



MONTGOMERY COUNTY SHERIFF'S OFFICE  
POLICY AND PROCEDURES

STANDARDS: 20-1

EFFECTIVE DATE: September 23, 2020

DIVISION: Use of Force

APPROVED: Jeffery T. Smith

SUBJECT: **General**

Sheriff

## I. PURPOSE

Law enforcement officers around the country and here in New York State 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 to individual agencies as they develop their own use of force policies in accordance with Executive Law §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.

## II. POLICY

The federal and state standards by which use of force is measured are both founded in the basic premise of objective reasonableness.<sup>1</sup> 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.”<sup>2</sup>

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.

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

<sup>2</sup> *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

### III. 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.<sup>3</sup>
- 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.<sup>4</sup>
- C. **Physical Injury** – Impairment of physical condition or substantial pain.<sup>5</sup>
- 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>

### IV. 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.<sup>7</sup>
- B. 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.<sup>8</sup>

<sup>3</sup> *Graham*, 490 U.S. 396 (1989)

<sup>4</sup> NY Penal Law § 10 (11) (McKinney 2013)

<sup>5</sup> NY Penal Law § 10 (9) (McKinney 2013)

<sup>6</sup> NY Penal Law § 10 (10) (McKinney 2013)

<sup>7</sup> NY Penal Law and § 35.30(1) (McKinney 2013)

<sup>8</sup> *Graham*, 490 U.S. at 396 (1989)

## V. 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;<sup>9</sup>
  - 2. The level and immediacy of threat or resistance posed by the suspect;<sup>10</sup>
  - 3. The potential for injury to citizens, officers, and suspects;<sup>11</sup>
  - 4. The risk or attempt of the suspect to escape;<sup>12</sup>
  - 5. The knowledge, training, and experience of the officer;<sup>13</sup>
  - 6. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;<sup>14</sup>
  - 7. Other environmental conditions or exigent circumstances.<sup>15</sup>

## VI. 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.

---

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Scott v. Harris*, 550 U.S. 372 (2007)

<sup>12</sup> *Graham*, 490 U.S. at 396 (1989)

<sup>13</sup> Analysis of cases under the 4<sup>th</sup> Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer. *Graham v. Connor*, 490 U.S. 386 (1989), *Terry v. Ohio*, 392 U.S. 1 (1968)

<sup>14</sup> *Sharrar v. Felsing*, 128 F. 3d 810 (3<sup>rd</sup> Cir. 1997) (numbers of officers or subjects)

<sup>15</sup> Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9<sup>th</sup> Cir. (1994)

- 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.

## **VII. 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.<sup>16</sup>
- 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.<sup>17</sup>

## **VIII. 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;

---

<sup>16</sup> NY Penal Law and § 35.30(1)(c)(McKinney 2013)

<sup>17</sup> NY Penal Law and § 35.30(1), as restricted by *Tennessee v. Garner*, 471 U.S. 1 (1985) (restricting the use of deadly physical force as it relates to fleeing felons) In *Garner*, the Supreme Court uses “significant threat of serious physical harm, either to the officer or others” in describing the limited circumstances under which deadly force can be used to prevent the escape of a felon.

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.

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

- A. A police or peace officer or other law enforcement entity 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.<sup>19</sup>
  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.<sup>20</sup>
- 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 a conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
  5. Incidents where a firearm was discharged at a subject.<sup>21</sup>

<sup>19</sup> NY Civil Rights Law § 28

<sup>20</sup> NY Mental Hygiene Law § 9.41

- C. A standardized use of force form should be used to document any reportable use of force incident.<sup>22</sup>
- D. Officers should document any requests for necessary medical or mental health treatment as well as efforts of police to arrange for such treatment.

## **X. 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 [applicable person, unit, or bureau] 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.<sup>23</sup>

## **XI. 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,

<sup>21</sup> 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.

<sup>22</sup> Chiefs of police departments, County Sheriffs, and the Superintendent of State Police should consider utilizing these forms to ensure compliance with the administrative reporting requirement of EXC §837-t.

<sup>23</sup> NY EXC § 840(4)(d)(2)(vi)

including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.<sup>24</sup>

- 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.

