

Cooperstown Police Department  
Policy and Procedure Manual  
Administration

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Subject: Use of Force, Warning shots, Less-than-lethal substances/devices, reporting requirements	Reference: Article 35 of NYS Penal Law/Standards Manual
Special Instructions: None	Distribution: All Personnel
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**I. PURPOSE**

- a. The Purpose of the use of force policy is to set a defining goal, and standards for the use of force and its application to the members of this department.

**II. STATEMENT OF 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 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”.

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.

- b. This department recognizes and respects the value of all human life and the responsibility to treat everyone equally and prohibits discrimination based on race, religion, sexual orientation, national origin, gender and age. All officers in this department have sworn an oath and have the responsibility to protect and serve both life and property within the Village of Cooperstown, the County of

Otsego and the State of New York. It is recognized by this department that to achieve this goal, officers may be required to use force which is granted by Article 35 of the New York Penal Law. It is the policy of the Cooperstown Police Department that officers shall only use the necessary amount of force required to achieve this goal while protecting the lives of the public and the officers of this department. However no officer shall interpret the law as a command for the use of force, as each situation is unique in its own circumstances to be considered.

### III. DEFINITIONS

Definitions officers should make themselves familiar with

- a. **Passive Resistance-** Non-violent opposition to authority, especially a refusal to cooperate with legal requirements. For example, a subject who remains in a sitting, standing, limp or prone position with no physical contact (e.g., locked arms) with other individuals.
- b. **Active and Aggressive Resistance-** There are many levels of active resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officers grasp). Active resistance can escalate to a subject's attempt to attack an officer and escalate to aggressive behavior. Exhibiting aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks or any instrument that may be perceived as a weapon such as a knife or stick) are examples of aggressive resistance.

When a subject's aggressive resistance and/or nature of an attack create an objectively reasonable belief on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result, it constitutes a deadly physical force encounter. Note: verbal statements, bracing, or tensing alone do not constitute active or aggressive resistance.

- c. **Agitated Delirium (also known as excited Delirium)-** A syndrome or condition characterized by extreme physical agitation, paranoid or irrational behavior, and/or pain insensitivity, often but not necessarily caused by mental illness or substance abuse.
- d. **Positional or compression asphyxia-** When a subject's body position interferes with his or her breathing, either when the chest is restricted from expanding properly or when the position of the subjects head obstructs the airway. Death may occur from positional asphyxia.
- e. **Sudden Tranquility-** When a subject who was acting violent suddenly becomes calm, sleepy, and appears to be resting.
- f. **Deadly physical Force-** Physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.
- g. **Physical Injury-** Impairment of physical condition or substantial pain.
- h. **Serious Physical Injury-** Physical injury which creates 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. **Objectively Reasonable-** 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.

#### IV. 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:
  - i. The severity of the crime or circumstance;
  - ii. The level and immediacy of threat or resistance posed by the suspect;
  - iii. The potential for injury to citizens, officers, and suspects;<sup>1</sup>
  - iv. The risk or attempt of the suspect to escape;<sup>2</sup>
  - v. The knowledge, training, and experience of the officer;<sup>3</sup>
  - vi. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;<sup>4</sup>
  - vii. Other environmental conditions or exigent circumstances;<sup>5</sup>

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<sup>1</sup> Scott v. Harris, 550 U.S. 372 (2007)

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

<sup>3</sup> 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 and experience of the officer. Graham v. Connor, 490 U.S. 386 (1989), Terry v. Ohio, 392 U.S. 1 (1968)

<sup>4</sup> Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or subjects)

<sup>5</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

**V. PROCEDURES**

- a. The basic procedure in use of force is recognized by the Department of Criminal Justice Services that police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient to achieve police objectives. Police should use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
- b. All arrestees will be restrained using handcuffs and/or leg restraints if necessary to reduce the potential of injury to the officer, the public, or the arrestee as well as additional resistance which could necessitate the use of additional physical force
- c. Any use of force by an officer of this department will require a completion of a use of force form. If any injury is incurred by an officer, the arrestee or civilian, a supervisor will be notified
- d. At no time while effecting an arrest shall leg shackles be connected to the handcuffs resulting in what is commonly known as “hog tie”
- e. Any arrestee who has been placed in the face down prone position is to be repositioned on his side in a seated position or upright as soon as safely practical. At no time will they be left in this position for any prolonged period.

