

NIAGARA FALLS POLICE DEPARTMENT

GENERAL ORDER

EFFECTIVE DATE: 09/03/2013	SUBJECT: USE OF FORCE	Number 122.00 (NYSLEAP A-20-1; A-20-4)
RESCINDS: 06/05/2012		Number of pages 14

I. Purpose:

To provide members of this department with guidelines and procedures for the proper use of physical force. It applies to all officers and civilian employees of the Niagara Falls Police Department regardless of duty status or geographical area of employment. Niagara Falls Police Department officers are bound to uphold the civil rights of all protected by the United States Constitution. Any use of force by any member of the Niagara Falls Police Department is governed by the New York State Penal Law, including Article 35, the training and policies of the Niagara Falls Police Department, and the United States Constitution.

II. Policy:

- A. The Niagara Falls Police Department recognizes the value of all human life and is committed to respecting human rights and the dignity of every individual, and the Constitutional right to be free from excessive force, whether deadly or not, by a law enforcement officer. The use of force, especially force likely to result in serious bodily injury or death (including a firearm), is a serious action. When deciding whether to use force, officers shall act within the boundaries of the United States and New York State constitutions and laws, ethics, good judgment, this use of force policy, and all other relevant Niagara Falls Police Department policies, practices and training. With these values in mind, an officer shall use only that degree of force necessary and reasonable under the circumstances.
- B. When use of force is deemed necessary by a member of the Niagara Falls Police Department, the degree of force used should directly correspond to the amount of resistance exerted, or the threat to the officers or others.
- C. There is a compelling public interest that officers authorized to use force do so in an objectively reasonable manner and in a way that does not violate the civil rights guaranteed by the United States Constitution and the laws of New York State.

D. NFPD officers who use excessive or unauthorized force shall be subject to discipline, possible criminal prosecution, and/or civil liability.

III. Definitions:

A. Definitions:

1. Active Resistance: Physically evasive movements to defeat an officer's attempt at control or custody, including bracing, tensing, pulling away, or pushing.
2. Authorized Weapons: All weapons approved, authorized and issued to officers who have been trained and met required proficiency standards by the Niagara Falls Police Department Firearms Training Unit, including firearms, impact weapons, chemical agents, and electronic controlled weapons.
3. Chemical Agent: Chemical Agent: Solid, liquid, or gaseous substance that produces an effect on a living organism by acting on the body tissue, or in an environment by interacting with air, water, and/or soil. Includes Department issued Oleoresin Capsicum (OC) containers, and Pepper Balls.
4. Command Presence: An officer projecting the appearance of being in control both of self and the situation in a manner that actually helps create such control.
5. Critical Firearm Discharge: When a NFPD officer discharges a firearm. Range and training discharges, and discharges at animals, are not included under this section.
6. Deadly Physical Force: Force which, under the circumstances in which it is used, can reasonably be expected to cause death or serious physical injury.
7. De-escalation of Force: A conscious reduction in the level of force used in response to a perception of decrease in the level of resistance or compliance.
8. Electronic Controlled Weapon: NFPD currently issues and deploys an electronic controlled weapon known as a Taser®, which is a non-deadly weapon that utilizes compressed nitrogen to shoot probes several feet toward a suspect. The probes are connected to the weapon by high voltage, insulated wires. When the probes make contact with the target, the ECW transmits an electrical pulse along the wires and into the body of the target. The ECW affects the sensory and motor nervous system causing electro-muscular

disruption. The ECW is made of plastic and has an integral laser sight and low level illuminator.

