



Vestal Police Department

General Order

Number 212

Subject: Use of Force	
Rescinds General Order Number(s): 91-25; 95-01, 01-212	Approved By: Chief John Butler
Date Issued: June 9, 2020	Number of Pages: 6

I. PURPOSE:

The purpose of this order is to establish clear guidelines for the use of physical force by sworn officers of the Vestal Police Department and to establish procedures for reporting and evaluating the use of such force.

II. POLICY:

Sworn officers may use only that level of physical force necessary and objectively reasonable in the performance of their duties within the limits established by Article 35 of the New York State Penal Law, and consistent with the training and policies of the Vestal Police Department. Officers shall employ the minimum degree of force that is necessary to achieve their lawful objectives. It is the responsibility of each officer to be aware of the requirements of Article 35 and to guide their actions based upon that law and department policy and training.

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** - A degree of physical contact that includes, but is not limited to, striking, kicking and pushing. In addition, any force used to disable, by means of a chemical agent, impact munitions or conducted electrical weapon capable of causing discomfort or pain, when such force is unlikely to result in serious physical injury or death.
- 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.

IV. 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.** 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.

V. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

- A.** 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.

VI. PHYSICAL FORCE GUIDELINES

- 1. Utilizing Headlocks or Chokeholds are prohibited as compliance techniques or take-down maneuvers.
- 2. Once a subject is handcuffed and as soon as practical, the use of a face-down position restraint should be avoided. The subject should be turned on their side or placed in a seated position. If it is necessary to position a person face-down under restraint, then the subject must be closely and continuously monitored
- 3. If the subject continues to struggle, officers shall not sit or kneel on their back. If practical, officers should consider holding their legs down, wrapping their legs with a strap or securing with an ankle restraint.
- 4. Officers shall not tie or connect the handcuffs to a leg or ankle restraint.

VII. 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.** Any 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.

VIII. 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.

IX. 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 to others.
 3. Where feasible, some warning should be given prior to the use of deadly physical force.
- C. Warning shots are prohibited.
- D. Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes that the occupants of the vehicle are using or about to use deadly physical force against the officer or another person, and all other options have been exhausted. It is extremely difficult to stop a moving vehicle with gunfire. Striking the operator may cause a situation where the uncontrolled moving vehicle creates a secondary hazard.
- E. Officers should be aware of the risk to innocent persons when considering the use of deadly physical force and avoid placing them at risk of injury whenever possible.

X. PROCEDURES:

- A. **Incidents Involving the Use of Force by Department Personnel:**
 1. Officers involved in use of force incidents while on duty shall immediately notify the supervisor or officer-in-charge. In the event that the officer is off duty, they shall contact the supervisor or officer-in-charge of the shift currently working. If the member is off duty and outside the Town of Vestal when the use of force occurred, they shall also notify the police agency with jurisdiction for investigation of the incident.
 2. Whenever force is used, the officer shall immediately evaluate the need for medical attention or treatment for the person upon whom the force was

used. The officer shall arrange for such treatment by requesting emergency medical services when the person has sustained a visible injury, complains of injury or discomfort or requests medical attention.

3. If the person refuses to be treated, they must sign the refusal statement on the emergency medical service's Pre-Hospital Care Report Form. If the person refuses to sign, the refusal will be noted and witnessed on the form. The subject's acceptance or refusal of medical care shall also be documented in the officer's police report.
4. Officers should attempt to locate and identify any witnesses and document their identifying information. Whenever possible, written statements should be taken from the witnesses.
5. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
6. Officers will complete a police incident report whether or not an arrest was made and complete a Use of Force Report, when required.
7. The officer-in-charge shall immediately respond to the scene of the incident to ensure that:
 - a) The officer involved receives necessary assistance, including medical treatment.
 - b) The person upon whom the force was used receives necessary medical attention.
 - c) Injuries to the officer or the person upon whom the force was used are documented and photographed.
 - d) A thorough preliminary investigation is conducted.
 - e) All reports, including a Use of Force Report when required, are prepared and submitted. In the event that an officer is unable to complete reports due to injuries, the officer-in-charge shall prepare or cause them to be prepared, along with their own reports of the incident
 - f) In the absence of a ranking officer, the officer-in-charge should notify their immediate supervisor and advise them of the incident.
8. The Division Lieutenant (Patrol or Detective) should be notified if, through the use of force:
 - a) Injury is sustained or inflicted by a member of the department.
 - b) A firearm was discharged or deadly physical force was employed.
 - c) There is an allegation of misconduct on the part of a member of the department.

The Division Lieutenant will determine if immediate notification up the chain-of-command is necessary.

B. Use of Force Reports:

1. In addition to documenting a use of physical force in their police report, officers shall prepare and submit a Department Use of Force Report when;
 - a) The use of force involving the discharge of a firearm, other than training or recreational purposes, whether or not a person was struck or injured by the projectile. (Officers are justified in using firearms to destroy an animal for self-defense, to prevent substantial harm to the officer or another, or when the animal is so badly injured that humanity requires its relief from further

suffering.) In this instance the discharging of a firearm will be documented in a police report however a separate Use of Force Report is not mandated.

- b) The officer's action results in, or is alleged to have resulted in, injury of another person.
 - c) The use of force involved acts such as striking, punching, kicking or the use of pressure point controls.
 - d) The use of force involved the employment of an impact weapon, impact munitions, chemical agents or conducted energy device.
 - e) The person is charged with the crime of resisting arrest.
 - f) The officer is directed to complete a Use of Force Report by a supervisor.
2. In accordance with New York State Executive Law 837-t and 9NYCRR 6058, officers are also required to submit a New York State Division of Criminal Justice Services Use of Force Report under the following use of force conditions;
- a) Display a chemical agent - to point a chemical agent at a subject.
 - b) Use/Deploy a chemical agent - the operation of the chemical against a person in a manner capable of causing physical injury.
 - c) Brandishes/Uses/Discharges a firearm - the operation of a firearm against a person in a manner capable of causing physical injury.
 - d) Brandishes/Uses/Deploys an impact weapon or electronic control weapon - the operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.
 - e) Uses a chokehold or other similar restraint - any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.
 - f) Conduct that resulted in death.
 - g) Serious Bodily Injury - bodily injury that creates or causes: a substantial risk of death; or unconsciousness; or serious and protracted disfigurement; or protracted loss or impairment of the function of any bodily member, organ or mental faculty.

If more than one officer is involved in the use of force, each officer shall complete the "Use of Force Report" describing the force used by that officer. A supervisor shall review the Use of Force Report(s) for completeness and accuracy.

C. Evaluating the Use of Force:

- 1. The Division Lieutenant (Patrol or Detective) will review all reports regarding the incident to ensure that the use of force was necessary, reasonable and justified.
- 2. The Lieutenant shall report his or her findings, together with any recommendations, to the Chief of Police or his/her designee.
- 3. The Chief of Police shall determine whether the use of force was:
 - a) Within department policy and applicable laws, or,
 - b) In violation of department policy and/or in violation of applicable laws.

XI. TRAINING

- A.** All officers should 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, 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.

XII. EXECUTIVE LAW 840(4)

- A.** Pursuant to Executive Law 840(4) this policy shall be conspicuously posted on the public website of the agency.