**Less-than-lethal Substances/Devices**

**A. Presence**

- a. An officer’s presence may escalate or de-escalate any situation; however more often than not, presence alone will be enough to control the situation and let the officer carry out their duties
- b. A non-uniformed officer should identify themselves with a badge and ID that states he is a police officer, and should make that identification plain and noticeable to not only the intended subject but to any other personnel as well
- c. Uniformed officers should make certain there is no obstructive clothing that may raise doubt as to their profession.

**B. Verbal**

- a. Using verbal skills is of primary importance when dealing with all individuals in police work. Whenever possible verbal communication should be the preferred method of resolving a situation. Officers must be aware when communicating with the public that some individuals may not speak English, may be non-verbal, hearing impaired, or may have other disabilities making it difficult to communicate.
- b. Officers are reminded to use plain language, simple directions and loud clear voices when giving information, directions, orders, and/or warnings. Use of belittling words, profanity or obscenities shall be prohibited. At no time shall sexual slurs, racial comments or biased generated remarks be tolerated. When this technique does not work, whenever possible, warning as to additional

actions, repercussion or charges should be articulated before escalating to physical contact.

- c. Verbal communication skills should be in use consistently through any situation and in all steps in the upward and downward escalation of force.

**C. Open Hand Technique:**

- a. Open hand technique refers to the use of physical contact by the officer to gain a desired effect or level of compliance. The two types of open hand contact include soft techniques and hard techniques.
  - i. Soft technique refers to physical contact with an individual usually with limited pressure applied to a person for general guiding and/ or leading.
  - ii. The hard technique refers to use of take down type holds and pressure point compliance. The hold should only be used when required and shall not be continued when the desired compliance is achieved.
  - iii. The carotid neck restraint is prohibited at all times unless it is a deadly physical force encounter and left with no other recourse.

**D. Closed Hand technique:**

- a. Use of closed hand technique refers to the striking with the use of an officer's hand, forearm, elbow, knee, foot, and shin.
  - i. Strikes to the head and genitalia should be avoided if possible as it could cause physical injury.

**E. Expandable Baton**

- a. The expandable baton is an approved weapon for officers certified in its use by recognized instructors. There are many different manufacturers and each baton will be approved by the chief of police. Officers must be trained in the use for the baton to be carried.
  - i. At no time shall an expandable baton be used as a lethal weapon unless the officer is faced with a deadly force situation and any other reasonable alternative is not available
  - ii. Expandable batons may be used as a leverage tool to subdue and control an individual
  - iii. Batons may be used to strike at non-lethal points on the body to stop an aggressive attack or to subdue a fleeing defendant
  - iv. Batons may be used as a device to facilitate an arrest using pressure points
- b. Several weapons are hereby prohibited by this policy and any officer's use or carrying such weapon will be subject to disciplinary action. Some prohibited weapons are but not limited to saps or slaps, nun chucks, switch blade knives, unapproved unauthorized weapons.
- c. Flashlights shall not be used as a striking weapon

**OC Policy:**

The only chemical agent to be used by this department is Oleoresin Capsicum solution.

**Description:**

Pepper spray is a substance that is carried by on duty officers as a tool, to be used as a less than lethal weapon. The formula is based on oleoresin capsicum, a powerful inflammatory agent that occurs naturally in cayenne peppers. The effects from the use of OC is designed to cause a loss of intended thought process, coordination, upper body control, thus impairing subjects ability and desire to harm others, thereby reducing the potential resistance.

**Effects:**

OC will cause mucous membranes to swell, producing an immediate closing of the eyes, uncontrollable coughing, gagging and gasping for breath. An intense sensation of burning of the skin will also be present. These physiological effects may produce a compliant subject who has lost coordination and upper body motor control, thereby reducing any further intended aggressive behavior. Aggressive subjects can then be controlled and restrained with minimum physical contact. This greatly reduces the risk of injury to the officer, subject and any innocent persons from the subject's initial aggressive behavior. OC produces no lasting effects to the subject or bystander.

