


**State University Police Department**

	<b>Use of Force-General</b>		Effective Date: <b>June 1, 2009</b>
	SECTION: <b>20.1</b>	DCJS STANDARD(S) <b>20.1/43.8</b>	Revision/Review Date: <b>November 17, 2020</b>
	APPROVAL: <b>Lawrence M. Zaccarese, Interim Chief of Police</b>		

**I. PURPOSE**

The purpose of this directive is to establish guidelines consistent with Executive Law 840 (4)(d)(3), Executive Law 837-t and 9 NYCRR 6058 that requires personnel to use only the amount of force that is objectively reasonable and under the circumstances for the officer involved to effect an arrest, prevent an escape or defend themselves or others. In addition, these regulations require the Stony Brook University Police Department to establish protocol and policy for documenting, reviewing and reporting use of force to New York State Division of Criminal Justice Services (DCJS). Furthermore, the Stony Brook University Police Department must conspicuously post these policies on the department website. This directive establishes the limits and guidelines within which the use of force and the use of deadly physical force, particularly the use of firearms, by members of this Department are permitted.


**II. POLICY**

Members of the Stony Brook University Police Department shall only use 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. Members shall use the least amount of force necessary to effect cooperation and control of a situation which requires police intervention. It will be only used after all other reasonable alternatives have been exhausted or are not available.

A police officer may in the course of effecting or attempting to effect an arrest or preventing or attempting to prevent the escape from custody, a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonable believes such to be necessary to effect the arrest, or to prevent the escape from custody. A police officer may also use physical force in self-defense or to defend a third person from what he or she reasonable believes to be the use or imminent use of physical force.

The fact that a police officer is justified in using deadly physical force under certain circumstances does not constitute justification of reckless conduct by such police officer to an offense against or with respect to innocent persons whom he or she is not seeking to arrest or retain in custody.

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III. DEFINITIONS

**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 of circumstances, without the benefit of 20/20 hindsight, and to be based on the totality of the facts that are known to that officer at the time that the force was used

**Justification** – a defense, which means the defendant, must interpose it at trial and the prosecution must disprove it beyond a reasonable doubt

**Serious Physical Injury** – any physical injury which creates a substantial risk of death or which causes death or serious protracted disfigurement, protracted impairment of health, or protracted impairment or loss of the function of any bodily organ

**Serious Bodily Injury-** any physical injury which creates a substantial risk of death or which causes death or serious protracted disfigurement, protracted impairment of health, protracted impairment or loss of the function of any bodily member, organ or mental faculty or unconsciousness

**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

**Physical Force** – any physical force that does not amount to deadly physical force

**Reasonable Cause to Believe** – all the facts taken together that would lead a reasonable and prudent person to believe that an offense was committed


**Necessity** – no other alternative

**Display a Chemical Agent-** To point a chemical agent at a subject

**Use/Deploy a Chemical Agent-** The operation of the chemical agent against a person in a manner capable of causing physical injury

**Brandishes/Uses/Discharges a Firearm-** The operation of a firearm against a person in a manner capable of causing physical injury

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**Brandishes/Uses/Deploys an Impact Weapon-** The operation of an impact weapon against a person in a manner capable of causing physical injury

**Uses a Choke Hold 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

**IV. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE**

When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event. Factors that may be used in determining the reasonableness of force include, but are not limited to:

- The severity of the crime or circumstance
- The level and immediacy of threat or resistance posed by the suspect
- The potential for injury to citizens, officers, and suspects
- The risk or attempt of the suspect to escape
- The knowledge, training and experience of the officer
- Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects
- Other environmental conditions or exigent circumstances


**V. DUTY TO INTERVENE**

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. An officer who observes another officer use force that exceeds the degree of force as described, should promptly report these observations to a supervisor.

**VI. USE OF FORCE**

- Officers may use only that level of force which is reasonably necessary to control an incident, to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.
- By law, an officer need not retreat in performance of their lawful duties, but a tactical retreat in some situations may be a wise choice. This is true even when use of force may

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be legally justified. De-escalation techniques shall be employed prior to use of force wherever possible.

- Only issued or approved equipment will be carried on duty and used when applying physical force; except in emergency situations when an officer must use any resources at his or her disposal.
- If circumstances dictate, the officer may bypass lower levels of force and immediately respond with a higher level when reasonably necessary.
- Officers shall use authorized less-than-lethal substances and devices such as OC spray, pursuant to departmental policy and training. The use of an active countermeasure, the baton, or OC spray shall be considered a use of force.
- Choke holds, carotid holds, and similar compression of the neck represent potential use of deadly force and shall *never* be utilized.


**Note: Effective June 12<sup>th</sup>, 2020 New York State modified Penal Law Section 121.13A to read as follows: Aggravated strangulation- A person is guilty of aggravated strangulation when being a police officer as defined in subdivision 34 of section 1.20 of the Criminal Procedure Law or a peace officer as defined in section 2.10 of the Criminal Procedure Law he or she commits the crime of criminal obstruction of breathing or blood circulation as defined in section 121.11 of this article or uses a chokehold or similar restraint as described in paragraph B of subdivision 1 of section 837t of the executive law and thereby causes serious physical injury or death to another person. Aggravated strangulation is a Class C Felony.**

**VII. PROHIBITED USES OF FORCE**

Force shall not be used by an officer for the following reasons:

- To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present
- To coerce a confession from a subject in custody
- 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
- 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
- Deadly force is not authorized against persons who only pose a danger to themselves

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- Firearms should not be discharged when it is likely that a third party might be injured as a result

**VIII. USE OF DEADLY PHYSICAL FORCE**

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.

