

	<b><u>Green Island Police Department</u></b>	
	<b><u>Order Number</u></b> <i>1-04</i>	<b><u>Title</u></b> <i>Use of Physical Force</i>
	<b><u>Effective Date</u></b> <i>03/01/2020</i>	<b><u>Last Revised</u></b> <i>03/01/2020</i>
	<b><u>Rescinds:</u></b> <i>N/A</i>	
<i>Issued by Chief Christopher Parker</i>		

**NYS ACCREDITATION STANDARD NUMBER & TITLE:**

**1. Purpose**

The Green Island Police Department is committed to the sanctity and preservation of life, human rights, and the dignity of all persons regardless of race, color, creed, or sexual orientation. As such, it is recognized that the application of varying degrees of physical force may at times be necessary to fulfill this mission. The purpose of this policy is to provide all sworn department employees with a clear and consistent policy on the use of physical force.

**2. Policy**

Police officers may use only a reasonable level of physical force that is necessary to perform their duties within the limits established by Article 35 of the New York State Penal Law and consistent with the training provided by the Green Island Police Department & State of New York. It is the responsibility of each officer to be aware of the provisions established under Article 35 of the New York State Penal Law, and utilize said provisions in that law in conjunction with department policy and training to guide their actions.

Furthermore, any use of force by law enforcement officers must be consistent with the standard established by the United States Supreme Court in *Graham v. Connor* 490 U.S. 386 (1989), which held that in order for an officers use of force to be deemed objectively reasonable, that officer must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officer(s) or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, Officers shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives.

Since no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer is 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 accomplish a legitimate law enforcement objective, and/or prevent injury to a member of the public or officer.

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. Any Officer who observes another Officer use force that exceeds the degree of force as described herein should promptly report these observations to a supervisor.

Failure to adhere to the guidelines set forth herein, and consistent with agency disciplinary protocol and the applicable collective bargaining agreement, may result in disciplinary action.

### **3. Definitions**

- A. **Reasonable Cause to Believe that a person has committed an offense:** Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay.<sup>1</sup>
- B. **Physical Injury:** Impairment of physical condition or substantial pain.<sup>2</sup>
- C. **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.<sup>3</sup>
- D. **Physical Force:** Physical presence, action, or exercise of strength to compel another to act or refrain from certain behavior; force which does not amount to deadly physical force.
- E. **Deadly Force:** Force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.<sup>4</sup>
- F. **Less Lethal Weapons:** Weapons, devices, and munitions, that are explicitly designed and primarily employed to incapacitate targeted personnel or material immediately, while minimizing fatalities, permanent injury to personnel, and undesired damage to property in the target area or environment. Less lethal weapons are intended to have reversible effects on personnel or material.
- G. **Imminent:** The determination of whether a particular threat or danger in “imminent” is based on an assessment of all of the circumstances known to the Officer at the time. “Imminent” does not necessarily mean “Immediate” or “instantaneous”.

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<sup>1</sup> NYS Criminal Procedure Law §70.10(2)

<sup>2</sup> NYS Penal Law §10 (9) (McKinney 2013)

<sup>3</sup> NYS Penal Law §10 (10) (McKinney 2013)

<sup>4</sup> NYS Penal Law §10 (11) (McKinney 2013)

- H. **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 the force was used.<sup>5</sup>
- I. **Excessive Force:** A use of force greater than that which a reasonable officer would use under the circumstances. A type or degree of force that is neither reasonable nor necessary, or utilizing any degree of force as summary punishment or vengeance.

#### 4. Procedure

##### A. GENERAL GUIDELINES

1. Officers shall use only the force necessary to overcome resistance; force must be reasonable in intensity, duration, and magnitude.
2. Factors that may used to determine 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;<sup>6</sup>
  - d. The risk or attempt of the suspect to escape;<sup>7</sup>
  - e. The knowledge, training, and experience of the Officer;<sup>8</sup>
  - f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of Officers or subjects;<sup>9</sup>
  - g. Other environmental conditions or exigent circumstances.<sup>10</sup>

If possible, situations are best resolved by effective communication skills.

