

## **Town of Montgomery Police Dept Use of Force Policy**

I. **PURPOSE:** The purpose of this General Order is to establish guidelines when officers by nature of their duties are required to use physical force.

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness. 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.” 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.

### II. 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.

### III. 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.

#### IV. 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 (ex. Possession of or proximity to weapons).
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 (ex. influence of drugs or alcohol).

#### V. DUTY TO INTERVENE

A. Any officer present and observing another officer using force that they reasonably believe 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.

#### VI. 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. 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.

## VII. 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.

## VIII. REPORTING & REVIEWING THE USE OF FORCE

A. Any officer who has custody of a person must provide attention to the medical and mental health needs of a person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.

1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.

2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.

B. Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.

1. Use of force that results in a physical injury.

2. Use of force incidents that a reasonable person would believe is likely to cause an injury.

3. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.

4. Incidents where oleoresin capsicum was discharged at a subject.

5. Incidents where a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.

6. Incidents where a police baton was utilized as an impact weapon.

7. Incidents where a firearm was discharged at a subject.

C. A standardized use of force form should be used to document any reportable use of force incident, in addition to fully documenting the incident in a case report.

D. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment. Any refusal of medical attention by the defendant will be documented on the Refusal of Medical Treatment form.

## IX. PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS

A. Where practicable, a supervisor should respond to the scene to begin the preliminary force investigation.

- B. A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
- C. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- D. A copy of the Incident Report and the original Use of Force Report form will be forwarded to the Chief of Police.
- E. The Chief of Police, or his designee, will receive the supervisor's report and conduct an investigation.
- F. Consistent with agency disciplinary protocols and any applicable collective bargaining agreements, agency policy should establish standards for addressing the failure to adhere to use of force guidelines.

## X. 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. The use of a weapon or instrument by an Officer is also the use of force. Officers may use only those weapons or instruments authorized by the Chief of Police. Officers must be properly trained and demonstrate proficiency before being authorized to carry or use any weapon. The following are the only weapons that are authorized for use by employees of this department:
  1. Primary, secondary and off-duty firearms,
  2. Department authorized shotgun,
  3. Department authorized oleoresin capsicum,
  4. Department authorized police baton,
  5. Department authorized Tactical Patrol Rifle,
  6. Department authorized Taser Conductive Electrical Weapon (CEW).

D. The Chief of Police will issue a Department Memorandum which will be updated as needed listing the types of weapons and ammunition which are authorized for use by Department personnel

E. 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.

#### XI. NOTIFICATION – DISCHARGE OF WEAPON

A. NY EXC § 837-v requires that any discharge of a weapon, while either on duty or off duty, in the direction of a person be verbally reported to the involved officer's supervisor within six hours and a written report prepared within forty-eight hours of occurrence