

# WEST SENECA POLICE DEPARTMENT

	SUBJECT <b>Use of Force - General</b>	GENERAL ORDER NUMBER <b>A-20.1</b>
	<b>Daniel M. Denz, Chief of Police</b>	REVISED <b>December 3, 2020</b>

## I. PURPOSE

Police Officers of the Town of West Seneca New York Police Department 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 to individual officers in selection of a justifiable level of force to control a subject. This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force.

## II. POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.<sup>1</sup> The amount of force that is used by officers shall be the amount of force that is objectively reasonable and necessary 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.

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.”<sup>2</sup>

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.

<sup>1</sup> Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4<sup>th</sup> Amendment standard of objective reasonableness.

<sup>2</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

### **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.<sup>3</sup>

**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.<sup>4</sup>

**C. Physical Injury** – Impairment of physical condition or substantial pain.<sup>5</sup>

**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.<sup>6</sup>

**E. 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.

**F. Display a chemical agent** – To point a chemical agent at a person or persons.

**G. 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 Penal Law Article 10.

**H. Brandishes a firearm** – To point a firearm at a person or persons.

**I. Uses/Discharges a firearm** – To discharge a firearm at a person or persons.

**J. Brandishes an electronic control weapon** – To point an electronic control weapon at a person or persons.

**K. Uses/Deploys electronic control weapon** – The operation of an electronic control weapon against a person or persons in a manner capable of causing physical injury as defined in Penal Law Article 10.

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<sup>3</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

<sup>4</sup> NY Penal Law § 10 (11) (McKinney 2013)

<sup>5</sup> NY Penal Law § 10 (9) (McKinney 2013)

<sup>6</sup> NY Penal Law § 10 (10) (McKinney 2013)

**L. Brandishes an impact weapon** – To point an impact weapon at a person or persons.

**M. 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 Penal Law Article 10.

**N. 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.

**O. Conduct which results in the death or serious bodily injury of another person** – Serious bodily injury includes 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.

#### **IV. USE OF FORCE**

**A.** In general terms, force is authorized to be used when 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.<sup>7</sup>

**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.<sup>8</sup>

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<sup>7</sup>NY Penal Law and § 35.30(1) (McKinney 2013)

<sup>8</sup>*Graham v. Connor*, 490 U.S. 386 at 396 (1989)

## **V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE**

**A.** When used, force should be only that which is reasonable and necessary given the circumstances perceived by the officer at the time of the event.

**B.** Factors that should be used in determining the reasonableness of force include, but are not limited to:

1. The severity of the crime or circumstance;<sup>9</sup>
2. The level and immediacy of threat or resistance posed by the suspect;<sup>10</sup>
3. The potential for injury to citizens, officers, and suspects;<sup>11</sup>
4. The risk or attempt of the suspect to escape;<sup>12</sup>
5. The knowledge, training, and experience of the officer;<sup>13</sup>
6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.<sup>14</sup>
7. Other environmental conditions or exigent circumstances.<sup>15</sup>

## **VI. DUTY TO INTERVENE**

**A.** Any officer present and observing another officer using force that is 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. An officer who observes another employee use force that exceeds the degree of force permitted by law and/or policy should promptly report these observations to a supervisor.

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<sup>9</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

<sup>10</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

<sup>11</sup> *Scott v. Harris*, 550 U.S. 372 (2007)

<sup>12</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989) <sup>13</sup> Analysis of cases under the 4<sup>th</sup> Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer. *Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)

<sup>14</sup> *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997) (numbers of officers or subjects)

<sup>15</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 9<sup>th</sup> Cir. (1994)

## **VII. USE OF DEADLY PHYSICAL FORCE**

**A.** 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.<sup>16</sup>

**B.** 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.<sup>17</sup>

**C.** Chokeholds and Obstruction of Breathing or Blood Circulation.

1. Any application of pressure to the throat, windpipe, neck, or blacking 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.<sup>18,20</sup>

## **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 body or a cavity 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 physical evidence 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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<sup>16</sup> NY Penal Law and § 35.30(1)(c)(McKinney 2013)

<sup>17</sup> NY Penal Law and § 35.30(1), as restricted by *Tennessee v. Garner*, 471 U.S. 1 (1985) (restricting the use of deadly physical force as it relates to fleeing felons) In *Garner*, the Supreme Court uses “significant threat of serious physical harm, either to the officer or others” in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.

<sup>18</sup> NY Penal Law § 121.13-a establishes the crime of Aggravated Strangulation

<sup>20</sup> EXEC ORDER 13929, 3 CFR

## **IX. REPORTING & REVIEWING THE USE OF FORCE**

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

**B.** Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a West Seneca Police Use of Force report ([A-20.1a](#)).

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. Where force is used to overcome active resistance.
4. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
5. Incidents where a conducted energy device (CED) intentionally discharged or accidentally discharged against a person or persons.
6. Incidents where a firearm was or discharged at a subject.

