

## 142.20 – USE OF FORCE

### I. PURPOSE:

- A. To establish within the Port Dickinson Police Department a policy concerning the use of force and an investigation system to be used in the event of a member using physical force.

### 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.<sup>6</sup>

(Rev.02/04//21)

### III. POLICY:

- A. All officers may use only that level of force that is necessary and objectively reasonable in performance of their duties within the limits established by Article 35 of the New York State Penal Law and consistent with the training given by the P.D.P.D. It is the responsibility of each officer to be aware of the requirements of Article 35, and Defense of Justification 35.00 -35.30 which will be provided during annual training in conjunction with firearms training.

### IV. DISCUSSION:

1. ARTICLE 35.30, NEW YORK STATE PENAL LAW. A police officer in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force; EXCEPT that deadly physical force may be used for such purposes only when he or she reasonably believes that:

- Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force
2. REASONABLENESS FACTORS. Factors that may be used in determining the reasonableness of force include, but are not limited to:
- a) The severity of the crime or circumstance;
  - b) The level and immediacy of threat or resistance posed by the suspect;
  - c) The potential for injury to citizens, officers, and suspects;
  - d) The risk or attempt of the suspect to escape;
  - e) The knowledge, training, and experience of the officer;
  - f) Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
  - g) Other environmental conditions or exigent circumstances.
3. 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.

## V. PROCEDURES.

### A. PHYSICAL FORCE GUIDELINES

1. Utilizing Headlocks or Chokeholds are prohibited at all times unless deadly physical force is authorized
2. Once a subject is handcuffed and as soon as practical, the use of a face-down position restraint should be avoided. The subject should be turned on their side or placed in a seated position. If it is necessary to position a person face-down under restraint, then the subject must be closely and continuously monitored
3. If the subject continues to struggle, officers shall not sit or kneel on their back. If practical, officers should consider holding their legs down, wrapping their legs with a strap or securing with an ankle restraint.
4. Officers shall not tie or connect the handcuffs to a leg or ankle restraint.

(Rev.02/04/21)

## B. PROHIBITED USES OF FORCE

- Force shall not be used by an officer for the following reasons:
  - To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
  - To coerce a confession from a subject in custody;
  - 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;
  - 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.

(Rev.02/22/21)

## C. FOR MEMBERS USING FORCE

1. Any employee using physical force pursuant to their duties as a law enforcement officer, whether on or off duty, shall report all facts relative to the incident on a “SUBJECT MANAGEMENT REPORT.”(See addendum #2 attached.)
2. Only designated and approved equipment will be carried on duty and used when applying physical force.
3. Use of restraining devices is mandatory on all arrestees unless, in the officer’s judgement, unusual circumstances exist which make the use of restraining devices impossible. The mere use of handcuffs on an arrestee will not be construed to be use of physical force. However, when the handcuffs become an appliance to exert force necessary to further subdue a subject or where the suspect physically resists the application of handcuffs, a use of force has occurred and the required reports must be completed.
4. Immediately after any physical force is used, the officer shall evaluate the need for medical attention or treatment for the person upon whom the physical force was used and arrange for such treatment when:
  - a. that person has a visible injury.
  - b. that person complains of injury or request medical attention.
  - c. chemical spray was used.
  - d. Taser was used.

5. The employee shall immediately notify the Chief or Sergeant of the incident. In cases when the incident occurred while off duty the officer shall follow the same protocol.
6. Officers shall attempt to locate and identify any witnesses and obtain statements from them.
7. If more than one officer is involved in a Use of Force incident, the officer who initiated the use of force shall complete the Subject Management Report detailing only their involvement or use of force. All other officers shall complete a supplemental report detailing their involvement or use of force. Copies of all reports will be forwarded together, along with any applicable reports to the Chief of Police.

## **II. SUPERVISORY RESPONSIBILITIES (CHIEF OF POLICE OR HIS DESIGNEE):**

1. At the scene:
  - i. The supervisor shall respond to the scene of incident immediately after learning of the use of force by an officer if necessary.
  - ii. Supervisor shall insure that employees receive any necessary assistance, including medical treatment. They will also ensure that any injuries to employees are properly documented and reported.
  - iii. Supervisor will determine what level of investigation will be utilized; including photos, measurements and diagrams, seeking assistance from an outside agency if warranted.
  - iv. The supervisor shall include a written report documenting his actions and the facts of the incident.
2. Additional Responsibilities
  - i. Notify the Village / County Attorney as necessary.
  - ii. Establish and maintain a liaison with the District Attorney.
  - iii. Present the case to the District Attorney for review.
  - iv. Keep the involved officer apprised of the status of the investigation.
  - v. At the conclusion of both the criminal and/or departmental investigation, make the final determination of action to be taken.
  - vi. Review policies, training, etc., for possible improvement.

