

CHENANGO COUNTY SHERIFF'S OFFICE

Subject: Use of Less-Lethal Physical Force		
References: Article 35 of the NYS Penal Law, NYS MPTC Use of Force Model Policy		Review Date:
Policy: Sec. 03 #01/20	Distribution: All Personnel	Amends: #03 #01/16
Prepared by: Undersheriff Daniel Frair	Date of Issue: 10/2020	Effective Date: 10/2020

POLICY:

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. It shall be the policy of the Chenango County Sheriff's Office that law enforcement and corrections personnel may use physical force in the performance of their duties, within the limits established by Article 35 of the New York State Penal Law.

ARTICLE 35 – NYS PENAL LAW:

- A. It is essential that every member be well versed in Article 35 of the New York State Penal Law and the limitation it places on the use of force.
- B. A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force.

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.

USE OF FORCE:

- A. In general terms, force is authorized to be used when reasonably believed to be 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. The 4th Amendment says, "The right of the people to be secure in their persons...against unreasonable searches and seizures, shall not be violated..." The courts have interpreted this to mean that an officer may use only such force as is "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, facing the same set of circumstances.

DETERMINING THE 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 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.

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.

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.

PROCEDURES:

- A. The following procedures will guide law enforcement and corrections personnel of this department in a direction that insures furtherance of the department policy regarding the use of less-lethal physical force.
1. Arrests:
 - a. Physical force will only be used to effect an arrest when the arrest is resisted, and then only to the extent necessary to overcome the resistance.
 - b. All felony arrestees and any other violent or resistant arrestee will be restrained using handcuffs and leg restraints, if the situation dictates, to reduce the potential for additional resistance and the need for the use of additional physical force.
 - c. If the need for physical force to be used in effecting a particular arrest would be reduced by the presence of more than one officer, the assigned officer should request and wait for assistance, when practical, before effecting the arrest(s).
 - d. Control may be achieved through advice, warnings, and persuasion, or when necessary, through the use of physical force.

 2. Inmates:
 - a. Physical force may be used against an inmate to terminate the use of physical force by the inmate against an Officer, a civilian employee, other civilians, another inmate, or to prevent an inmate from inflicting physical injury upon themselves. Officers may also use physical force against a non-compliant inmate in order to gain compliance. Physical force will be used only to the extent necessary to terminate the incident.
 - b. Inmates being transported by department personnel will be properly restrained using handcuffs and leg restraints to reduce the potential for a physical confrontation. Exceptions may be made by shift supervisor or officer in charge.
 - c. Personnel are not to use physical force against an inmate as a means of punishment. It is the responsibility of this department to maintain the care and custody of inmates; the Courts dictate the punishments to be imposed.
 - d. Passive resistance by inmates will be overcome by passive physical force on the part of corrections personnel. For example, an inmate refusing to move from one location to another when required to do so will be transported to the new location using a sufficient number of personnel to effect the move without injury to the inmate.
 - e. Inmates acting in a manner likely to injure themselves or others may be restrained by locking them in their individually assigned cell and, if necessary by using handcuffs, leg restraints, or restraint chair. Mental Health personnel will then be immediately requested to evaluate the inmate.
- B. AUTHORIZED LESS-LETHAL SUBSTANCES/DEVICES**
1. Deputies and Corrections Officers of the Chenango County Sheriff's Office will carry while on duty only equipment that has been department issued or approved.
 2. For additional reference, Deputies should refer to Policy Section 04 #44 and Corrections Officers should refer to Policy Section 06 #13, both of which are titled "Personnel Appearance, Including Uniform & Equipment."

