



POLICE DEPARTMENT  
**TOWN OF EAST FISHKILL**

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**DIRECTIVE**

**92-20**  
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**DATE: MARCH 25, 1992**

**SUBJECT: USE OF FORCE**

**PURPOSE**

Law enforcement officers around the country, New York State and in the Town of East Fishkill, 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. This policy is founded in these standards, but is not intended to be an exhaustive recitation of state and / or federal legal framework governing use of force. The policy is designed to provide guidance in the development of our own use of force policies in accordance with Executive Law Section 840(4)(d)(3).

This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force. Separate policy guidance and training should be provided for each of the available force instrumentalities made available to officers.

**POLICY**

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 and less lethal force.

As the Supreme Court has recognized, the 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. Additionally, 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 in light of the facts and circumstances confronting them.

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.

## DEFINITIONS

- A. **Objectively Reasonable** – An objective standard used to judge an officer’s actions. Under this standard, a particular application or 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 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.
- E. **Less-Lethal Force** – Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.
- F. **De-Escalation** – Taking action or communicating verbally or non-verbally during 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 in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion and tactical repositioning.
- G. **Exigent Circumstances** – Those 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.
- H. **Warning Shot** – Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.
- I. **Unnecessary Force** - Occurs when unjustified physical abuse of a person has occurred or when it is apparent that the type or degree of force employed was neither necessary nor appropriate, or when any degree of force is utilized as summary punishment of vengeance. The use of indiscriminate force is prohibited.

## **USE OF FORCE**

- A. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
- B. Whenever possible and when such delay will not compromise the safety of the officer or another and 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.
- C. When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. 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.
- D. 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.

## **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;
  - 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.

## **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 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.

### **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 if not immediately apprehended.
  - 3. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.

### **PROHIBITED USES OF FORCE**

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 fluids or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
- 4. Against person 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. Deadly force should not be used against persons whose actions are a threat only to themselves or property;
- 6. To fire warning shots in order to induce a fleeing subject to halt;
- 7. Firearms shall not be discharged at a moving vehicle 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 practical;
- 8. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force;
- 9. Choke holds are prohibited unless deadly force is authorized.

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

- A. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured or requests medical attention.
- 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 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 an electronic control weapon (TASER), chemical agent (OC spray), or impact weapon (police baton) was intentionally brandished, used or discharged or accidentally discharged after being displayed.
  - 5. Incidents where a firearm was brandished, used or discharged at a subject.
- C. A standardized use of force report should be used to document any reportable use of force incident.

## **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. The Chief of Police or their designee will receive the supervisor's report and conduct an investigation.
- E. 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.

## **TRAINING**

- A. All officers should receive yearly use of force training to include article 35, police baton, OC spray and TASER 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. 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.

## **FIREARMS**

1. Each officer shall be issued a firearm, holster, and a minimum of fifty two rounds of ammunition. The issued firearm shall be recorded by serial number and will be kept on file in the officer's personnel file.
2. Ammunition for on-duty and off-duty weapons will be authorized by the Chief of Police
3. Officers issued firearms shall carry such firearm fully loaded with ammunition as issued or authorized by the Chief of Police.
4. Each officer is responsible to keep his/her firearm clean, oiled and in correct working order.
5. Each officer shall be responsible for retaining firearm in his/her possession and will exercise the best precaution necessary for its security and the care to prevent theft, loss, misuse, or damage.
  - A. Firearms shall not be stored in department or privately owned vehicles.
6. Any unauthorized or careless handling of a firearm by any member of the East Fishkill Police Department is prohibited and may be cause for disciplinary action.
7. Firearms shall not be drawn except as authorized in the line of duty, inspection, cleaning, loading or unloading, supervised training, or firearm practice.
8. Officers of the department shall carry firearms and ammunition issued or authorized by the Chief of Police at all times while on duty unless acting pursuant to specific order by the Chief of Police.
9. Removal of firearms from the person of an officer in any public place, public or private office or building, except as authorized by the Chief of Police or when required by the rules of a court of record or the rules of a penal or mental institution is strictly forbidden.
  - A. Officers will always remove their firearms while processing prisoners.

