

ALBANY COUNTY SHERIFF'S OFFICE			
General Order	Date Issued 04/23/2008	Effective Date 5/01/2008	General Order No. 31-SO-19
Subject: Use of Force & Firearms Conduct		Distribution: All Personnel	
Reference: Reviewed November 2022		Revised: November 2022	

PURPOSE: To provide members with guidelines, policy and statues regarding the use of physical force, deadly physical force, and firearms. This policy is posted on the main page of the agency website for public viewing per state standards. (Rev. 11/2022)

FOREWARD: The following directive is for this Agency's use only and does not apply in any civil or criminal proceeding. Violations of this directive will only form the basis for Internal Administrative Sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

Often times in their normal course of duties, Law Enforcement Officers will be called upon to use some degree of force. This force must always be the minimum amount necessary to achieve lawful objectives, be it physical force or deadly physical force.

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 the defense of themselves or others. 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. (Rev. 10/2020)

Perhaps the gravest decision any member may make in his police/peace officer career is whether or not to use deadly physical force against another person. At times the decision must be made in seconds, with little time for discussion. As professional police/peace officers, the most important objective is to protect human life and avoid using deadly physical force unless it is absolutely necessary. New York State Penal Law, Article 35, Defense of Justification, details when the use of deadly physical force is justified. All members shall familiarize themselves with Article 35, which governs the use of physical and deadly force.

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. (Rev. 10/2020)

DEFINITIONS:

1. **Objectively Reasonable** – An objective standard used to judge a sworn employees actions, Under this statement, a particular application of force must be judged through the perspective of a reasonable sworn law enforcement or corrections division member 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 sworn member at the time that the force was used.
2. **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 as defined in the New York State Penal Law.
3. **Physical Injury** – Impairment of physical condition or substantial pain as defined in the New York State Penal Law.
4. **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 as defined in the New York State Penal Law. (Rev. 07/19)

I. TRAINING

- A. All Law Enforcement Members and those Corrections Division Members designated by the Facility Superintendent, receive annual firearms training and instruction concerning Article 35 and the policies of the Albany County Sheriff's Office concerning the use of force and firearms. Said members should demonstrate their understanding of the proper application of force as part of this training.
- 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 key to the real-world application of the concepts discussed within this policy. (Rev. 07/19)

II. **USE OF FORCE** - In addition to the provisions of New York State Penal Law, Article 35, the following rules shall apply to the 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. (Rev. 07/19)

III. **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. (Rev. 07/19)

IV. **DETERMINING 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 the following:
 - 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, members of this agency, and suspects;
 - 4. The risk or attempt of the suspect to escape;
 - 5. The knowledge, training, and experience of the member;
 - 6. Member/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of members/law enforcement officers or subjects;

7. Other environmental conditions or exigent circumstances.

(Rev. 07/19)

V. DUTY TO INTERVENE

A. Any member present and observing another member using force that they reasonably believe 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 member has a realistic opportunity to prevent harm.

B. A member who observes another member use force that exceeds the degree of force as described in subdivision A of this section as listed above should promptly report these observations to a supervisor.

(Rev. 07/19)

C. Members who violate agency use of force policy are subject to corrective actions, including formal discipline, in accordance with this agency's disciplinary protocols and any applicable collective bargaining agreements. (Rev. 10/2020)

VI. USE OF DEADLY PHYSICAL FORCE – Deadly physical force may be used by a member to protect themselves or another person from what the member believes is an imminent threat of serious physical injury or death. In addition to the provisions of New York State Penal Law, Article 35, the following rules shall apply to the use of force and firearms (Rev. 07/19):

A. No member shall draw a firearm except for firing in the line of duty or in anticipation of firing in the line of duty, for inspection, cleaning or during supervised training.

B. Members shall fire their weapons to terminate criminal activity when justified. Members shall aim at the "Center Mass" of the body to minimize danger to other than the intended target.

C. Warning shots are prohibited.

D. Shooting at or from a moving vehicle is prohibited except as the ultimate measure of self- defense or defense of another. (Rev 10/2020)

E. Members shall not use deadly physical force when it appears likely that an innocent person may be injured as a result. Reckless conduct which harms an innocent person is not justified under Article 35 of the New York State Penal Law and may subject the member to criminal or civil liability.