**Procedure:**

All officers shall be fully trained and certified in the use of OC spray in a course of instruction approved by the chief of police prior to being permitted to carry it. The canister is to be worn on the duty belt when in uniform in an appropriate holster or carrier. The safe keeping of the canister both on and off duty is the responsibility of the individual officers. Officers are only permitted to carry the OC spray issued by the department. The use of OC spray may be at the officer's discretion under the following circumstances:

- A. When necessary to defend themselves or another from a perceived imminent threat or bodily injury
- B. To affect an arrest when lower levels of force are deemed ineffective
- C. To prevent the commission of public offense or unrest when other alternatives are exhausted or impractical for the situation at hand
- D. The stream produced by the canister will be directed at the subjects face. Once the subject has complied with verbal commands given to him or her, or has rendered him or herself unable to continue the aggressive behavior, the officer will place them in custody. The use of OC will discontinue immediately when the subject has discontinued the aggressive behavior.
- E. Officers will take into consideration other factors when deciding to use OC. Such considerations are, wind speed and direction, distance from subject, innocent bystanders who may be effected, and location from other possible aggressive subjects. All efforts should be made to move innocent bystanders from possible area about to be sprayed. The recommended range is 2-12 feet from affectively incapacitating a person.
- F. When about to use OC, the officer will give warning of impending spray, when practical. The warning is to advise the subject, bystanders and other officer that a stream of OC may be used.

- G. OC spray will not be permitted for the use on a subject known to the officer and clearly displayed as an adolescent, elderly, pregnant person, or using oxygen at the time of the incident.

**Procedure After Use:**

It is the officer's responsibility to make every effort to get the subject immediate relief from the effects, when practical for safety considerations. Methods to be used for rendering immediate relief are washing the affected area with large amounts of water. Use of ice packs and/or wet towels will be at the officer's discretion. At no time will any burn salve or cream be used for decontamination. After the deployment of OC, the subject will be transported for medical attention. If in obvious distress, EMS will be contacted for evaluation and transportation.

Officers are reminded that after using OC , they too should be considered contaminated. The officers involved should use due care not to touch any area on their body that may have an adverse reaction to OC, such as eyes, nose or mouth. When practical and safe, all involved officers will wash hands, arms, face, or any other part that was in contact with OC or subjects contaminated area.

At no time shall an officer leave a subject who has been exposed to OC and is in custody unattended until the effects of the OC has dissipated. When transporting a subject who has been exposed to OC, care should be given in transporting the subject and at no time shall the subject be placed in the face down prone position with his/her hands behind their back. The officer will pay close attention to the status the subject is in. The officer will remain alert for any signs of deteriorating medical conditions.

**TASER:**

- A. Purposes:
  - a. The purpose of this policy is to provide officers with guidance and direction on the use of electronic control devices (ECD). Electronic control devices are designed to safely incapacitate potentially dangerous person(s) from a distance that minimize the danger to all parties involved
- B. Policy:
  - a. Officers are authorized to use and deploy the Taser Electronic Control Device (ECD) as approved by the department and subject to the provisions of all New York State Laws, specifically Article 35 and departmental training
  - b. The use of the Taser ECD will be limited to the degree of force which is reasonably necessary to provide protection for the officer, the subject, a third party, and/or to affect a legal arrest. (note) An ECD is not a substitute for deadly force-in case where a subject is believed to be armed with a dangerous weapon; an officer should not arm him or herself with an ECD unless another officer at the scene has the immediate ability to deliver deadly force
  - c. Any officer found to have used a Taser in a manner that would be considered negligent, dangerous, out of scope of his/her duty, unlawfully, will be held responsible for such use and be subject to disciplinary action.