**C.** Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.

**D.** A supervisor that is made aware of a force incident shall make a thorough inquiry of all officers involved at the time the force or alleged force was used, and ensure the completion of a use of force report.

**E.** Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.

**F.** The Chief of Police will receive all reports and designate personnel to conduct an investigation.

**G.** Failure to adhere to use of force guidelines are subject to discipline consistent with the Town of West Seneca Police General Orders and Procedures section A-14.4 and Article 9 of the current collective bargaining agreement.

## **E. DCJS Mandated Use of Force Data Collection - Executive Law 837-t**

1. For reporting purposes, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs use of force as listed below:
  - a. When an officer engages in conduct which results in the death or serious bodily injury of another person;
  - b. When one of the following is initiated by an officer:
    - 1) Brandishes, uses or discharges a firearm at or in the direction of another person;
    - 2) 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;
    - 3) Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum pepper spray or tear gas;
    - 4) Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
    - 5) Brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long range acoustic device.
2. Beginning December 1, 2020 each law enforcement agency will be responsible for reporting information for their own officers who are involved in use-of-force incidents that meet the criteria of the data collection. Law enforcement agencies will be required to submit details of the incident to DCJS, including, but not limited to date of incident, agency involved, county, town/city, description of circumstances, and demographics of all persons engaging in the use of force or suffering such injury.
3. The Chief of Police, or his designee, will be directly responsible to report such criteria as listed under Executive Law 837-t to the State of New York using the eJustice New York Integrated Justice Portal (IJ Portal)
4. Agencies are expected to submit use of force incidents to the state Division of Criminal Justice Services (DCJS) no later than 30 days after a month ends (i.e. January data no later than the end of February). In the event there are no Use of Force incidents for a given month, it must mark the "Nothing to Report" box on the main reporting page.
5. For use of force incidents involving death, discharge of a firearm at or in the direction of an individual, or serious bodily injury, the West Seneca Police Dept. Use of Force FBI Supplement must also be completed.

## **X. 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.<sup>19</sup>

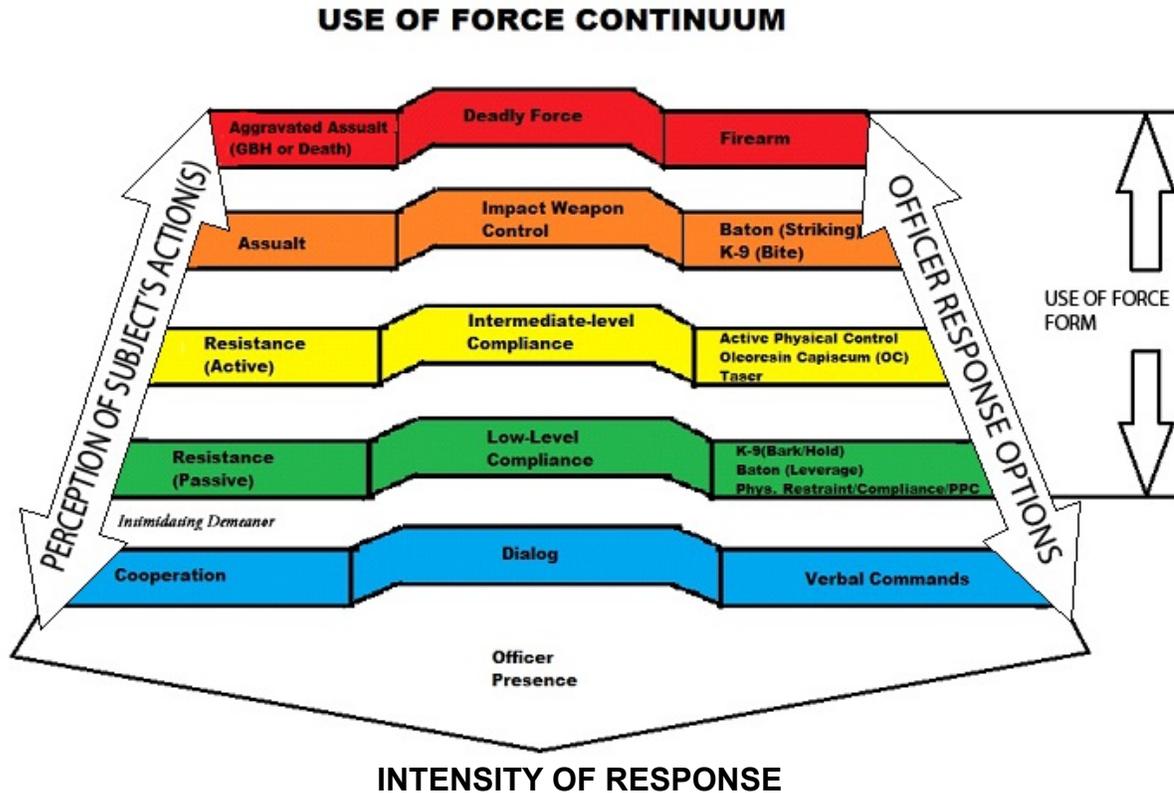
**C.** This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to the real world application of the concepts discussed within this policy.

