probable cause has to exist prior to arrest, search, or seizure.
- ***Reasonable belief*** – The facts or circumstances that the officer knows or should know, which would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- ***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.



## **Annex B – Use of Force - Levels of Resistance and Response Matrix**

The **Use of Force Continuum/Levels of Resistance and Response Matrix** is meant to be used as a guideline for an officer to select effective, reasonable and legal force options in a verbal or physical encounter. As a subject increases his/her resistance level from verbal to physical, an officer may have to increase the level of his/her response until the resistance ceases and the officer is able to gain control of the subject. As soon as the point of subject compliance is reached, the officer must de-escalate his or her response level to the minimum force necessary to control the subject. There is always an option to escalate or disengage at any point depending upon the circumstances and type of resistance encountered.

It is important to note that an officer need not attempt to gain control over an individual by use of the lowest level of force on the continuum when reason dictates and the officer can reasonably articulate that a higher level of force was reasonable and necessary.

The skipping of steps may be appropriate given the resistance encountered. This continuum should be viewed as an elevator, not a ladder, that an officer may go to any level of the continuum provided that the force selected is reasonable.

Note that the category descriptions above are non-exclusive and are intended to serve as illustrations of actions which fall within the various levels. Officers are required to use the least amount of force necessary to affect an arrest. In properly determining the appropriate response to a subject's resistance, several factors must be evaluated by an officer. For instance, an unarmed small framed juvenile subject may be displaying Level 4 resistance, but would probably require a Level 3 response by the average officer.

On the other hand, a single officer faced with a very large professional wrestler or football player may very well find that his/her response to even mild resistance must be escalated to a relatively high point on the matrix. It must be remembered that, by law, an officer may utilize the amount of force necessary to accomplish his or her task. This is not to say that a tactical retreat, particularly in the face of overwhelming odds, may not be a wise choice.

### **Level 1: Compliant and Cooperative**

- The suspect is perceived by the officer to be cooperative and compliant with verbal commands and other directions. The appropriate level of response is cooperative controls including officer presence, hand signals, verbal commands and instructions, light touching or patting, etc. Potential for physical harm is unlikely.

### **Level 2: Passively Resistant - Non-Responsive or Uncooperative**

- Subject is perceived by the officer to be passively resistant, uncooperative when taken into custody, fails to respond or comply with officer's requests, verbal commands, directions, or attempts to control a situation, and may threaten the officer with further resistance. The subject may not make an attempt to physically defeat the actions of the officer but forces the officer to employ physical maneuvers to establish control and/or physically remove the subject. The appropriate level of response is contact controls, including strong or forceful soft hand, hand and arm holds, pressured physical movement of the subject, and removal. The potential for physical harm is unlikely.

### **Level 3: Actively Resistant or Aggression**

- The suspect is perceived by the officer to be actively resisting an officer's authority and direction and the potential of physical harm is possible. This includes verbal and/or physical cues of non-compliance, making physically evasive movements to defeat an officer's attempts at control. This may be in the form of bracing and/or tensing, attempts to push or pull away, or not allowing the officer(s) to get close to him/her. The appropriate response is compliant techniques.
- This is the threshold for any reasonable officer to consider this suspect to be a potential violent threat to himself, officers, or others. Compliance techniques may include all reasonable means to cause the suspect to comply as soon as reasonably possible. These techniques may include the use of chemical weapons, use of restraints, forced movement, forcing a suspect's limbs behind their back, forcing a suspect down on the floor or against a wall, or using other forms of physical force. Once suspects are perceived as actively resistant, officers should not relax care until the subject is fully secured.

### **Level 4: Assaultive and a Threat to Bodily Harm**

- The suspect is perceived by the officer to be assaultive – and a threat to bodily harm. A subject makes overt hostile, attacking movements which may cause injury, but are not likely to cause death or serious bodily harm to the officer or others. The subject may assume a fighting stance, charges an officer, or verbally or physically indicates an intent to commit an assault. The threat of physical harm is likely.
- The appropriate level of response is immediate defensive tactics. The original assaultive behavior may have been directed at a fellow suspect, apparent victim, or the officer. Defensive tactics may include chemical agents, impact weapons, hard fist, electronic control devices, or any other reasonable means available and at hand to stop the aggression, defend against the attack, or bring the suspect into compliance. It is contemplated and understood that reasonable officers, while employing defensive tactics, may cause injury, serious injury, and in some isolated instances, death without intending such consequences.

