

Endicott Police Department General Order 2019-04 - Use of Force Policy:

I. PURPOSE:

Police officers assume a great responsibility unlike any other government official in that they are the only governmental entity permitted to use force against individuals, including deadly physical force, without prior judicial review. That tremendous responsibility also places a great burden on police, because actions taken in a use of force will not only be scrutinized on the individual incident level, but could also have a profound effect on law enforcement's ability to use this necessary safety tool in the future. For this reason, the decision to use force necessitates a careful balancing of all human interests, including the risk of injury to officers; other innocent people; and to suspects, versus the risk of the threat posed by suspects. In every instance, use of force must be necessary, justified and authorized.

The purpose of this policy is to establish proper guidelines regarding the use of force.

II. POLICY:

It is the policy of the Endicott Police Department to value and preserve all human life and dignity without prejudice to anyone, and to respect the constitutional rights of all people. Officers shall use only the force that is objectively reasonable¹ and necessary 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, as established by United States Supreme Court in "*Graham v. Connor, 490 U.S. 386 at 396 (1989)*", recognizes the decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting arrest or attempt to evade arrest by flight" and that "(t)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them."

This Use of Force Policy will be reviewed at least annually.

¹ Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th amendment standard of objective reasonableness.

In accordance with New York State Executive law §840(4), this policy:

- Is available for public examination. Free copies may be requested through the Village of Endicott Municipal Building, 1009 E. Main Street, Endicott, NY 13760, Endicott, NY 13760; and
- Will be conspicuously posted to the department's website. Revised versions of this document shall be posted within seventy-two (72) hours of approval; and.
- Shall maintain consistency with the model law enforcement use of force policy established by the New York State Division of Criminal Justice Services pursuant to Executive Law §840(4), except that it may impose additional restrictions on the use of force, as deemed appropriate by the Chief of Police.

III. DEFINITIONS

COMPLIANCE TECHNIQUES: An intermediate-level of control (intermediate-level of force) used by an officer that involves physical techniques to overcome a subject who is actively resisting the officer's attempt to control or gain compliance of a subject by physical resistance or flight. Compliance techniques may include but are not limited to: empty hand tactics including takedowns, strikes or kicks; use of ASP batons as an escort tool or for physical manipulation of a limb (i.e. leverage); Oleoresin Capsicum (OC); conducted electrical weapons; or other control devices.

CONTACT CONTROLS: A low-level of control (low-level of force) used by an officer that involves physical techniques designed to gain compliance and/or control of a subject. Contact controls are normally associated with a subject who is, at a minimum, passively resisting the officer's direction. Contact Controls include, but are not limited to: an officer using empty hand physical force to manipulate control of a subject for handcuffing or other restraint; pain compliance techniques; takedowns that are not likely to cause injury; escorts or physical re-location (e.g. protestors being physically moved from specific locations), etc.

COOPERATIVE CONTROLS: A low-level of control used by an Officer that involves officer presence and verbal communication to gain voluntary compliance from the subject(s). Cooperative controls can include restraining a subject in handcuffs or other approved restraint devices, when a subject willingly submits to the officer's directions.

DEADLY PHYSICAL FORCE: (Ref. NYS Penal Law §10.00 sub.1) Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

DEFENSIVE TACTICS (As used in this policy): An intermediate to high-level of control (intermediate to high-level use of force) used by an officer that involves less-lethal force against a subject who is in active resistance of an officer's attempt to gain control or compliance of the subject, through either the subject's assaultive or combative actions against the officer or another person, or the officer's objectively reasonable perception that the subject is preparing to attack or is attacking the officer or another person. Defensive tactics by an officer are likely to produce injury or substantial pain to a subject, but are not intended to cause serious physical injury or death.

LESS-LETHAL FORCE: Any use of force other than that which is considered deadly physical force that involves the physical effort to control, restrain or overcome the resistance of another person. Less-lethal force includes the use of: Contact Controls, Compliance Techniques and Defensive Tactics.

LESS-LETHAL CONTROL DEVICES: Specialized equipment that provides an officer an alternative to using other force options that are potentially more dangerous to officers, others and suspects. New less-lethal control devices are continually being developed and evaluated for suitability of use within the department; however, common examples include but are not limited to: Conductive Electrical Weapons; defense spray such as Oleoresin Capsicum pepper-spray; beanbag rounds; stun grenades, etc.

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 circumstances that are known to that officer at the time the force was used (see *Graham v. Connor, 490 U.S. 386 at 396 (1989)*).

The totality of the circumstances can include, but is not limited to: the immediate threat to the safety of the officer or others; whether the subject is actively resisting; the time available for the officer to make decisions in circumstances that are tense, uncertain, and rapidly evolving; the seriousness of the crime(s) involved; whether the subject is attempting to evade or escape and the danger the subject poses to the community; prior law enforcement contacts with a subject or location; the number of officers versus the number of suspects; age; size; and relative strength of the suspect versus the officer; imminent danger due to officer injury or exhaustion; whether the subject appears to be affected by mental illness or under the influence of alcohol or other legal or illegal drugs; environmental factors such as terrain, lighting, radio communications, and crowd control issues; and the subject's proximity to potential weapons.