3. No unauthorized weapons or equipment may be carried or utilized by Sheriff's Office personnel, absent specific approval of the Sheriff.
4. The following **LESS-LETHAL SUBSTANCES** are authorized for Sheriff's Office personnel to carry and utilize:
 - a. **OLEORESIN CAPSICUM (OC) PEPPER SPRAY**
 - 1) Definition: Oleoresin Capsicum Pepper Spray is a naturally occurring substance derived from certain cayenne pepper plants. When dispensed, OC does not vaporize and therefore requires direct contact with the mucus membranes (eyes, nose and mouth) to be effective. Contact with the mucus membranes should cause immediate closing of the eyes, uncontrollable coughing and gasping for breath. It can also produce a sensation of intense burning of the skin.
 - 2) Only personnel, in the Chenango County Sheriff's Office, who have completed training in the use of OC Pepper Spray are authorized to carry and use the less-lethal substance, with annual training to be conducted to ensure proficiency and to enhance tactics.
 - 3) Personnel will have the responsibility for maintaining their Pepper Spray and insuring that the container is properly functioning.
 - 4) OC Pepper Spray shall be carried by trained Sheriff's Office personnel in the appropriate holder worn on the duty belt or in an approved manner.
 - 5) The use of OC Pepper Spray is permitted where and when the use of physical force is justified within Article 35 of the New York State Penal Law and Section 9.41 of the New York State Mental Hygiene Law.
 - 6) In electing to use OC Pepper Spray, personnel should realize that its effects may vary and some individuals may remain unaffected by its application. Personnel should be aware that they may have to resort to further action to insure safety and control. OC Pepper Spray can also be utilized on animals with varying degrees of effectiveness.
 - 7) OC Pepper Spray should be directed to the [REDACTED] of the subject, using 1 (one) second bursts rather than one continuous spray. The spray has a maximum effective range of [REDACTED]
 - 8) **FIRST AID** for OC Pepper Spray by Patrol Division:
 - a) After the use of OC and the subject has been secured, personnel should attempt to flush the subjects affected area with cold water or proper decontamination wipes. Normally there is no need for additional medical treatment.
 - b) The subject should be told to relax and not to panic in order to reduce additional effects of the Pepper Spray.
 - c) If the subject is unable to flush the OC off of the exposed parts of the body, or if any further complications are evident, the subject will be transported to the nearest hospital for further treatment.
 - d) **Do Not** under any circumstances transport a subject, who has been subjected to OC Pepper Spray, in a "hog-tie" or prone position. It is imperative to keep the subject sitting in an upright position.
 - 9) **FIRST AID** for OC Pepper Spray within Correctional Facility:
 - a) In all cases of exposure to any chemical agents, facility health services staff shall examine and treat all persons exposed to such chemical agent as soon as possible. Treatment for exposure shall begin with those persons most seriously affected.

b. OTHER LESS-LETHAL SUBSTANCES

- 1) Tear gas in any form, chemical mace, or any other less-lethal substances will only be used when authorized by the Sheriff and/or his designee, and then only under the direction of personnel properly trained and certified in its use.
5. The following **LESS-LETHAL DEVICES** are authorized for Sheriff's Office personnel to carry and utilize:

a. TACTICAL BATON (ASP)

- 1) Description: The Tactical Baton (ASP) is an expandable striking/impact weapon.
- 2) Only personnel in the Chenango County Sheriff's Office who have completed formal training and certification in the use of the ASP Tactical Baton are authorized to carry and use this less-lethal device, with annual training to be conducted to ensure proficiency and to enhance tactics.
- 3) Personnel who have not received formal training and certification in the use of the ASP **may not** carry or use the ASP in any manner while on duty.
- 4) Personnel who are issued a baton will be personally responsible for the security and maintenance of this less-lethal device.
- 5) The use of the ASP will be limited to that degree of force that is reasonably necessary to provide protection to the Deputy/Officer, another person, and/or when necessary to effect a lawful arrest.
- 6) Personnel **may not** strike a subject in the head or face area with the ASP unless their life, or another person's life is in danger or there is danger of imminent serious physical injury.

b. ELECTRONIC CONTROL DEVICE (ECD) – Level of force continuum, equal to OC Pepper Spray.

- 1) Description: Electronic Control Devices (ECD's) are based on a Neuro-Muscular Incapacitation (NMI) technology which is designed to temporarily override the central nervous system and directly control the voluntary muscles. This causes uncontrollable contraction of the muscle tissue and physically incapacitates a subject regardless of pain tolerance or mental focus.
- 2) Only Chenango County Sheriff's Office personnel who have been trained and certified in the use of a specific ECD will be designated to carry the device while on duty as directed by the Sheriff or his designee. Non certified personnel will not handle the ECD unless specifically authorized to do so by the officer in charge of the device.
- 3) The ECD used by the Chenango County Sheriff's Office is the TASER X2.
- 4) Deputies are to secure the ECD with their firearm prior to entering the Chenango County Sheriff's Correctional Facility.
- 5) Only Chenango County Sheriff's Office issued cartridges are to be used by Sheriff's Office personnel. While cartridges are interchangeable, all cartridges are individually assigned to a specific device for evidence and tracking documentations.
- 6) The issued ECD will only be carried on the opposite side of the body from the duty firearm, and only in the Sheriff's Office issued holster. If personnel wish to carry the ECD in any other holster, said holster must be approved by the Sheriff or his designee.