- B. Officers on-duty within the station designated to carry firearms shall wear the prescribed firearm except when assisting another officer in processing a prisoner.
10. All officers on duty shall carry only the firearm and ammunition issued to them by the department unless written permission has been granted by the Chief of Police to carry a personally owned firearm while on duty.
  11. Officers are encouraged, but not mandated to carry a handgun when off duty. Police officers are subject to respond when not on active duty and therefore may elect to be in possession of a department issued firearm at all times, except when impractical. Failure to be in possession of a firearm when off duty will not excuse any police officer from taking action required by law when a crime is observed by them or called to their attention by another person.
    - A. Officers carrying non issued handguns on or off duty will be required to qualify semi-annually at their own cost.
    - B. Off-duty officers while operating departmental vehicles shall be armed with a firearm issued or authorized by the Chief of Police.
    - C. Officers off-duty and not in uniform who elect to carry a firearm shall do so in such a manner as to conceal it from view.
  12. Firearms training shall be required at least two times per year and in case of any accidental discharge, the officer involved must undergo immediate firearms retraining.
  13. The acquisition of any handgun, by department personnel, will require written permission from the Chief of Police, unless such acquisition is pursuant to a valid pistol permit.
  14. All personally owned concealable weapons, if approved, will be registered with the department whether on permit or shield and appropriate "C" form will be filed with department for registration with the New York State Police for all concealed weapon transfers or acquisitions. All proper forms will be with the Chief's secretary.
  15. All officers shall comply with the laws of the United States and the State of New York, which govern the possession and/or transfer of firearms.
  16. The use of firearms and other forms of deadly physical force are governed by and must be justified in accordance with the provisions of the Penal Law. Officers are responsible for their own actions and will be required to justify those actions.
  17. Only issued and approved equipment will be carried on duty and used when applying physical force except in an emergency when the officer may use other resources at their disposal.

18. An officer of the Town of East Fishkill Police Department is authorized to use a firearm to kill an animal or wildlife so badly injured that humanity requires that it be removed from further suffering or dangerous animals or dogs which are attacking any person or animal.
19. An officer of the Town of East Fishkill Police Department is authorized to use a firearm for target practice or competition.
20. Any East Fishkill Police Officer who discharges his firearm for any reason except for authorized target practice or competition shall, as soon as possible, submit to the Chief of Police a report in accordance with departmental procedures, which should include the following information:
  - A. The names and addresses of any injured persons and witnesses.
  - B. The extent and treatment of any injuries, the hospital where treated and/or the doctor who provided such treatment.
  - C. The number of shots fired and the reasons and circumstances that required the use of firearms.
21. Avoidance of recklessness should be considered in any situation involving deadly physical force. Even a case where deadly physical force is both authorized by law and reasonable under the circumstances, the officer must consider the safety of innocent bystanders (e.g., firing in a crowded street.)

## **UNAUTHORIZED NON-LETHAL WEAPONS**

The carrying or use of any instrument as an offensive or defensive weapon, not specifically authorized or issued as a weapon by the East Fishkill Town Police Department is PROHIBITED. Examples of unauthorized weapons include but are not limited to the following:

### **BLACKJACKS, WEIGHTED GLOVES AND BRASS KNUCKLES**

Flashlights are not authorized as an offensive weapon to quell resistance except in extreme cases when no other adequate instrument is available.

## **AUTHORIZED NON-LETHAL WEAPONS**

Examples of authorized weapons include, but are not limited to the following:

Impact Weapon (Police Baton)

Chemical Agent (O.C. Spray)

Electronic Control Weapon (TASER)

Compliance Techniques (Come-alongs; takedowns; use of hands, arms, feet, legs)



## **USE OF RESTRAINING DEVICES**

Use of restraining devices is mandatory on all prisoners unless in the officer's judgement unusual circumstances exist which make the use of restraining devices impossible or unnecessary. 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 report must be completed.