9. Force: To compel by physical means; physical contact or action beyond mere restraint. Any physical strike or instrumental contact with 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, including: acquiring a target with a firearm, discharging a firearm, use of chemical agents, use of impact weapons, use of an electronic controlled weapon, acquiring a target with an electronic controlled weapon, the taking of a subject to the ground, and any physical contact that includes control techniques. The escorting or handcuffing of a person with minimal or no resistance shall not constitute the use of force. Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to affect an arrest or protect the officer or other person.
10. Hard Hand Control: Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and include strikes to pressure points such as: the common peroneal nerve (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).
11. Harm: Injury inflicted upon a person, whether visible or not.
12. Impact Weapons: Devices used for striking, which may disable or cause temporary motor dysfunction; such as an expandable or straight baton approved by the agency. These devices are not fundamentally designed to cause death or great bodily harm.
13. Imminent Threat: An officer's reasonable perception of impending death, danger, or serious injury from any action or outcome which may occur during an encounter.
14. Non-Deadly force: Any use of force not intended to cause, nor likely to cause, death or serious bodily harm.
15. Oleoresin Capsicum Spray: Also known as pepper spray, is a chemical compound that irritates the eyes to cause tears, pain, and even temporary blindness. Its inflammatory effects cause the eyes to close, taking away vision. This temporary blindness allows officers to more easily restrain subjects and control unruly crowds.
16. Objective Reasonableness: A balance between the rights of the person being arrested and the government interests that allows the

use of force. Facts and circumstances make up what is objectively reasonable.

17. **Passive Resistance:** Physical actions that do not prevent the officer's attempt to control, for example, a person who does not cooperate with commands, but does not take action to prevent being taken into custody.
18. **Pepper Ball System:** Air-Powered launch device and projectiles that are plastic spheres filled with powdered Oleoresin Capsicum (OC). Projectiles burst on impact and release OC. Pepper Ball projectiles subdue by strongly irritating the nose, lungs, and breathing. Response to inhaling Pepper Ball projectile OC powder varies greatly among individuals. In most cases, the symptoms last for a few minutes. The Pepper Ball can deliver projectiles with enough kinetic energy to produce abrasions, bruises, and/or welts.
19. **Physical Injury:** Impairment of physical condition or substantial pain.
20. **Reportable use of force:** All force used above non-resistant compliant handcuffing with the exception of drawing a firearm at low ready position. While it does not include unresisted (cooperative) handcuffing, it does include handcuffing individuals to objects.
21. **Resisted Handcuffing:** When a person actively resists being placed in handcuffs and the officers must use "soft hand controls" to gain compliance by forcibly moving the subject's wrists or arms, or to physically maneuver the subject's body so the handcuffs can be applied. The "resistance" may range from an active struggle to a person simply "locking" his/her arms to prevent compliant handcuffing. Conversely, "unresisted (cooperative) handcuffing" occurs whenever the subject complies with the officer's verbal commands and/or unresistingly allows the officers to position their arms in order to apply handcuffs, or the subject positions their arm as commanded for the application of handcuffs.
22. **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.
23. **Soft Hand Control:** The use of physical strength and skill in defensive tactics to control arrestees that are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points,

takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.

24. Supervisor: A supervisor includes a Lieutenant who is assigned responsibility for supervising officers.
25. Tactical Communication/Verbal Commands: Communication consisting of verbal dialogue, requests, instructions, and commands.
26. Weapon: Any instrument, article or substance, including a vehicle, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious bodily injury.

IV. State/Federal Statutes; Authorizations:

- A. New York State Penal Law Article 35 governs the use of physical force and deadly physical force in making an arrest or in preventing an escape.
 1. All applications of force by Officers of the Niagara Falls Police Department must be consistent with Article 35, and where court decisions, NFPD policies, and training are more restrictive than those described in Article 35, it shall be those standards an officer will be held to.
- B. In all applications of force, officers shall be held strictly accountable to the United States Constitution, which is intended to support New York State law to provide citizens with protection of their Constitutional rights, and all appropriate Federal Criminal and Civil Rights statutes.

