

**POLICE DEPARTMENT**

**Town of Stony Point  
79 Route 210  
Stony Point, NY 10980**

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*Brian J. Moore, Chief of Police*

<p>GENERAL ORDER  <b>413</b></p>	<p>SUBJECT  <b>USE OF FORCE</b></p>		<p>EFFECTIVE DATE  <b>10/31/19</b></p>
<p>RESCINDS</p>	<p>AMENDS GO-413 <b>Dated 03/14/18</b></p>	<p>CROSS REFERENCE</p>	<p>PAGE  <b>1 of 10</b></p>

**I. PURPOSE**

The purpose of this policy is to establish guidelines for the use of force by members of the Town of Stony Point Police Department. Law enforcement officers around the country and in New York State are authorized to use reasonable and legitimate force in specific circumstances. Federal and state constitutional as well as state statutory standards dictate when and how much force can be used. This policy is founded in these standards but is not intended to be an exhaustive recitation of the state and federal legal framework governing use of force.

**II. 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 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. The standard of objective reasonableness, established by the United States Supreme Court in Graham v. Connor, 490 U.S. 386 at 396 (1989), is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.
- B. 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.”
- C. Officers may only use that level of physical force necessary in the performance of their duties, within the limits established by Article 35 of the New York State Penal Law and other applicable laws, and consistent with the training given by the Stony Point Police Department.
- D. It is the responsibility of each officer to be aware of the requirements of Article 35 and to guide his/her actions based upon that law and Department policy and training.

- E. Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th Amendment standard of objective reasonableness.
- F. This policy is consistent with Article 35 of NYS Penal Law, (Defense of Justification Sections 35.00 – 35.30) and with the Municipal Police Training Council Use of Force Model Policy pursuant to Executive Law 840 (4)(d)(3), Executive Law 837-t and 9 NYCRR 6058.
- G. All use of force incidents will be documented, reviewed, investigated, and reported as laid out in this policy.
- H. This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. As members of the Stony Point Police Department we are sworn to protect human life. It is the responsibility of each officer to ensure that they are constantly aware of their duty with regard to the use of force and the limitations for the use of that authority.
- I. This policy will be posted on the Stony Point Police Department website.
- J. Reporting to DCJS:
  - 1. Section 837-t of the New York Executive Law has been amended to add a new section requiring the chief of every police department, each county sheriff, and the superintendent of state police to report to DCJS any instance in which a police officer or a peace officer, as defined in the criminal procedural law, uses force in any manner enumerated in the new legislation.
  - 2. The requirement to begin tracking these specific use of force incidents is effective July 11, 2019. DCJS is currently in the process of developing a reporting structure for agencies to submit the statutorily required reportable use of force incidents and will issue a future advisory to law enforcement agencies on the manner in which to submit the use of force information.

### 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. **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. **Less-Lethal Force:** Any use of force other than that which is considered deadly force, or that involves physical effort to control, restrain, or overcome the resistance of another.
- F. **Excessive Force:** Any force which is not reasonably necessary.
- G. **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.
- K. **De-Escalation:** Taking action or communicating verbally or non-verbally during a potential use of 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 or tactical repositioning.
- I. **Exigent Circumstances:** 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.
- J. **Choke Hold:** A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.
- K. **Warning Shot:** Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

#### IV. PROCEDURE

##### A. General

1. Officers must be aware that each individual situation will dictate the level of force ultimately utilized. Beginning with the officer's presence at the scene, the officer will determine the appropriate level of force to control the situation based upon what is objectively reasonable and meets the guidelines of the Department's "FORCE Options Chart," found in this General Order.
2. In general terms, force is authorized to be used when reasonably believed to be necessary to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.

3. Under the 4<sup>th</sup> 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.
4. Use of physical force should be discontinued when resistance ceases or the when the incident is under control.
5. Only issued or approved equipment will be carried on duty and used when applying physical force, except in exigent circumstances when an officer must use any resources at his disposal. The use of the Expandable Baton, Advanced Taser, or Oleoresin Capsicum (“OC Spray”) is considered use of force.
6. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only that amount of force reasonably necessary to control the situation shall be used.
7. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care, consistent with his or her training, to any individual who has visible injuries, complains of being injured, or requests first aid. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

**B. Determining the Objective Reasonableness of Force**

1. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
2. Factors that may be used in determining the reasonableness of force include, but are not limited to:
  - a. The severity of the crime or circumstance;
  - b. The level and immediacy of threat or resistance posed by the suspect;
  - c. The potential for injury to citizens, officers, and suspects;
  - d. The risk or attempt of the suspect to escape;
  - 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; and
  - g. Other environmental conditions or exigent circumstances.

**C. Duty to Intervene**

1. 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.
2. An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section shall promptly report these observations to a supervisor.

