

# **TOWN OF FALLSBURG POLICE DEPARTMENT USE OF FORCE POLICY**

## **Purpose:**

The purpose of this General Order is to provide members of the Town of Fallsburg Police Department with guidelines for the use of deadly and non-deadly physical force.

## **Background:**

The Town of Fallsburg Police Department recognizes and respects the value and integrity of each human life. The Department also recognizes and accepts the profound responsibility that our lawful authority to use physical force and deadly physical force carries with it.

## **Definitions:**

*Physical Injury, Serious Physical Injury, and Deadly Physical Force* – These terms shall all have the same meaning in this General Order as they do in the New York State Penal Law.

*Physical Force* –A level of force less than deadly physical force.

*Deadly Physical Force*– Physical force which, under circumstances in which it is used, is readily capable of causing death or other serious physical injury.

*Reasonable Belief* - The facts or circumstances that the officer knows or should know, which would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

*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.

*De-Escalation*- a tactic designed to place officers in a position of advantage when dealing with irrational, unpredictable or suicidal persons.

*Unnecessary force* -- is the force used 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 reasonable, or when any degree of force is utilized as summary punishment or vengeance.

*Use of Force* – this term shall include the use of physical force (including soft hand tactics) and the use and/ or brandishing of lethal/less-lethal substances and devices to include the following:

- \* Brandishing or using a chemical agent, including but not limited to OC/ pepper spray or tear gas
- \* Brandishing or using an impact weapon, including but not limited to a baton or impact projectile
- \* Brandishing or using an electronic control weapon, including but not limited to an electronic stun gun, taser, flash bomb, or long range acoustic device
- \* Using a choke hold 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
- \* Brandishing, using or discharging a firearm at or in the direction of another person

**Policy:**

- A) All use of physical force and deadly physical force will comply with all Federal and State laws and this General Order.
- B) This General Order will govern the use of physical force and deadly physical force by whatever means including, but not limited to, firearms, other weapons, or empty hand tactics (see attached circular Use of Force Continuum).
  - 1) Any use of a weapon shall comply with this General Order as well as any other General Order governing the use of such weapon.
- C) This Order applies to all use of physical force and deadly physical force by all sworn members of the Town of Fallsburg Police Department while on duty. It also applies to all off-duty uses of physical force and deadly physical force in the following circumstances:
  - 1) When the officer is acting pursuant to his/her authority as a Town of Fallsburg Police Officer; or
  - 2) When the officer is using a weapon, which is being carried pursuant to his/her police office status; or
  - 3) When the officer is using any Department-issued weapon, Department-issued ammunition, or other equipment.
- D) In using physical force or deadly physical force officers shall avoid creating an **unreasonable** risk of injury to bystanders or persons other than the intended subject of the force.
- E) This General Order is for Departmental use only and does not apply in any criminal or civil proceeding. It shall not create and it shall not be construed as creating or implying a higher legal standard of duty, care, or safety in an evidentiary sense with respect to any claims. Nothing in this General Order is intended to create nor does create an enforceable legal right or private cause of action.

**Procedures:**

A) Personnel will use only the physical force or deadly physical force necessary to accomplish the lawful objectives set forth below.

- 1) 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:
    - i) The severity of the crime or circumstance
    - ii) The level and immediacy of threat or resistance posed by the suspect
    - iii) The potential for injury to citizens, officers, and suspects
    - iv) The risk or attempt of the suspect to escape
    - v) The knowledge, training, and experience of the officer
    - vi) Officer/ subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects
    - vii) Other environmental conditions or exigent circumstances
- 2) Self-Defense or Defense of Another Person:
  - (a) An officer may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force or deadly physical force.
- 3) To Effect an Arrest or Prevent an Escape:
  - (a) An officer, may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary to affect a lawful arrest, or to lawfully prevent a person's escape from custody.
- 4) Prevention of Suicide:
  - (a) An officer acting under a reasonable belief that another person is about to attempt suicide or to inflict physical injury upon himself may use physical force (excluding deadly physical force) upon such person only to the extent that he reasonably believes it necessary to prevent such result.
- 5) Protection of Property and Premises:
  - (a) An officer may use physical force (excluding deadly physical force) upon another person when and to the extent that he reasonably believes it to be necessary to protect property.
- 6) An officer may use physical force or deadly physical force when and to the extent he/she reasonably believes it to be necessary under circumstances not defined above but consistent with Federal and State law.

