Woodstock Police Department			# 106-3
Use of Force			
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I. Purpose:

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 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.

II. Policy

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness [1]. 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* [2], 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 judgements – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."[2]

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.

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.[3]

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.[4]

C. **Physical Injury**- Impairment of physical condition or substantial pain.[5]

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.[6]

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.[7]
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.[8]

V. Determining the 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:

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

VI. 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.
B. An officer who observes another officer use of force that exceeds the degree of force as described in

subdivision A of this section should promptly report these observations to a supervisor.

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.[16]

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 of 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.[17]

C. 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.[18]

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 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.

IX. Reporting & Reviewing the Use of Force

A. A police or peace officer or other law enforcement entity who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.[19]

1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.[20]

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.

The following Use of Force Incidents must be reported when initiated by an Officer.

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 complaints of minor discomfort from compliant handcuffing.
4. When an officer engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury as defined as bodily injury, that involves a substantial risk of death,

or unconsciousness, protracted and obvious or disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. Brandishes, uses or discharges a firearm at or in the direction of another person.[21]
6. 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.
7. Displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas;
8. Brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy;
9. Brandishes, uses or deploys an electronic control weapon, including, but not limited to an electronic stun gun, flash bomb, or long-range acoustic device.
10. Incidents where an electronic control weapon/device was accidentally discharged after being displayed.

Executive Law 845-T Use of Force Reporting

C. A standardized use of force form should be used to document any reportable use of force incident.[22] *(See Attached Use of Force Form)*

D. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.
E. A separate Use of Force Form is to be completed for each officer that actually uses force.

X. Procedures for Investigating Use of Force Incidents

A. Where practicable, a supervisor should respond to the scene to begin the preliminary use of force investigation
B. A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force

C. and, to the extent practical, make a record of all officers present. Supervisor shall also notify Police Chief of the incident as soon as possible.
D. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
E. The Police Chief will receive the supervisor's report and conduct an investigation.
F. Consistent with agency disciplinary protocols and any applicable collective bargaining agreements, agency policy should establish standards for addressing the failure to adhere to use of force guidelines.[23]

XI. 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.[24]

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.

Notification to the Attorney General

Effective April 1, 2021, it will be the responsibility of the Chief of Police to make notification to the Attorney General's Office of Special Investigations any time a death occurs of any armed or unarmed civilian caused by a police officer, certain peace officers, and corrections officers.

Executive Law 70-b

https://www.nysenate.gov/legislation/laws/EXC/70-B#:%7E:text=The%20attorney%20general%20shall%20be,for%20inspection%2C%20examination%20or%20audit%2C

Footnotes:

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

[2] Graham v. Connor, 490 U.S. 386 at 396 (1989)

[3] Graham, 490 U.S. 396 (1989)

[4] NY Penal Law §10 (11)(McKinney 2013)

[5] NY Penal Law §10 (9)(McKinney 2013)
and experience of the officer. Graham v. Connor, 490 U.S. 386 (1989), Terry v. Ohio, 392 U.S. 1 (1968)

[6] NY Penal Law §10 (10)(McKinney 2013)

[7] NY Penal Law and §35.30(1)(McKinney 2013)

[8] Graham, 490 U.S. at 396 (1989)

[9] Ibid.

[10] Ibid.

[11] Scott v. Harris, 550 U.S. 372 (2007)

[12] Graham, 490 U.S. at 396 (1989)

[13] Analysis of cases under the 4th Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training

[14] Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997)(numbers of officers or subjects)

[15] Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v Gates, 27 F. 3d 1432, 1475 n.5 9th Circ.(1994)

[16] NY Penal Law and §35.30(1)(c)(McKinney 2013)

[17] NY Penal Law and §35.30(1), as restricted by Tennessee v Garner, 471 U.S. 1 (1985)(restricting the use of deadly 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.

[18] NY Penal Law §121.13-a establishes the crime of Aggravated Strangulation.

[19] NY Civil Rights Law §28

[20] NY Mental Hygiene Law §9.41

[21] NY EXEC §837-v requires that any discharge of a weapon, while either on duty or off duty, in the direction of a person be verbally reported to the involved officer's supervisor within six hours and a written report prepared within forty-eight hours of occurrence.

[22] Chiefs of police departments, County Sheriffs, and the Superintendent of the State Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.

[23] NY EXC §840(4)(d)(2)(vi)

[24] EXC §840(4)(d)(2)(vii)