



OPERATIONAL PROCEDURES

Procedure No. 3.001-4

USE OF FORCE			Page 1 of 11
Date Issued 1/4/93	Effective 1/18/93	History OPS-90-09	Revised 7/15/2020

I. PURPOSE

This policy provides guidelines on the reasonable use of force. 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.

II. POLICY

The Mount Vernon Police Department is committed to protecting people, their property and rights while providing the best in public safety and service. The proper use of force is essential for policing. There are circumstances where individuals will not comply with the law unless compelled or controlled by the use of force. Officers must also remain mindful that they derive their authority from the community and that unreasonable force degrades the legitimacy of that authority. In a use of force incident, the governmental interest must match the level of force and intrusion upon an individual's constitutional rights. It is the policy of this Department that officers hold the highest regard for the dignity and liberty of all persons, and place a minimal reliance upon the use of force. The Department respects the value of every human life and the application of deadly force is a measure to be employed in the most extreme circumstances. 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 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.”

Prior to engaging in non-deadly force with a person, the officer should, in the initial stages of the confrontation, attempt to resolve the matter by use of verbal persuasion. If the situation escalates further officers should limit their response to what is necessary to accomplish their lawful objectives. This would include verbalizing at a safe distance until reinforcements or specialists could arrive on the scene if possible. In any event, officers should use discretion when using non-deadly force and adhere to the below listed Escalation of Force Table when circumstances necessitate the use of force.

ESCALATION OF FORCE TABLE:

VERBALIZATION -	Verbal persuasion used by the officer to defuse a situation or inform a suspect that he/she is under arrest.
RESTRAINT TECHNIQUES -	The acts of simple holding, grabbing or restraining used to control an individual in a manner not likely to cause injury.
PERSONAL WEAPONS -	Punching, kicking or other unarmed strikes (Example: Palm, Elbow, or Knee) an officer may resort to in accomplishing lawful objectives.
IMPACT WEAPONS -	Striking with Department authorized Batons or Expandable Batons in order to accomplish lawful objectives. This can also include Taser and OC.
FIREARMS -	The ultimate use of force when the officer is compelled to discharge a Handgun, Shotgun, Rifle, Less Lethality Shotgun/40mm Specialty Impact Weapon

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 vision of 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.

E. Approved Weapons - Weapons meeting department specifications for which officers receive proficiency and safety training. Before the use of any approved weapon option, the officer, when practical, will communicate to other officers and the subject that the use of the option is imminent, and should clearly and audibly announce the same to all personnel in the immediate area unless exigent circumstances prevent this from occurring.

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

F. Force Transitions – The movement, escalation/de-escalation, from the application of one force type to another in conjunction with the “objectively reasonable” standard from *Graham v. Connor*. The officer must consider all factors before using force and choose a reasonable option based on the “totality of the circumstances” present.

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 OBJECTIVE REASONABLE FORCE

The United States Supreme Court decisions and interpretations of the Fourth Amendment of the United States Constitution states a police officer may only use such force as is “objectively reasonable” under all of the circumstances. The standard that courts will use to examine whether a use of force is constitutional was first set forth in *Graham v. Connor*, and expanded by subsequent court cases. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving.

The reasonableness inquiry in reviewing use of force is an objective one. The question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them. The officer’s perception will be a consideration, along with other objective factors that may affect the reasonableness of the force. These factors may include but are not limited to:

1. The severity of the crime(s) at issue.
2. Whether the subject poses an immediate threat to the safety of the officer(s) or others.
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
4. The influence of drugs/alcohol or the mental capacity of the subject.
5. The time available to an officer to make a decision.
6. The availability of the officers/resources (including the number of officers present at the time) to de-escalate the situation.
7. The proximity or access of weapons to the subject.
8. The environmental factors and/or other exigent circumstances.

VI. MEDICAL ATTENTION – DUTY TO RENDER AID

Whenever an officer applies a use of force option upon a subject that results in a visible injury or complaint of injury, the officer will monitor the subject and immediately summon medical attention. When requesting medical attention, the officer will provide the nature of the injury to responding medical personnel. NOTE: In some instances, the best course of action may be to transport the subject to the nearest medical facility. In these instances, the nature of injury, response time of medical personnel and the proximity of the medical facility should be considered.