---

<sup>24</sup> EXC § 840(4)(d)(2)(vii)

MONTGOMERY COUNTY SHERIFF'S OFFICE  
POLICY AND PROCEDURES ATTACHMENT

ATTACHMENT: 20-1-1

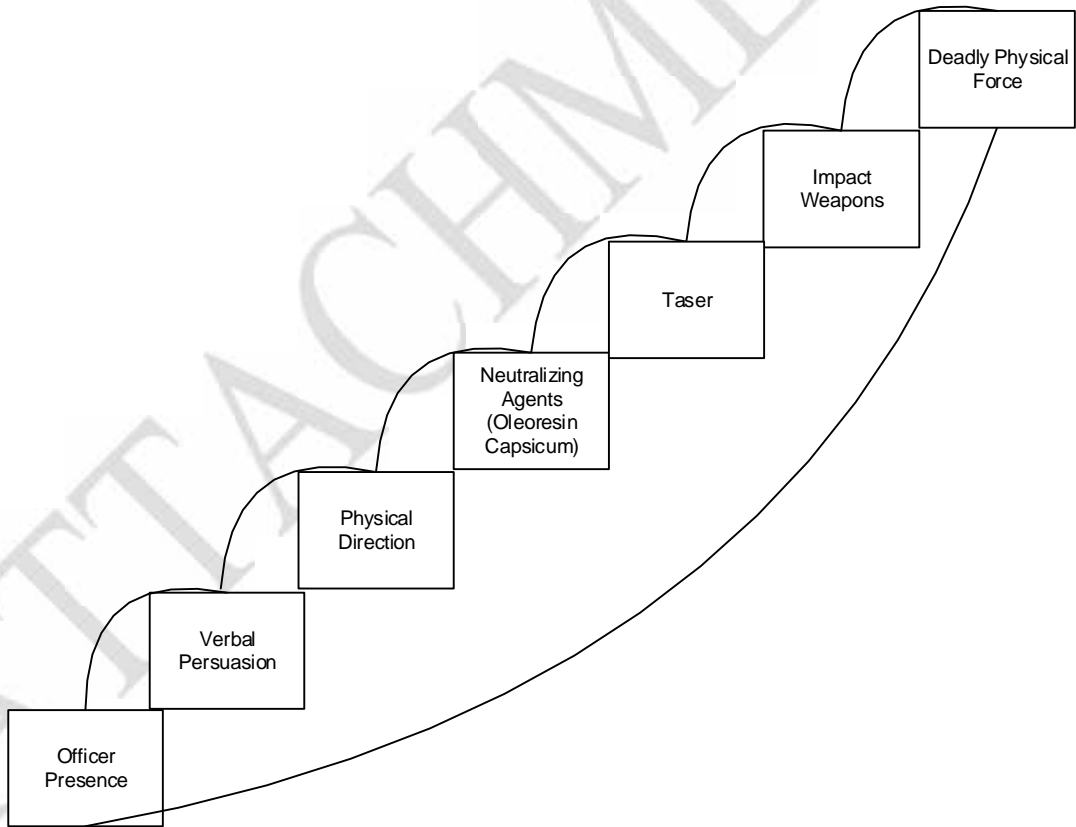
EFFECTIVE DATE: January 1, 2019

DIVISION: Use of Force

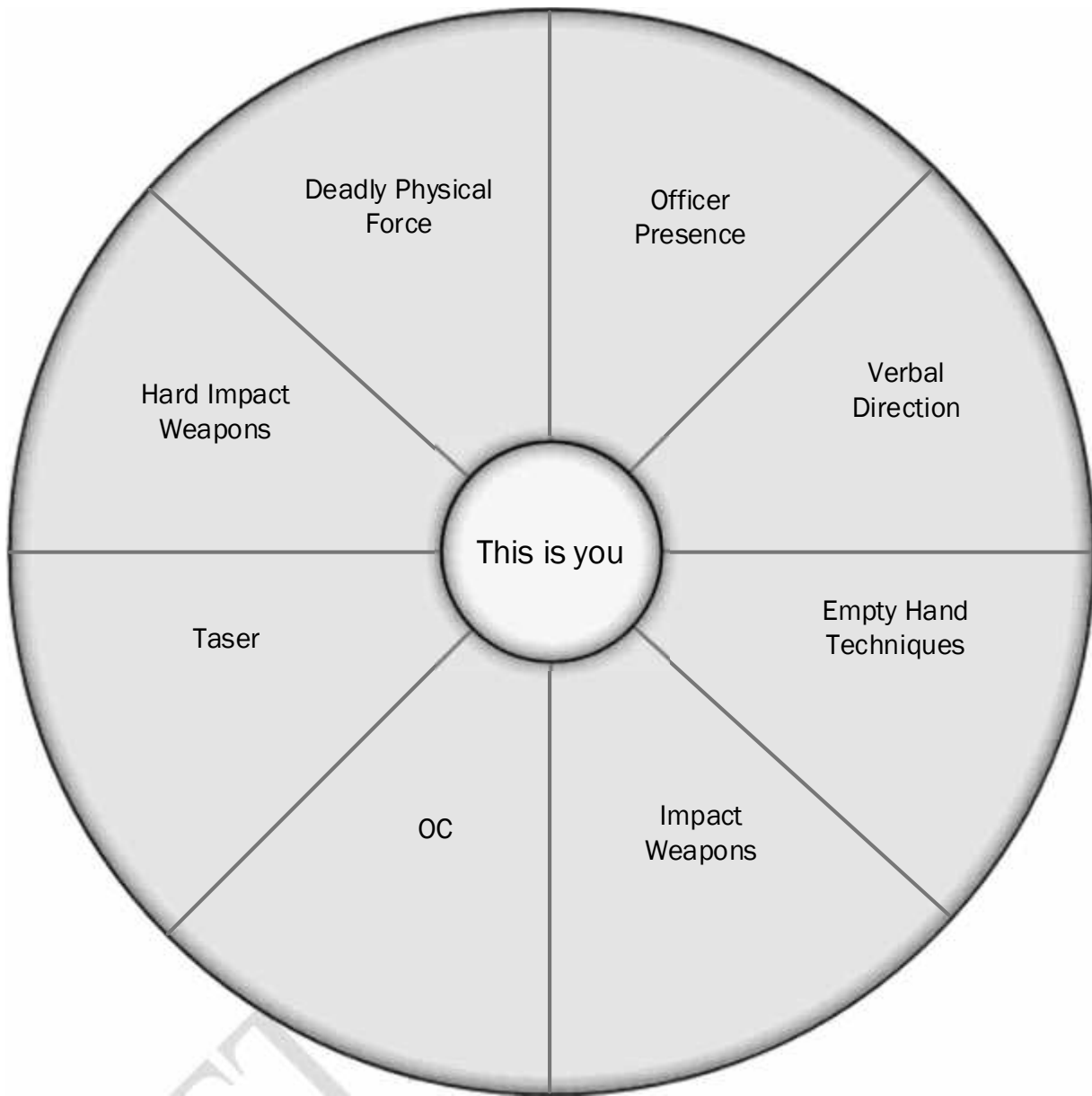
APPROVED: Jeffery T. Smith

SUBJECT: **General**

Sheriff







ATTN

MONTGOMERY COUNTY SHERIFF'S OFFICE  
POLICY AND PROCEDURES ATTACHMENT

ATTACHMENT: 20-1-2

EFFECTIVE DATE: January 1, 2019

DIVISION: Use of Force

APPROVED: Jeffery T. Smith  
Sheriff

SUBJECT: **General**

Sec. 35.05

Justification; generally.

Unless otherwise limited by the ensuing provisions of this article defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. Such conduct is required or authorized by law or by a judicial decree, or is performed by a public servant in the reasonable exercise of his official powers, duties or functions; or

2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

Sec. 35.10

Justification; use of physical force generally.

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a person under the age of twenty-one or an incompetent person, and a teacher or other person entrusted with the care and supervision of a person under the age of twenty-one for a special purpose, may use physical force, but not deadly physical force, upon such person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such person.

2. A warden or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use such physical force as is authorized by the correction law.

3. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury.

4. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result.

