

JOHNSON CITY POLICE DEPARTMENT

G.O. #111

USE OF FORCE

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I. PURPOSE

To define the policy of the Johnson City Police Department concerning the use of physical force and deadly physical force by police personnel.

II. POLICY

Police officers are confronted daily with situations where control must be exercised in order to affect an arrest and to protect public safety. Control may be exercised through advice, warnings, persuasion, or when necessary, through the use of physical force or, in some cases, deadly physical force. The use of reasonable physical force may be necessary in situations which cannot otherwise be controlled or resolved in a peaceable manner.

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.

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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.

This Policy will be conspicuously posted on the Johnson City Police Departments public website www.jcnypd.org

III. DEFINITIONS

A) NON-DEADLY FORCE:

Any use of force other than that which is considered deadly force.

B) DEADLY FORCE:

Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

C) PROBABLE CAUSE:

An apparent state of facts, sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed.

D) UNNECESSARY OR EXCESSIVE FORCE:

A type or degree of force employed that is neither necessary or appropriate, or when utilizing any degree of force as summary punishment or vengeance. The use of indiscriminate force is prohibited.

This department specifically prohibits the use of excessive force against any individuals engaged in non-violent civil rights demonstrations. However, officers will enforce any state and/or local laws that are violated during such demonstrations.

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E) **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

IV. USE OF FORCE

- A) 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.
- B) 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.

V. 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;

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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.

VI. DE-ESCALATION

Force shall be de-escalated immediately as resistance decreases. When an officer reasonably believes it to be feasible and practical based on circumstances, officers should consider the use of disengagements; area containment; surveillance; waiting on a subject; or summoning backup and or specialized units in order to reduce the need for force and increase officer and civilian safety. When possible, officers shall allow individuals a reasonable amount of time to submit to arrest before force is used.

VII. 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 must promptly submit a written report of these observations to a supervisor.

VIII. USE OF PHYSICAL FORCE

A) GENERAL PRACTICES

1. The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment, and often physical resistance. Simple directions that are complied with while the officer accompanies the subject is the most desirable method of dealing with an arrest situation.

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When tactically feasible, officers shall attempt to gain control through advice, persuasion, and warnings before resorting to actual physical force. These practices, however, should never be construed to suggest that an officer relax and lose control of the situation, thereby endangering his/her personal safety or the safety of others. Frequently, subjects are reluctant to be taken into custody and offer some degree of physical resistance. Normally, all that is required to overcome this resistance is physical strength and skill in defensive tactics.

Officers shall use only the reasonable amount of force necessary to overcome resistance. The authorized use of physical force ends when resistance ceases and / or the officer has accomplished the purpose necessitating the use of force.

B) PROHIBITED USES OF FORCE

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.

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C) PROCEDURES

1. Any police officer using physical force pursuant to his/her duties, whether on or off duty, will immediately notify his/her supervisor of the incident. In the case of off-duty incidents pursuant to his/her duties as a police officer, the officer shall make the incident known to the On-Duty Shift Supervisor. In either case, the officer shall report or cause to be reported all the facts relative to the incident on the Subject Resistance Management Report SRMR. If the incident occurred while the officer was on duty, he/she will complete the reports by the end of the shift; if while off duty, the officer will make every effort to complete the reports as soon as possible, and at the most, within four (4) hours of the occurrence, unless the officer is unable to do so due to injury.
2. If more than one officer is involved in a use of force incident, (regardless of what jurisdiction the force was used in and even when assisting another agency) the officer with the most direct involvement will complete the SRMR form. All other officers involved will complete Supplemental Reports documenting their actions and observations of the incident. Any injuries to the suspect or officers will be documented in the above reports. Suspects will be asked if they are injured and their response will be noted in reports. Immediate medical assistance will be provided/called for whenever necessary or requested. All finished reports will then be submitted to the Shift Supervisor/OIC for review.

