



SHERIFF'S OFFICE, COUNTY OF SUFFOLK, N.Y.  
 ACCREDITED LAW ENFORCEMENT AGENCY  
 Errol D. Toulon, Jr., Ed.D., Sheriff  
**SHERIFF'S OFFICE DIRECTIVE**



SCSO-239-2

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VOLUME

**3 – LAW ENFORCEMENT DIRECTIVES**

CHAPTER

**6 – USE OF FORCE**

SECTION

**100 – USE OF PHYSICAL AND DEADLY PHYSICAL FORCE**

**I. HISTORY.**

- A. Sheriff's Office Directive number 09-071 issued 04/27/2009 and effective 05/18/2009 by Sheriff DeMarco.
- B. Sheriff's Office Directive number 10-025 issued 04/12/2010 and effective 04/12/2010 by Sheriff DeMarco.
- C. Sheriff's Office Directive number 16-021 issued 05/27/2016 and effective 05/27/2016 by Sheriff DeMarco.
- D. Sheriff's Office Directive number 19-007 issued 08/05/2019 and effective 08/05/2019 by Sheriff Toulon.

**II. APPLICABILITY.**

- A. All Correction Officer personnel.
- B. All Deputy Sheriff personnel.

**III. PURPOSE.**

- A. Law enforcement officers around the country and here in New York State 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 Directive 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.
- B. This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force.

**IV. POLICY.**

- A. 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 sworn officers shall be

the amount of force that is objectively reasonable under the circumstances for the sworn 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. Conner*, is used in this policy and is intended to provide sworn officers with guidelines for the use of force, including deadly physical force.

- B. 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.”
- C. This Directive is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting sworn officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

## V. REFERENCES.

- A. Article 35 of the New York State Penal Law.
- B. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9<sup>th</sup> Cir. (1994).
- C. Fourth Amendment to the United States Constitution.
- D. *Graham v. Connor*, 490 U.S. 386 (1989).
- E. *Scott v. Harris*, 490 U.S. 372 (2007).
- F. Section 10.00 of the New York State Penal Law.
- G. Section 70.10 of the New York State Criminal Procedure Law.
- H. Section 690.50 of the New York State Criminal Procedure Law.
- I. *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997).
- J. *Terry v. Ohio*, 392 U.S. 1 (1968).

## VI. DEFINITIONS.

- A. Deadly Physical Force – shall mean physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- B. Instrument – shall mean any article, device, object, apparatus, implement or tool used to effect cooperation and control by forceful means.
- C. Objectively Reasonable – shall mean an objective standard used to judge a sworn officer's actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable sworn 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 sworn officer at the time that the force was used.
- D. Physical Force – shall mean the striking, kicking, fighting or any other physical or violent confrontation and force greater than restraining force not amounting to deadly physical force.
- E. Physical Injury – shall mean the impairment of physical condition or substantial pain.

- F. Reasonable Cause to Believe – reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable, discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in Article 70 of the Criminal Procedure Law, such apparently reliable evidence may include or consist of hearsay.
- G. Restraining Force – shall mean the use of a minimal amount of physical strength or energy exerted to hold, restrain, control, etc., required to overcome resistance or reluctance to obey the direction of sworn officers.
- H. Serious Physical Injury – shall mean 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.
- I. Sworn Officer – shall mean a Correction Officer or a Deputy Sheriff.

## **VII. RULES AND REGULATIONS.**

### **A. Use of Force.**

1. In general terms, force is authorized to be used when reasonably believed to be necessary to affect 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 Fourth Amendment, a sworn 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 sworn officer on the scene.
3. Only issued or approved equipment shall be utilized when applying physical force, except in emergency situations when it may be necessary to use any instrument at the disposal of the sworn officer(s) involved.
4. Less lethal equipment shall only be utilized upon successful completion of a course of instruction approved by the Sheriff's Office.
5. OC Spray – The sworn officer shall comply with that section of the Directive Manual issued by their Division Commander.
6. Batons – The sworn officer shall comply with that section of the Directive Manual issued by their Division Commander.
7. Tasers – The sworn officer shall comply with that section of the Directive Manual issued by their Division Commander.

### **B. Determining the Objective Reasonableness of Force.**

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the sworn 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 and 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/suspect considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or suspects;
- g. Other environmental conditions or exigent circumstances.