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

1. The member has probable cause to believe that the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and
2. The member reasonably believes that the suspect poses an imminent threat of serious physical injury to the member or to others.
3. Where feasible, some verbal warning should be given prior to the use of deadly physical force. (Rev. 07/19)

G. Chokeholds and Obstruction of Breathing or Blood Circulation

1. 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. (Rev. 10/2020)

H. The killing of an animal by use of deadly physical force or firearm is justified:

1. When it is self-defense;
2. To prevent substantial harm to the member or another
3. When/if the animal is so badly injured that humanity requires relief from further suffering.
4. When/if authorized bylaw:
 - a. Agriculture and Markets Law (121,122,370 and 374)
 - b. Environmental Conservation Law (11-0529.4)
5. The active pointing of a firearm at a person, (handgun, long gun) is considered a use of force pursuant to this order. Such shall be reported to a supervisor as soon as practically possible and a "Use of Force Form" shall be completed by the member as prescribed in section VIII of this order.

VII. **SAFE HANDLING OF FIREARMS** – To prevent unwarranted injury to persons and needless damage to property, members shall comply with the following Firearm Safety Rules:

- A. Until you have personally checked a firearm to be certain it is safe, treat every firearm as if it is loaded.
- B. Never point a firearm at a person unless you are prepared to use it and are justified by Article 35.
- C. Never load or unload a firearm inside a vehicle.
- D. Unload the firearm before any cleaning, inspecting or other maintenance is performed on any firearm.

VIII. FIREARM REQUIREMENTS

- A. No member shall carry any firearm on duty which is not issued by the Albany County Sheriff's Office, except as authorized by the Sheriff or Undersheriff.
- B. While carrying a firearm on duty, such firearm shall be kept fully loaded (unless authorized otherwise), clean, and in working order at all times.
- C. All weapons modifications are prohibited unless authorized by the Sheriff or Undersheriff.
- D. No member shall carry any additional or other firearm unless authorized by the Sheriff or Undersheriff.
- E. No member shall carry any ammunition not issued or approved by the Sheriff or Undersheriff.
- F. No member will carry a firearm issued by this Agency unless they have been successfully qualified with the issued weapon.
- G. When entering a facility or location that prohibits firearms, the member will deposit his firearm in a secured place prescribed for storage of firearms. If no such place is allocated, the firearm will be secured in a locked closet, locker or desk not accessible to the public.
- H. Members are prohibited from carrying personally owned firearms into the Albany County Correctional Facility.
- I. Whenever a firearm is discharged while on official business or otherwise, except for firearms training, the member shall report the same immediately to their superior and complete a "use of force form," explaining the circumstances surrounding such discharge.

- J. No Member shall be issued more than two handguns and one long gun without authorization from the Sheriff.

IX. OFF-DUTY WEAPONS

- A. Members are not required to carry firearms while off-duty. A member who elects not to carry a firearm while off-duty shall not be subjected to disciplinary action if an occasion should arise in which they could have taken police action if they were armed, except off-duty members who are operating a department vehicle shall be armed with an approved firearm.
 - 1. An approved firearm shall mean an agency issued firearm which such member has qualified with and / or a personally owned firearm which is properly registered on a valid NYS Pistol Permit or registered with this Agency on a C-Form pursuant this policy.
- B. Any member carrying a firearm off-duty may carry their issued Agency firearm and in such case such member must carry with them their badge and identification card, unless otherwise authorized by the Sheriff. Members who carry personally owned firearms while off-duty which are registered on a C-Form must carry their badge and identification card with them. Those members carrying personally owned firearms registered on a NYS Pistol Permit must conform to statutes of State Law pertaining to the issuance of Pistol Permits and restrictions on such permit.

X. REGISTERING PERSONALLY OWNED FIREARMS ON A "C-FORM"

- A. Members are required to request authorization for any purchase or acquisition of any handgun acquired by their police / peace officer status. Members are also required to notify this Agency of any sale or disposal of a handgun which was possessed by virtue of their police / peace officer status.
- B. Effective October 31, 2008 no member of this Agency will be authorized to possess more than **two** handguns by virtue of their police / peace officer status without obtaining a New York State Pistol Permit.
 - 1. Those members who had more than two handguns registered to them (on a C- Form) prior to November 14, 2008 shall have up to three (3) months from such date to file for NYS Pistol Permit or legally dispose of such weapons to bring them in compliance with this order and up to one year from such date to possess a valid NYS Pistol

Permit, switching such weapons from the C-Form to the NYS Pistol Permit.