### **Level 5: Assaultive and Serious Threat of Bodily Harm or Death**

- The suspect is perceived by the officer to be assaultive, resulting in serious bodily harm or death. Physical harm is very likely. A subject makes overt hostile, attacking movements, with or without a weapon, with the intent and apparent ability to cause death or serious bodily harm to the officers or others.
- The appropriate level of response is deadly force. Deadly force includes firearms, knives, or any other means immediately available that a reasonable officer, in the same circumstance, would consider as potentially causing death or serious bodily injury.

# **Officer Response Options: Tactics, Applications, Officer's Perceptions**

## **Level 1: Low Level - Compliant, No or Slight Apparent Potential for Harm**

- **Arrival, Presence, Dialogue:** The presence of a uniformed law enforcement officer(s) or officer(s) identified as police officers at a scene is the lowest and first step in the use of force continuum. This includes proper voice and/or other identification, body language, and awareness by the subject that he or she is dealing with an officer of the law. This may include the presence of the officer's vehicle, seeing the officer in uniform, hearing officer identification, etc. A reasoning person seeing and hearing these things normally alter their behavior and respond to the officer's instructions.
- **Cooperative controls** include methods developed to preserve officer safety and security, including a proper interview stance outside of his/her danger zone that provides appropriate protection and forms the basis of an effective physical response if attacked. The officer establishes communication, both verbal, and non-verbal commands, with the subject, and engages in communications and interpersonal skills.
- These situations represent the vast majority of confrontations between officers and citizens. The officer establishes and maintains cooperation of the citizen(s) via acceptance, verbalization skills, presence and the like.

## **Level 2: Passively Resistant - Moderate Potential for Physical Harm**

- **Dialogue Between Parties:** A two way, controlled, non-emotional communications between the officer and the subject, aimed at a problem identification and/or resolution.
- **Verbal Direction:** Officer asks, advises, or commands subject to engage in, or refrain from, a specific action or non-action.
- **Soft Hand Techniques / Enhanced Strategies or Tactics:** Officer may choose to employ some assistance in movement, compliance, or removal from the immediate scene. Contact or "touch" controls such as minimal use of the hands to obtain the attention of or provide direction to a subject or utilizing psychological manipulation to gain compliance.

## **Level 3: Actively Resistant - Moderate Potential for Physical Harm**

- **Restraint Devices:** Mechanical tools used to restrict a subject's movement and facilitate searching such as, handcuffs, flex cuffs, leg irons.
- **Chemical Agents or OC Spray:** Agent used to subdue or bring a subject into compliance.
- **Transporters:** Techniques used to control and/or move a subject from point A to point B with the minimum effort by the officer or to gain and retain control over the subject.
- **Takedown:** Techniques that redirect a subject to the ground in a controlled manner to limit physical resistance and to facilitate the application of a restraint device, and to prevent intentional injury to the subject.

- **Pain Compliance:** Techniques designed to force a subject to comply with an officer, as a result of the officer inflicting controlled pain upon specific points in the subject's body such as pressure point techniques.

#### **Level 4: Assaultive & A Threat to Bodily Harm - Serious Potential for Physical Harm**

- **Defensive Tactics/Counter Moves:** Techniques that impede a subject's movement toward an officer or others (e.g., blocking, striking, distracting, kicking, parrying, dodging, weaving, redirecting or avoiding), followed by appropriate controlling techniques.
- **Incapacitation:** Generally, more aggressive techniques that are intended to stun or render a subject temporarily unable to continue to resist and be assaultive. They may include the use of an impact weapon.
- **Electronic Control Device:** Is a Level 4 application of force, when properly employed. Such devices are not used on persons known to have implanted medical devices such as pace makers, timed medical dispensing mechanisms, or diagnosed with heart conditions.
- **Intermediate Weapon:** Impact weapons that are primarily used to control a subject such as a baton, expandable baton, Taser®, and/or agency canine.
- Requires survival strategies and tactics that demand mandatory subject compliance and control.

#### **Level 5: Assaultive & Serious Threat of Bodily Harm or Death - High Potential for Great Bodily Harm or Death**

- **Deadly Force:** Techniques and implements that by their very nature are known to cause death or serious bodily harm/injury or permanent disfigurement such as impact weapon strikes to potentially lethal areas or use of firearms. Deadly force techniques are a last resort. To employ deadly force, officers must perceive that an imminent threat to their life or the life of another is present.
- **Firearm Special Munitions:** Special munitions fired, launched, or discharged from a service handgun or shoulder weapon, constitute a Level 5 application of the use of force, and is used with extreme care. Although often referred to as less-lethal, officers know that the less refers to less chance of causing death or serious bodily injury. Special munitions rounds must not be deliberately fired or thrown at the face, chest, neck, or spine of any individual. Officers who have not been specifically trained or certified in the use of firearm special munitions are not authorized to deploy same.