



# Suffern Police Department GENERAL ORDER

<b>General Order No. 210</b>	<b>Issuance Date: 02/26/08</b>
<b>Subject: USE OF FORCE</b>	
<b>Cross Reference: 20.1, 20.6, 32.4</b>	<b>Effective Date: 02/29/08</b>
<b>Distribution: All Department members</b>	<b>Rescinded Date:</b>
<b>Issuing Authority: Chief Andrew Loughlin</b>	

<b>04/10/16</b>										
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**I. Purpose.**

The purpose of this policy is to establish guidelines for the use of force by members of the Village of Suffern Police Department. It is impossible to regulate what kind and to what extent force may be used. This decision is dependent on a variety of circumstances and events that are unique to almost every situation where force may be appropriate.

**II. Policy**

Since it is the law that confers authority on officers, and which also limits the use of that authority, the law should also serve as the framework for the Department’s policy statement on use of force. *It is therefore the policy of this Department that officers should only use that force which is lawful under the circumstances when the force is employed.* Both state and federal law require that the force be “reasonable under all the circumstances”. ***Hence, it is the policy of this Department that 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 “perception” of the officer must also be reasonable; hence, “reasonableness of the force used” must be judged from the perspective of the reasonable officer on the scene at the time of the incident, and must embody allowance for the fact that officers are often called upon to make split-second decisions about whether to use any force, and what and how much force to use, in circumstances that are tense, dangerous and rapidly-evolving.

**III. Definitions**

- A. Deadly Force: Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

- B. Non-deadly Force: Force which is not intended to cause death or serious physical injury. The use of a baton or similar objects normally is non-deadly force, but their use may constitute deadly force, depending on the manner of use and other circumstances.
- C. Reasonably Necessary: An action or response which is reasonable given the circumstances present at the time and which is necessary to accomplish a lawful objective.
- D. Physical Injury: Impairment of physical condition or substantial pain.
- E. Serious Physical Injury: An injury that 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. Excessive Force. Any force which is not reasonably necessary.
- G. Objective Reasonableness. 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. General

- A. Since no policy can realistically predict every possible situation, an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain or unreasonably risk physical injury before applying reasonable force to effect arrest, overcome resistance or prevent escape.
- B. An application of force by a member of this Department must be judged by the "objective reasonableness" standard. The use of force equation must take into consideration the following factors and any others relevant to the reasonableness of the officer's response:
  - The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
  - Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
  - Influence of drug/alcohol or mental capacity.
  - Presence of or proximity to weapons (including any object that could be used to inflict injury or death).

- Availability of other options (what resources are reasonable available to the officer under the circumstances).
- Seriousness of the suspected offense or reason for contact with the individual.
- Training and experience of the officer.
- Potential for injury to citizens, officers and suspect.
- Risk of escape.
- Relative timing of events, i.e. was the officer required to really make a “split-second” decision, or, was there time for reflection and planning?
- The existence, and effect upon the officer, of psychological and physiological phenomena that frequently occur in sudden, violent or deadly encounters, such as fear, visual and auditory distortion or exclusion, “tunneling”, memory and sequencing distortion, time distortion and many others.
- Other exigent circumstances.

## V. Specific Regulations and Application

### A. Deadly Force

1. Deadly 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.
2. Deadly Force may be used to apprehend a fleeing felon if all other means of effecting an arrest have been exhausted and 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 officer or to others**. The United States Supreme Court ruled in the 1985 case of *Tennessee v. Garner*, and recognizing constitutional authority for the use of deadly force to prevent escape and providing a two-prong test to guide the exercise of that authority:
  - First, an officer must have probable cause to believe that the fleeing felon is dangerous; and secondly,
  - the use of deadly force must be necessary to effect the arrest.
3. Deadly force shall not be employed to apprehend a fleeing misdemeanor.
4. In effecting any lawful arrest, or while taking a mentally disturbed person into custody under the Mental Hygiene Law, only that amount of force reasonably necessary to ensure safe custody to overcome resistance to arrest is justified. If during the course of a lawful arrest or custodial situation, officers are met with resistance to the extent that the officer reasonably believes that death or serious physical injury will occur to the officer or any other person, the use of deadly force to overcome such resistance is reasonably necessary.