V. Rules and Procedures:

- A. Deadly Force; Authorization:
 1. An officer is justified in using deadly physical force only when he/she believes such force to be necessary to:
 - a. Defend the officer or a third person from the imminent threat of death or serious physical injury; or
 - b. Effect an arrest, or prevent the escape from custody, of a person whom the police officer reasonably believes has committed, or attempted to commit, a felony involving the infliction, or threatened infliction, of serious physical injury; *and,*

- c. Where the police officer reasonably believes that the person still poses a significant threat of death or serious physical injury to the officer or other persons.
 - 2. When feasible, the officer should give verbal warning of the intent to use deadly physical force.
 - 3. Refer to *Tennessee v. Garner*, 471 U.S. 1, 85 (1985).
- B. Non-Deadly Force; Authorization:
 - 1. Law enforcement officers are permitted to use force to effect an arrest only to the extent that it is "objectively reasonable" under the circumstances.
 - 2. The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Its proper application, however, requires careful attention to the facts and circumstances of each case.
 - 3. When using force, officers must balance between the rights of the person being arrested and state/federal statutes that allow the use of force.
 - 4. Officers must weigh:
 - a. The severity of the alleged crime,
 - b. Whether the suspect poses an imminent threat to the safety of officers and/or others, *and*,
 - c. Whether the suspect is actively resisting or attempting to evade arrest by flight.
 - 5. Refer to *Graham v. Connor*, 490 U.S. 386, (1989)

C. Use of Force: Application:

- 1. Officers should ensure that they do not engage in unreasonable actions that precipitate the use of force as a result of tactical, strategic, and procedural errors that place themselves or others in jeopardy. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 hindsight. 2. This reasonableness must allow

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.

3. The reasonableness inquiry in an excessive force case is an objective one; the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
4. An officer may use deadly force in the circumstances permitted by this policy when all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly force is necessary.

D. Deadly Force Restrictions/Guidelines:

1. Safe handling of firearms: Safe handling of firearms is required by all members of the Niagara Falls Police Department during the course of their duties and at all times by officers carrying a firearm while off duty.
2. Firing a Weapon: Officers of the Niagara Falls Police Department may fire weapons to stop or incapacitate an assailant to prevent serious bodily injury or death. For this purpose and to minimize danger to innocent bystanders, the officer should shoot at the center body mass, whenever possible. Officers shall also consider the environment surrounding the target and not place others at unnecessary risk. Although an officer may be justified in using deadly force, the law does not relieve the officer of the consequences of his/her actions.
3. No Distinction Regarding Age: No distinction shall be made relative to the age of the intended target.
4. Alcohol/Drugs Restriction: No officer shall use a firearm while under the influence of alcohol or drugs.
5. Using a Firearm: Members are justified in pointing a firearm and acquiring a target if:
 - a. There is justification to use a firearm against a person; or, If the officer reasonably believes that a person or a situation poses or may pose an immediate threat of death or serious physical injury either to himself or another person.

- b. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a weapon unless a reasonable belief exists that it may be necessary to use the firearm in conformance with this policy on the use of force.
 - c. Drawing a firearm does not necessarily constitute a use of force action. However, once a target is acquired, the action should be considered a use of force, even if the weapon is not discharged, and a Use of Force report shall be filed pursuant to NFPD G.O. A-20-7.
- 6. Warning shots: Warning shots are prohibited. Officers are prohibited from discharging firearms as a means of warning or frightening a person.
- 7. Moving Vehicle Restrictions: Officers are prohibited from discharging a firearm at or from a moving vehicle, unless extreme circumstances exist and deadly force is necessary to defend an officer or a third person from the use of imminent deadly force.
 - a. An officer threatened by an oncoming vehicle shall attempt to move out of its path instead of discharging a firearm at it or any of its occupants. Officers shall avoid tactics which would place them in the path of a moving vehicle.
 - b. It is understood that the policy in regards to discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, Department members are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to articulate clearly the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.
- 8. Choke holds/neck restraints:
 - a. The use of any type of neck hold that intentionally restricts blood flow or breathing shall be considered use of deadly

physical force. It shall not be used to subdue an individual, except as a last resort, and then only when an officer has reasonable cause to believe that his/her life is in imminent danger or to prevent the escape of any suspect whose freedom is reasonably believed to represent an imminent threat of death or serious physical injury to the officer or others.