- C. Any member wishing to acquire or purchase a handgun by virtue of their police / peace officer status must **PRIOR** to such acquisition or purchase:
1. Complete a “Request for Authorization of Acquisition of a Handgun” form and submit the same to this Agency.
 2. Correctional Facility members shall submit their requests to their Training Unit Supervisor, who will forward them to the Superintendent for approval.
 3. Law Enforcement Members shall submit their requests to the commander of the Office of Professional Standards.
- D. It shall be the duty of the commander of the Office of Professional Standards (in Law Enforcement) and the Training Unit Supervisor (in the Correctional Facility) to review “Request for Authorization of Acquisition of a Handgun” forms.
1. Requests will be approved and returned to requesting member if they have fewer than two handguns registered on a C-Form and if there are no restrictions on file for the requesting member, such as active orders of protection.
 2. Requests will be denied if the member has more than two handguns registered to them on a C-Form or for a specified restriction. In such case, such member shall not be authorized to purchase, acquire or possess the requested handgun by virtue of their police / peace officer status.
- E. Upon receiving authorization for the purchase / acquisition of a handgun pursuant to this directive, such member acquiring a handgun must within **48 hours** of acquisition submit a completed “New York State Police C-Form” along with the APPROVED “Request for Authorization of Acquisition of a Handgun” form to this Agency.
1. Correctional Facility members shall submit their C-Forms to their Training Unit Supervisor.
 2. Law Enforcement Members shall submit their C-Forms to the commander of the Office of Professional Standards.

- F. The Training Unit Supervisor at the Correctional Facility (for Correctional Facility members) and the member in charge of Internal Affairs (for Law Enforcement members) shall maintain files of all requests and C-Forms **and** file copies with the Personnel Office at Headquarters.
 - 1. The Personnel Office at Headquarters will file in member's personnel records such requests and forms.
- G. Any member disposing of a handgun possessed by them by virtue of their police / peace officer status will complete and submit a "New York State Police C-Form" within **48 hours** of such disposal.
 - 1. Correctional Facility members shall submit their C-Forms to their Training Unit Supervisor who will file the same within their office **and** with the Personnel Office at Headquarters
 - 2. Law Enforcement Members shall submit their C-Forms to the commander of the Office of Professional Standards who will file the same within their office and with the Personnel Office at Headquarters.

XI. SHOTGUN / PATROL RIFLEPROCEDURES

- A. Agency Shotguns and Patrol Rifles may be carried by members on duty in their assigned vehicle if they so choose (with the permission of a supervisor) or are so assigned.
- B. If the vehicle is assigned with a "rack", the weapon shall be locked in such rack, loaded with an empty chamber.
- C. Shotguns are to be loaded with the same type of shells. Mixing of various shell types is prohibited.
- D. If the vehicle is not equipped with a rack, the weapon shall be in a case, locked in the vehicle's trunk, loaded with an empty chamber.
- E. Shotguns / Patrol Rifles shall be fired in a prescribed course by each member authorized to carry them during annual firearms training and a review of safety rules shall be conducted at that time.

XII. NON-LETHAL WEAPONS

- A. The use of non-lethal weapons (e.g. police baton, ASP, chemical agent, aerosol

restraint devices, TASER) is considered a use of force. Their use must be consistent with the amount of force necessary to effect lawful objectives and in accordance with Article 35 of the New York State Penal Law.

- B. Each Law Enforcement member shall be issued a police baton or ASP and Aerosol Restraint. Training in the use of such weapon is conducted during the Basic Course for Police Officers at the Sheriff's Training Institute and/or during specialized training in the Agency. (Rev. 10/2020)
- C. Law Enforcement members trained in accordance with Agency General Orders in the use and deployment of Conducted Energy Weapons (TASER M26) may carry and utilize the same as prescribed by Agency policy and procedure. The use of a TASER is considered a use of force and strict reporting guidelines have been established and shall be adhered to.
- D. Uniform members are required to carry their issued baton or ASP and Aerosol Restraint while on duty. Those Law Enforcement members not regularly assigned to uniform duties shall carry such equipment as directed by their Unit Commanders.
- E. Although this Agency maintains chemical agents, members are prohibited from carrying these items (with the exception of Aerosol Restraints which are approved and issued, reference General Order 48-LE-01). Their use shall be limited to those persons specially trained and under special circumstances as dictated by the Sheriff, Undersheriff or for incidents involving matters related to the Correctional Facility, the Superintendent of the Albany County Correctional Facility.

XIII. POST SHOOTING PROCEDURES – In the event a member of this Agency is involved in a shooting of another person, the following procedures shall be followed in addition to standardized investigative procedures.

- A. The scene shall be secured as soon as possible. Appropriate medical aid shall be rendered.
 - 1. The Sheriff shall be notified immediately through channels. The Unit Commander of the member involved in the shooting shall respond to the scene along with the Commander of Professional Standards.
- B. The weapons used shall be turned into the Commander of Professional Standards or his designee tagged and kept until it is determined it is not an item of evidence. All rounds, fired and live, will be turned in with the weapon or

accounted for until it is determined they are not an item of evidence.