5. In any situation where an officer is otherwise acting lawfully, the use of deadly force is justified in the defense of the officer's life or a citizen's life whenever the officer reasonably believes that deadly force is necessary to prevent or terminate deadly force directed toward him/her or another person. In any situation where an officer is otherwise justified in using deadly force, the officer shall not use deadly force recklessly or in any place or under any circumstances where injury or death to an innocent bystander is likely.
6. Any use of force, which is not reasonably necessary in view of the circumstances confronting the officer, is prohibited.
7. When feasible, officers shall give the verbal warning, "**Police, don't move!**", prior to using deadly force involving use of a firearm.
8. Shooting at or from a moving vehicle shall be avoided except to defend an officer's or citizen's life or protect them from serious physical injury or when the escape of a felon will pose an imminent threat of death or serious physical injury to an officer or other person and in accordance with 210.5.A.4 above. The safety of residents and innocent bystanders is of paramount importance.
9. Officers shall exercise caution at all times in handling and displaying firearms in any place, whether public or private. Except for official purposes such as training, inspecting, securing or cleaning, firearms shall not be handled or displayed. Firearms, whether loaded or unloaded, shall not be aimed at any person except as necessary in the line of duty. Any use of a firearm must be reasonable, necessary, and in strict accord with department policy.
10. The accidental discharge of a firearm, on duty or off duty, NOT RESULTING IN DEATH OR INJURY TO ANY PERSON, shall be immediately reported to the employee's squad/division commander and the Staff Duty Officer. Investigations of such incidents will usually be conducted by an on-duty supervisor. The investigating supervisor shall document the findings in a memorandum to be concluded before the supervisor's next scheduled day off and forwarded to the Chief of Police.
11. Choke Holds. Choke holds are not authorized and shall not be applied intentionally, unless the use of deadly physical force would be authorized under the law AND officers reasonably believe there is an imminent threat of serious physical injury or death to an officer or other person, and that the application of a chokehold is the only reasonable means of protecting an officer and/or another person.

#### B. Non-Deadly Use of Force

1. In general terms, non-deadly force may be used by officers only when that force is reasonably believed to be necessary:
  - a. To prevent escape from lawful custody, to effect a lawful arrest or detention, or in defense of one's self or others.

2. 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.
  
3. There are a number of factors (situations) officers have to consider when evaluating the use of force:
  - a. The severity of the crime committed or circumstance;
  - b. The level and immediacy of threat or resistance posed by the suspect;
  - c. The degree to which the suspect resists arrest or detention and the risk or attempt of the suspect to escape;
  - d. The potential for injury to citizens, officers, and suspects;
  - e. The knowledge, training, and experience of the officer;
  - f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
  - g. Other environmental conditions or exigent circumstances.
  
4. Due to the potential dangers associated with an accidental discharge, using a firearm as a striking instrument shall be avoided except as a last resort. Handcuffed prisoners resisting arrest or assaulting officers present unique use of force decisions for law enforcement officers. Officers may use only that amount of force reasonably necessary to ensure safe custody or overcome resistance to a lawful arrest.
  
5. The “totality of the circumstances including time” will influence the kind and extent of force used by an officer whenever force is deemed appropriate.
  
6. Officers may use the force reasonably necessary, such as moderate pressure to stop, turn or guide a subject, to conduct an investigative stop without converting the stop into an arrest. Increased levels of force may be used if it is reasonable under the circumstances confronting the officer.

**C. Oleoresin Capsicum (OC Dispenser.)**

1. Only those OC dispensers issued by the Village of Suffern Police Department shall be used by department employees.

2. Only those officers who have completed Departmental training related to the use of Oleoresin Capsicum (O.C.) shall be authorized to carry and or use OC Spray while on duty.
3. Officers certified to use OC Spray shall use only that chemical which is approved and issued by the Department while on duty.
4. OC Spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting EDP or mentally ill person into custody.
5. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been effective in overcoming physical resistance. When consistent with personal safety, a verbal warning should be given before using pepper spray against an unarmed subject.
6. OC pepper spray shall not be used on suspects who passively resist arrest. (e.g., going limp, offers no physical resistance).
7. The Oleoresin Capsicum (OC) dispensers should be directed at the subject's face. Due to the flammable carrier for the OC it shall not be knowingly discharged in the direction of and/or within range of open flames or sparks.
8. OC may be used when it is reasonably necessary to effect a lawful arrest or mental custody situation, overcome resistance to a lawful arrest or mental custody situation, to defend an officer or other person from assault, or to prevent escape from lawful custody.
9. Officers are responsible for decontaminating subjects in their custody who have been exposed to OC. Personal security should be established in a safe area, and subjects must be physically controlled prior to undertaking decontamination procedures.
10. Officers may decontaminate a subject by rinsing the affected area with water. The water should be poured over the bridge of the nose so that it floods both eyes. EMS personnel may be requested to assist in decontamination. Particular care should be given to those persons wearing contact lenses.
11. Subjects who are very obese or have bronchitis, asthma, emphysema or similar respiratory disease shall be decontaminated by EMS personnel. This will allow time for EMS personnel to monitor the subject for any adverse reaction to the OC.
12. Officers shall ensure that subject exposed to OC, especially very obese individuals, are restrained or transported in a manner which does not constrict their body position. Obese persons are at greater risk for respiratory problems than the average person. Pepper spray devices may be used in the following situations that would justify the use of physical force:
  - a. Assault on a police officer or any other person.

