

HARRIMAN POLICE DEPARTMENT

GENERAL ORDER GO-024-12		SUBJECT USE OF FORCE		EFFECTIVE DATE 07/01/12	
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The purpose is to establish the policy and procedure of the Harriman Police Department in the use of force in accordance with New York State Executive Law 840(4)(d)(3).

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection must at all times be subservient to the protection of life. The officer's responsibility for protecting life must include his/her own.

I. Policy

- A. 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. Further it will be the policy of the Harriman Police Department that in all cases, only the minimum amount of force will be used, which is consistent with the accomplishment of a mission.
- B. Police officers may use deadly physical force if necessary to defend the officer or other persons from what the officer reasonably believes to be an immediate threat of death or serious physical injury. All police officers will review Article 35 of the New York State Penal Law with a supervisor.

II. 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.
- 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. *De-Escalation* – a tactic designed to place officers in a position of advantage when dealing with irrational, unpredictable, or suicidal persons. De-escalation helps officers stay focused and calm during crisis situations to bring chaotic moments to as peaceful a resolution as the suspect will afford. Do not risk the safety of officers or the subject. No caselaw prohibits officers from using any

physical force against a person before first attempting alternative de-escalation techniques. Resistance that was probably caused by excited delirium does not preclude officers from using a reasonable amount of force to bring a person under control (Roell v. Hamilton (6th Cir 2017)).

III. Determining the Objective Reasonableness of Force

- A. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation (Graham v. Connor, SCOTUS 1989).
- B. The calculus of reasonableness must embody 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 (Graham v. Connor, SCOTUS 1989).
- C. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: Not every push or shove, violates the 4th Amendment (Graham v. Connor, SCOTUS 1989).
- D. 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.
 - 2. The level and immediacy of threat or resistance posed by the suspect.
 - 3. The potential for injury to citizens, officers, and suspects.
 - 4. The risk or attempt of the suspect to escape.
 - 5. The knowledge, training, and experience of the officer.
 - 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects.
 - 7. Other environmental conditions or exigent circumstances.

IV. Duty to Intervene

- A. An officer who directly observes an unreasonable, excessive, or illegal use of force, in violation of Department policy and / or state or federal law, shall:
 - 1. Act to intervene and stop the use of force by another officer.
 - 2. Contact a supervisor as soon as piratical.
- B. An officer who has knowledge of excessive, unreasonable, or illegal use of force against a person shall:
 - 1. Notify a supervisor.
 - 2. Submit a written incident report to a supervisor in a timely fashion.
- C. Retaliation against any officer who intervenes against excessive force, reports misconduct, or cooperates in an internal investigation is prohibited.

V. 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.
- B. Deadly physical force may be used to stop a fleeing suspect where:
 - 1. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.

2. Apprehension by use of deadly physical force is a seizure subject to the 4th amendment's reasonableness requirement (Tennessee v. Garner SCOTUS 1985).
3. Deadly physical force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the subject poses a significant threat of death or serious physical injury to the officer or others (Tennessee v. Garner SCOTUS 1985).
4. Where feasible, some verbal warning should be given prior to the use of deadly physical force.
 - a. Warning shots- an officer is not justified in using his/her firearm to fire warning shots.

VI. Procedure

A. Shots Fired at or from Motor Vehicles

1. Officers are prohibited from discharging their firearms at or from a moving vehicle, motorcycle, or bicycle (collectively "moving vehicle"), unless officers reasonably believe deadly force is necessary to defend the officer, or a third party from the use, or imminent use of deadly physical force.
2. For purposes of this policy, officers will not discharge their firearms at moving vehicles except under extreme circumstances. Such discharges will be rigorously scrutinized.
3. Officers shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them.
4. When confronted with an oncoming, moving vehicle, officers must generally avoid placing themselves in situations where the use of deadly physical force is more likely.

B. Risk to Innocent Persons

1. Officers should not discharge a firearm when it appears likely that an innocent person may be injured.

C. Defense of Life

1. Officers may use deadly physical force to protect themselves or other persons from what they reasonably believe to be an immediate threat of death or serious physical injury.

D. Juveniles

1. No distinction shall be made relative to the age of the intended target of deadly physical force. Officers may use deadly physical force, if necessary, to defend the officer or other persons from what the officer reasonably believes to be an immediate threat of death or serious physical injury.

E. Fleeing Felon

1. An officer may use deadly physical force to affect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent threat of death or serious physical injury to the officer or other persons.

F. Destroy Animals

1. The killing of an animal is justified:
 - a. For self defense
 - b. To prevent substantial harm to the officer or another person
 - c. When the animal is so badly injured that humanity requires its relief from further suffering.
2. A seriously wounded or injured animal may be destroyed only after all attempts have been made to request assistance from the agency responsible (Humane Society, Animal Control, Department of Environmental Control, Wildlife Division, a licensed agent of the Department of Environmental Conservation) for the disposal of animals. The destruction of vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others.