- b. Any such use of such technique must be clearly articulated on a Use of Force report and will be reviewed by the Office of Professional Standards.

9. Destruction of Animal with a Firearm:

- a. Unless exigent circumstances exist, Supervisory approval shall be obtained before intentionally shooting an animal with a firearm.
- b. All appropriate steps shall be taken to ensure the safety of all citizens, property, and other animals prior to firing. The potential for ricochet must be considered by the officer.
- c. Shoot the animal from close range (5 to 10 feet maximum, if possible.).
- d. Shoot down into the animal so that the projectile, if exiting the animal's body, will enter the ground.
- e. Shoot the animal in the brain to minimize suffering.

Exception: If the possibility of rabies or that the animal has bitten someone exists, the animal should not be shot in the brain. In these cases, the animal should be shot in the chest cavity, directly behind either front leg.

10. Security and Storage of Firearms:

On Duty: While on-duty, officers shall secure their weapons in a lockbox or secure storage. Where a lock box or secure storage is not available, on-duty officers will secure their weapons in the trunk of their vehicles.

Off-Duty: Officers are responsible for the safe storage of their weapons when off-duty. Weapons shall be maintained in a locked

or secure location in the home. Weapons shall be stored with an appropriate child safety device.

E. Non-Deadly Force Restrictions/Guidelines:

1. **Flashlight as Impact Weapon:**
 - a. The primary use of the flashlight is for illumination purposes. Use of the flashlight as an impact device is discouraged by the NFPD. However, under exigent circumstances, the flashlight may be used as an impact device when the use of an officer's baton is not feasible. Any such use of this device must be clearly articulated on a Use of Force report and will be reviewed and investigated by the Office of Professional Standards.
2. **Head Strikes With an Impact Weapon:**
 - a. An officer's use of an object of any type, including a baton or flashlight, to strike a blow to a person's head is prohibited, except when an officer reasonably believes there is an imminent threat of serious physical injury or death to himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person.
 - b. Any such use of this device must be clearly articulated on a Use of Force report and will be reviewed and investigated by the Office of Professional Standards.
3. **Use of Any Weapon Without Training:**
 - a. No member of the NFPD is authorized to use any weapon without proper training and certification, and prior authorization of the Firearms Training Unit; unless an immediate threat exists and the officer reasonable believes that serious physical injury or death will occur unless the weapon is used. Any such use of an unauthorized weapon must be clearly articulated on a Use of Force report and will be reviewed and investigated by the Office of Professional Standards.

VI. De-escalation:

- A. Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer,

other officers, or members of the general public from risk of imminent harm. Officers may either escalate or de-escalate the use of force as the officer's perception of the circumstances change. Officers should always use the least amount of force necessary in response to the level of resistance encountered. Officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force should be de-escalated accordingly.

- B. Each situation is unique. Sound judgment and the circumstances of each situation will dictate the force option the officer deems necessary. Depending on the circumstances, officers may find it necessary to escalate or de-escalate the use of force. It is not the intent of this policy to require officers to attempt to exhaust each option before moving to the next, so long as the level of force used is reasonable and appropriate under the circumstances.

VII. Use of Force Continuum:

- A. The Use of Force Continuum is a guideline for officers to utilize when making critical use of force decisions. The image below illustrates the options that an officer has at each level of resistance. Notably, professional presence and verbal interaction are present at every level of resistance.

Officers shall not use more force than is reasonably necessary in overcoming any resistance or force.

