

# UTICA POLICE DEPARTMENT

## General Order



Effective date: December 1, 2007	<b>Subject: Response to Resistance</b>	<b>G.O. 10-02</b>
<b>Last updated:</b> September 9 <sup>th</sup> , 2020	<b>Reference standard(s):</b> 20.1, 20.6, 20.7, 21.2	<b>CHAPTER</b> <b>4</b>
		<b>ARTICLE</b> <b>4</b>

**4.00 PURPOSE:**

Law enforcement officers around the country and here in New York State are authorized to use reasonable and legitimate force in specific circumstances. Federal constitutional and state statutory standards dictate when and how much force can be used.

The purpose of this order is to establish guidelines concerning the response to resistance/aggression which is necessary to attain lawful objectives and to establish procedures for reporting and evaluating.

**4.05 POLICY:**

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.<sup>1</sup> 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*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force.

As 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.”<sup>2</sup>

This policy is written in recognition of the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires a careful balancing of all interests.

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<sup>1</sup> Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal law and civil liability by the 4<sup>th</sup> Amendment standard of objective reasonableness.

<sup>2</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989)

Sworn officers shall use only that level of physical force necessary in the performance of their duties within the limits established by the United States Court in *Graham v. Connor*, Article 35 of the New York State Penal Law and consistent with the training and policies of the Utica Police Department. Officers shall employ only the 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 *Graham v. Connor* and Article 35 to guide their actions based upon that law and department policy and training. Officers shall not unnecessarily or unreasonably endanger themselves or others in applying these guidelines to actual situations.

Only issued or approved equipment will be carried on duty and used when encountering resistance, except in emergency situations when an officer may use any justifiable resource at their disposal.

The use of any active countermeasure, including but not limited to, pressure point control, baton, or pepper spray is considered a use of physical force and will require a police report. Any use of force shall be documented in RMS and a Subject Resistance Form.

#### **4.10 DEFINITIONS:**

- A. Force** – Any physical strike, or contact with an instrument, of a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes: aiming of a firearm, discharge of a firearm, use of chemical agents, use of impact weapons, use of an electronic control weapon (ECW), taking a subject to the ground, and any physical contact that includes control techniques. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is objectively reasonable under the circumstances to effect an arrest, or protect the officer or other person.
- B. 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.
- 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.<sup>3</sup>
- 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.<sup>4</sup>

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<sup>3</sup> NY Penal Law § 10 (9) (McKinney 2013)

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

**4.11 PROCEDURE:**

**4.12 DE-ESCALATION:**

- A. De-escalation is communicating, verbally or non-verbally, or through physical contact or action in response to a potential threat in an attempt to stabilize the situation or reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation.
- B. De-escalation may include the use of such techniques as command presence, advisements, verbal commands or warnings, verbal persuasion, tactical repositioning, or any tactic or force option that in the officer's reasoned judgement is likely to result in a lower level of force being used to accomplish the objective at hand.
- C. When reasonable and safe under the totality of circumstances, officers should attempt to de-escalate potential threats. Officers should use de-escalation techniques consistent with his/her training whenever feasible and appropriate.
- D. While de-escalating techniques are often effective, just like all tools at an officer's disposal, de-escalation techniques are not always applicable. It is generally preferential for officers to attempt to de-escalate most situations when and where warranted, but sometimes a suspect's actions do not allow for the deployment of such tactics.
- E. Officers are not expected to compromise personal safety in order to de-escalate a situation if it is likely to result in harm to the officer or others.
- F. Some example of de-escalation techniques include:
  - 1. Containing the threat.
  - 2. Slowing down an encounter by "backing off" from immediate intervention or action thereby giving the officer(s) time to call more officers, utilize other tactics, or request specialty assistance, such as Crisis Negotiators.
  - 3. Communicating from a safe position to gain the subject's compliance through the use of verbal persuasion, advisements, and/or warnings. Generally, communication techniques should engage active listening to calm agitated individuals and promote rational decision-making.
  - 4. Decreasing the exposure to the potential threat by using distance or physical barriers between an uncooperative subject and an officer.
  - 5. Use discretion to the officer's advantage.