VII. 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.
- B. Carotid Restraint Techniques (choke holds) are unauthorized and specifically prohibited by this department.

VIII. Whenever an Officer Discharges His/Her Firearm, Either Accidentally or Officially, or uses force during an Incident

- A. Involved Officer
 1. Determine the physical and mental condition of any injured person and render first aid when appropriate.
 - a. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
 - b. Request necessary emergency medical aid. Officers must provide medical attention and address the mental health needs of a person in their custody.
 2. Notify the dispatcher or officer at the front desk of the incident and location. Notify a supervisor.
 3. The officer will remain at the scene (unless injured) until the arrival of the appropriate supervisors. However, if the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop (violent crowd), the ranking officer at the scene shall have the discretion to instruct the officer to respond to another, more appropriate location.

4. If the incident requires the use of firearms, the officer will protect his/her weapon for examination and submit said weapon to the appropriate supervisor.
5. The officer shall prepare a detailed IMPACT blotter and either firearms discharge report, use of force report or both.
6. The officer should not discuss the case with anyone except:
 - a. Supervisory and assigned investigative personnel
 - b. The assigned District Attorney
 - c. The officer's attorney, psychologist, clergy or immediate family
7. The officer shall be available at all times for official interviews and statements regarding the case and shall be subject to recall to duty at any time.

B. Communications

1. The notified communications person shall:
 - a. Dispatch requested medical aid
 - b. Notify the on-duty uniformed patrol supervisor
 - c. Notify the Chief of Police and next in chain of command

C. Supervisor

1. Proceed immediately to the scene.
2. Secure the scene.
3. Conduct a preliminary investigation into the use of force.
4. Document, as necessary, the scene of the incident.
5. Visibly inspect the officer(s) and subjects(s) for injury and ensure medical attention is provided.
6. Interview the subject for complaints of pain and ensure medical attention is provided.
7. Render command assistance to the assigned investigator(s).
8. Assist the involved officer.
 - a. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
9. Identify and interview witnesses other than officers as appropriate.
10. Interview any physician or qualified health care provider concerning the injuries sustained and their consistency with uses of force reported.
11. Take video/audio statements from all officers who participated in or witnesses the event as appropriate within 5 working days of the reportable use of force.
12. Review and sign off on all documentation submitted by the involved Officer.
 - a. 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 and, to the extent practical, make a record of all officers present.
13. Submit a detailed written report of the results of the investigation to the Chief of Police.
14. In the case of homicide, the officer shall be placed on administrative leave without loss of pay or benefits, pending the results of the investigation. See section D below for further.

15. 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.

D. Objective Considerations (Kingsley Criteria)

1. Threat perceived by a reasonable officer.
2. Need for use of force as the appropriate response to the perceived threat.
3. Amount of force used in relation to the need for force.
4. Efforts made to temper the severity of the forceful response.
5. Extent of the injury to the subject.
6. Severity of the security problem at issue.
7. Whether the subject was actively resisting.

E. Death of Persons Caused by a Police Officer Investigation

1. The Office of Special Investigations (NYS Attorney General's Office) will investigate incidents involving the death of persons caused by a Police Officer (NYS Executive Law 70-b). OAG hotline phone number – (855)674-6924
2. Provide immediate medical assistance.
3. Address any ongoing threats to public safety.
4. Preserve and/or secure any evidence (vehicles should not be moved unless absolutely necessary).
5. Identify, and if at all possible, hold witnesses for OAG personnel.
6. Ensure Chief is on scene or en route to take command of incident.
7. Establish an appropriate crime scene.
8. Document everything-observations by responding officers, original 911 calls, anyone who entered the crime scene, who responded EMS and/or fire personnel).
9. Determine if BWCs were used and preserve relevant video.
10. Take photographs of involved officers at scene.
11. Obtain any possible information about the deceased.
12. Ensure no evidence is released without permission of OAG personnel.
13. Ensure no evidence is tampered with, and document by whom and why if it has.
14. If incident involved a firearm or taser, ensure firearm and/or taser is secured.
15. Notify OAG if any search warrants are needed.
16. Obtain signed consent forms for any seized evidence, where applicable.
17. Identify, and where possible, retrieve and safeguard potential electronic evidence (cell phones, EZ pass, GPS, etc.).

F. Evaluate training considerations:

- a. Drawing and exhibiting firearms
- b. Firing of weapon
- c. Tactics prior to drawing and discharging
- d. Tactics during and following discharge

2. The quality of supervision prior to, during and after the shooting incident.
3. The internal affairs unit, in conjunction with the OAG Office of Special Investigations, will prepare a detailed report of findings for the Chief of Police.