Officers should be aware of threat indicators given by the subject and take additional precautions when the subject expresses bellicose statements. Officers should also be aware of telegraphing threat indicators to the subject, examples of such are requesting additional Officers to the scene, or asking another officer to make ready a Taser.

3. Generally, officers are authorized to use force in the following situations:

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<sup>5</sup> *Graham v Connor*, 490 U.S. 396 (1989)

<sup>6</sup> *Scott v. Harris*, 550 U.S. 372 (2007)

<sup>7</sup> *Graham*, 490 U.S. at 396 (1989)

<sup>8</sup> Analyses of cases under the 4th Amendment require the focus to be on the perspective of a reasonable Officer on the scene which includes the training and experience of the Officer. *Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)

<sup>9</sup> *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997)

<sup>10</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9<sup>th</sup> Cir. (1994)

1. To protect themselves or another person from physical harm
  2. To effect a lawful arrest or detention
  3. To restrain or subdue an uncooperative or resistant person
  4. To safely and effectively control an unlawful or hazardous situation
  5. To prevent the escape of a person in custody
  6. To effect other lawful objectives
4. *De-escalation*: Policing requires that at times an Officer must exercise control of a violent or resisting subject to effect an arrest, or to protect an Officer or others, from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but Officers do have the ability to impact the direction and the outcome of many situations they handle based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of the circumstances, Officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with the subjects, Officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options<sup>11</sup> when withdrawal does not increase the risk of innocent persons or themselves.

5. *Safety Priorities*: Factors that influence the decision-making process in a critical incident where lives are in the balance, shall be based on the totality of the circumstances known to Law Enforcement at that time, and the safety priorities model:
- 1) Hostage(s)
  - 2) Innocent civilians
  - 3) Police Officers
  - 4) Suspect

No person's life is intrinsically more valuable than another; the Green Island Police Department holds all life in the highest regard.

Any prioritization of the efforts of Law Enforcement to effectively resolve a critical incident should be based primarily on the person's ability to remove themselves from the dire situation they may be in. Suspects have the most ability to remove themselves or affect the outcome of the situation through surrender. Conversely, a hostage will have the highest priority, based not on any valuation of their life, but rather based on the fact that they are in the most peril with the least amount of control. When contemplating an action, Officers must evaluate who would benefit or suffer the most.<sup>12</sup>

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<sup>11</sup> Cops.usdoj.gov "Use of Force" PDF, §VIII (retrieved 2019-07-10)

<sup>12</sup> National Tactical Officers Association Tactical Response and Operations Standard for Law Enforcement Agencies §2.3.3 (published April, 2018)

6. Use of restraining devices is mandatory on all prisoners unless in the officer's judgment unusual circumstances exist that make the use of restraining devices impossible or unnecessary (elderly, handicapped, etc.). The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. However, when the handcuffs become an appliance to exert force necessary to further subdue a prisoner or where the suspect physically resists the application of handcuffs, a use of physical force has occurred and the necessary reports must be completed.

## B. LEVELS OF RESISTANCE

It is important for Officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. The person in question may not be capable of understanding the gravity of the situation. Officers must consider several factors when dealing with a non-compliant subject. A subject may be non-compliant due to a medical condition, mental, physical, or hearing impairment, language barrier, drug interaction or emotional crisis, and have no criminal intent. This may not make the subject any less dangerous, but it may require a change in tactics that will be more effective while maintaining Officer Safety.<sup>13</sup>