- d. All Taser qualified sworn officers will be responsible for their Tasers retention, safety, storage, and care at all times
  - e. Any discharge of a Taser will be reported to the chief of police or acting supervisor within 24 hours and documented on a Taser discharge report form
- C. Definition:
- a. Taser Electronic Control Device (ECD) - are weapons that conduct electrical energy that target, thereby controlling and overriding the central nervous system of the body. They are designed to safely incapacitate potentially dangerous persons by:
    - i. Drive Stun Deployment- Acting as a drive stun system when brought into immediate contact with a person's body
    - ii. Air Cartridge Deployment- Using compressed nitrogen to project two probes at the subject. An electrical signal is then sent to the probes, via wires, which disrupts the body's ability to communicate messages from the brain to the muscle and causes motor skills dysfunction
  - b. Air Cartridge- A single use item that contains compressed nitrogen, AFID tags, two darts and insulated wires, it is identified with a serial number and is tamper resistance
  - c. AFID- (Anti Felon Identification Device) Every time an air cartridge is deployed; several small confetti-like ID tags called AFIDs are ejected. Each AFID contains the serial number of the cartridge deployed allowing investigators to identify which officer deployed the cartridge
  - d. Taser Instructor- Members qualified by Taser International to certify users of the Taser ECD
  - e. Taser Operator- members who have successfully completed the training prescribed by Taser International and the Cooperstown Police Department
- D. Training and certification:
- a. Only currently approved Taser ECDs shall be deployed
  - b. All sworn officers will be required to attend initial scheduled Taser training and once he/she has successfully completed such training will be deemed Taser qualified. Officers who do not qualify will not be able to carry a Taser
  - c. All officers will be required to attend scheduled annual training and maintain yearly re-certifications.
- E. Issuance:
- a. Cooperstown Police Department currently has 3 approved and purchased Tasers, which are to be used only by qualified sworn officers. Officers will turn over the Taser at the end of their shift to the oncoming certified officer. If an officer is not certified to carry the Taser, it will be secured in the gun cabinet in the back room and the key will be secured to the designated area at the desk
  - b. All sworn officers will be responsible for basic maintenance and daily spark testing. All officers will also inspect routinely and clean and test the Taser as they are exposed to the elements and continual daily use to ensure it operates properly



- c. All sworn officers will notify the Taser instructor if the Taser is in need of repair. At no time will any officer take it upon themselves to repair or alter the Taser. Any repairs or alterations made to the Taser will be documented by the Taser instructor
  - d. Tasers will not be carried off duty
- F. Deployment:
- a. If circumstances allow and whenever practical, officers should use verbal persuasion and commands for suspects to obey police orders and cease illegal behavior prior to the use of the Taser
  - b. Deployment of a Taser will be considered any time a Taser is removed from its holster, turned on and presented to a subject. The stage of deployment will be noted on any reports or Taser use reports
  - c. Stage of deployment
    - i. Deterrent- laser on/Taser visible to subject with verbal warning
    - ii. Stun Drive
    - iii. Probe Discharge
      - 1) Target area for deployment is:
        - a. The subject's back, from below the neck line to below the waist.
        - b. The subject's front, from below mid-chest (avoiding the heart, neck and face) to below the waist.
- G. Backup officers should accompany the Taser operator when available, and will be designated as contact and cover. When practical, at least one back-up officer present should be designated to control/cuff under power
- H. Once an air cartridge is fired from the Taser and probes are deployed, the empty cartridge, recovered probes, wire, and AFID tags will be secured together and labeled in plastic bag and placed in evidence with the incident report and the Taser discharge report attached.
- I. When the Taser has been successfully deployed, the subject will be transported to the nearest and most appropriate medical facility for probe removal if necessary, and medical evaluation.
- J. The deployed air cartridge ID number will be documented on the Taser use report and USB printout will be included, noting the date, time, and amount of deployment.

**Probe Removal:**

- A. Discharged Taser probes that have struck a target will be removed and contained by a Taser qualified sworn officer as they have been trained unless circumstances merit medical personnel removing the probes. A Taser probe removal kit will consist of rubber gloves, alcohol pads, and band aids. The probes will then be placed into the expanded cartridge and into a plastic bag appropriately labeled.
- B. Probes that strike facial/ soft tissue area or are abnormally penetrating the target will be removed by medical personnel

**Taser Use Report:**

- A. A Taser use report will be filed with the chief of police within 24 hours of any incident, along with a copy of the Taser USB downloaded information to be completed by the Taser instructor.