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

Medical attention will be summoned for the following use of force applications, regardless of visible injury or complaint of injury:

1. Baton/Impact Weapons – any strikes to the head, neck, or groin area.
2. Canine – all bites.
3. Taser – any probe strikes or drive stun application.
4. OC Spray – direct spray to facial area.
5. Use of Force with a Firearm/Specialty Impact Weapon/Less Lethal Shotgun
6. Use of Force with a Vehicle
7. Any application of force to the neck has been used.

VII. POSITIONAL ASPHYXIATION

Positional Asphyxia is not just about the position of the subject's body. There are precipitating factors that make positional asphyxia deadly. These factors include intoxication due to alcohol, drug use, obesity, psychiatric illnesses, pre-existing medical conditions and physical injury. Positional asphyxia may even be caused simply by the subject getting into a breathing-restricted position they cannot get out of, either through their own carelessness or as a consequence of an accident or illness. Some people have suffered seizures that trapped them in positions where their breathing was restricted and death has resulted.

Positional asphyxia is a potential danger of some common physical restraint techniques. Officers need to know and understand that pre-existing risk factors combined with the body position of the subject when subdued or while in transport can increase the risk of in-custody death.

Common risk factors of death from positional asphyxia include but are not limited to excessive alcohol intoxication, drug use, obesity, and medical conditions such as an enlarged heart. An individual with an enlarged heart can have a greater susceptibility to a cardiac arrhythmia (irregular heartbeat) when under conditions of stress and when there are low levels of oxygen in the blood stream.

In order to ensure the safety and to minimize the risk of positional asphyxia resulting in an in-custody death, officers need to recognize contributing factors and conditions that contribute to positional asphyxia.

1. When feasible, officers should avoid the use of prone restraint techniques.
2. Learn and follow department guidelines and policy for situations involving physical restraint of individuals.
3. Once the suspect is handcuffed, get them off the face-down position.
4. Inquire about the recent use of drugs or if the subject has a cardiac condition or any respiratory conditions or diseases.
5. Have someone monitor the subject.
6. Obtain medical evaluation and treatment if needed.
7. Pass on any information about drug or alcohol use and medical conditions to the personnel at the detention facility where the subject will be incarcerated.

VIII. DUTY TO INTERVENE

- A. Any officer present and observing another officer regardless of rank 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 shall promptly report these observations to a Superior Officer not involved in the use of force. The Police Commissioner shall then be notified by the Superior Officer through the established chain of command. Any Superior Officer alleged to have used improper or excessive force shall be bypassed in the notification process.

IX. USE OF DEADLY PHYSICAL FORCE

These guidelines have been prepared to establish a policy governing the use of deadly force for the Mount Vernon Police Department. In addition, these guidelines incorporate the U.S. Supreme Court ruling that deadly physical force may not be used to affect the arrest of an unarmed, non-dangerous, fleeing felon. Accordingly, Article 35 of the Penal Law, with respect to the use of deadly physical force by police officers to affect arrests or prevent escapes shall be interpreted in accordance with the restrictions imposed by the U.S. Constitution and in accordance with the following Department guidelines:

- A. In all cases, only the minimum amount of force will be used which is consistent with the accomplishment of a mission.
- B. The firearm shall be viewed as a defensive weapon, not a tool of apprehension.
- C. Every other reasonable alternative means will be utilized before an officer resorts to the use of his/her firearm.
- D. Deadly physical force shall not be used to affect the arrest of a fleeing felon unless the officer has probable cause to believe that:
 - 1. Deadly physical force was used or threatened by the perpetrator and the perpetrator has the means to carry out that threat, OR
 - 2. The perpetrator caused serious physical injury, OR
 - 3. The perpetrator is armed with a deadly weapon.

