

New Castle Police Department  
**105-3 - Use of Physical Force**

**Effective:** 5/1/2001

**Last Review**  
**Date:** 12/19/2022

**Revised:** 12/19/20202

**Summary:**

To establish the policy and procedure of the Department in the use of physical force. Officers are expected to use only such force as is reasonable and necessary in making an arrest.

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**PURPOSE**

To establish the policy and procedure of the Department in the use of physical force. Officers should attempt to de-escalate any situation where force may become necessary. In the event force becomes unavoidable, Officers are expected to use the amount of force that is objectively reasonable under the circumstances.

**POLICY**

The amount of physical force used by members of the Department, the continued use of force, and the type of police equipment utilized all depend upon what is necessary to effect lawful objectives in the performance of their duties within the limits established in Article 35 of the New York State Penal Law, United States Supreme Court in Graham v. Connor, and consistent with the training given by this Department. The amount of force that is used by the officer shall be the amount of force that is objectively reasonable under the circumstances for the officer to effect an arrest, prevent an escape, or in defense of themselves. 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 guideline for the use of force. It is also the responsibility of each member to be aware of the requirements of Article 35, and to guide his or her actions based upon the law. Once a threat has been overcome or a subject is securely in custody, it is an officer's responsibility to de-escalate and immediately address any injuries the suspect may have sustained. The use of indiscriminate force is prohibited.

**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 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 and the force used.

**Unnecessary Force** - When unjustified physical abuse of a person occurs, or when it is apparent that the type or degree of force employed is neither necessary nor appropriate, or when any degree of force is utilized as summary punishment or vengeance.

**PROCEDURE**

1. **Generally, members may use force in the performance of their duty in the following circumstances:**

- A. To prevent the commission of a breach of the peace or other unlawful act.
- B. To prevent a person from injuring him or herself.
- C. To effect the lawful arrest of person(s) resisting arrest or attempting to flee from custody.
- D. In self-defense or in the defense of another person.

**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. Only issued and approved equipment will be carried on duty, and used only when utilizing physical force, except in an emergency, when the officer may use any resources at his or her disposal.**

**4. Level of Force (Force Continuum):**

A. When the use of force is necessary and appropriate, members shall, to the extent possible, utilize an escalating or de-escalating scale of options and will not use more force than is objectively reasonable given the circumstances perceived by the officer to overcome the subject's resistance and to gain control. Officers are not required to start at the lowest levels of the Force Continuum; they will select the appropriate level of force based on the subject's actions. Officers will modify their level of force, more force or less force, in relation to the amount of resistance offered by the subject. The scale of options in increasing severity is as follows:

1. Physical Presence - In some instances, the mere presence of a uniformed police officer will serve to calm a situation and cause a potential situation to resolve itself.

2. Verbal Persuasion -The practice of courtesy in all public contact encourages understanding and cooperation. Lack of courtesy arouses resentment and often physical resistance. Simple directions that are complied with while the member accompanies the subject are by far the most desirable method of dealing with a potential arrest situation. Control may be achieved through advice, persuasion, and warnings, before resorting to actual physical force.

3. Physical Strength - Frequently, subjects are reluctant to be taken into custody and offer some degree of physical resistance. Normally, all that is required to overcome this resistance is physical strength and skill in defensive tactics.

4. Non-lethal Weapons

A. When possible or practical, the electronic control device (ECD) or Department issued chemical agents shall be the first option when employing less lethal weapons. Except for training purposes, they shall be used in accordance with section 105-4 of this Manual, **ONLY TO THE DEGREE NEEDED TO GAIN CONTROL OF THE RESISTING SUBJECT.**

B. If necessary, the police baton (nightstick), or expandable baton may be used, in accordance with guidelines established in section 105-5 of this Manual, **ONLY TO THE DEGREE NEEDED TO GAIN CONTROL OF THE RESISTING SUBJECT.**

5. Lethal Force - Refer to section 105-6 of this Manual.

**5. Determining Objective Reasonableness of Force:**

A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

B. Factors that may be used in determining the reasonableness of force include, but are not limited to:

1. The severity of the crime or circumstances,
2. The level and immediacy of threat or resistance posed by the subject,
3. The potential for injury to citizens. Officers, and himself,
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 number of officers or subjects,
7. Other environmental conditions or exigent circumstances.

**6. Medical Aid and Reporting:**

A. Each and every time a weapon is used, or a physical injury is inflicted by any means by a member of the Department, said member shall immediately evaluate the need for medical assistance and if necessary, arrange for such attention.

B. Any Department member who has a person in custody 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. 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 that is likely to result in serious harm to themselves or others.
3. Officers should document any requests for necessary medical or mental health treatment as well as efforts to arrange for such treatment

C. Members involved in the use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a Departmental Use of Force / Firearms Report.

1. Use of force that results in a physical injury, serious physical injury, or death.
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 for complaints of minor discomfort from compliant handcuffing.
4. Incidents where a firearm, conducted energy device (CED), or OC spray was intentionally discharged or accidentally discharged after being displayed.
5. When an Officer initiates one of the following;
  - Brandishes, uses, or discharges a firearm at or in the direction of another person;
  - 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 reduce intake of air;

- Displays, uses, or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray, or tear gas;
- Brandishes, uses, or deploys an impact weapon, including, but not limited to, a baton or billy; or
- Brandishes, uses, or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb, or long-range acoustic device.
  - For Use of Force reporting purposes, required under Executive Law §837-t, the Municipal Police Training Council (MPTC) and the Division of Criminal Justice Services (DCJS) revised the definitions of brandishing to include pointing a firearm, electronic control weapon, and impact weapon at a subject.

D. If there is no supervisor on duty at the time, the desk officer is to notify one of the Division Commanders as soon as possible. The Division Commander may respond to the incident, or he or she may assign a supervisor to respond and supervise the investigation.

E. The Department Use of Force / Firearms Report should be completed as soon as possible thereafter. In the blotter event entry, the member in question shall make a notation as to the use of force and the filing of said report.

F. If the member who used such force is injured and incapable of filing said reports as required, the immediate supervisor/officer in charge is responsible for filing a preliminary Department Use of Force / Firearms Report. Said report shall be as complete as possible pending further Departmental investigation.

#### **7. 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 9 of this section should promptly report these observations to a supervisor.

#### **8. Investigation by a Supervisor:**

A. The supervisor shall review all Department Use of Force / Firearms Reports concerning the utilization of any force, and it should contain, but is not limited to, the following:

1. Was a crime actually committed, and if so, what type?
2. Were alternative measures available?
3. Did the subject resist, and if so, what was the nature and the extent of the resistance?
4. Was the subject armed with visible means of inflicting death or serious physical injury?
5. Was the officer in uniform, or did he or she make known his or her presence known, and by what authority?

B. The complete name, address (residence and work), DOB, and phone number (residence and work) of **ANY AND ALL** possible witnesses and/or victims.

C. The extent and treatment of injuries to anyone involved. Photographs must be taken of any and all alleged injuries.

D. If able to offer a professional assessment from the available facts, was the utilization of force necessary in the case in question?

E. After reviewing the Department Use of Force / Firearms Report, the supervisor shall forward the completed form to the Patrol Division Commander.