## **OFF-DUTY ACTION/FIREARM**

1. Purpose: The purpose of this order is to adopt safety directives and guidelines for dealing with the carrying of firearms while in an off-duty status for dealing with an officer's duty and responsibility to take action in response to criminal activity while in an off-duty status.
2. Policy: The department's policy of carrying firearms while "off-duty" are:
  - A. A member may carry a firearm while off-duty in accordance with state and federal law. It shall not be necessary that a member, who chooses to carry a firearm off-duty, carry his service weapon however, their service weapon is recommended. Any personally owned weapon that an officer chooses to carry must be in proper working condition. Officers carrying non-issued handguns must be proficient in the use of such weapon and may qualify semi-annually at their own expense.
  - B. Officers should refrain from carrying firearms when contemplating the consumption of alcoholic beverages or under other circumstances where the need to carry a firearm is outweighed by safety issues associated with the circumstances that the officer will be undertaking.
  - C. A member of the police department who becomes aware of an incident which poses a threat of serious bodily harm or death to some individual shall take "action" to minimize the risk of serious bodily harm or death. "Action" under this provision is fulfilled by reporting the incident and shall not require the officer to place him or herself in a position of peril. An officer who is faced with such a circumstance should act in accordance with the guidelines as spelled out in this General Order.
3. Procedure:
  - A. First, Go to a safe location and call 911.
  - B. Second, when you encounter a situation off-duty that seems to require police action, you must consciously evaluate whether your involvement is necessary or desirable, given the circumstances. How important and urgent is the need for your intervention?
  - C. A number of circumstances may impact your decision to get involved in any situation. First, you may be alone, with family members or other non-police

personnel. Second, it is unlikely that you will have all of the necessary police equipment while off-duty, for example; pepper spray, baton, handcuffs or radio. You may be faced with multiple suspects or unaware of hidden suspects. There may also be environmental factors working against you such as: lack of cover, crowds of civilians, darkness, etc. Your intervention may actually spark an escalation of violence. Therefore, your best plan of action may be to:

1. Gather accurate intelligence like a good witness until uniformed, on-duty officers arrive.
2. You have no obligation to get involved, especially if such intervention places you in a position of peril or such intervention requires that you behave recklessly, carelessly or in a suicidal manner.
3. While department policy mandates that you “take action” when witnessing a serious crime, that obligation is fulfilled by calling the police and monitoring the situation from a SAFE vantage point.
4. Most survival-conscious officers have trained themselves NOT to intervene off-duty UNLESS their life or the life of another innocent party is IMMINENTLY in danger. In other words, you should only consider intervention when deadly force would be justified. You should not intervene just to make an arrest while off-duty. The decision to take action, beyond simply reporting, is a personal one and is not a requirement of this department.
5. If you decide you must get involved, attempt to have someone call 911 advising the operator that an off-duty officer is on scene. Have the caller inform the operator if you are armed. If possible, have them describe you and your clothing. This will affect the mindset of the responding officers. When uniformed police officers arrive, have your badge out and visible. (if you carry your shield while off-duty, some officers carry only their photo credentials). Do not rely on showing your identification as a means of providing any protection. At a distance, in dim light and under stress, your badge may not be seen. Or, the identification may not be given credibility if the responding officers do not recognize you personally.
6. Some trainers advise officers to hold their badge next to their gun for the best chance of being seen because the eyes of the responding officers are most likely to go immediately to your drawn firearm. You’re probably safer to RE-HOLSTER your gun when other officers arrive, unless doing so would put you and the responding officers or innocent civilians, in jeopardy. Until the responding officers sort out who is who, your gun is your greatest personal liability.
7. If you have cover, maintain it. You can communicate verbally from there.
8. Make your hands visible. Having responding officers see that you are

unarmed and non-threatening will work to calm them and protect you.

9. Verbally identify yourself as a police officer—not once and not in a normal tone of voice, but repeatedly and very loud. Keep shouting out: “POLICE! DON’T SHOOT! OFF-DUTY OFFICER!” until you get acknowledgment and directions as to what you should do. Remember, the noise and excitement of the scene, combined with stress induced auditory blocking may prevent responding officers from hearing you initially.

10. When commands are issued by the responding officers, follow them promptly and completely. Expect to be treated like a suspect until your law enforcement status is verified.


11. When carrying a firearm off-duty (including finishing or beginning a tour of duty), It shall be concealed from public view by an outer jacket, shirt, sweater etc. If an off-duty officer’s firearm is observed and prompts the response of police or security officials, the off-duty officer should respond in a manner consistent with this policy.