**D. De-Escalation**

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training, whenever possible and appropriate, before resorting to force and to reduce the need for the use of force.
2. Whenever possible, and when such delay will not compromise the safety of the officer or another, and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

**E. Use of Less-Lethal Force**

1. When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less lethal force techniques and issued equipment
  - a. to protect the officer or others from immediate physical harm;
  - b. to restrain or subdue an individual who is actively resisting or evading arrest;  
or
  - c. to bring an unlawful situation safely and effectively under control.

**F. Use of Deadly Physical Force**

1. Deadly physical force may be used by an officer to protect himself or herself or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
2. Under the 4<sup>th</sup> Amendment and as delineated by the United States Supreme Court's 1985 decision in Tennessee v. Garner, police officers are not authorized to utilize deadly physical force to prevent the escape of an unarmed, non-dangerous

fleeing suspect. Consistent with law and this policy, the use of deadly physical force to prevent the escape of a fleeing felon is only authorized when:

- a. First, an officer must have probable cause to believe that the fleeing suspect has committed a felony involving the infliction or threat of serious physical injury or death, and poses a significant threat of death or serious physical injury to the officer or others; and
- b. Second, the use of deadly force must be reasonable and necessary to affect the arrest.
- c. Where feasible, some warning should be given prior to the use of deadly physical force.

#### **G. Prohibited Uses of Force**

1. Force shall not be used by an officer for the following reasons:
  - a. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
  - b. To coerce a confession from a subject in custody;
  - c. To obtain blood, saliva, urine, or other bodily fluids or cells from an individual for the purposes of scientific testing, in lieu of a court order where required;
  - d. 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.
  - e. Choke holds are only authorized when officers reasonably believe there is an imminent threat of serious physical injury or death to an officer or other person, and no other force options may be available.
  - f. Warning shots are prohibited.
  - g. Firearms shall not be discharged at a moving vehicle unless
    - (1) a person in the vehicle is using or threatening the officer or another person with deadly force by means 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 exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
- h. 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.

## **H. Reporting and Reviewing the Use of Force**

1. Any officer who uses physical force pursuant to his/her duties as a police officer (whether on or off duty), shall complete a Use of Force report, a detailed memorandum on the incident and enter the incident into the CAD system.
  - a. If the incident occurs outside the geographical confines of the Town of Stony Point, the officer shall make a full report to the police agency having jurisdiction thereat, and as soon as possible complete a Stony Point Police CAD entry, listing the type of complaint as an assist to an outside agency, complete a detailed Memorandum of the incident and complete a “Use of Force Report.”
2. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.
  - a. Use of force that results in a physical injury to a suspect, an officer or a third party.
  - b. Use of force incidents that a reasonable person would believe is likely to cause an injury.
  - c. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.
  - d. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
  - e. Incidents where OC Spray is used to control a subject.
  - f. Incidents where an Expandable Baton is used to control a subject.
  - g. Incidents where a firearm was discharged at a subject.

3. Responsibilities of Supervisors:
  - a. When practicable, a supervisor will respond to the scene of the incident after learning of the use of physical force.
  - b. Supervisors will ensure that employees receive any necessary assistance, including medical treatment. They shall also ensure that any injuries to employees shall be properly documented and reported.
  - c. Supervisors will determine if a Detective will respond to the scene of an incident involving the use of physical force and along with the Detective, will determine what level of the Detective's service will be utilized; including photos, measurements and diagrams.
  - d. Supervisors will determine if the Executive Officer and the Chief should be notified immediately based on the level of force used or injury. In all instances where serious injury or a discharge of firearm occurs, immediate notification to the Executive Officer and Chief is required.
  - e. Supervisors will ensure that a thorough investigation of the use of force incident is conducted. Whenever possible this investigation will be conducted at the scene. The supervisor should identify police and civilian witnesses to the incident and conduct interviews of them. The supervisor will include a written report documenting his actions and summarizing his findings after investigation of the incident.
  - f. In the event that an employee is unable to complete reports due to injuries, the supervisor will prepare or cause them to be prepared and submit them through the chain of command. The reports will be copied and forwarded as per current directives.
  - g. The investigating supervisor will forward all reports, including the Use of Force Report, any and all memorandums, injured prisoner report(s), investigative report, incident report, etc, to the Executive Officer for review.
  - h. Should further investigation be required, after the fact, the Executive Officer shall direct such investigation utilizing whatever department resources are required. The Executive Officer will also be responsible for securing any audio or video tapes and for the downloading of the record of use on the department Taser. After review by the Executive Officer, the report shall be forwarded to the Chief of Police for adjudication.

4. Adjudication of Report:
  - a. The Chief of Police will classify completed use of force investigations as follows:
    - (1) Unfounded – no undue use of force.
    - (2) Justified – definite use of force, but in adherence to proper and appropriate police procedures and techniques.
    - (3) Not sustained – unable to verify improper use of force.
    - (4) Sustained – improper use of force.
  - b. Completed investigations classified as unfounded, justified or not sustained will be maintained in the Use of Force files in the Chief’s office. Sustained complaints will be filed in the individual employee’s department personnel file with a copy in the Use of Force files.
  - c. The Chief of Police, upon receipt of the completed investigation, will review the material pertaining to the incident, the involved member’s work record, disciplinary history and service record, and then, if the incident is deemed sustained, recommend appropriate disciplinary action.
  - d. The employee will be notified of the results of the investigation and the recommended disciplinary action, including scheduled implementation of said action.

