

	<p style="text-align: center;">TONAWANDA POLICE DEPARTMENT</p> <p style="text-align: center;">POLICY AND PROCEDURE GENERAL ORDER</p>	Distribution	General Order Number
		ALL PERSONNEL	3.01
		Original Issue Date	Reissue/Effective Date
			10/01/2020
Order Title: USE OF FORCE - GENERAL		Accreditation Standard:	Section
			3
		Section Title	
		RULES OF CONDUCT	
Rescinds: All previously issued Use of Force policies		 James P. Stauffiger, Chief of Police	

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order 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

I. PURPOSE

The purpose of this policy is to provide Town of Tonawanda Law Enforcement Officers with guidelines for the use of physical and deadly physical force.

This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force. Separate policy guidance and training should be provided for each of the available force instrumentalities made available to officers.

II. POLICY

It is the policy of the Town of Tonawanda Police Department to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officers and others. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight... the question is whether the officer’s actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” (Graham v. Connor, 490 U.S. 386 (1989))

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.
- B. Physical Force – Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another, prevent the escape of a person from custody, or in defense of one’s self or another.
- C. 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.
- D. Physical Injury – Impairment of physical condition or substantial pain.
- E. 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.
- F. De-escalation – Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion and tactical repositioning.
- G. Exigent Circumstance – Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

IV. USE OF FORCE

- A. In general terms, force is authorized to be used when 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 only use 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 THE OBJECTIVE REASONABLENESS OF FORCE

- A. When used, force should be only that which is reasonable and necessary given the circumstances perceived by the officer at the time of the event.
- B. Factors that should 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 present;
 - 7. The effects of drugs and/or alcohol on a subject;
 - 8. The mental state or capacity of a subject;
 - 9. Other environmental conditions or exigent circumstances.

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 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.

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 or 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 others.
3. Where feasible, some warning should be given prior to the use of deadly physical force.

VIII. PROHIBITED USE OF FORCE

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

1. To extract an item from the body or a cavity 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. Deadly force shall not be used against persons whose actions are a threat only to themselves or property.

C. Firearms shall not be discharged at a moving vehicle except in the following exigent circumstances:

1. A person in the vehicle is threatening the officer or another person with deadly force other than the vehicle; or
2. The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

D. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

- E. A police officer is not permitted to carry or use authorized weapons unless qualified in their use as per department standard unless exigent circumstances exists.
- F. The use of a chokehold or similar restraint that applies pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing or reduce intake of air or obstruct blood circulation is prohibited, except in those situations where the use of deadly physical force is authorized.
- G. If an exigent circumstance exists that poses an imminent threat to the safety of the officers or the public requiring the immediate use of an improvised weapon of opportunity, the officer may use the weapon. In such circumstances, the use of an improvised device or method must be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.
- H. Warning shots are prohibited.

IX. REPORTING AND REVIEWING THE USE OF FORCE

Any member of this department who discharges his or her weapon while on or off duty under circumstances wherein a person could be struck by a bullet from the weapon, including situations wherein such officer discharges his or her weapon in the direction of a person, shall verbally report the incident to a supervisor within six (6) hours of the occurrence of the incident and shall prepare and file a written report of the incident within forty-eight (48) hours of the occurrence of the incident. Nothing contained in this section shall prevent any officer from invoking his or her constitutional right to avoid self-incrimination.

Any use of force by a member of this department other than the discharge of a weapon shall be reported as soon as practicable to their supervisor.

All uses of force will be documented promptly on a standardized use of force report form (TTP 47).

- A. A police officer who has custody of a person must provide attention to the medical and mental health needs of that person and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.
 - 1. Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
 - 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.

- B. The officer should articulate the factors perceived and why he/she believed the use of force was objectively reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law.
- C. The officer will report anything of evidentiary value pertaining to the use of force. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.
- D. For purposes of the section, a supervisor shall be defined as an officer holding the official rank of Lieutenant or above.

X. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

- A. A supervisor should respond to the scene to begin the preliminary 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 the use of force and should document all officers present at the time the force or alleged force was used.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D. Any and all reports related to the use of force shall be forwarded through the proper chain of command. The Captain of the bureau that the officer using force reports to will review the supervisor's report and conduct an investigation if appropriate. Officers using force that does not adhere to the use of force guidelines will have their actions addressed in accordance with the protocols set forth in the Town of Tonawanda Policies and Procedures manual.
- E. The Chief of Police, or his designee, will ensure ALL use of force incidents are recorded on the agency's use of force tracking spreadsheet.
- F. The Chief of Police, or his designee, will ensure use of force incidents, which meet the parameters, are reported to the Department of Criminal Justice Services (DCJS) through the method of reporting established by DCJS.
- G. For purposes of this section, a supervisor shall be defined as an officer holding the official rank of Lieutenant or above.

XI. TRAINING

- A. All officers will 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 to include interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

XII. POLICY ACCESSIBLE BY THE PUBLIC

- A. This policy will be conspicuously displayed on the Town of Tonawanda Police Department's website.

(9/28/20) Rev.