- C. The involved member(s) shall be issued a different weapon and remain on-duty unless there are circumstances that would indicate another course of action (suspension, leave at member's request, light duty, etc...).
- D. The incident shall be investigated by the Criminal Investigations Unit and Professional Standards under the direction of the Sheriff or his designee.

XIV. REPORTING AND REVIEWING USE OF FORCE INCIDENTS

- A. Whenever an employee uses force against another or discharges their firearm for other than training purposes, they shall notify their supervisor as soon as practicable and a "Use of Force Report" shall be completed by the employee. The Use of Force Report (attached to this order) shall be completed for each person force is used upon in any given situation. (Rev. 07/19)
- B. A supervisor that is made aware of a use of force shall ensure that the necessary use of force report(s) are completed by all members engaged in a reportable uses of force and, to the extent practicable, make a record of all members present. This record can be made in the Supervisor Review ~Use of Force Form (attached to this order). Where practicable, a supervisor should respond to the scene to begin the preliminary use of force review process which shall proceed according to agency policy. (Rev. 10/2020)
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to members or suspects. (Rev. 07/19)
- D. Members should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment. Such documentation may be in the form of a standard incident report. (Rev. 10/2020)
- E. For the purpose of reporting, Use of Force types have been given numeric identifiers and divided into four (4) separate reporting levels. See attached Chart.
- F. Level 4 Types of Use of Force by a member require a Use of Force Form be completed by each member using such force. A supervisor shall be notified and the on-duty Supervisor shall complete the Supervisor Review ~ Use of Force Form (attached to this order).

- G. Level 3 Types of Use of Force, in addition to requirements in Section XIV (F) of this order, require an on-duty or on-call Supervisor to respond to the scene and conduct the review of Use of Force.
- H. Level 2 Types of Force, in addition to requirements in Sections XIV (F, G) of this order, require the prompt notification to the Station Commander and Commander of Professional Standards. Level 2 Use of Force incidents will be evaluated and determination will be made for need of a Commissioned Officer to respond to the scene to conduct the review.
- I. Level 1 Types of Force, in addition to requirements in Sections XIV (F, G) of this order, require immediate notification to the Station Commander and Commander of Professional Standards, who both shall respond to the scene to conduct a review of the use of force. In Level 1 Types of Force incidents, the Station Commander / Asst. Station Commander shall be responsible for completing the "Supervisor Review of Use of Force Form." Additionally, a "Use of Force Checklist Form" shall be completed by the Station Commander / Asst. Station Commander.
- J. New York State Standardized Incident Reports are NOT required except if the incident would dictate the same be completed whether or not force was used.
- K. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party. Reasonable attention shall also be provided to the medical and mental health needs of **any** persons under arrest or in custody.
(Rev. 10/2020)
- L. Complete copies of all reports generated from an incident wherein force was used, no matter the Level Type, shall be forwarded within 72 hours to Professional Standards except as approved by the Commander of Professional Standards.
- M. The Office of Professional Standards shall ensure that any use of force involving any of the following is reported to the New York State Division of Criminal Justice Services:
 - 1. Brandishing, use, or discharge of a firearm at or in the direction of another person;
 - 2. Use of a chokehold;
 - 3. Display, use or deployment of a chemical agent or electronic stun device;

4. Brandishing, use or deployment of an impact weapon (e.g. a baton);
5. Engages in any conduct which results in the death or serious bodily injury of another person. (Rev. 07/19)

For the purposes of such state reporting, the following definitions as defined by the Division of Criminal Justice Services shall apply:

- **Display of a chemical agent** – to point a chemical agent at a person
- **Use/Deploy a chemical agent** – the operation of the chemical agent against a person or persons in a manner capable of causing physical injury as defined in New York State Penal Law Article 10
- **Brandishes a firearm** – to point a firearm at a person or persons
- **Uses/Discharges a firearm** – to discharge a firearm at or in the direction of a person or persons
- **Brandishes an electronic control weapon** – to point an electronic control weapon at a person or persons
- **Brandishes an impact weapon** – to point an impact weapon at a person or persons
- **Uses/Deploys an impact weapon** – the operation of an impact weapon against a person or persons in a manner capable of causing physical injury as defined in New York State Penal Law Article 10
- **Uses a chokehold or other similar restraint** – any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air
- **Serious bodily injury** – bodily injury that creates or causes:
 - a substantial risk of death; or
 - unconsciousness; or
 - serious and protracted disfigurement; or
 - protracted loss or impairment of the function of any bodily member, organ, or mental faculty

(Rev. 10/2020)

General Order
31-SO-19
SO ORDERED:
Craig D. Apple, Sr.
Sheriff