

TOWN OF BOLTON, WARREN COUNTY, NEW YORK POLICE DEPARTMENT

USE OF PHYSICAL FORCE POLICY

Adopted by Town Board Resolution #69

Effective March 31, 2021

TOWN OF BOLTON POLICE DEPARTMENT (BPD)

USE OF PHYSICAL FORCE BY ANY BPD POLICE OFFICER

PURPOSE AND INTENT

The purpose of this policy is to establish guidelines for the reasonable and legitimate use of physical force by law enforcement officers. Law enforcement agencies must recognize and respect the value and dignity of every person. In vesting law enforcement officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effectuating an arrest is where a suspect complies with simple directions given by an officer. When officers are confronted with a situation where control is required to effect arrest or protect the public safety, officers should attempt to achieve control through advice, warnings and persuasion. Where such verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use force that is reasonably necessary.

Law enforcement officers are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used. This policy is founded in these standards but is not intended to be an exhaustive recitation of state and/or federal legal framework governing use of force. The policy is designed to provide guidance on the use of physical force in accordance with New York State Executive Law §840(4)(d)(3).

This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force. Separate guidance and training is provided for each available instrumentality made available to our members.

POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. 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* (490 U.S. 386) is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

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.

DEFINITIONS

1. **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.

2. FORCE - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

3. 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.

4. PHYSICAL INJURY - Impairment of physical condition or substantial pain.

5. SERIOUS BODILY INJURY - Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, unconsciousness, protracted loss or impairment of the function of any bodily organ, member, or mental faculty.

USE OF PHYSICAL FORCE

1. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.

2. Under the 4th Amendment, a police officer may use only such force as is "objectively reasonable" under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

DETERMINING THE OBJECTIVE REASONABLENESS OF PHYSICAL FORCE

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

2. Factors that may be used in determining the reasonableness of force include, but are not limited to:

- A. The severity of the crime or circumstance;
- B. The level of immediacy of threat or resistance posed by the suspect;
- C. The potential for injury to citizens, officers and suspects;
- D. The risk or attempt of the suspect to escape;
- E. The knowledge, training and experience of the officer;
- F. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers and/or subjects;
- G. Other environmental conditions or exigent circumstances.

DUTY TO INTERVENE

1. Any officer present and observing another officer using physical 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.

2. An officer who observes another officer use force that exceeds the degree of force as described in subdivision 1 of this section should promptly report these observations to a supervisor.

USE OF DEADLY PHYSICAL FORCE

1. 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.

2. Deadly physical force may be used to stop a fleeing suspect where:

A. 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,

B. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or others.

C. Where feasible, some warning should be given prior to the use of deadly physical force. 3. Chokeholds and Obstruction of Breathing or Blood Circulation:

D. Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited UNLESS deadly physical force is authorized.

PROHIBITED USE OF PHYSICAL FORCE

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

A. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;

B. To coerce a confession from a subject in custody;

C. 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;

D. 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.

NON-VIOLENT CIVIL RIGHTS DEMONSTRATIONS

1. Members shall not use excessive force against any individuals engaged in non-violent civil rights demonstrations.

2. Members shall enforce applicable State and Local Laws against physically barring entrance to or exits from a facility or location which is the subject of such non-violent civil rights demonstrations.

REPORTING AND REVIEWING THE USE OF PHYSICAL FORCE

1. Appropriate and timely medical attention shall be provided to all persons with injuries resulting from a use of force incident.

2. Members having custody of a person must provide attention to the medical and mental health needs of such person and, must obtain assistance and treatment of these needs for such person. Such attention, assistance, or treatment shall be reasonable and provided in good faith under the circumstances.

A. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of physical force incident.

B. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner likely to result in serious physical injury or death to themselves or others.

3. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete an agency use of physical force report.

A. Use of force that results in a physical injury, serious bodily injury, or death.

B. Use of force incidents that a reasonable person would believe is likely to cause an injury.

C. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.

D. When an officer points a chemical agent at a person(s).

E. When an officer uses a chemical agent against a person(s) in a manner capable of causing physical injury as defined in Penal Law Article 10.

F. When an officer points a firearm at a person(s).

G. When an officer discharges a firearm at or in the direction of a person(s).

H. When an officer points an electronic control weapon (Conducted Electrical Weapon - Taser) at a person(s).

I. When an officer uses an electronic control weapon (Conducted Electrical Weapon - Taser) against a person(s) in a manner capable of causing physical injury as defined in Penal Law Article 10.

J. When an officer points an impact weapon at a person(s).

K. When an officer uses an impact weapon against a person(s) in a manner capable of causing physical injury as defined in Penal Law Article 10.

L. When an officer applies sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.

4. A Use of Physical Force Report (To be designed and utilized by the Police Department) shall be completed to document any reportable use of physical force incident.

5. Members should document any requests for necessary medical or mental health treatment, as well as efforts to arrange for such treatment.

DUTIES OF MEMBERS

1. Members may not use a level of physical force, i.e. oleoresin capsicum (pepper) spray, until they have successfully completed an approved training program relative to the proper use of such force.

2. Any member using physical force pursuant to their duties shall report or cause to be reported all facts relative to the incident on a Use of Physical Force Report .

