



SUBJECT: ADMINISTRATION
USE OF PHYSICAL FORCE

References: **NEW YORK STATE ACCREDITATION STANDARDS:**

20.1 (Necessary Force),
20.6 (Less-Than-Lethal Substances/Devices),
25.1 (Internal Affairs Function).

Special Instructions:

1. This Policy supercedes all previous Policies and Procedures.

<u>Number:</u> A - 20.110	<u>Pages:</u> 8	<u>Effective Date:</u> August 15, 2002	<u>Revised Date:</u> January 6, 2023	<u>Issuing Authority:</u> Chief of Police
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I. **PURPOSE:** The purpose of the Town of Cicero Police Department Use of Force Policy is to provide guidelines on the reasonable use of force for officers of the Department as part of their sworn duty to protect and serve the public of the Town of Cicero. The policies set forth in this section are operational guideposts, and the Department's policy shall also include the standards, techniques, and requirements contained within the instruction provided to officers as part of their basic, in-service, and on-the-job training. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner. The Department and this Policy recognize and respect the value and sanctity of human life and the dignity to be accorded to the citizens the Department is sworn to protect. This Policy equally protects the welfare and safety of the Department's officers who place themselves in danger on a daily basis. Vesting officers with authority to use reasonable force and to protect the public welfare and themselves requires monitoring, evaluation and a careful balancing of these interests

II. **POLICY:**

- A. Any use of force by officers shall be consistent with the governing legal and constitutional standards set forth in the Supreme Court's decision in *Graham v. Connor*.
- B. Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.
- C. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident, rather than with the 20/20 vision of hindsight. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

- D. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
- E. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- F. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this Policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.
- G. This Policy shall be interpreted consistently with the provisions set forth in Article 35 of the N.Y.S. Penal Law
- H. It is the policy of the Town of Cicero Police Department to conspicuously post General Orders, A-20.100 Use of Physical Force, A-22.220 Use of Deadly Physical Force, GO-T-32.100 Impact and Aerosol Weapons, GO- T-32.200, and SO- FSS-15-002 Electronic Control Device (EDC) Policies on the department's website, for public review.

III. **DEFINITIONS:**

- A. **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.
- B. **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.
- C. **Physical Injury** – Impairment of physical condition or substantial pain.
- D. **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.

IV. **DE-ESCALATION:**

- A. De-escalation” is communicating, verbally or non-verbally, or through physical contact or action in response to a potential threat in an attempt to stabilize the situation or reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation. De-escalation may include the use of such techniques as command presence, advisements,

verbal commands or warnings, verbal persuasion, tactical repositioning, or any tactic or force option that in the officer's reasoned judgment is likely to result in a lower level of force being used to accomplish the objective at hand. When reasonable and safe under the totality of circumstances, officers should attempt to de-escalate potential threats. Officers should use de-escalation techniques consistent with his/her training whenever feasible and appropriate.

V. USE OR FORCE AUTHORIZATION AND LIMITATIONS:

- 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.
1. Effecting an arrest or prevent the escape from custody of a subject whom the officer reasonably believes has committed an offense;
 2. effecting an investigatory stop or detention where there is reasonable suspicion to believe that criminal conduct has occurred or is ongoing;
 3. where there is a reasonable basis to believe the subject poses a physical threat to an officer or others, including the subject;
 4. taking subjects into protective custody, including civil custody, when authorized by law, such as persons who are a danger to themselves or others or persons incapacitated by intoxicating agents;
 5. preventing a subject from committing suicide or inflicting serious physical injury upon themselves;
 6. assisting a licensed medical provider in providing necessary medical treatment; or
 7. overcoming resistance to a police order
- B. The authorized use of physical force should cease when the officer reasonably perceives that the purpose necessitating the use of force has ceased.

VI. FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE:

- A. When determining whether to apply force, a number of factors should be taken into consideration to determine the existence of a threat, as time and circumstances permit. These factors include, but are not limited to:
1. the immediacy and severity of the threat to officers or others;
 2. the seriousness of the suspected offense or reason for contact with the subject;
 3. whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the officer;
 4. the conduct of the subject being confronted, as reasonably perceived by the officer at the time;
 5. dynamics between the officer and subject (e.g., age, size, physical condition, skill level, injuries sustained, level of exhaustion or fatigue, the length or duration of the encounter, the number of officers available vs. subjects, etc.);
 6. whether the subject exhibits any pre-assault indicators, such as verbal aggression, posture change, physiological changes consistent with stressor events, target glance, undirected over-compliance, aggression directed at another person or an inanimate object, kinetic body movements, physical

non-compliance, defensive or offensive physical posturing, or any combination;

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

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.

VIII. 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
 - 3. To obtain blood, saliva, urine, or other bodily fluids or cells, from and 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 resistance posed by the subject.
 - a. When utilizing force against persons whom are restrained the following criteria will be utilized to assess the reasonableness of the force;
 - i. The relationship between the need for the use of force and the amount of force used.
 - ii. The extent of the defendant's injury caused by the force
 - iii. Any effort made by the officer to temper or limit the amount of force
 - iv. The severity of the security problem at issue.
 - v. The threat reasonably perceived by the officer.
 - vi. Whether the plaintiff was actively resisting

IX. MEDICAL EVALUATION:

- A. Officers shall assess and observe subjects for injuries as soon as reasonably practical and feasible following the use of force.
- B. Officers shall promptly request medical assistance for subjects who exhibit signs or symptoms of injury or illness or otherwise request medical assistance as soon as reasonably practical and feasible following the use of force.
- C. Officers shall render emergency first aid within the limits of their individual skills, training, and available equipment until professional medical care providers arrive on the scene, if necessary and feasible under the circumstances.