- b. Physical threat against a police officer or other person actually present and an officer reasonably believes it is necessary to prevent an imminent assault.
  - c. Resisting arrest by using physical force to prevent an officer from effecting custody.
  - d. Fleeing or attempting to flee from arrest or custody.
13. OC pepper spray may also be used effectively in controlling dangerous animals, to deter attack and prevent injury to all persons and other animals present. OC pepper spray should be considered as an initial defense against vicious dogs. Firearms should only be used as a last resort.
14. Injuries received due to the use of OC, beyond simple decontamination, shall be documented in accordance with **Reporting Use of Force [GO 212]**.

*Refusal of offers for decontamination shall be noted in the related incident report.*

**D. Asp, Baton, etc.** (Impact Weapons)

Impact Weapons shall be issued or approved in accordance with **[GO 111], Weapons, Ammunition and Tools.**

Operational Procedures:

1. Impact weapons may be used to strike the subject in designated target areas of the body; i.e., torso, legs, arms. Intentional strikes to the subject's head, kidneys, neck or groin shall be avoided, whenever possible.
2. Impact weapons may be used as a lever to induce sufficient pressure to cause the subject to cease aggressive action. Utilization of an impact weapon or flashlight in a manner constituting a choke hold is prohibited except when officers reasonably believe there is an imminent threat of serious physical injury or death to an officer or other person, and that it is the only reasonable means of protecting an officer and/or another person.

**E. Taser**

1. The use of tasers (Conducted Energy Weapon) will be consistent with the Department's existing physical force policy. Further it will be the policy of the Suffern Police Department that in all cases, the use of force shall be limited to that which is reasonably necessary to carry out authorized duties.
2. Taser devices shall be considered Department equipment for the purpose of all existing policies/procedures governing the care, maintenance and recording and

inspection of Department equipment.

3. The following guidelines will be observed whenever the Taser is used.
  - a. The Taser is deployed as an additional tool and is not intended to replace firearms. The Taser may be used to control dangerous and violent subjects when deadly physical force does not appear to be justified and/or other attempts to subdue the subject by other conventional tactics have been, or will likely be, ineffective in the situation, or there is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject.
  - b. The Taser shall be issued to and used only by officers who have completed the taser training program.
  - c. Officers carrying the Taser shall carry the device in an issued holster on their weak side.
  - d. Officers carrying the Taser on-duty shall be responsible to ensure the device is charged and all components are fully operational.
  - e. The Taser can be used at a distance up to 25 feet, however, the optimum distance is 7-10 feet. The device is equipped with both laser and fixed sight.
  - f. When feasible, before discharging the Taser, officer should make every reasonable effort to inform other officers involved in the incident that a non-lethal weapon is being discharged by using the code word "TASER."
  - g. The Taser shall be aimed in a manner to attempt to "split the beltline" with the Taser probes. Ideally, officers should attempt to achieve one probe strike above the beltline of the subject and one probe strike below the beltline, in the area of the upper leg. This may not always be possible due to the actions of the subject and/or the fluidity of the situation, but the lower torso and legs when the subject is facing the officer, or the subject's back if the subject is turned away from the officer are the preferred targeting areas. The device should not be deliberately aimed at the face, neck or groin area.
  - h. The Taser shall not be utilized on elderly subjects, children or known pregnant women unless deemed necessary by the Patrol Supervisor or OIC.
  - i. The Taser may also be used in "touch" or "drive stun" mode, to make physical contact with a subject and deliver energy.
  - j. The Taser may be deployed multiple times on the same subject if the officer reasonably believes the use necessary to take the suspect into custody.
    - Caution should be used to avoid repeated, extended, or continuous exposures beyond 15 seconds absent reasonably perceived immediate threat and increased justification.