#### **4.13 RESPONDING TO RESISTANCE:**

- 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.<sup>5</sup>
- B.** The primary goal in law enforcement/subject confrontation is control of the subject. In each situation, the officer must make a conscious decision, based upon training and experience, whether or not to escalate or de-escalate the level of control.
- C.** 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.<sup>6</sup>
- D.** An officer's decision regarding the level of his/her response to resistance or aggression must be based on the capacity for control vs. the potential for death or serious physical injury. Force must not start before resistance starts and must stop when resistance stops.
- E.** As a person increases his/her resistance level from verbal to physical, an officer may have to increase the level of his/her response until the resistance ceases and the officer is able to gain control of the person. As soon as the point of the person's compliance is reached, the officer must de-escalate his/her response level to the minimum force necessary to control the person and accomplish the law enforcement objective.

#### **4.14 REPORTING & REVIEWING THE USE OF FORCE:**

- A.** Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.
- B.** Officers involved in use of force incidents, on or off-duty, shall immediately notify a supervisor as soon as practical and shall complete a department "response to resistance" report. If the member is off-duty and outside the City of Utica when the use of force occurs, the officer shall also notify the police agency with jurisdiction for investigation of the incident.

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<sup>5</sup> NY Penal Law and § 35.30(1) (McKinney 2013)

<sup>6</sup> *Graham*, 490 U.S. at 396 (1989)

- C. A Response to Resistance form must be completed:
1. Anytime a subject is actively resisting, and physical contact is used to gain compliance or to prevent harm to themselves or another.
  2. Anytime an officer uses their issued/authorized OC Spray, TASER or Baton.
  3. Anytime an officer uses any non-issued weapon or item.
  4. Anytime an officer points their TASER at a subject, drive stuns or probe deploys a subject, or spark tests at a subject.
  5. Anytime an officer points their handgun at a subject.
  6. Anytime a Noise Flash Distraction Device or long-range acoustic device is used.
  7. Anytime a member discharges their weapon under circumstances where a person could be struck by a bullet.

#### **4.15 OFFICER RESPONSIBILITIES:**

- A. Whenever physical force is used, the officer(s) shall:
1. Immediately evaluate the need for medical attention or treatment.
  2. If necessary request UFD/EMS for evaluation/treatment. (Dependant upon the circumstances this may be done at the scene or at headquarters).
  3. Attempt to locate and identify any witnesses.
  4. Notify a supervisor of the incident
  5. Complete all necessary reports (i.e.: incident, response to resistance, narrative etc.).

#### **4.16 SUPERVISOR RESPONSIBILITIES:**

- A. Whenever physical force is used the supervisor must:
1. Immediately respond to the scene of the incident to begin the preliminary force investigation.
  2. Ensure that medical treatment is given to anyone in need of it.
  3. Ensure that any visible injuries are photographed. Photographs must also be taken when there is a complaint of an injury regardless if it is visible or not. (A photograph showing an absence of injury is as important as one that shows injury)

4. Ensure that any possible witnesses are secured and deposed if necessary.
5. Ensure that the necessary reports are prepared by all involved officers. In the event that an officer is unable to complete reports due to injuries, the supervisor shall prepare or cause them to be prepared.
6. Complete a Response to Resistance Investigation unless directed otherwise by Professional Standards personnel. If the responding supervisor is related to any of the officers involved, by blood, marriage or any other known romantic relations, that supervisor must notify their superior officer so an alternate supervisory can be assigned to conduct the Response to Resistance Investigation.
7. The supervisors Response to Resistance Investigative Report should determine:
  - a. Whether or not the use of force used was objectively reasonable and justified in accordance to Article 35.
  - b. Whether or not any laws or departmental policies were violated.
8. If the use of force report is accompanied by a civilian complaint or if the supervisor's investigation determines it, the supervisor shall:
  - a. Notify the Professional Standards Unit. If there is no one available at the time or if it is after hours an email shall be sent. The original civilian complaint and a copy of the use of force report must be delivered to the Unit. If there is no one available at the time or if it is after hours the paperwork shall be left under the door.
9. Depending on the severity and/or circumstances of the injury the Squad Commander may deem it necessary to notify the duty Captain.
10. Once a supervisor completes their use of force investigation they must submit their findings and any recommendations if necessary to their Squad Commander for review.
11. The Division Commander/Duty Captain will ensure that a thorough investigation into the use of force was conducted, determine whether their personnel acted lawful and within department policy.