1. *Compliant*- A person contacted by an Officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, aggravated aggressive resistance.
2. *Passive Resistance*- The subject is not complying with Officers commands, and is uncooperative, but is taking only minimal physical action to prevent an Officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, falling limply and refusing to use their own power to move (becoming "dead weight"), holding onto a fixed object, or locking arms with another during a protest or demonstration.
3. *Active Resistance*- The subjects' verbal or physical actions are intended to prevent an Officer from placing the subject into custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the Officers grip.
4. *Aggressive Resistance*- The subject displays intent to harm the Officer, themselves or another person and prevent an Officer from placing the subject into custody and taking control. The aggression may manifest itself through a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions which present an imminent threat of physical harm to the Officer or another.
5. *Aggravated Aggressive Resistance*- The subjects actions are likely to result in serious bodily harm to the Officer, themselves, or another. These actions may include a firearm, use of blunt or bladed weapon, and extreme physical force.

## C. LEVELS OF FORCE

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<sup>13</sup> Cops.usdoj.gov "Use of Force" PDF, §V (retrieved 2019-07-10)

The subject(s) actions will dictate the Officers use of force. Force transition is the shift, escalation/de-escalation from the application from one force type to another in conjunction with the 'objective reasonableness' standard described in section 3, H herein.

In use of force incidents, the Officer will transition to differing degrees or types of force, including attempts to de-escalate. Force situations are dynamic and require an Officer to continually assess the subjects' actions to ensure a proportionate response. Officers shall modify their level of control in relation to the amount of resistance offered by a subject.<sup>14</sup> The Officer need not progress through each level of force before reaching the final level of force.

### **1. PRESENCE**

- a. The mere presence of an Officer, whether uniformed or not, is considered the best method for deterring a crime or diffusing a situation. Presence may be accomplished by, but is not limited to: Professional and non-threatening disposition of Officer(s), marked patrol vehicle(s), etc.

### **2. VERBAL PERSUASION**

1. The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment and often physical resistance.
2. Simple directions that are complied with while you accompany the subject are by far the most desirable method of dealing with an arrest situation. Control may be obtained through advice, persuasion, and warnings before resorting to physical force.
3. The above should not be construed to suggest that officers relax and lose control of a situation, thus endangering their personal safety or the safety of others. Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands may include "Stop" or "Don't Move".

### **3. EMPTY-HAND CONTROL**

- a. Frequently, subjects are reluctant to be taken into custody and offer some degree of physical resistance. Under circumstances when the subject offers passive or active resistance, an Officer may overcome this resistance through physical strength and skill in defensive tactics.
  - i. *Soft Technique*- Officers use grabs, holds, and joint locks to restrain an individual.
  - ii. *Hard Technique*- Officers use punches and kicks to restrain an individual

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<sup>14</sup> Cops.usdoj.gov "Use of Force" PDF, §VII (retrieved 2019-07-10)

#### 4. LESS-LETHAL WEAPONS

- a. *Impact Weapons*: Officers who encounter a subject(s) who is displaying active resistance and/or aggressive resistance, less-lethal weapons may be utilized.
  - i. The expandable baton and wooden baton are authorized for use by members of the department.
    - 1. Officers will make every effort to use their primary department issued or approved impact weapon. In the event that the officer's primary impact weapon has been lost as a result of that confrontation, broken or taken away, the officer may be justified in using an alternative impact weapon (flashlight, radio or any other impact weapon not issued or approved specifically as a defensive weapon as a means of force). An alternative impact weapon should only be used when no other reasonable alternative is present.
    - 2. If an alternative impact weapon is used, it will be used in a manner consistent with the training given for department issued or approved impact weapons.
- b. *Chemical Agents*: The department issued chemical agents and pepper spray (OC) may be used in accordance with general orders.
- c. *Conducted Energy Devices (CEDs)*: The department issued Taser may be used in accordance with General Orders.