- k. The Taser has the ability to ignite flammable liquids. The device is not to be discharged at subjects who have come into contact with flammable liquids or in environments where flammable liquids are obviously present.
  - l. Consideration should be given and care taken in situations where the targeted subject is likely to experience a fall from an elevated position.
  - m. Each Taser has a data port that stores the date, time and duration of each firing of the weapon.
  - n. Tasers will be used but not limited to the following confrontational situations:
    - 1. To defend the officer or another from violent or aggressive behavior directed toward them.
    - 2. To control a subject who has shown himself to be a danger to himself or others and is exhibiting menacing behavior.
    - 3. To extricate a threatening or violent subject from an area that is not conducive to safe entry by an officer.
3. Reporting
- a. Whenever an officer deploys the Taser
    - 1. Determine the physical condition of any injured person and render first aid when appropriate.
    - 2. Notify Communications of the incident and location.
    - 3. Notify a supervisor.
    - 4. Request necessary emergency medical aid.
    - 5. Document the use of force in an Incident report narrative. The incident Report narrative will be completed prior to the end of the officer's tour of duty.
    - 6. The Officer and Supervisor will complete a Use of Force Report, Supervisor Use of Force report as per **GO 212**.
  - b. Each discharge, including accidental discharges of a Taser shall be investigated and documented. Each discharge (intentional or accidental) of a Taser shall be documented in the Incident Report. A supervisor shall be notified as soon as practical.
4. Medical Attention/removal of Probes:
- a. Upon deployment of the Taser, the appropriate medical attention shall be immediately provided to the subject at the scene, if necessary, with follow up medical treatment at an appropriate medical facility. In the event the probes strike a sensitive region of the body (eyes, head, genitals, or female breasts), such transportation to a medical facility shall be provided by ambulance.
  - b. After securing the subject in handcuffs and/or other appropriate restraints, an officer will remove the probes using prescribed methods. However, if the probes are in areas such as face, neck or groin, the officer shall require the subject to be

treated at a hospital and the probes removed only by medical personnel.

- c. Officers shall wear medical latex gloves, place hand above the probes and stretch the skin taut, using a brisk pull; the officer shall pull the probe out of the subject. The puncture site may be wiped with a sterile alcohol swab and an adhesive bandage applied to the site.
- d. Alcohol swabs, gloves and bandage packaging shall be disposed of in a biohazard bag or receptacle.
- e. Officers shall be guided by the Department's Exposure Control Plan (See G.O. 802).

#### 5. Evidence Procedure

- a. The expended Taser cartridge, probes and anti-felon identification tags (AFIT) will be collected as evidence and shall be treated as biohazard. The probes may be safely contained by inverting them, placing them into the cartridge. (See G.O. 605 Evidence and Property Procedures).

#### 6. Record Retention

- a. The Chief of Police shall maintain and retain a file on all Taser use.

### **F. Specialty Impact Munitions**

#### 1. Specialty Impact Munitions - Specialty Impact Munitions are extended range impact beanbag rounds that are fired from weapons that are designated to fire beanbag rounds.

##### a. Use of Specialty Impact Munitions.

1. The Specialty Impact Munitions Weapon along with its rounds will be stored in assigned vehicles. The Specialty Impact Munitions Weapon Delivery System shall be the Remington 870 Shotgun with a fluorescent orange slide and stock. No other weapon is authorized for use with these munitions.
2. At no time will the Specialty Impact Munitions Weapon be loaded with anything other than Specialty Impact Munitions Rounds.
3. Specialty Impact Munitions may be used to control and arrest a violent or potentially violent suspect. This may also include suspected carriers of communicable diseases and those subjects that appear emotionally disturbed.

##### b. Authorizations.

1. The Officer in Charge or the Patrol Supervisor may summons trained and certified personnel for anticipated use of the Specialty Impact Munitions rounds.

c. Medical Treatment.

1. When the Specialty Impact Munitions are utilized and the suspect is struck with the projectile, he/she must be transported to a medical facility for observation and examination.

- d. Whenever a certified member of this Department is required to use Specialty Impact Munitions, they will complete a Use of Force report along with all other necessary reports.

## **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. Medical Assistance**

- A. A police 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.
  - (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.
- B. In all situations, medical assistance shall be immediately provided to any person who is obviously injured, alleges an injury, or request medical assistance.
- C. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.
- D. It is the duty of an officer's immediate supervisor to coordinate and make available post critical incident counseling for any officer involved in a use of force incident

where another officer or any citizen suffers a serious physical injury or is killed.

## **VII. General Provisions and Restrictions**

- A. Warning shots are prohibited.**
- B. Unauthorized weapons/instruments. The carrying or use of any instrument as an offensive or defensive weapon, not specifically authorized or issued as a weapon by the Police Department is prohibited, except when possessed pursuant to official duties. Examples of unauthorized weapons include but are not limited to:
- (1) Blackjacks, slappers, weighted gloves, stun guns, brass knuckles.
  - (2) Flashlights are not authorized as an offensive weapon to quell resistance except in extreme cases when no other issued instruments are available.
- C. Officers shall not loan or permit the use of department issued weapons to any other person except in the following circumstances.
- (1) At approved police training activities.
  - (2) Emergency tactical situations
  - (3) When authorized by a superior officer
  - (4) When required for maintenance/repair
- D. Officers shall not leave a Department issued or approved firearm unsecured. This shall apply to on duty and off duty situations.
- E. Only that ammunition issued by the Department shall be used during the performance of official duty.
- F. 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.

**VIII. Training**

- A. All officers will receive training 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.
- 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.

# USE OF FORCE CONTINUUM