OFFICER PERCEPTION

Cooperative ➔ Passive to Active Resistance ➔ Assultive / High-Risk ➔ Great Bodily Injury

OFFICER RESPONSE	Lethal Force Impact Weapons Baton, Expandable Baton Electronic Control Weapon Electronic Control Weapon Application Takedowns / Chemical Weapons Takedowns, OC Spray, Pepper Ball Deployment Control and Handcuffing Techniques Firm Grip, Joint Locks, Handcuffing Techniques Command Presence / Tactical Communication / Verbal Commands
	B.

Both State and Federal law requires that all uses of force be reasonable. The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Its proper application, however, 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 officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight. (Graham v. Connor) In addition, an officer should take into account his or her abilities. Tactical withdrawal is a reasonable option when considering officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be appropriate responses to a situation, and should always be considered. The Use of Force Continuum is not designed to be a step-by-step progression and does not require a rigid exhaustion of lower levels of force if the circumstances do not justify or necessitate such a lower level of force. Therefore, the escalation and de-escalation by the officer or the subject may not be sequential. In circumstances where NFPD policy conflicts with the continuum, an officer should rely upon the policy.

VIII. Duty to Intervene:

- A. All members of the Niagara Falls Police Department have a duty to intervene when apparent excessive force is being used by another officer against a subject.
- B. An officer who witnesses inappropriate, unnecessary, unreasonable or excessive use of force by another officer shall report it immediately to a commander or supervisory officer.
- C. Failure to intervene by any officer or supervisor shall result in disciplinary action, up to and including termination, and may result in both criminal and civil liability.

IX. Medical Attention:

- A. Officers are responsible to ensure that medical treatment is provided to any person who has been injured or claims injury as a result of being subjected to the use of force.
- B. A supervisor shall immediately respond to any incident involving any subject who is injured or alleges injury and ensure that appropriate medical care is provided.
- C. All information regarding subject's injury or alleged injury shall be documented on the Use of Force report.

X. Reporting Use of Force:

- A. Officers who use force as described in this policy must immediately report the circumstances to a command or supervisory officer and submit, without delay, a Use of Force Report, and file other report pursuant to NFPD policy.
- B. Officers who are off-duty and become involved in any use of force situation must report the circumstances to an on-duty Niagara Falls Police Department command or supervisory officer as soon as the situation is stabilized.
- C. Refer to NFPD G.O A-20-7 and G.O. A-21-2.

XI. Supervisor's Responsibility:

- A. Supervisory personnel shall respond to the scene of any use of physical force or alleged use of force by a member of the Niagara Falls Police Department use and review the incident for consistency with policy and training.
- B. Supervisors shall ensure appropriate medical care is provided and review Use of Force Report prior to submittal.

- C. Supervisors shall oversee proper collection of evidence.
- D. Supervisors shall ensure that photographs of injuries or alleged injuries are taken and Crime Scene Unit personnel notified.
- E. Supervisors shall ensure that a copy of the Use of Force Report is delivered to the Office of Professional Standards and the Superintendent of Police after supervisory review.
- F. Refer to G.O. A-20-7.

XII. Training:

- A. All members of the Niagara Falls Police Department will successfully complete annual training in New York State Penal Law Article 35 and related court decisions, Use of Force, Use of Deadly Physical Force, and Arrest Control Techniques. All such training shall be conducted and coordinated by the Training Division and Firearms Training Unit at the direction of the Superintendent of Police. Training records shall be maintained by the Training Division.
- B. All members of the Niagara Falls Police Department authorized to carry a firearm shall successfully qualify annually with their issued weapon, and any other firearm they are authorized to carry or use on duty. The qualification schedule and recordkeeping shall be the responsibility of the Firearms Training Unit.
- C. Prior to using or being issued any type of non-deadly weapon or other device for which training was not required in the Basic Course for Police Officers, officers shall successfully complete a training course as approved by the Superintendent of Police. Annual refresher training shall also be required as overseen by the NFPD Training Director.