Deadly physical force may be used to stop a fleeing suspect where:


- 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,
- The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officers or to others
- Where feasible, some warning should be given prior to the use of deadly physical force

**Note: Police officers are not required to retreat in lieu of the justifiable use of deadly physical force. Nevertheless, deadly physical force must be avoided if a less drastic means can be used without unreasonably endangering the officer or another person.**

**IX. GUIDELINES FOR THE USE OF FIREARMS**

- Police Officers shall not use deadly physical force against another person unless they have probable cause to believe they must protect themselves or another person present from imminent death or serious physical injury.
- Police Officers shall not discharge their weapons when doing so will unnecessarily endanger innocent persons.
- Police Officers shall not discharge their firearms in defense of property.
- Police Officers shall not discharge their firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to themselves or another person present.
- Police Officers shall not fire warning shots.
- Police Officers shall not discharge their weapons to summon assistance except in emergency situations when someone’s personal safety is endangered and unless no other reasonable means is available.

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- Police Officers shall not discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the police officer or another person present, by means other than a moving vehicle.
- Police Officers shall not discharge their firearms at a dog or other animal except to protect themselves or another person from physical injury and there is no other reasonable means to eliminate the threat unless directed by a Deputy Chief or above.
- Where feasible, some warning should be given prior to the use of deadly physical force

**X. PROCEDURE**

**REPORTING AND REVIEWING THE USE OF FORCE**


In the event that use of force results or is alleged to result in the injury or death of another person, with the exception of complaints of minor discomfort from compliant handcuffing, the following procedures shall be required:

**Police Officer Responsibilities:**

1. Render medical assistance, if able
2. Request medical assistance, if necessary
3. Immediately notify supervisor
4. Injured person(s) should be transported to Stony Brook University Medical Center prior to headquarters if under arrest in compliance with policy 64.1 of this manual.
5. Officers will document all details of the incident by:
  - a. Completing an incident report in IMPACT;
  - b. Entering required information on the Use of Force tab in IMPACT;
    - This tab is a fillable UPD 1035 form to be printed and signed by officer(s) and provided to the shift lieutenant
6. All officers who used force should complete their own Use of Force form entries.
7. Other circumstances requiring completion of a Use of Force form (UPD 1035):
  - a. When an officer draws his or her firearm or less-lethal equipment in performance of duty (other than routine maintenance or training)
  - b. Whenever long guns have been deployed in response to an incident

**NOTE: If an officer is unable to complete an incident report due to personal injury, a Supervisor may be directed to complete the incident report in the officer's place.**

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Officers are responsible for their actions and may be required to justify those actions. Reckless conduct which harms another person is NOT justified under the NYS Penal Law or Stony Brook University Police policy.

**Lieutenant Responsibilities:**

1. When practicable, supervisors should respond to the scene to investigate the circumstances and ensure policy and procedures are being followed.
2. Upon arriving on scene supervisors will determine if medical attention is needed for any person(s) involved and will ensure medical attention has been requested.
3. Supervisors are responsible for documenting all officers at the scene.
4. Supervisors are responsible for taking photographs of the subject force was used upon and officers involved, whether or not injury occurred.
5. Supervisors are responsible for reviewing the IMPACT entries as well as the Use of Force Form (UPD 1035) submitted by all officers engaged in use of force incidents. Use of Force Forms will be reviewed, signed, and provided to the Assistant Chief of Patrol or designee.

**Assistant Chief of Patrol Responsibilities:**


The Assistant Chief of Patrol or designee will review all documentation submitted by the supervisor to determine if use of force is within department guidelines. The Assistant Chief of Patrol will indicate such on the Use of Force Form (UPD 1035). The completed Use of Force Form (UPD 1035) will be kept in a separate file in the office of the Assistant Chief of Administration and Investigations and uploaded to the electronic case file by Central Records personnel.

If the Assistant Chief of Patrol or designee determines that follow up action is necessary all documentation of the incident will be provided to the Assistant Chief of Administration and Investigations or designee.

**Assistant Chief of Administration and Investigations or designee:**

1. In the event that a preliminary investigation shows the possibility of fault by an officer, the investigation will be turned over to the Assistant Chief of Administration and Investigations for follow up as necessary.

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2. Contact Suffolk County Police Department Detective Division in accordance with provisions in MOU in cases of firearms use, death or serious physical injury.
3. If an incident involving use of force by an officer is investigated, all pertinent information at the close of the investigation will be submitted to the Chief of Police and Assistant Chief of Patrol.
4. If it is determined that the officer's actions did not adhere to department guidelines, they may be subject to disciplinary action in accordance with policy 14.4 of this manual.

**Central Records Officer Responsibilities:**

The Central Records Officer will be charged with maintaining the documentation of an incident involving the use of force, as well as reporting the following uses of force to NYS DCJS:

- An officer brandishes, uses or discharges a firearm at or in the direction of another person
- An officer uses a choke hold 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
- An officer displays, uses or deploys an impact weapon, including but not limited to, oleoresin capsicum, pepper spray or tear gas
- An officer brandishes, uses or deploys an impact weapon, including, but not limited to a baton
- An officer uses force resulting in death or serious bodily injury

**NOTE: If the use of force is the result of a firearms discharge by a member of the Stony Brook University Police Department, the provisions of Stony Brook University Police Department Policy and Procedure Manual Section 21.1 Review of Firearms Use will be adhered to.**


**XI. TRAINING**

All sworn officers will receive training on use of force in the police academy. Officers will be able to successfully fulfill the knowledge requirements for completion of the Use of Force Lesson Plan.

Officers will receive a refresher course of Article 35 annually and will be able to successfully fulfill the knowledge requirement for completion of this course. Training topics will include use of force, conflict prevention, conflict resolution and negotiation, and de-escalation techniques



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and strategies including, but not limited to interacting with persons presenting in an agitated condition as well duty to intervene and prohibited conduct.