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3. The use of approved less lethal devices will be considered a use of force and all necessary reports, including SRMR, must be completed. The use of handcuffs on a subject will not be considered the use of physical force unless the use of handcuffs becomes an appliance to exert force necessary to further subdue a prisoner, or when the subject physically resists the application of handcuffs. In those situations, a use of force has occurred, and the aforementioned reports must be completed.
4. Only issued and approved equipment will be carried on duty and used when applying physical force, including deadly physical force, except in emergency situations when an officer must use any resources at his/her disposal.
5. All officers are responsible for retaining the weapons in their possession and will exercise safety and security precautions with these weapons both on and off duty.
6. Loss or theft of any department-issued firearm, or less lethal device will be reported in writing through the chain of command as soon as possible to the Chief of Police, with a copy sent to the Departmental Armorer. Also, the appropriate entries will be made through the eJustice system, and a copy of the entry attached to each report.
7. The use of neck restraints is prohibited. Officers will not use restraint or submission tactics commonly known as “choke holds.” Any tactic intended to cut off either the subject’s airway or blood circulation to the head is prohibited. The only situation where such tactics would be authorized is when an Officer is justified in using deadly physical force on the subject.

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8. Anytime an officer has custody of a subject the officer must provide attention to the medical and mental health needs of the subject in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.

This includes appropriate and timely medical attention being provided to a person injured as a result of a use of force incident. After any use of force incident, an officer shall immediately evaluate the need for medical and mental health attention or treatment for the subject upon whom the physical force had to be used, and will arrange for immediate medical or mental health treatment when:

- a) subject has a visible injury; or
 - b) subject complains of injury and requests medical attention. If OC spray was used against subject, the officer will evaluate the need for medical treatment based on the guidelines set forth in this order and department training in the use of OC spray.
 - c) the officer has reasonable cause to believe that the subject appears to be mentally ill and is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.
9. Persons refusing medical treatment to obvious injury must be evaluated by Emergency Medical personnel where the refusal will be witnessed by said personnel and so noted on the SRMR.

D) SUPERVISORY RESPONSIBILITY

The Supervising Officer will:

1. Respond to the scene of the incident immediately;
2. Ensure that officers receive any necessary assistance, including medical treatment, and ensure that any injuries are documented on police reports;

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3. Ensure medical treatment for subject is evaluated per section 8 & 9 above;
4. Determine if technical services (i.e.: photographs, etc.) Are needed and who will perform them;
NOTE: a photo showing no injury may be as important as one showing injury
5. Ensure that that all forms, reports, etc. are completed. In the event that an officer is injured and unable to complete the forms, the Shift Supervisor will complete the forms to the best of his/her ability and knowledge of the incident, including his/her own comments in the report;
6. As soon as practical, all use of force reports (SRMR – Subject Resistance Management Report) and supplemental reports will be forwarded to the shift supervisor or OIC who will do a preliminary investigation of the incident and document the investigation on a supplemental report. The investigation will be as thorough as possible given the circumstances.

The OIC/Supervisor should interview the suspect and ask them: (or make sure these questions are asked if not on scene)

If they are injured as a result of the incident and if so:

How were they injured, and;

Where they are injured, and;

Do they require medical treatment

The OIC/Supervisor should also conduct an initial interview of any witnesses and document their account.

7. The Detective Division Supervisor will conduct an overall investigation of all use of force incidents. This will include review of BWC video. Copies of all reports (supplemental reports, SIR or DIR, etc) will be forwarded to the Detective Division Supervisor for review.

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The original SRMR will be completed by the Officer on the day it occurs and will be submitted for approval. Once approved it will also be forwarded to the Detective Division Supervisor the day of the incident. The Detective Division Supervisor will notify the second in command immediately if any force used is excessive.

Once the investigation is completed all reports will be forwarded to the Second in Command for his review.

All completed reports will be forwarded by the Second in Command to the Chief of Police for his review. All SRMR reports will be kept in a binder by the Second in Command.

E) DCJS USE OF FORCE REPORT

1. Pursuant to NYS Executive Law 837-t, any use of force incidents that meet the follow criteria must be reported to the NYS Department of Criminal Justice Services:
 - a) When an officer engages in conduct which results in the death or serious bodily injury of another person.

2. When one of the following is initiated by an officer:
 - a) Brandishes, uses or discharges a firearm at or in the direction of another person;
 - b) 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;
 - c) Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
 - d) Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;

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- e) Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long range acoustic device.

3. It will be the responsibility of the Chief or his second in command to complete and submit this report to DCJS in a timely manner.