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<sup>19</sup> EXC 840(4)(d)(2)(vii)

## XI. USE OF FORCE CONTINUUM

Police Officers of the Town of West Seneca New York Police Department shall use the force reasonably believed to be necessary to effect lawful objectives. (Refer to Art. 1, Section 1, Paragraph 8 of the Departmental Rules and Regulations) The following Use of Force Continuum is to be used as a guideline to help you keep your use of force reasonable.



<b>CED</b>	<b>CONDUCTED ENERGY DEVICE (TASER X26P)</b>
<b>GBH</b>	<b>GREAT BODILY HARM</b>
<b>OC</b>	<b>OLEORESIN CAPSICUM</b>
<b>PPC</b>	<b>PRESSURE POINT CONTROL</b>

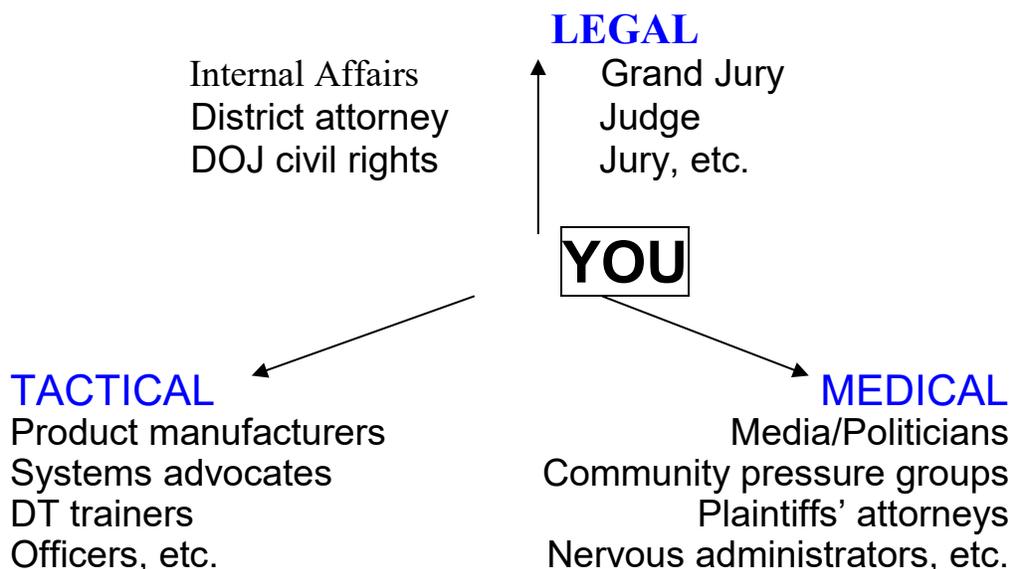
This Continuum, designed by Calibre Press for the Street Survival Seminar, shows a relationship between a suspect's behavior and your appropriate response. It includes certain response options that are prevalent today and whose relative ranking in terms of force intensity is confusing to many Officers. It allows for adaptation, according to your training and experience, to Department policies, and to new tools, techniques and legal decisions that may develop in the future.

Understand that any force continuum is merely a **starting point** for discussing a very complex issue: the justification for the use of force. It represents an ideal, orderly world - not necessarily the real, chaotic, bizarre world on the street, where Officer actions in the midst of violent turmoil often are judged long afterward in calm and distant settings. In selecting your use of force, you may need to skip one or more entire steps on the Continuum, depending on how you "normally" perceive **key factors**, as outlined in subsection V.

Resistance and response are dynamic. The suspect's behavior and your use of force to control it may move up and/or down on the Continuum during any given encounter, as indicated by the two-way arrows. Moreover, this movement will not always be in an incremental step-by-step sequence.

Your force decisions as a Law Enforcement Officer are scrutinized from several perspectives. Some who assess your actions will be concerned whether they were **legal**. Others may focus on how much **medical** damage was done to the subject. Still others will evaluate what you did from a **tactical** standpoint: did you successfully stop the threat?

## USE OF FORCE DILEMMA



In selecting a **justifiable** level of force to control a subject, you must accommodate, at least to some extent, all of these perspectives.

There will never be unanimous agreement on any ranking of force options. However, a good force Continuum does offer a guideline that will help you keep your use of force reasonable, and allow you to articulate a good explanation of it after the confrontation is over.

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