7) **USE OF THE ECD:**

The ECD may be used in situations where a person demonstrates an overt intention to use violence or force against an officer, another person, themselves or actively resists arrest, or where other alternatives for controlling them are not appropriate. Sheriff's Office personnel must consider the totality of the circumstances in every use-of-force situation to insure that the force used is reasonable and necessary. Although time is generally not available to weigh all the circumstances surrounding a potential ECD deployment, personnel should, where possible, be aware of the following concerns:

- a) Is there a need to immediately incapacitate the subject? Consider factors such as: intoxication from alcohol or drugs, apparent mental state, and the level of aggression displayed.
- b) Type of clothing worn by the subject [REDACTED] of the ECD.
- c) Physical environment of the subject that may increase the risk of injury from falling, such as a stairwell or ledge, or near water that may pose a risk of drowning.
- d) Other risk factors, including flammables such as gasoline, alcohol-based pepper spray, etc. or fumes that may ignite upon use of the ECD.
- e) Distance or range from the subject: The preferred distance to engage a subject [REDACTED] however nothing here should prohibit personnel from firing the ECD up to the maximum range of the cartridge.
- f) Clear sightlines to the target; the ECD requires an unobstructed view and must be held in alignment with the long axis to the body or the bottom probe may be off target.
- g) The use of a second ECD should be used only when the first ECD malfunctions or appears to be ineffective.
- h) If a subject is armed with an ECD and attacks or threatens to attack a police/peace officer, the officer may defend him/herself to avoid becoming incapacitated, thus risking the possibility the attacker or another could gain control of the officer's firearm. When possible, the officer should attempt to move outside the ECD's range ([REDACTED]) and seek cover, as well as request backup officers to mitigate the danger. This should not be construed to rule out the use of deadly physical force if necessary.

8) **PROHIBITED use of the ECD (unless exigent circumstances exist):**

- a) The subject is known or appears to be pregnant;
- b) The subject is elderly;
- c) The subject is very young;
- d) The subject is of small stature;
- e) The subject is known to have heart problems;
- f) The subject is known to be in ill health;
- g) The subject is holding a firearm (muscle contractions could activate the trigger);
- h) For more 5 second electronic cycles than are necessary to control the subject;
- i) Targeting the head or face area;
- j) The subject is near the edge of a building or at a height where a fall could be fatal;
- k) The subject is in a body of water of depth that could cause a drowning;
- l) The subject is handcuffed;

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 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.

PROCEDURES:

A. In applying the provisions of Article 35 of the New York State Penal Law, trained personnel will be guided by the following procedures when considering the use of deadly physical force.

1. Trained personnel are authorized to use a firearm or other means of inflicting deadly physical force in the following circumstances if there is no other reasonable alternative available:
 - 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 to others.
 - 3) Where feasible, some warning should be given prior to the use of deadly physical force.
 - c. Chokeholds and Obstruction of Breathing or Blood Circulation
 - 1) Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited unless deadly physical force is authorized.
 - d. A firearm may be used to destroy a dangerous animal or an animal so badly injured that humanity requires that it be removed from further suffering. In the case of an injured animal the permission of the owner should be obtained, whenever possible. Great care should be taken to protect bystanders from a ricocheting bullet and, if possible, the destruction of an animal in the presence of children should be avoided.
2. Trained personnel may use a firearm for authorized firearms qualification, target practice or competition with weapons authorized by the department.
3. Trained personnel shall not use a firearm in the following circumstances:
 - a. To fire warning shots in order to induce a fleeing suspect to halt.
 - b. To effect an arrest, except as provided in Section 1- a & b of this order.
 - c. To fire at or from a moving vehicle unless the occupants of the vehicle are using deadly physical force against the officer or another, [REDACTED]
4. Avoidance of recklessness should be considered in any situation involving deadly physical force. Even a case where deadly physical force is both authorized by law and reasonable under the circumstances. The officer must consider the safety of innocent bystanders (e.g. firing in a crowded area or heavy traffic).

The fact that an officer is legally justified using deadly physical force does not constitute a license for reckless conduct by the officer and such officer may be held criminally and/or civilly liable.

5. An Officer who injures any person through the discharge of a firearm or other use of force will ensure that steps are taken to provide the injured person with necessary medical treatment.
6. Any injury or death that results from the use of deadly physical or physical force by a Deputy or Corrections Officer against another person shall be reported, as soon as practicable, to the Sheriff and/or Undersheriff by telephone, followed up by an in-depth written report.
7. A **Report of Discharge of Firearms** will be completed and filed with one of the Sheriff's Office firearms instructors on the same date of occurrence. The only exceptions will be firearms discharged during authorized firearms training and competition. The **Report of an Animal Destroyed** form will be completed as applicable.
8. Firearms Instructors will review all Discharge of Firearms Reports to include **Discharge of Firearms, Report of Animal Destroyed** and any incidents of accidental discharge. Reports will be critiqued to evaluate the need for further training and to evaluate the adequacy of firearms and ammunition.
9. Any member of the department who is involved in a fatality resulting from the use of deadly physical force will receive the full support of the administration in dealing with the stress and trauma that results from such an incident. This will include provisions for counseling and necessary leave with pay to overcome any associated problems .