In addition, Department policy prohibits the use of deadly physical force unless **ALL** the following factors are present:

- 4. The officer must have probable cause based upon knowledge of the crime involved and the surrounding circumstances, AND
- 5. The officer has probable cause to believe the fleeing felon poses an immediate threat of serious physical injury to the officer, or has probable cause to believe

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

that failure to apprehend the fleeing felon poses a threat of serious physical injury to others, AND

6. There are no other reasonable means to apprehend the perpetrator, other than by deadly physical force.
- E. Deadly physical force shall not be used to affect an arrest or prevent or terminate a felony unless the officer has probable cause to believe that the victim may be killed or seriously injured and there are no other reasonable means to affect the arrest or prevent or terminate the felony other than by deadly physical force.
- F. A police officer may use deadly physical force upon another person when he reasonably believes that such other person is using or about to use deadly physical force against the officer or a third person.
- G. Where feasible, some warning should be given prior to the use of deadly physical force.
- H. The firing of warning shots is prohibited.
- I. Discharging a firearm to summon assistance is prohibited, except where someone's safety is endangered.
- J. Discharging a firearm from or at a moving vehicle is prohibited, unless the occupants of the other vehicle are using deadly physical force against the officer or another **BY MEANS OTHER THAN THE VEHICLE.**
- K. The discharging of a firearm at dangerous dogs or other animals should be an action employed **ONLY** when no other means to bring the animal under control exist.
- L. The discharging of a firearm to kill an animal so badly injured that humanity requires that it be removed from further suffering will be used **ONLY** with the permission of the Senior Supervisor on patrol at that time. All attempts to find the owner or transport to an animal hospital along with all other animal control procedures will be utilized first.

AVOIDANCE OF RECKLESSNESS SHOULD BE CONSIDERED IN ANY SITUATION INVOLVING DEADLY PHYSICAL FORCE. EVEN A CASE WHERE DEADLY PHYSICAL FORCE IS BOTH AUTHORIZED BY LAW AND REASONABLE UNDER THE CIRCUMSTANCES, THE OFFICER MUST CONSIDER THE SAFETY OF INNOCENT BYSTANDERS (i.e. FIRING IN A CROWDED STREET).

THE FACT THAT AN OFFICER IS LEGALLY JUSTIFIED USING DEADLY PHYSICAL FORCE DOES NOT CONSTITUTE A LICENSE FOR RECKLESS CONDUCT BY THE POLICE OFFICER AND SUCH OFFICER MAY BE HELD CRIMINALLY AND/OR CIVILLY LIABLE.

X. CAROTID RESTRAINT CONTROL HOLD

The carotid restraint control hold is a vascular neck restraint. The hold employs bilateral compression of a person's carotid arteries and jugular veins at the sides of the neck, which results in diminished cerebral cortex circulation. This abrupt reduction of blood significantly affects the ability of the cerebral cortex to remain in an "awake state" and leads to unconsciousness.

Sworn and Civilian members shall **NOT** routinely use carotid restraint control holds. This will **ONLY** be used if justification exists for the use of deadly physical force, where the sworn member's life or another person's life is in danger, and the carotid restraint control hold is the **LEAST** dangerous alternate method of restraint available to a sworn member.

XI. 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;

B. 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;

C. 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.

D. Choke holds or 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 are prohibited.

XII. DE-ESCALATION

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest, or to protect the officer, other officers or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance to consider or deploy a great variety of force options. Officers shall perform their work in a manner that avoids unduly jeopardizing their safety or the safety of others through poor tactical decisions.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potentially violent encounters by coordinating resources and

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

officers' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that officers under their supervision perform to a standard. As good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

XIII. REPORTING & REVIEWING THE USE OF FORCE

The Department reviews or investigates all reportable use of force incidents to determine their justification, as well as to correct any identifiable training deficiencies. Officers involved in reportable use of force or alleged use of force incidents will immediately notify their supervisor. The officer will complete a Use of Force Report before the end of shift. Any exceptions to this must be approved by the supervisor of the officer completing the report. A report will be required by each officer involved in a use of force incident when a reportable force is used. The report will include a detailed description of the level of force, tool or tactic used, to include its effectiveness or ineffectiveness. Supervisors shall respond to each use of force incident in which reportable force is used.

A. Any injuries or complaints of pain resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party. (See Paragraph VI: Medical Attention)

B. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental Use of Force Report (MV-95).

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.
4. Incidents where a Taser was intentionally discharged or accidentally discharged after being displayed.
5. Incidents where a firearm was discharged at a subject.
6. Incidents where a Kinetic Energy Projectile was discharged at a subject.
7. Incidents where a Flash/Sound Diversionary Device was discharged at or near a subject.
8. Incidents where Oleoresin Capsicum Aerosol Spray or any other authorized Chemical Agent was discharged at or near a subject.
9. Any non-compliant handcuffing that results in injury or complaint of pain.
10. Any member using any level of force pursuant to their duties as a Police Officer while off duty shall report or cause to be reported all facts relative to the incident to the on-duty Desk Officer without delay.