**Restrictions:**

- A. A Taser will not be deployed on females who are known to be pregnant due to the possibility of secondary injuries from a fall that could cause complications to an unborn child, unless serious physical injury or deadly force will be avoided by deploying the Taser.
- B. Tasers will not be deployed on subjects that are elevated from which he/she may fall, unless serious physical injury and or deadly force will be avoided by deploying the Taser
- C. Tasers will not be deployed at subjects who are in control of a motor vehicle or machinery, unless serious physical injury and or deadly force will be avoided by deploying the Taser
- D. The Taser will not be deployed on a subject that is in a body of water where there is a risk of drowning
- E. The Taser will not be deployed in an area that is potentially flammable such as in area that contain gasoline or other flammables, explosive material, liquids, or vapors (I.E. gases from sewer lines or methamphetamine labs)
- F. The Taser will not be deployed for punitive or coercion purposes
- G. Taser operators should only apply the number of cycles reasonable necessary to allow them to safely restrain the subject
- H. Taser will not be permitted for the use on a subject known to the officer and clearly displayed as an child, elderly, pregnant person, or on oxygen at the time of the incident

**Lethal:**

Deadly physical force means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. In the scope of this policy, deadly force used in relation to apprehending and/or stopping an aggressive attack act comes in the form of a last resort when all other efforts have failed, or when the officer perceives no other option is reasonable and lethal force is the only alternative to protect the officer and/or others from death or serious physical injury.

- A. Deadly physical force shall be authorized when an officer perceives that he or she and / or others are in danger of death or serious physical injury by an aggressive or threatening act.
- B. The Cooperstown Police department shall recognize that the deadly force option shall be available by the use of firearm provided and or approved by the chief of police.
- C. Before using a firearm, officers shall, when circumstances permit and is practical, identify themselves as police officers and order the individual to stop the aggressive or threatening act
- D. At no time shall warning shots be discharged in an effort to stop aggressive behavior

- E. At no time shall an officer use deadly force at or for a moving vehicle unless the occupants of the vehicle are using deadly force by means other than the vehicle itself
- F. Avoidance of recklessness should be considered in any situation involving deadly physical force. The safety of innocent bystanders, even when conditions are met for the use of deadly physical force is of top concern to the officer about to use deadly physical force.
- G. An officer who injures any person through the discharge of his or her firearm will ensure that immediate steps are taken to provide the injured person with necessary medical treatment when safely permitted
- H. Other circumstances in which firearm discharges may be permitted are as follows:
  - a. When during training involving firearms on an authorized range
  - b. To dispatch an animal that is sick or represents a threat to public safety or as humanitarian measures where the animal is seriously injured
- I. Authorized firearms
  - a. All on duty firearms must meet the approval of the chief of police
  - b. Authorized firearms :
    - i. Glock 21 45 caliber
    - ii. Remington 870 Shotgun
    - iii. AR 15
    - iv. All personal second weapons must be 9mm short or above
    - v. All officers must have training, certification and annual qualification to carry any of these firearms on duty
- J. It is the responsibility of all the officers employed by Cooperstown Police department to be versed in Article 35 of the NYS Penal Law and any changes made there in

**Reporting:**

- A. General Reporting:
  - a. When lethal force or non-lethal force is used and injuries occur, a state mandated use of force form and SJS incident report will be completed.
  - b. When required, an investigator from county or state police will be contacted and called out to investigate and collect evidence and statements
  - c. Statement of witnesses shall be taken when included in report as required.
  - d. Any and all communication will be documented and included in any report filled out and turned over to the chief of police.
  - e. A monthly use of force report must be completed every month through E-Justice regardless if any use of force occurred
- B. Immediate Notification of chief of police:
  - a. Certain circumstances apply that will require immediate notification of the chief of police:
    - i. Whenever an injury is received by the officer, defendant, or any other person
    - ii. Whenever a weapon is discharged in any manner except for the dispatch of an animal or training

- iii. When there is a substantial amount of property damage as the result for any use of force.
- iv. Whenever any strange extenuating circumstances exist that may require additional guidance
- b. When deadly physical force is used, the chief of police will be immediately notified of the situation. The scene will be secured and an activity log will be created. A complete report listing all the circumstances, people involved (both law enforcement and non-law enforcement, and defendants) shall be compiled and include in the report.
- c. The improper use of force occurs when the type or degree of force employed was excessive, unnecessary, or unreasonable. The improper use of force will not be tolerated and will subject to disciplinary action.

**C. 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 force that exceeds the degree of force objectively reasonable should promptly report these observations to a supervisor and create an SJS report of the incident.

<hr/> Frank Cavalieri Chief of Police	<hr/> Date
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