### **III. REVIEW OF FORCE CAUSING INJURIES:**

- When any member uses force which is alleged to result in injury or death of another, the Chief shall review such case to ensure:
  - a. The rules and regulations of this department were followed.
  - b. Documentation is retained in the event of future litigation.
  - c. Additional training is provided if necessary.
  - d. The incidents involving the use of force are properly evaluated.

(Rev. 02/22/21)

### **IV. EXECUTIVE LAW 837-t (See addendum #1 attached)**

Effective, July 11, 2019, Executive Law 837-t requires each police department, county sheriff, and the state police to report any occurrence in which a police officer or peace officer employs the use of force. The P.D.P.D. Administration will be responsible for reporting information for officers who are involved in use of force incidents that meet the criteria of data collection. Details required to be submitted to DCJS include the date of incident, agency involved, county, town/city, description of circumstances, and demographics of all persons engaging in the use of force or suffering such injury. Incidents involving use of force which are required to be reported are described as:

- a. When an officer engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury is defined as bodily and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- b. When one of the following is initiated by an officer:
  - Brandishes, uses, or discharges a firearm at or in the direction of another person;
  - Displays, uses, or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray, or tear gas;
  - Brandishes, uses, or deploys an impact weapon, including, but not limited to, a baton or Asp;
  - Brandishes, uses, or deploys an electronic control weapon, including, but not limited to, a Taser.

(Rev. 01/27/21)

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## Addendum #1

# EXECUTIVE LAW SECTION 837-t

### **Executive**

\* § 837-t. Use of force reporting. 1. The chief of every police department, each county sheriff, and the superintendent of state police shall report to the division, in a form and manner as defined in regulations by the division, any instance or occurrence in which a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer, as defined in section 2.10 of the criminal procedure law, employs the use of force as follows:

- a. brandishes, uses or discharges a firearm at or in the direction of another person; or
- b. uses 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
- c. displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
- d. brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
- e. brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long range acoustic device; or

f. engages in conduct which results in the death or serious bodily injury of another person. Serious bodily injury is defined as 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.

2. On an annual basis, the commissioner shall conspicuously publish on the department's website a comprehensive report including the use of force information received under subdivision one of this section during the preceding year. Such reports shall not identify the names of the individuals involved, but for each event reported, shall list the date of the event, the location disaggregated by county and law enforcement agencies involved, the town or city, and any additional relevant location information, a description of the circumstances of the event, and the race, sex, ethnicity, age, or, if unknown, approximate age of all persons engaging in the use of force or suffering such injury.

\* NB Effective July 11, 2019

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Addendum #2

# Port Dickinson Police Department

## Subject Management Report

Port Dickinson Police Department Call -or-  Assist Other Law Enforcement Agency

Subject's Name: \_\_\_\_\_ Complaint #: \_\_\_\_\_

Date of Incident : \_\_\_\_\_ Location of Incident: \_\_\_\_\_

Time of Incident : \_\_\_\_\_

**Management Control Used :** (Check All That Apply)

Verbal Commands  Oleoresin Capsicum  Empty Handed Control  Canine  Taser  
 Intermediate Impact Weapon  Firearm  Shotgun  Carbine  Other (Explain) \_\_\_\_\_

Describe the subject's actions that prompted the reporting officer to use reactive force: (Examples: The subject's verbal threats, demeanor, level of resistive tension, size, age, skill level, additional subjects, special knowledge or training, previous contacts, etc.)

[Large area for writing, consisting of approximately 10 horizontal lines.]

*If required, attach additional sheets*

Was the force effective ( Y or  N) If No, what factors caused the force to be ineffective? (i.e.: Wind, Intoxication)

[Large area for writing, consisting of approximately 10 horizontal lines.]

*If required, attach additional sheets*

Was the Officer injured ( Y or  N); If Yes, before or after force contact? \_\_\_\_\_

Was the Subject injured ( Y or  N); If Yes, before or after force contact? \_\_\_\_\_

Was the Officer hospitalized ? ( Y or  N) Was the Subject hospitalized ? ( Y or  N)

Other Officers at the scene: \_\_\_\_\_

Civilian witnesses at the scene: \_\_\_\_\_

Reporting Officer: \_\_\_\_\_