5. A duly licensed physician, or a person acting under a physician's direction, may use physical force for the purpose of administering a recognized form of treatment which he or she reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is under the age of eighteen years or an incompetent person, with the consent of the parent, guardian or other person entrusted with the patient's care and supervision, or (b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

6. A person may, pursuant to the ensuing provisions of this article, use physical force upon another person in self-defense or defense of a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody. Whenever a person is authorized by any such provision to use deadly physical force in any given circumstance, nothing contained in any other such provision may be deemed to negate or qualify such authorization.

#### Sec. 35.15

Justification; use of physical force in defense of a person.

1. A person may, subject to the provisions of subdivision two, use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless:

(a) The latter's conduct was provoked by the actor with intent to cause physical injury to another person; or

(b) The actor was the initial aggressor; except that in such case the use of physical force is nevertheless justifiable if the actor has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or

(c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

2. A person may not use deadly physical force upon another person under circumstances specified in subdivision one unless:

(a) The actor reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not

use deadly physical force if he or she knows that with complete personal safety, to oneself and others he or she may avoid the necessity of so doing by retreating; except that the actor is under no duty to retreat if he or she is:

(i) in his or her dwelling and not the initial aggressor; or

(ii) a police officer or peace officer or a person assisting a police officer or a peace officer at the latter's direction, acting pursuant to section 35.30; or

(b) He or she reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible criminal sexual act or robbery; or

(c) He or she reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by subdivision three of section 35.20.

ATTACHMENT

MONTGOMERY COUNTY SHERIFF'S OFFICE  
POLICY AND PROCEDURES ATTACHMENT

ATTACHMENT: **20-1-3**

EFFECTIVE DATE: January 1, 2019

DIVISION: **Use of Force**

APPROVED: *Jeffery T. Smith*

SUBJECT: **General**

Sheriff

Following is a blank copy of the MCSO Use of Force Form as well as the new DCJS Form that is completed online.

ATTACHMENT



## USE OF FORCE FORM

<b>GENERAL</b>	Case Number:	Date / time of Occurrence:	Location of Occurrence:
	How was this encountered: <input type="checkbox"/> Patrol <input type="checkbox"/> Dispatch	Type of Complaint:	Member Involved:
<b>SUSPECT</b>	Name of Suspect:	DOB:            Sex:  <input type="checkbox"/> M <input type="checkbox"/> F	Address of Suspect:
	Type of Force Used:  <input type="checkbox"/> Struggle <input type="checkbox"/> Physical <input type="checkbox"/> Control <input type="checkbox"/> Struck <input type="checkbox"/> Baton <input type="checkbox"/> OC <input type="checkbox"/> Taser <input type="checkbox"/> Firearm		
<b>DEPLOYMENT</b>	# of Strikes	# of Sprays	# of Taser Deployments
	# of Rounds fired	Serial # of Taser / Firearm	Misc.
<b>SUSPECT INJURY</b>	Suspect Injured: <input type="checkbox"/> Yes <input type="checkbox"/> No	Type of Injury:	Location of Injury:
	Charges Pending:	Suspect Intoxicated/Impaired: <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect MH 9.41/5: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Suspect Photographed: <input type="checkbox"/> Yes <input type="checkbox"/> No	Photographer:	Number of Photographs:
	Suspect seen by EMS: <input type="checkbox"/> Yes <input type="checkbox"/> No	Suspect Transported to ER: <input type="checkbox"/> Yes <input type="checkbox"/> No	Which ER:
	Was the suspect arrested: <input type="checkbox"/> Yes <input type="checkbox"/> No	Time of arrest:	Suspect arraigned: <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>OFFICER INJURY</b>	Were Members injured: <input type="checkbox"/> Yes <input type="checkbox"/> No	Which Members:	Location of injuries:
	Photographs of injuries: <input type="checkbox"/> Yes <input type="checkbox"/> No	Member seen by EMS: <input type="checkbox"/> Yes <input type="checkbox"/> No	Member out of work: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Member or Witness:	Member or Witness:	Member or Witness:

Narrative of how and why force was applied:

Signature of Deputy involved:

\_\_\_\_\_

---

**REFUSAL OF TREATMENT AND/OR TRANSPORTATION**

I hereby refuse treatment / transport to a hospital and I acknowledge that such treatment / transportation as advised by a Montgomery County Sheriff's Office member. I hereby release such persons from liability for respecting and following my express wishes.