SERIOUS PHYSICAL INJURY: (Ref: NYS Penal Law §10.00 sub. 10) 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.

SERIOUS BODILY INJURY: (Ref: Executive Law §837-t): Bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ or mental faculty.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction of the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion and tactical repositioning.

EXIGENT CIRCUMSTANCES: (Ref: United States v. McConney, 728 R.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984)). “Circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”

CHOKE HOLD: A physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. PROCEDURES

A. General Provisions

1. The orders contained in this policy pertain to all on-duty conduct or off-duty conduct where an officer is acting or claiming to act in the officer’s official capacity as police officer.
2. Officers have the lawful authority to use force in the performance of their duties in accordance with the mandates of Article 35, New York State Penal Law, except as otherwise limited by this policy. In general, the use of force is authorized to be used when 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.

3. The use of force must be objectively reasonable for the situation and must be discontinued when resistance ceases or when the incident is under control, as judged from the perspective of a reasonable officer on the scene.
4. Officers may only use less-lethal physical force techniques that are approved by the department and for which the officer has received appropriate training.
5. Only department issued or approved weapons and less-lethal control devices may be used while on-duty and only after the officer using a weapon or less-lethal control device has received appropriate training and approval on the specific weapon or less-lethal control device.
6. Once a scene is safe and as soon as practical thereafter, an officer shall provide appropriate medical care consistent with his or her level of training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

Note: This does not require medical treatment at the scene of the incident unless such treatment is necessary due to an immediate danger to life or health of the individual. For minor injuries and complaints of pain, etc., individuals may be transported to headquarters or other secure facilities where emergency medical services may respond.

7. Any officer present and observing another officer, from any department, using force that is 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.
8. An officer who observes another employee use force that exceeds the degree of force permitted by law and/or policies of the Endicott Police Department must promptly report these observations to a supervisor and/or the officer-in-charge, and in any such instance may make a report directly to the Chief of Police.
9. All uses of force shall be documented and investigated pursuant to the policies of the Endicott Police Department.

B. De-Escalation

1. When possible and appropriate and consistent with an officer's training, de-escalation techniques and other alternatives to higher levels of force shall be used before resorting to force and to attempt to reduce the need for force.

2. When possible and when such delay will not compromise the safety of the officer or another person, or will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.
3. By law, officers need not retreat in performance of their lawful duties; however a tactical retreat in some situations may be the most effective method of dealing with a situation, even when use of force is legally justified. A tactical retreat should never endanger officers or other innocent subjects.

C. Use of Less-Lethal Force

1. When de-escalation techniques are not effective or appropriate, an officer may employ the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use department-approved, less-lethal force techniques and less-lethal control devices:
 1. To protect the officer or others from immediate physical harm; or
 2. To restrain or subdue an individual who is actively resisting or evading arrest, or
 3. To bring an unlawful situation safely and effectively under control.

D. Use of Deadly Physical Force

1. An officer is authorized to use deadly physical force when it is objectively reasonable under the totality of the circumstances to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death, or to stop a fleeing suspect where: 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 the officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or others. Use of deadly physical force is justified when it is applied in accordance with Article 35 of the New York State Penal Law.
2. Where feasible and consistent with the officer's personal safety as well as the safety of others, the officer shall identify as a law enforcement officer and warn of the intent to use deadly physical force.
3. Deadly Force Restrictions:
 1. Deadly force may not be used against persons whose actions are a threat only to themselves or property.
 2. Officers are prohibited from firing warning shots.
 3. Firearms should not be discharged at moving vehicles unless:

- a. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
 - b. The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted, or are not present, or are not practical, including moving out of the path of the vehicle.
4. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for the use of deadly force.
 5. Choke holds are prohibited unless deadly force is authorized.

E. Training

1. All officers shall receive training, at least annually, on this Use of Force policy and related legal updates.
2. In addition, training shall be provided on a periodic basis, designed to:
 1. Provide techniques for the use of and reinforce the importance of de-escalation; and
 2. Simulate actual shooting situations and conditions; and
 3. Enhance officers' discretion and judgement using less-lethal and deadly force in accordance with this policy.
3. All Use-of-Force training will be documented.

V. SPECIFIC TOOLS/TECHNIQUES

- A.** It is the policy of the Endicott Police Department to utilize available less-lethal control devices when it is objectively reasonable to do so. Only those less-lethal control devices that are approved by the Chief of Police are to be used on-duty. Approved less-lethal control devices, instructions, guidelines and authorization for use will be published in separate policy.
- B.** The use of less-lethal control devices must be performed in accordance with established use of force guidelines and may only be used by trained Endicott Police Department personnel.