C. Duty to Intervene.

1. Any sworn officer present and observing another officer 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 officer has a realistic opportunity to prevent harm.
2. A sworn officer who observes another officer use force that exceeds the degree of force as described in section 1 above shall promptly report these observations to a supervisor.

D. Use of Deadly Physical Force.

1. Deadly physical force may be used by a sworn 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 when:
  - a. The sworn 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 sworn officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
  - c. Where feasible, some warning should be given prior to the use of deadly physical force.

E. Firearm Discharge – A sworn officer may discharge a firearm in the following circumstances:

- a. Injured Animal – To put to death an animal which presents an immediate serious physical threat to the sworn officer or a third party, or an animal that is so seriously injured that humaneness demands the immediate cessation of its further suffering. Supervisor approval must be obtained prior to euthanizing a seriously injured animal.
- b. Firearms Practice or Qualification – Firearms practice, for target practice at an approved range, for purposes of qualification at the Sheriff's Office range or by sworn officers of the Firearms Training Section to test fire weapons as required.

F. Prohibited Uses of Force – Force shall not be used by a sworn 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 suspect.

G. Specific Prohibitions.

1. Moving Vehicles – Discharging a firearm at or from a moving vehicle is prohibited, except as the ultimate measure of self defense or defense of another when the sworn officer reasonably believes the occupants are using deadly physical force against the sworn officer, or another, by means other than the vehicle.
2. Warning Shots – No warning shots shall be fired.
3. Firing Shots for Alarm – Firearms shall not be discharged to summon assistance, except where the sworn officer's safety or that of another is endangered, and there is no reasonable alternative. Extreme care must be exercised in such situations to prevent injury to other persons.
4. Drawing or Displaying Firearms.
  - a. A sworn officer shall unholster or display a firearm only if authorized by these procedures, directed by competent authority, or there is reason to believe such may be necessary for the safety of the sworn officer or others.
  - b. To reduce the potential for accidental discharge, an unholstered or displayed firearm will not be cocked.
  - c. "Dry firing" or working the action of an unloaded firearm is prohibited in view of the public, or in or on any Sheriff's Office premises, except by or under the direction of a firearms instructor or armorer, or when necessary to clean and lubricate a weapon.
5. Chokeholds and Carotid Holds – Chokeholds, carotid holds, and similar compressions of the neck represent potential use of deadly physical force and shall never be utilized.

H. No sworn officer shall exceed the limits of his/her authority under Article 35 of the New York State Penal Law.

I. All other Directives pertaining to the use of physical and deadly physical force shall be strictly adhered to in addition to the contents of this Directive.

J. A copy of this Directive shall be conspicuously posted on the agency's public website.

**VIII. USE OF PHYSICAL AND DEADLY PHYSICAL FORCE PROCEDURES.**

A. If it has been necessary to utilize physical force, the sworn officer shall immediately determine whether the person requires medical treatment. If the person has suffered a physical injury and/or complains of injury and/or pain, the person shall be transported, or caused to be transported, for medical evaluation and treatment.

B. A Supervisor shall be notified when physical force, including deadly physical force, has been used, resulting in serious physical injury. The Supervisor will respond to the incident, assess the situation

and when necessary:

1. Ensure the sworn officer receives medical treatment and injured employee procedures are followed and completed.
2. Ensure that medical treatment for an injured arrestee/inmate is obtained.
3. Notify the Criminal Investigations Bureau.

C. Photographs.

1. Photographs may be taken if a person is subjected to any force, including restraining force, or is charged with Resisting Arrest (New York State Penal Law section 205.30), whenever the person is injured or alleges injury. A Supervisor or Criminal Investigations Bureau Investigator shall determine whether photographs are required.
2. The Identification Section or the Criminal Investigations Bureau will take the photographs utilizing either a digital or 35mm camera.
3. Photographs of the injured employee and/or arrestee/inmate will clearly depict the following body areas of the person:
  - a. Overall front and back areas.
  - b. Close-ups of all exposed areas.
  - c. Close-ups of all injured areas.
  - d. Close-ups of all areas alleged by the sworn officer or arrestee/inmate to be injured.
  - e. Upon consent of the injured party, close-up photographs of the following areas: front and rear torso (male), rear of torso (female), legs and feet. No efforts shall be made to compel or force a person to submit to any photographs of the foregoing body areas.
4. At the discretion of the Supervisor or Criminal Investigations Bureau Investigator, photographs may be taken of the scene and/or any evidence pertaining to the sworn officer's and/or the arrestee/inmate's injury/alleged injury, if applicable.