F) APPROVED LESS-LETHAL DEVICES

All officers using department approved less lethal devices must successfully complete an initial training course prior to the issuance or use of the approved less lethal device. The approved less lethal options are as follows:

1. Oleoresin Capsicum Aerosol (Pepper Spray)
2. Collapsible Batons: officers are authorized to carry a department-approved collapsible baton only. Officers are prohibited to deploy intentional blows to the head or spinal column of an individual with the collapsible baton, except in a situation where deadly physical force is needed. An officer may only use the collapsible baton as a defensive weapon, and must complete a defensive collapsible baton training course in which that officer must demonstrate competency in its use.
3. TASER MODEL X26
4. BLUNT IMPACT PROJECTILES

G) UNAUTHORIZED LESS-LETHAL WEAPONS

Officers are forbidden to carry or use the following weapons:

1. Blackjacks
2. Weighted ("saps") gloves
3. Brass knuckles

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4. Any knife specifically prohibited by Section 265 of the NY State Penal Law.
5. Flashlights will not be used as an offensive or defensive weapon in a situation where the use of physical force or deadly physical force is needed, unless no other adequate instrument is available.

IX. USE OF DEADLY PHYSICAL FORCE

Police personnel may use deadly physical force when:

A) **THE USE IS NECESSARY TO DEFEND**

the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force;
or

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B) TO APPREHEND A SUBJECT

who is committing or has committed a felony in which deadly physical force has been used or threatened, and the officer has reasonable cause to believe that such subject would pose a substantial risk of death or serious physical injury to the officer or other persons, unless immediately apprehended.

All officers will familiarize themselves with Article 35, Defense of Justification (35.00-35.30), of the NY State Penal Law. Officers are to guide their actions when using force based upon this law as well as departmental training and policy.

The fact that an officer is justified in using deadly physical force does not allow reckless conduct by the officer if the use of deadly physical force may injure innocent persons.

X. SPECIFICS CONCERNING THE USE OF DEADLY PHYSICAL FORCE

In addition to applicable procedures listed under: "Use of Physical Force", the following procedures will be used:

A) GENERAL PRACTICES

1. Only firearms and ammunition that are department issued and/or authorized by the Chief of Police shall be carried and used by officers while on duty;
2. No officer shall be issued a firearm for duty purposes until they have received the necessary training while attending the Police Academy or from a departmental Firearms Instructor, and successfully qualified with the firearm according to the departmental standards.

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3. Although not prohibited by departmental rules & regulations, the carrying of the department-issued and/or authorized firearm and ammunition while off duty is discouraged unless working an extra assignment as approved by the Chief of Police. Personal firearms and ammunition may be carried off-duty (exception: department-authorized extra work assignments) by officers provided that all applicable laws are complied with.
4. Warning shots are prohibited.
5. Discharge of a firearm from or at a moving vehicle is generally prohibited; however, it is recognized that a situation may arise in which an officer may have to do so (as: a vehicle used as a deadly weapon toward an officer, or the occupants using deadly physical force against the officer or another person and it is absolutely necessary for the officer to defend himself or another person).
NOTE: Shooting at a fleeing vehicle or one that is leaving the scene traveling away from the officer is PROHIBITED.
6. Department policy dealing with the use of deadly physical force shall be adhered to during vehicular pursuit driving.
7. Where feasible officers should always attempt to give commands or warnings to a subject to try to gain compliance before using deadly physical force.

XI. TRAINING

- A) All officers will receive training and demonstrate their understanding on the proper application of force. Annual training will be conducted in the following areas: use of force policy, Article 35, firearms, and related legal updates.

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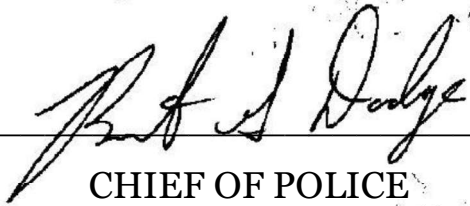
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- B) Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition as well 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.

****THIS POLICY IS NOT TO BE COPIED OR DISSEMINATED IN ANY MANNER WITHOUT THE AUTHORITY OF THE CHIEF OF POLICE****

BY ORDER OF



CHIEF OF POLICE