C. New York State Executive Law section 837-t requires law enforcement agencies to report certain use of force incidents to the Division of Criminal Justice Services (DCJS). Members involved in use

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

of force incidents below shall also notify their supervisor as soon as practicable and shall complete a departmental Use of Force Report (MV-95). The Support Services Division shall report these incidents to DCJS via the provided online portal.

1. **Brandishes/Uses/Deploys an impact weapon or electronic control weapon** – The operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
2. **Brandishes/Uses/Discharges a firearm** – The operation of a firearm against a person in a manner capable of causing physical injury.
3. **Display a chemical agent** – To point a chemical agent at a subject.
4. **Use/Deploy a chemical agent** – The operation of the chemical agent against a person in a manner capable of causing physical injury.
5. **Uses a chokehold or 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 or reduces blood flow to the brain which may lead to unconsciousness.
6. **Conduct that Resulted in Death**
7. **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

D. Members utilizing **any** level of force that is not required to be reported on a Use of Force Report pursuant to this policy shall document the force used on an MV-61 report or MV-61(b) report. Exceptions to reportable force – a Use of Force Report is not required when no injury or complaint of injury occurs as a result of:

1. Standing Search
2. Routine Handcuffing
3. Felony Prone Handcuffing/Search
4. Felony Kneeling Handcuffing/Search
5. Restraint Techniques (See Paragraph II: Policy)

E. All reported force shall be clearly articulated within submitted reports. Vague, generic accounts of the force used without further detailed articulation are not acceptable.

XIV. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. A supervisor shall respond to the scene and commence an investigation for all reportable use of force incidents. Response to a minor force incident, as listed in Section XI – D of this policy, shall be left to the supervisor’s discretion.

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

- B. A supervisor that is made aware of a reportable force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D. In the absence of discrepancies or additional facts, the investigating supervisor shall endorse all MV-95 reports and briefly state that a supervisory investigation has been conducted and that the facts are as reported in the official reports.
- E. A supervisor responding to a reported use of deadly physical force by a Member, whether on or off duty, shall make or cause to be made notifications to:
 - 1. Division Commander(s) of the Member(s) involved;
 - 2. Commanding Officer of the Internal Affairs Division;
 - 3. The Executive Officer of Department or Office of the Chief;
 - 4. Deputy Police Commissioner; and
 - 5. Police Commissioner
- F. Supervisors shall follow procedures as outlined on Operational Procedure 3.003 – Form MV-95 Firearms Discharge/Assault Form (where applicable).
- G. Investigations involving the use of Deadly Physical Force shall be reported as outlined in Administrative Guide 2.087-2 Supervisor’s Report (MV-93).

XV. INTERNAL AFFAIRS DIVISION

- A. The Internal Affairs Division shall respond to the scene and initiate an investigation whenever the subject of the use of deadly physical force has suffered any injury or death, or whenever a firearm, rifle or shotgun has been discharged, whether on or off duty, except for training, ballistics testing, competition, legitimate recreational activity or the euthanizing of an animal pursuant to Department policy.
- B. The Internal Affairs Division shall notify the Police Commissioner of significant developments in such investigation.
- C. Upon completion of such investigation, the Internal Affairs Division shall forward to the Commissioner a Memorandum setting forth preliminary determinations, with explanations, as to the following:
 - 1. Whether the weapon or force used was lawful and in accordance with Department regulations.
 - 2. Whether the circumstances of the force used indicate a need for additional training.

OPERATIONAL PROCEDURES 3.001-4 USE OF FORCE

3. Whether there are any indications the weapon, ammunition or equipment involved was inadequate.

XVI. COMMISSIONER

A. Whenever a Member of the Department is involved in an incident whereby deadly force was used or a member accidentally discharges his/her weapon, whether on or off duty, the member involved shall be assigned to modified duty pending the results of an inquiry.

B. Upon review of the findings, the Police Commissioner shall decide whether to suspend the member or not.

XVII. TRAINING

A. All officers shall receive training and demonstrate their understanding on the proper application of force in accordance with this policy and all applicable laws. Training shall be provided annually, at a minimum, by the Training Unit and shall be documented in the appropriate training records.

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.