3. Use of restraining devices as stated in this manual will not be construed as a use of physical force. However, when the handcuffs become an appliance to exert force necessary to subdue a person, or when the person physically resists the application of handcuffs, a use of physical force has occurred and the necessary reports must be submitted.
4. Subsequent to the use of physical force the member shall immediately evaluate the need for medical attention for that person and arrange for treatment when any person has a visible injury or complains of injury or pain and requests medical attention.
5. Except for obvious minor injuries, Emergency Medical Services (EMS) shall be requested for all persons with a visible injury who are refusing medical treatment, or the person may be transported to a hospital, where the refusal can be witnessed by EMS/hospital personnel. Any such refusal must be documented on the Use of Physical Force Report.
6. Members shall immediately notify the BPD Police Chief or his/her designee of any incident involving the use of physical force whether it occurs on-duty or off-duty.

MOVING VEHICLES

1. Shots fired at a moving vehicle involve additional considerations and risks, and are generally ineffective. When feasible, members should make reasonable efforts to move out of the pathway of an approaching vehicle.
2. No member shall discharge a firearm at a moving vehicle unless the occupants of the vehicle are actually using deadly physical force against them or another person.

ALTERNATIVE TACTICS - DE-ESCALATION

Members are encouraged, when circumstances reasonably permit, to utilize non-violent techniques and strategies to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., attempting verbal persuasion, negotiation, conflict resolution, formulating a plan, and summoning additional resources).

DUTIES OF THE SUPERVISOR

1. Ensure all members and other persons receive necessary assistance, including medical treatment and that all injuries are properly documented.
2. Ensure a complete investigation is conducted and a report is prepared and submitted.
3. Determine if an outside agency should be called to the scene or take over the investigation.
4. Ensure detailed photographs are taken of any injuries, lack of injuries under certain circumstances, or complaints of injury/pain, from any involved person(s); i.e. defendants, detainees, officers, involved third parties, etc.
5. Make an Administrative Notification, as required by agency policy, if a defendant or third party is physically injured or requires any type of medical treatment as a result of the use of physical force.
6. If the use of force is delivered by the BPD Chief, then a request should be made to the Warren County Sheriff or the New York State Police requesting one of their on-duty supervisors respond to the scene and document the incident in accordance with their agency procedure.

MEDICAL CONSIDERATIONS

1. Once it is reasonably safe to do so, medical assistance shall be provided to any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. A supervisor must be notified when a subject complains of pain, is injured or requires medical assistance following a use of physical force incident.
2. Any individual exhibiting signs of physical distress following a use of physical force incident should be continuously monitored until (s)he can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.
3. The supervisor or, if the supervisor is not available, the primary officer shall ensure that any person providing medical care, or receiving custody of a person following any use of force, is informed that the person was subjected to physical force. This notification shall include a description of the physical force used and any other circumstances that may be beneficial to the care for the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).
4. If the subject refuses medical attention, such refusal shall be properly documented and, whenever practicable, should be made to the supervisor and witnessed by another member and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, whenever practicable.
5. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple members to be brought under control, may be at an increased risk of sudden death. Incidents involving these persons should be considered medical emergencies. Members who reasonably suspect such a medical emergency should request medical assistance as soon as practicable and direct medical personnel stage at a safe location until directed otherwise.
6. Members should take steps to obtain medical attention for persons who are displaying signs of mental illness and acting in a manner likely to result in serious physical injury or death to themselves or others.
7. Requests for medical or mental health treatment, as well as efforts to arrange for such treatment, shall be documented.

DUTIES OF ADMINISTRATION

1. Review all reports, photographs and documents relating to all use of physical force incidents for accuracy and completeness.
2. Ensure a file is maintained, including all reports submitted in connection with the incident.
3. For reporting purposes, NYS Executive Law §837-t requires police agencies report any occurrence in which a police officer employs use of physical force as described below. The BPD Chief shall ensure all use of physical force incidents are reported to the NYS Division of Criminal Justice Services (DCJS) each time a member:
 - A. Engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury is defined as bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

- B. Brandishes, uses or discharges a firearm at, or in the direction of, another person;
- C. Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air;
- D. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
- E. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
- F. Brandishes, uses or deploys an electronic control weapon, including, but not limited to, a conducted electrical weapon (Taser), electronic stun gun, Noise-Flash Diversionsary Device (NFDD), or long range acoustic device.

4. The BPD Chief shall ensure all reporting requirements to DCJS regarding use of physical force are completed timely as defined by legislation and the criteria described above. Reporting shall be completed through the Use of Force Reporting Interface at: *eJustice New York Integrated Justice Portal (IJ Portal)*. Complete all portions of the online form and click the submit button to transmit the data to DCJS as required by law.

PROCEDURES FOR INVESTIGATING USE OF PHYSICAL FORCE INCIDENTS

1. Whenever practical, a supervisor should respond to the scene to commence a preliminary use of physical force review, and/or investigation if applicable.
2. The supervisor shall ensure the completion of a use of force report by all officers engaging in a reportable use of force incident and, to the extent practical, make a record of all members present.
3. Detailed photographs should be taken which sufficiently document any injuries, lack of injuries under certain circumstances, and/or complaints of injury/pain, from any involved person(s); i.e. defendants, detainees, officers, involved third parties, etc.
4. The BPD Chief shall receive and review every Use of Physical Force Report that is filed and ensure a thorough investigation is completed, when necessary.
5. Excessive, unreasonable and/or unnecessary use of physical force may be cause for disciplinary action and/or criminal prosecution.

TRAINING

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