X. REPORTING AND REVIEWING THE USE OF FORCE:

- A. Members involved in use of force incidents as described below shall notify the watch supervisor or duty chief immediately:
 - 1. Use of force that results in a physical injury.
 - 2. Use of force incidents that a reasonable person would believe is likely to cause an injury.
 - 3. Incidents that result in a complaint of pain from the suspect except for complaints of minor discomfort from compliant handcuffing.

4. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
 5. Incidents where a firearm was discharged at a subject.
 6. Any incidents that occur when off duty.
- B.** Members will attempt to locate and identify any witnesses, documenting their statements if necessary
- C.** Subject Management Form:
1. In addition to documenting a Use of Physical Force in their Police Report, Officers shall prepare and submit a Subject management Report when;
 - a. The use of force required compliance techniques. Simply handcuffing does not denote use of force as required in this policy.
 - b. A Person is Injured or Complains of an Injury as a result of the Use of Physical Force by a Cicero Police Officer.
 - c. The Use of Force involved Acts such as Striking, Punching, Kicking, K-9 Bite, or the Use of Pressure Point Controls.
 - d. A Police Canine Bites a Person or Strikes a Person with a Muzzle.
 - e. The Use of Force involved the threat of or deployment of an **Impact Weapon, Kinetic Energy Weapon**, Pepper Spray, Electronic Control Device (ECD) or firearm.
 - f. The Person is charged with the Crime of Resisting Arrest and/or Obstructing Governmental Administration.
 - g. The Officer is directed to complete a Subject management report by a Superior Officer.
 2. If more than one Officer is involved in the Use of Force, each Officer shall complete the Subject Management Report describing the Force used by each Officer.
 3. Physical Force used against Crowds or Unknown Persons will be documented, recording all possible Information.
 4. If an Officer is injured/incapacitated, his Supervisor shall prepare the Subject Management Report based upon the Supervisor's Investigation of the Incident and Statements of the Officer, if possible. Any inability to speak with the Officer will be recorded in the Supervisor's Report.
 - a. Statements will be obtained from any witnesses present
 - b. Officer will be instructed to submit a report as soon as practical
 5. A summary of the use of force and resistance encountered will be documented in the Subject Management Report.
 6. The force using officer will place the draft copy of the subject management form in the Chief of Police mailbox upon completion.

7. A Supervisor shall initially review the Subject Management Report for Completeness and Accuracy. Upon the supervisor approving the subject management form the signed approved copy will be placed in the Chief of Police or designee's mailbox.
- D. Document and Photograph Injuries.** Note: A Photograph showing an Absence of Injury may be as important as one that shows Injury.
- E. The Watch Supervisor/Duty Chief will investigate the Incident to ensure that:**
1. The Officer involved receives Necessary Assistance, including Medical Treatment.
 2. The Person upon whom the Force was used receives necessary Medical Attention.
 3. Injuries to the Officer or the Person upon whom the Force was used are Documented and Photographed.
 4. All Reports, including a Suspect Management Report, are prepared and submitted. In the event an Officer is unable to complete Reports due to Injuries, the Watch Supervisor shall prepare or cause them to be prepared, along with his own Reports of the Incident.
 5. A copy of the
 6. The Chief of Police or designee is notified if the Use of Force results in:
 - a. Injury Sustained or Inflicted on a Member of the Department.
 - b. A Firearm Discharged or Deadly Physical Force was employed.
 - c. There is an Allegation of Misconduct on the part of a Member of the Department.
 - d. A suspect or other person suffers a serious physical injury as a result of an Officers use of force.
- F. The Chief of Police or designee shall respond to the scene when and if he/she deems appropriate. In the absence of a Watch Supervisor, the Duty Chief shall ensure that those tasks described in (X)(E) are accomplished.**
- G. EVALUATING THE USE OF FORCE**
1. The Subject Management Form will be reviewed by the Chief of Police or designee to determine if the use of force was lawful and appropriate. If determined that the Use of Force was not appropriate or requires further review the Chief of Police or designee will conduct an investigation.
 2. The Chief of Police or designee will be responsible for conducting reviews of all Use of Force incidents where a personnel complaint is involved.
 3. The review process for all Subject Management Forms shall include:

- a. Document and log all use of force in the use of force log saved in the shared drive.
 - b. A review of the Incident to ensure that the Use of Force was Necessary, Reasonable and Justified, and shall determine whether the Use of Force was:
 - i. Within Department Policy and Applicable Laws.
 - ii. Out of Department Policy and/or in violation of Applicable Laws.
 - c. A use of force final memo of review shall be completed and filed in the Office of the Chief of Police in the department reports and information binder.
 - d. Use of force incidents that are required under executive law 837-t shall be entered into the use of force reporting interface in the Ejustice Portal monthly via the UCR.
4. If an Internal Affairs Officer is assigned, he/she shall report their findings to the Chief of Police.

XI. TRAINING:

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