D. Except for those use of force cases investigated by the Criminal Investigations Bureau (i.e., sworn officer shootings resulting in physical injury or death, death in custody, etc.), when a sworn officer uses physical force, including deadly physical force, whether an arrest is made or not and/or in any case where a person is charged with Resisting Arrest wherein any level of force is used, the sworn officer shall report or cause to be reported all facts relative to the incident on a Sheriff's Office Use of Force Report (SCSO-209). A Sheriff's Office Incident Report Form (SCSO-CF-6) shall be substituted for the Use of Force Report when the incident occurs within a Sheriff's Office Correctional or Detention Facility. A copy of the SCSO-209 or the SCSO-CF-6 shall be forwarded to the Division Commander for review.

1. The Use of Force Report or the Incident Report Form shall be completed by a sworn officer when they:
  - a. Use any type of hands-on physical force;
  - b. Brandish, use, or discharge a firearm at or in the direction of another person;

- c. Display, use, or deploy a chemical agent or electronic stun device;
  - d. Brandish, use, or deploy an impact weapon; or
  - e. Engage in any conduct which results in death or serious physical injury to another person.
2. The Police Records Section shall be responsible for entering Deputy Sheriff Use of Force and Incident Report Forms into eJustice.
  3. The Corrections Division shall be responsible for entering Correction Officer Incident Report Forms into eJustice.
  4. The Division Commander shall review each SCSO-209 and SCSO-CF-6 for compliance with all Directives pertaining to the Use of Force. In the event a Use of Force is deemed unjustifiable by the Division Commander, a detailed report will be forwarded by the Division Commander to the Sheriff recommending an investigation by the Internal Affairs Bureau.
- E. Use of Force Investigations Conducted by the Criminal Investigations Bureau – In cases when an investigation is being conducted by the Criminal Investigations Bureau concerning the use of force by a sworn officer of the Sheriff's Office, the Use of Force Report (SCSO-209) shall not be completed. Instead, the Commanding Officer of the Criminal Investigations Bureau, or the Commanding Officer's designee, shall prepare and submit a Standard Report Form (SCSO-65) to the Commanding Officer of the Internal Affairs Bureau within ten (10) days of the initiation of the investigation, the Standard Report Form shall include the following information:
1. The name, rank, shield number and command of the sworn officer.
  2. The date, time and location of the incident.
  3. Type of force used.
  4. Name and pedigree of the use of force subject.
  5. Indicate if the subject was engaged in unlawful activity and if so, what type.
  6. Description of the subject's injury.

## **IX. LEGAL DISCLAIMER.**

This Directive regarding the use of force is for Sheriff's Office administrative use only and, to the extent that it constrains conduct otherwise permissible under law, shall not apply in any criminal or civil proceeding. The Suffolk County Sheriff's Office rules regarding the use of deadly physical force should not be constructed as creating a higher standard of safety or care, in an evidentiary sense, with respect to third party claims. Violations of these rules will only be used as a basis for Sheriff's Office administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in recognized judicial settings.

## **X. SHERIFF'S OFFICE SANCTIONS.**

In all cases where a sworn officer's action is determined to be violation of these rules but not a violation of law, this distinction shall be made clear in all public discussion of such incidents and any disciplinary action which may result. A sworn officer found to have acted in violation of this Directive shall be

subject to disciplinary proceedings, in addition to any criminal sanctions which may be imposed in the courts.

**XI. REASSIGNMENT OF SWORN OFFICER PENDING REVIEW.**

On the occasion when a sworn officer's use of force results in the death of another person, that officer will be assigned to an administrative post. The future assignment of the sworn officer shall be determined by the Sheriff, or his/her designee, following the administrative review of the incident.

**XII. ACCREDITATION STANDARD REFERENCE NUMBER(S).**

- A. NYSLEAP – 20.1, 20.5, 20.6, 21.2 & 32.4.
- B. NYSSACAP – 34, 40, 41, 78, 79, 80, 81, 83 & 85.

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