#### 5. DEADLY FORCE

- a. An Officer may use deadly force upon another person when it is objectively reasonable to:
  - i. Protect him/her self or others from what is reasonably believed to be imminent threat of death or serious physical injury;
  - ii. Prevent the escape of a fleeing felon who the Officer has probable cause to believe has committed a violent felony crime and is an imminent threat to human life should escape occur. Officers shall give verbal warning, if feasible, prior to the use of deadly force.
  - iii. When feasible, some warning should be given prior to the use of deadly physical force unless that warning increases the jeopardy of the Officer or another.

b. Elements of Deadly Force:

- i. *Capability*- When a person has the means or capability to cause serious physical injury or death to an Officer or another.
  - ii. *Opportunity*- When a person is in a position to effectively resist an Officer's control, or to use force or violence upon the Officer or another. Examples which affect opportunity include, but are not limited to: relative distance to the Officer or others, and physical barriers between the subject and the Officers.
  - iii. *Intent*- Based on all of the facts and circumstances confronting the Officer, the Officer reasonably believes that the subject poses imminent threat of serious physical injury to the Officer or another
- c. Deadly Force can also result from a force option being improperly applied.<sup>15</sup>
- d. Deadly Force is not limited to the use of firearms. When reasonable and necessary, examples of alternative methods are, but are not limited to: Baton (strikes to the head, neck, sternum, spine, groin, or kidneys), vehicle ramming, less-lethal munitions when the stand-off distance from Officer to subject is closer than recommended and/or impact is directed toward the vital areas of the subject's body.<sup>16</sup>
- e. Deadly force should be used as a last resort option when all other lesser alternatives have been considered and/or exhausted (when feasible) prior to the use of deadly force- to include disengagement.
- f. 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 it must be humanely euthanized. Any discharge of a firearm to destroy an animal required completion of an incident report.

D. PROHIBITED USES OF FORCE

- a. Warning shots are prohibited under any circumstances.
- b. Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes the occupants of the vehicle are using, or are about to use deadly physical force against the Officer or another person, and other options are not immediately available.

Officers should avoid positioning themselves in a tactically inferior location when working near a motor vehicle and the potential for harm exists, and should note that a motor vehicle presents a formidable shield against most firearms, and if the officer disables the operator the vehicle can be expected to continue uncontrolled thereby creating a hazard to officers and the public.

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<sup>15</sup> Cops.usdoj.gov "Use of Force" PDF, §VI(C) (retrieved 2019-07-10)

<sup>16</sup> Cops.usdoj.gov "Use of Force" PDF, §VI(C) (retrieved 2019-07-10)



- c. Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured.
- d. Force shall not be used by an Officer for the following reasons:
  - i. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;<sup>17</sup>
  - ii. To coerce a confession from a subject in custody<sup>18</sup>
  - iii. 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;<sup>19</sup>
  - iv. 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.<sup>20</sup>
- e. Only issued or approved equipment will be carried on duty and used when applying physical force, except in emergencies when an officer may use any resource at their disposal. The carrying or use of any instrument as a weapon not specifically authorized or issued by the Green Island Police Department is prohibited. Examples of unauthorized weapons include, but are not limited to, the following:
  - a. Blackjack
  - b. Weighted Gloves
  - c. Stun guns
  - d. Brass Knuckles
  - e. Steel toe shoes or boots

#### E. AFTER CARE

- 1. When physical force is used, and when it is safe to do so, the officer shall evaluate the need for medical attention/treatment for that person upon whom the physical force was used as soon as is feasible and without unnecessary delay.

Depending on the seriousness of the resulting injuries to either the Officer or subject, Emergency Medical Services shall be summoned to the scene, or may be summoned to the police station once the Officer and/or subject are in the secured confines of the station. Officers shall exercise prudent discretion regarding the need for medical services.