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

---

Supervisor Review:     Approved     Investigation opened

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

# NYS Use of Force Reporting

## Use of Force



## Division of Criminal Justice Services

**This survey meets the administrative reporting requirements outlined in Executive Law §837-t. The MPTC model use of force policy should be used to guide an agency's compliance with the statutory use of force [policy](#) requirements delineated in Executive Law §840(4)(d)(3).**

**The Division of Criminal Justice Services (DCJS) is not authorized to provide legal advice; however, it may provide general information. DCJS is responsible for collecting, maintaining and reporting use of force information. DCJS does not make any officer or officer employer discretion determinations regarding this data; as such decisions are reserved for the officer or the officer's employer. Accordingly, you may wish to contact your county attorney, or other legal counsel, for any specific or legal questions that you may have.**

**Definitions for the types of force used by law enforcement that are required to be reported to the Division of Criminal Justice Services:**

**Display a chemical agent** - to point a chemical agent at a subject.

**Use/Deploy a chemical agent** - the operation of the chemical against a person in a manner capable of causing physical injury.

**Brandishes/Uses/Discharges a firearm** - the operation of a firearm against a person in a manner capable of causing physical injury.

**Brandishes/Uses/Deploys an impact weapon or electronic control weapon** - the operation of an impact weapon or electronic control weapon against a person in a manner capable of causing physical injury.

**Uses a chokehold or other similar restraint** - any application of sustained pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air.

**Conduct that resulted in death**

**Serious Bodily Injury** - bodily injury that creates or causes:

- a substantial risk of death; or
- unconsciousness; or
- serious and protracted disfigurement; or
- protracted loss or impairment of the function of any bodily member, organ or mental faculty.

**To ensure the appropriate staff at your agency receives future reporting alerts and program updates related to Use of Force reporting, please supply the contact information at the end of the report. Thank you for your participation.**

Please select or fill in the information below.

Agency Name: \*

-- Please Select --

1. Incident Number: \*

2. Incident Date: \*

3. City/Town/Village (location where incident occurred): \*



-- Please Select --

4. County (location where incident occurred): \*

-- Please Select --

5. Circumstance: \*

-- Please Select --

6. Subject Details\*:

	Subject's Age:	Sex:	Race:	Ethnicity:
1		-- Please Select --	-- Please Select --	-- Please Select --
2				
3		-- Please Select --	-- Please Select --	-- Please Select --
4				
5		-- Please Select --	-- Please Select --	-- Please Select --
6				
7		-- Please Select --	-- Please Select --	-- Please Select --
8				
9		-- Please Select --	-- Please Select --	-- Please Select --
10				

7. Officer Details\*:

There are seven (7) Use of Force categories. When choosing Use of Force type, please select all that apply. Move slider bar to the right to view all Types of Force options.

	Officer's Age:	Sex:	Race:	Ethnicity:	Select all that apply Type of Use Of Force:					
					Displayed a Chemical Agent	Used/Deployed a Chemical Agent	Brandished/Used/Discharged a Firearm	Brandished/Used/Deployed an Impact Weapon or Electronic Control Weapon	Used a Chokehold or Other Similar Restraint	Conduct that Resulted in Death
1		-- Please Select --	-- Please Select --	-- Please Select --						
2										
3		-- Please Select --	-- Please Select --	-- Please Select --						
4										
5		-- Please Select --	-- Please Select --	-- Please Select --						
6										

7		-- Please Select --	-- Please Select --	-- Please Select --	
8					
9		-- Please Select --	-- Please Select --	-- Please Select --	
10					

**Please provide contact information**

First Name: \*

Last Name: \*

Title:

Phone:

Email: \*

Confirm Email: \*

Please contact DCJS at [useofforce@dcjs.ny.gov](mailto:useofforce@dcjs.ny.gov) for more information and/or questions about the reporting process.

0%