G. Psychological Services Provided to Officers

1. In all cases where any person has been injured or killed as a result of a firearm discharge by a police officer, the involved officer will be required to undergo a debriefing with the Employee Assistance Program as soon as possible, but within 24 hours of the incident. The purpose of this debriefing will be to allow the officer to express his/her feelings and to deal with the moral, ethical and/or psychological after-effects of the incident. The debriefing shall not be related to any Department investigation of the incident and nothing discussed in the debriefing will be reported to the Department. The debriefing session will remain protected by the privileged physician/patient relationship.

H. Administrative Leave

1. Any officer directly involved in a deadly force incident shall be placed on “administrative leave” directly upon completion of his/her preliminary report of the incident. This leave shall be without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer had acted improperly.
2. While on administrative leave, the officer shall remain available at all times for official departmental interviews and statements regarding the shooting incident and shall be subject to recall to duty at any time. The officer shall not discuss the incident with anyone except the Chief of Police, the OAG Office of Special Investigations, departmental personnel assigned to the investigation, the officer’s private attorney, the officer’s psychologist, the officer’s chosen clergy, and the officer’s immediate family.
3. Upon returning to duty, the officer may be assigned to “administrative duty” for a period of time deemed appropriate by the Chief of Police.

IX. On Duty Handgun and Ammunition

- A. All on duty uniformed police officers shall be armed with a Department approved firearm, a Glock Model 22, 40 Caliber Semi-Automatic Pistol with 165 grain jacketed hollow point ammunition and will not possess more ammunition than is required by policy and procedure.

X. Firearm Training

- A. All officers shall be “certified” with their on-duty weapon and their off-duty weapon. “Certification” shall include training regarding the legal, moral and ethical aspects of firearm use; safety in handling firearms and proficiency in the use of firearms.
 - 1. All officers should receive training and demonstrate their understanding on the proper application of force.
 - 2. 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
 - 3. 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
- B. Firearms “certification” shall be required at least semi-annually. And, in the event of an accidental discharge, the officer involved must undergo immediate re-certification training prior to returning to full duty.
- C. Officers who fail to meet certification requirements with their on-duty weapon will be granted a 10-day grace period. Within the 10-day period, the officer must on his/her own time report to the training officer for remedial training and certification. Officers who fail to achieve certification after attending remedial firearms training will be placed on suspension.
- D. After one week on suspension, if the officer still has failed to achieve certification, he/she shall be suspended for failing to maintain standards or, in the case of physical or mental disabilities, the officer shall become eligible for disability retirement.

XI. Legal Issues

- A. A Department furnished attorney should be immediately notified of any officer-involved shooting incident. The attorney shall immediately proceed to the scene of the shooting to meet with and establish a lawyer/client relationship with that officer, and refrain from acting on behalf of the Department at this initial stage of investigation until officer and Department interests are deemed to be consistent with each other. The attorney should assist the officer in drafting a formal statement as to the underlying facts and the reasonableness as perceived by the officer justifying his or her use of deadly physical force. This statement shall be drafted to insure (if that be appropriate) that legal sufficiency for such use of force is included in the officer’s statement. The officer will also be advised of his/her legal and Departmental rights regarding statements. The attorney will continue to assist the officer during the post-shooting investigations as well as criminal, civil and federal agents in a criminal civil rights action. Should this initial lawyer-client interview indicate that the officer has not acted lawfully, in good faith, or within the scope of his/her duties, the attorney assigned by the Department will advise the officer that all future legal representation on his/her behalf will have to be financed personally by the officer. However, all communications between the officer and the Department

assigned counsel are privileged and will remain confidential and undisclosed. Should this be the case, and in view of the severe criminal consequences involved, Department assigned counsel should advise the officer to refrain from making any further statements on the matter and save those for strictly departmental, internal purposes. Whenever Department legal counsel is required to withdraw from providing legal assistance to the Department because of this prior involvement and relationship with the officer, a request to the state, county or local legal entity providing such services to the Department by statute should be made to seek the assignment of another publicly employed attorney to assist in whatever departmental or criminal action is deemed appropriate. This can be done on a case-by-case basis to ensure propriety at all time and legal counsel, as well as provide necessary legal service to the departmental commend personnel.

XII. Legal Disclaimer

- A. This directive is for departmental use only and does not apply in any criminal or civil proceeding. The Department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

XIII Use of Force Data Collection

- B. Executive Law 837-t requires each police department, sheriff's office or state police agency to report any of the below listed use of force incidents to DCJS:
 - 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. 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 reduced air intake.
 - 5. Brandishes, uses or deploys an impact weapon, including, but not limited to a baton or billy.
 - 6. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
 - 7. Brandishes, uses or discharges a firearm at or in the direction of another person.