12. The most important rule of all: If you have a gun in your hand, NEVER, EVER turn toward an on-duty officer

4. Reporting / Compliance: Whenever an officer becomes involved in an incident while in an off-duty capacity, he or she shall notify the Shift Supervisor as soon as possible. The off-duty officer shall complete a written report on the incident that will be forwarded to the Chief of Police or designee. This report shall also be reviewed in order to evaluate and update training for “off-duty” response.

## **PUBLICIZE**

The Town of East Fishkill Police Department will make the Use of Force Policy readily available upon request and post the Policy on its Website.

  
Chief Christopher A. Bellino

# Town of East Fishkill Police Department

## Use of Force Report Form

Date	Time	Location	Incident #
Subject Name		Date of Birth	Height
		Weight	Phone #

**REASON THE USE OF FORCE WAS NECESSARY (Check all that apply)**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> To Effect an arrest              | <input type="checkbox"/> To Defend Self                    | <input type="checkbox"/> Prevent Escape |
| <input type="checkbox"/> To Defend another Officer/Person | <input type="checkbox"/> Protective Custody/Subject Safety | <input type="checkbox"/> Other          |
| <input type="checkbox"/> To Dispatch Animal               |  |   |

**LIST MOST SERIOUS OFFENSE(S) AT TIME FORCE WAS USED:**

Was the subject injured? <input type="checkbox"/> Yes <input type="checkbox"/> No Describe injuries	Was Reporting Officer injured? <input type="checkbox"/> Yes <input type="checkbox"/> No Describe injuries	Medical Treatment Provided To/By:	Photos Taken By
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# Of Subjects Resisted	# Of Officers Present	Supervisor Notified / Time / By Whom
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**At The Time of Arrest. The Subject Was:**

<input type="checkbox"/> Suspected to be Under the Influence of Alcohol or Drugs	<input type="checkbox"/> Mentally Impaired/Emotionally/Disturbed
<input type="checkbox"/> Under the Influence of Alcohol or Drugs	<input type="checkbox"/> Other (Explain):

**OFFICERS PERCEPTION OF INDIVIDUAL'S ACTIONS (Use Narrative to Describe Perceived Threat(s) Posted by Individual)**

- Passive Resistance -  
(Dead weight or non-compliance to Officer's lawful verbal direction, but offering no actively resistive movement)
- Active or Escape Resistance-  
(Actions such as pushing, pulling, evasive arm movement, flailing, flight, muscle tension to avoid control. Does NOT include attempts to harm Officer)
- Assaultive / High-Risk-  
(Agitated, combative state, physically assaultive actions and / or behavior that poses threat of injury to another (e.g., punching, kicking, clenching fists)
- Life Threatening / Serious Bodily Injury (Actions that could lead to death or SPI)

**OFFICER'S RESPONSE OPTIONS(S) (Provide further details in attached narrative reports (s))**

- Presence     Full Uniform     Partial Uniform     Plainclothes (Describe visual means of identification)
- Verbal Commands (Describe in detailed narrative report)
- Compliance Techniques (Describe in detailed narrative report) (Come-alongs, takedowns – use of hands, arms, feet and legs)
- Chemical Spray (Describe in detailed narrative report)
- Number of Bursts:                      Duration of Bursts:                      Approx. Distance from Subject:
- Impact Location:                      Time between application and Decontamination:
- Impact Weapon / Temp. Incapacitation (Describe in detailed narrative report)
- Electronic Control Device-TASER (Describe in detailed narrative report)
  - Laser only     Spark Check     Drive Stun     Probe Deployment    Impact Location \_\_\_\_\_    Number of Cycle \_\_\_\_\_
  - Taser Unit # \_\_\_\_\_    Serial # \_\_\_\_\_    Cartridge Serial # \_\_\_\_\_    Approx Distance from Subject \_\_\_\_\_
- Point a Firearm (Describe in detailed narrative report)
- Deadly Force – Firearms or other (Describe in detailed narrative report)
- Other :

Restraint Method Used:  Hand or Flex Cuffs     Leg Restraint     Body Guard     Spit Shield     None     Other

Officers Present at Scene During Force Application:	Shift Supervisor(s):
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Other Witness(es) / person at scene:	Reporting Officer / Shield #:
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Audio-visual Evidence <input type="checkbox"/> YES <input type="checkbox"/> NO	Reviewing Supervisor:
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