B) Use of Deadly Physical Force:

- 1) It is the responsibility of each officer to be thoroughly familiar with New York State and Federal laws pertaining to the use of deadly physical force.
- 2) This Department authorizes the use of deadly physical force only when such use is:
  - (a) Reasonable; and
  - (b) Necessary; and
  - (c) Authorized by Article 35 of the New York State Penal Law; and
  - (d) Not contrary to any New York State or Federal Laws; and
  - (e) Not used in a reckless manner.
- 3) Since all possible combinations of circumstances cannot be envisioned, notwithstanding any provisions of these rules and procedures, a police officer may use deadly force as an emergency measure to avoid the imminent unlawful use of deadly force which is about to occur by reason of a situation occasioned or developed through no fault of the officer; and, which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding such injury clearly out-weighs the desirability of avoiding the conduct sought to be prevented by these rules and procedures.

C) Use of Firearms:

- 1) Warning Shots:
  - (a) Warning shots are not permitted.
- 2) Moving Vehicles:
  - (a) Shots fired at moving vehicles shall be in accordance with the provisions of this General Order.
  - (b) Officers firing at a moving vehicle shall consider the danger created by an uncontrolled vehicle.
- 3) Drawing or Exhibiting Firearms:
  - (a) An officer will not draw or exhibit his/her firearm unless there is reason to believe that circumstances exist, which may justify the use of deadly physical force under this General Order (e.g., conducting building searches, felony vehicle stops, confronting a person who may be armed or dangerous, dealing with an injured or dangerous animal, etc.).
- 4) Intentional Discharge of Firearm:
  - (a) An officer will not intentionally discharge a firearm unless:
    - i) The officer reasonably believes that circumstances exist which justify the use of deadly physical force under this General Order; or
    - ii) The officer reasonably believes that circumstances exist justifying the use of a firearm against an injured or dangerous animal under this General Order; or

- iii) The discharge is part of Department-authorized training.
  - (b) All intentional discharges of a firearm will be reported and investigated as a deadly physical force incident.
    - i) This does not apply to training activities or those occasions when the firearms discharge was for the purpose of destroying an injured or dangerous animal.
- 5) Accidental Discharge of Firearm:
  - (a) Officers will exercise due care to handle and store firearms properly and safely and to prevent an accidental discharge.
  - (b) Any officer involved in an accidental discharge of a firearm, whether on-duty or off-duty, will report it to the on-duty Shift Supervisor immediately.
    - i) The Shift Supervisor shall then notify the Chief of Police to advise them of the incident.
- 6) Destruction of Animals:
  - (a) An officer may use his firearm to destroy an animal under the following circumstances:
    - i) The officer reasonably believes that the animal is so badly injured that it is appropriate to destroy the animal for humanitarian reasons; or
    - ii) The officer reasonably believes that the animal is presenting a danger or threat of injury to the officer, another person or a domesticated animal.
  - (b) In using firearms to destroy animals, officers will adhere to the following procedures:
    - i) In the event an officer believes it is or may be appropriate to destroy an animal the officer will first contact an on-duty supervisor and notify him or her unless not feasible.
    - ii) Officers shall exercise due care to ensure that no person is endangered or injured by the discharge of the firearm.
    - iii) In the case of an injured animal permission from the owner should be obtained if possible. If the owner is present and declines permission the officer will require the owner to remove the animal.

D) Neck Restraints:

- 1) Carotid Control Holds, Choke Holds or other neck restraints, designed to restrict oxygen and/or blood flow, are prohibited unless this General Order authorizes deadly physical force.

E) Prohibited Uses of Force:

- 1) Force shall not be used by an officer for the following reasons:
  - (a) To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstance are present.

- (b) To coerce a confession from a subject in custody
- (c) 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
- (d) 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.

F) De-escalation:

- 1) Members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances. This includes continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety. Examples of de-escalation techniques include but are not limited to:
  - (a) Exercising persuasion and advice, and providing a warning prior to the use of force.
  - (b) Determining whether the member may be able to stabilize the situation through the use of time, distance, or positioning to isolate and contain a subject.
  - (c) Requesting additional personnel to respond or make use of specialized units or equipment including crisis-intervention-team trained officers, negotiators, mobile mental health, etc.