VI. PROHIBITED USE OF FORCE

- A.** Force shall not be used:
 1. To extract an item from any body cavity without a warrant, except when exigent circumstances exist; or
 2. To coerce a confession from a subject; or

3. To obtain physical evidence from an individual for the purposes of scientific testing in lieu of a court order where required; or
4. Against individuals in restraints, except as is objectively reasonable to prevent their escape, imminent physical injury to the individual, the officer, or another person, or to otherwise overcome active or passive resistance posed by the subject.
5. In a reckless manner than endangers innocent persons whom an officer is not seeking to arrest; or
6. For indiscriminate use.

VII. USE OF FORCE REPORTING

- A. Each of the following uses of force shall be reported to the Chief of Police through channels:
 1. Brandishing; using or discharging a firearm at or in the direction of another person; or
 2. Using 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; or
 3. Displaying, using or deploying a chemical agent, including but not limited to oleoresin capsicum pepper spray, tear gas or similar agent; or
 4. Brandishing or using or deploying an impact weapon, including but not limited to a baton, billy; or
 5. Brandishing, using or deploying an electronic control weapon, including but not limited to an electronic stun gun, flash bomb or long range acoustic device; or
 6. Engaging in conduct which results in the death or serious bodily injury of another person; or
 7. Employing any cooperative control technique that results in injury or illness to a person; or
 1. Note: a complaint of pain from a suspect demonstrating minor discomfort from compliant handcuffing does not require a use of force report.
 8. Employing any contact controls, compliance techniques, defensive tactics; or any manner of deadly physical force, regardless of whether a person was injured.
- B. Each officer who engages in any use of force required to be reported in subdivision A above shall immediately notify a supervisor or the Officer-in-Charge of the shift, as soon as practical.
- C. Each officer who engages in a use of force that is required to be reported pursuant to Subdivision A above shall complete a standardized report in a form and manner defined in "Appendix A".

1. The primary officer is responsible for the report; secondary officers will submit supplemental reports documenting their specific actions and observations.
- D.** Each officer who witnesses a use of force that is required to be reported pursuant to Subdivision A above shall complete a supplemental report in a form and manner defined in the Department Policies.

VIII. PROCEDURES FOR REVIEW AND INVESTIGATING USE OF FORCE INCIDENTS

- A.** Each Use of Force incident shall be reviewed by a supervisor. After review, the report will be forwarded to the next level of supervision, through channels to the Chief of Police.
1. At each level of review, the supervisor conducting the review will indicate their opinion as to whether the level of force used was appropriate (i.e. objectively reasonable) and make recommendations for any further action that should be considered at higher levels of review.
 1. Recommendations may be non-disciplinary, such as additional individual officer training, department training, policy change, and change of weapon type or manufacturer or, in instances where the level of force is questionable or excessive, the recommendation may be for additional training for the officer, disciplinary action and/or an internal investigation to be initiated.
 2. Supervisors that are directly involved in Use of Force incidents are considered part of the incident and may not be involved in the supervisory review. All reports and forms will be forwarded by involved officers to the next higher level of supervision.
- B.** A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers present at the time the force or alleged force was used.
- C.** Where practicable or necessary, a supervisor or Officer-in-Charge should respond to the scene to begin a preliminary use of force investigation, conducting an inquiry into matter and determine if the situation merits an investigation beyond the normal reporting procedures detailed in Appendix A.
1. If further investigation is required, the supervisor or Officer-in-Charge shall immediately notify the Chief-of-Police through channels.
 2. For any situation that merits an investigation beyond the normal reporting procedures detailed in Appendix A, a police officer acting as an Officer-in-Charge will complete a supplemental report documenting their observations, actions taken and witness interviews prior to turning the investigation over to a supervisor.
- D.** Photographs will be taken during the preliminary use of force investigation which sufficiently document any injuries (or lack thereof) to officers or suspects.

1. Photographs should include a full front and rear view of the suspect and/or officer as well as close-ups of the specific injuries or area where there is a complaint of pain.
 2. If relevant to the investigation or documentation of injuries, the scene should also be photographed.
- E.** An administrative investigation shall be conducted for any of the following use of force reports:
1. Using or discharging a firearm or any other manner of deadly physical force at or in the direction of another person, regardless of whether an injury was sustained by anyone; or
 2. Using 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; or
 3. Using an impact weapon, including but not limited to a baton, billy; or
 4. Using or deploying an electronic control weapon, including but not limited to an electronic stun gun, flash bomb or long range acoustic device that results in an injury to the suspect or another person;
 1. Note: Noticeable marks on or a complaint of pain from a suspect demonstrating minor discomfort caused by the probes of an electronic control weapon does not require an additional administrative report.
 5. Engaging in conduct which results in the death or serious bodily injury of another person; or
 6. Employing any contact controls, compliance techniques, or defensive tactics that result in a complaint of excessive force by the subject or any other person.
- F.** All administrative investigations shall be conducted by the Assistant Chief of Police or, with the approval of the Chief of Police, his designee.

IX. FAILURE TO ADHERE TO USE OF FORCE GUIDELINES

- A.** Failure to follow the guidelines established herein shall result in a complaint against personnel investigation and subject the officer to potential disciplinary action consistent with current Rules & Regulations and the Collective Bargaining Agreement.