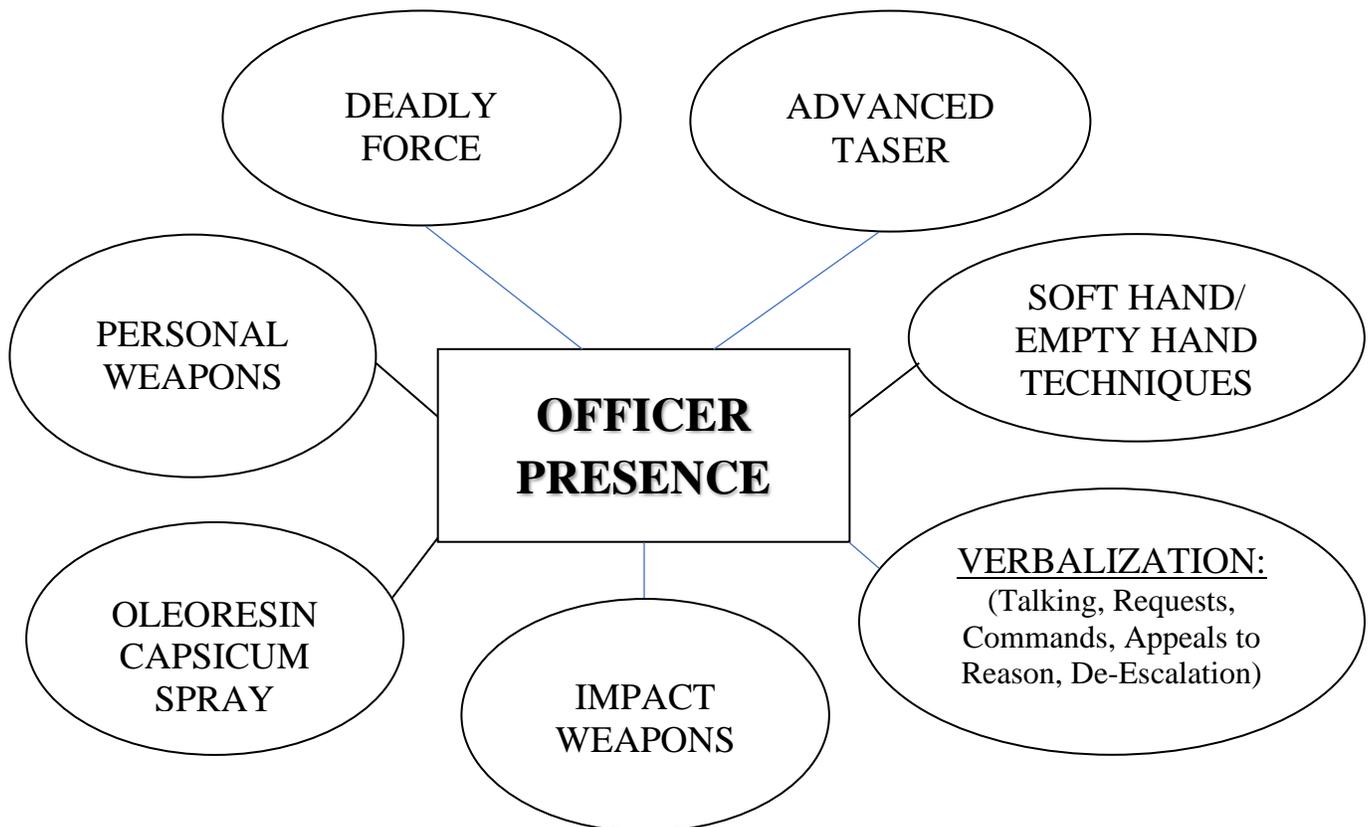
## **I. Training**

1. All officers shall receive training and demonstrate their understanding on the proper application of force. Training topics may include, but are not limited to, 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 the duty to intervene and prohibited conduct.

**J. Force Options Chart**

When the use of force is reasonable and necessary, officers shall, to the extent possible, utilize an escalating scale. The officer shall determine the level of force necessary to control or subdue a subject by utilizing the least amount of force necessary to gain their compliance. The Force Options Chart starts with Officer Presence and escalates as necessary. However, an officer is not required to utilize each force option during escalation, as the level of force used by the officer will depend on the level of force presented by the subject. For example, an officer immediately presented with deadly physical force from the subject, shall immediately be authorized to use deadly physical force in response.

**FORCE OPTIONS CHART**



Approved by,

Brian J. Moore  
Chief of Police