G) General Considerations:

- 1) Verbal Warnings:
  - (a) If feasible, officers will identify themselves and issue a verbal warning before using deadly physical force.
  - (b) Verbal warnings need not be issued when the officer reasonably believes that doing so would increase the danger to the officer or another person.
- 2) Equipment and Techniques:
  - (a) In using physical force or deadly physical force an officer will generally use Department-issued equipment and Department-approved techniques. However, in cases in which the officer reasonably believes it is necessary to protect himself or another person, the officer may utilize any readily available weapon, instrument, or technique provided the level and nature of such force is legally justifiable.

H) Duty to Intervene:

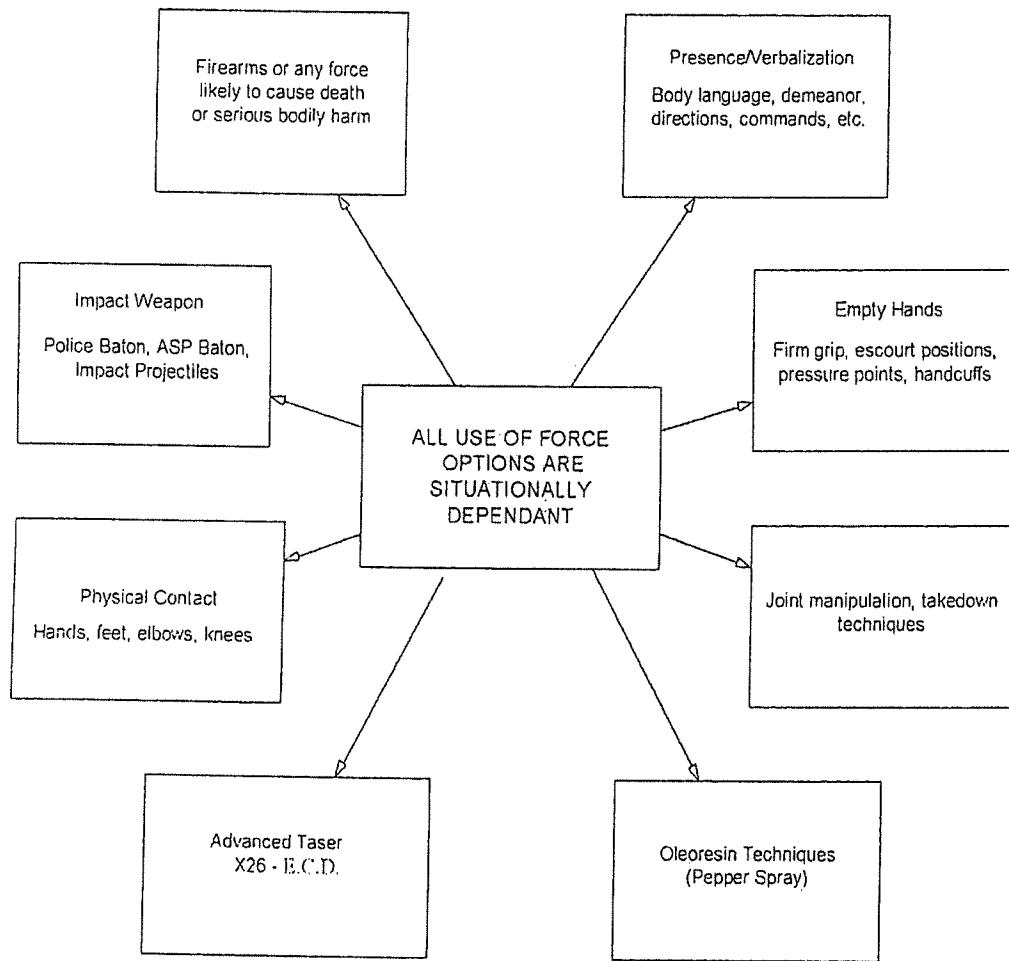
- 1) Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unnecessary force, if and when the officer has a realistic opportunity to prevent harm.

- 2) An officer who observes another officer use force that exceeds the degree of force as described in subdivision 1 of this section shall promptly report these observations to a supervisor.

I) Training:

- 1) All officers shall receive annual training regarding the use of physical force and the use of deadly physical force.

## Use of Force Continuum



AN OFFICER MAY USE ANY TECHNIQUE OR TECHNIQUES, IN ANY ORDER,  
PROVIDED THE FORCE USED IS IN COMPLIANCE