- b. When an Officer has used force, Emergency Medical Services shall be requested when:
  - i. There is visible injury

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<sup>17</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(1), June 2019

<sup>18</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(2), June 2019

<sup>19</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(3), June 2019

<sup>20</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(4), June 2019

- ii. The person complains of injury or discomfort
- iii. The person is in custody, and the Officer reasonably believes that medical attention is needed, even if the subject refuses medical attention
- c. In the case of a person in custody refuses medical attention from Green Island Fire Department medical personnel, Officers shall note such refusal and the Green Island Fire Department's Master Incident Number on the subject's arrest report.
- d. Injuries sustained to a person in custody prior to police contact, or sustained as the result of some reason other than the use of force, shall be documented on the subject's arrest sheet. Medical attention shall be provided to said subject when a reasonable and prudent Officer would believe such injuries require it.
- d. In all cases wherein any person sustains an injury during an arrest, a supervisor shall immediately be notified.
- e. In most cases, injuries should be photographed, whether visible or not.

## **F. REPORTING**

- A. Any officer using physical force in the performance of duty shall report, or cause to be reported, all facts about the incident on a report. In the event of injury to the officer that prevents his or her completion of this report, a supervisor shall be responsible for preparing this report.
- B. The display or use of the expandable baton, wooden baton, Taser, chemical agent, pepper ball, pepper spray (OC) or department authorized firearm is considered a use of force and all necessary reports must be completed.
- C. The arresting officer shall attempt to locate and identify any witnesses and document their statements.
- D. The arresting officer shall prepare and submit reports required by current directives.

## **5. Supervision**

### **G. RESPONSIBILITIES**

- 1. Records Supervisor
  - i. The records supervisor will review all reports for approval.
  - ii. Once approved, the information will be inputted into the DCJS data collection mechanism.
- 2. Chief of Police
  - i. The Chief of Police will review all uses of force by department members to verify alignment with this policy.

## 6. Training

1. All sworn members of the Green Island Police Department shall receive the training and demonstrate their understanding on the proper application of force.
2. 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.<sup>21</sup>
3. 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.

## 7. Reference

1. <sup>1</sup> EXC §840(4)(d)(2)(vi)
2. <sup>1</sup> NYS Criminal Procedure Law §70.10(2)
3. <sup>1</sup> NYS Penal Law §10 (9) (McKinney 2013)
4. <sup>1</sup> NYS Penal Law §10 (10) (McKinney 2013)
5. <sup>1</sup> NYS Penal Law §10 (11) (McKinney 2013)
6. <sup>1</sup> *Graham v Connor*, 490 U.S. 396 (1989)
7. <sup>1</sup> *Scott v. Harris*, 550 U.S. 372 (2007)
8. <sup>1</sup> *Graham*, 490 U.S. at 396 (1989)
9. <sup>1</sup> Analyses of cases under the 4th Amendment require the focus to be on the perspective of a reasonable Officer on the scene which includes the training and experience of the Officer. *Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)
10. <sup>1</sup> *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997)
11. <sup>1</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9<sup>th</sup> Cir. (1994)
12. <sup>1</sup> Cops.usdoj.gov “Use of Force” PDF, §VIII (retrieved 2019-07-10)
13. <sup>1</sup> National Tactical Officers Association Tactical Response and Operations Standard for Law Enforcement Agencies §2.3.3 (published April, 2018)
14. <sup>1</sup> Cops.usdoj.gov “Use of Force” PDF, §V (retrieved 2019-07-10)
15. <sup>1</sup> Cops.usdoj.gov “Use of Force” PDF, §VII (retrieved 2019-07-10)
16. <sup>1</sup> Cops.usdoj.gov “Use of Force” PDF, §IX(F) (retrieved 2019-07-10)
17. <sup>1</sup> Cops.usdoj.gov “Use of Force” PDF, §VI(C) (retrieved 2019-07-10)
18. <sup>1</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(1), June 2019
19. <sup>1</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(2), June 2019
20. <sup>1</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(3), June 2019
21. <sup>1</sup> Municipal Police Training Council “Use of Force Model Policy”, §VIII, A(4), June 2019
22. <sup>1</sup> EXC §840(4)(d)(2)(vii)

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<sup>21</sup> EXC §840(4)(d)(2)(vii)