**4.17 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;<sup>7</sup>
  2. The level and immediacy of threat or resistance posed by the suspect;<sup>8</sup>
  3. The potential for injury to citizens, officers, and suspects;<sup>9</sup>
  4. The risk or attempt of the suspect to escape;<sup>10</sup>
  5. The knowledge, training, and experience of the officer;<sup>11</sup>
  6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;<sup>12</sup>
  7. Other environmental conditions or exigent circumstances.<sup>13</sup>

#### **4.18 EVALUATING THE USE OF PHYSICAL FORCE BY SUPERVISORS:**

- A.** If a supervisor's investigation determines that an officer's use of force was not justified in accordance with Article 35 he or she must immediately notify the Squad Commander, who will also notify the duty Captain.
- B.** If a supervisor's investigation determines that an officer's use of force was in violation of departmental policies and procedures he or she will add the recommended action to be taken in their report to be submitted to the Squad Commander for review.
- C.** All supervisory officers are responsible for monitoring subordinate behavior relative to the use of physical force employed in the performance of their duties, to ensure that departmental policies and procedures are followed.
- D.** The disposition of all cases logged by the Professional Standards Investigation Unit shall be compiled and analyzed annually. The disposition of all cases logged, together with any recommendations, shall be reported to the Chief of Police.
- E.** The Office of Professional Standards is responsible for reviewing all "response to resistance" reports and entering them into the IA Pro data base.
- F.** The Chief of Police shall review all investigation and administrative reports regarding the use of physical force which conclude that the officer's use of force was not justified and/or violated departmental policies and procedures.

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<sup>7</sup> Ibid

<sup>8</sup> Ibid

<sup>9</sup> *Scott v. Harris*, 550 U.S. 372 (2007)

<sup>10</sup> *Graham*, 490 U.S. at 396 (1989)

<sup>11</sup> Analysis of cases under the 4<sup>th</sup> 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>12</sup> *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997) (numbers of officers or subjects)

<sup>13</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)

#### **4.19 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 and not authorized by Article 35 of the New York State Penal Law, 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.

#### **4.20 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.<sup>14</sup>
- 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.<sup>15</sup>

#### **4.21 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;
  - 5.** For punishment or retaliation.

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<sup>14</sup> NY Penal Law and § 35.30(1)(c)(McKinney 2013)

<sup>15</sup> NY Penal Law and § 35.30(1), as restricted by *Tennessee v. Garner*, 471 U.S. 1 (1985) (restricting the use of deadly physical force as it relates to fleeing felons) In *Garner*, the Supreme Court uses “significant threat of serious physical harm, either to the officer or other” in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.



**B. Chokeholds**

**Chokeholds are prohibited unless deadly force is authorized.** A chokehold restraint is defined as 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, or restraining the flow of blood to the brain by compressing the neck where the carotid arteries are located.

**4.22 TRAINING**

1. The Training Division is responsible for the design and implementation of training programs relative to the use of physical force.
2. The Training Division will ensure that each employee receives in-service training annually on the department's Response to Resistance policies and procedures, demonstrate their understanding on the proper application of force, and proficiency with the weapon(s) each employee is assigned and/or authorized to use.
3. 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>16</sup>
4. 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.

**4.23 POLICY ACCESSIBILITY**

This General Order will remain posted on the Utica Police Department's public page at <http://www.cityofutica.com/departments/police-department/index>. All updates will be managed by the department's Program Manager who will work with the MIS Sergeant to ensure the policy on the public page is current.

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<sup>16</sup> EXC §840(4)(d)(2)(vii)

**Approved by:** \_\_\_\_\_  
Chief of Police

**Date:** \_\_\_\_\_

Policy updated January 28, 2010, no content changes, Sgt. L. Cozza  
Policy updated November 8, 2010, Sgt. L. Cozza  
Policy updated January 11, 2011, 4.12, B-1, Sgt. L. Cozza  
Policy updated December 7<sup>th</sup>, 2016 by PO D. Poccia, section 4.12 modified.  
Policy updated June 18<sup>th</sup>, 2019 by PO R. Hill. Several sections updated to reflect the Municipal Police Training Council's Use of Force Policy created on June 5<sup>th</sup>, 2019.  
Policy updated on May 1<sup>st</sup> 2020 by PO R. Hill. Section 4.21 added.  
Policy updated on June 9<sup>th</sup>, 2020 by PO R. Hill. Section 4.12 modified.  
Policy updated on August 24<sup>th</sup>, 2020 by PO R. Hill. Section 4.14 C/7 added.  
Policy updated on August 25<sup>th</sup>, 2020 by PO R. Hill section 4.21/5 added.  
Policy updated on September 3<sup>rd</sup>, 2020 by PO R. Hill. Section 4.21/B added.  
Policy updated on September 9<sup>th</sup>, 2020 by PO R. Hill. Section 4.21/B modified.