

 Official Policy Manual	Date issued 08/25/23	Supersedes 04/01/07	Page 1 of 9	Section # A-3023
	Section: Administration			
	Directive: Use of Force			
	Policy Owner: Director, Administrative Support Services Group			

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. The OMH Use of Force Policy is founded on these standards, but it is not intended to be an exhaustive recitation of state and/or federal legal framework governing the use of force. This policy was drafted in accordance with Executive Law §840 (4)(d)(3).

New York State Office of Mental Health (OMH) Safety Departments recognizes and respects the value and dignity of all human life without prejudice toward anyone. Vesting officers with authority to use reasonable force and to protect the public welfare requires a careful balancing between legitimate law enforcement objectives, personal liberties, and creating an atmosphere of comfort and healing for individuals receiving OMH services. This policy is limited in scope to on duty actions.

OMH Safety Officers are designated as peace officers of New York State who are authorized to use reasonable and legitimate force in specific circumstances. The federal and state standards by which use of force is measured are both founded on the basic premise of objective reasonableness.¹ It is the policy of this agency, that the amount of force that is used by its safety 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 (where authorized), or to defend themselves or others. This policy employs the standard of objective reasonableness as established by the United States Supreme Court in *Graham v. Connor*. This policy is intended to provide safety officers with guidelines for the use of force, including deadly physical force.

This policy outlines expectations related to non-clinical interventions. In the first instance, Safety Officers should always utilize OMH approved de-escalation techniques when responding to clinical interventions such as behavioral codes and incidents requiring restraint or seclusion of a patient.² In situations where physical force cannot be reasonably avoided, this policy sets forth the requirements and expectations of the use of that physical force.

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

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

² Therapeutic Relationships and Universal Safety Training (TRUST), PMCS, YES.

As the Supreme Court has recognized, this objective 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.”³

In any situation where the use of force would be justified, Safety Officers should, where practicable, attempt to de-escalate the situation through appropriate communication, maintaining distance, and other means designed to minimize the need to use force.

Relevant Statutes and Standards

NY Civ Rts Law §28;
NY Exec §840;
NY Ment Hyg §§ 7.25, 9.41; 9.60
NY Penal §§10, 121 and Article 35; and
NYS Crim Pro §2.10

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 based on the totality of the facts and circumstances that are known to that officer at the time that the force was used.⁴
- B. **Physical Injury** – Impairment of physical condition or substantial pain.⁵
- C. **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.⁶
- D. **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.⁷
- E. **Brandishes/Uses/Deploys an Impact Weapon** – The operation of an impact weapon against a person in a manner capable of causing physical injury.
- F. **De-escalation** – Taking action or communicating verbally or non-verbally during a 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 use of force techniques such as command presence, advisements, warnings, verbal persuasion, and

³ *Graham v. Connor*, 490 U.S. 386 at 396 (1989).

⁴ NY Penal Law §10 (11)

⁵ NY Penal Law §10 (9)

⁶ NY Penal Law §10 (10)

⁷ NY Penal Law §10 (11)

tactical repositioning. When interacting with patients, officers apply de-escalation techniques before applying force, except where the officer reasonably believes that de-escalation techniques would result in harm to the officer, patient, or a third party and would frustrate the officer's lawful objective.

- G. **Suspect** – A person about whom there is reasonable suspicion to believe that they are committing, have committed, or are about to commit a crime. The term “suspect” may apply to individuals receiving OMH services and members of the public.
- H. **Lawful Objective** – for this policy, “lawful objectives” include but are not limited to the following:
 - i. Detentions
 - ii. Frisks;
 - iii. Arrests;
 - iv. Self defense;
 - v. Defense of others;
 - vi. Preventing an escape from custody;
 - vii. Taking an individual who is conducting themselves in a manner that is likely to result in serious harm to themselves or others into custody.⁸
 - viii. Taking an individual into custody under the direction of an appropriate party due to the individual's failure to comply with assisted outpatient treatment.⁹
 - ix. Executing a lawfully issued court order which, on its face, allows the use of force in producing an individual in court.

Procedure

I. Use of Force – General Public and OMH Employees

- 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 oneself or another.¹⁰ However, even in situations where the use of force is authorized, force should not be employed unless de-escalation techniques and alternate interventions (i.e., local Mobile Crisis Team), where appropriate, have failed.
- B. Under the 4th Amendment, an 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.¹¹
- C. Given that no policy can realistically predict every possible situation an officer might encounter, safety officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
- D. Emergency situations may arise where an officer reasonably believes their actions are required to prevent death or serious injury to themselves or others and may improvise

⁸ NY Mental Hygiene Law § 9.41

⁹ NY Mental Hygiene Law § 9.60

¹⁰ NY Penal Law and §35.30 (1)

¹¹ *Graham*, 490 U.S. at 396 (1989)

their response to include the use of any nontraditional device or method. The use of such device or method must be reasonable and utilized only to the degree reasonably necessary to accomplish a lawful objective.

- E. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires a Safety Officer to retreat or be exposed to possible physical injury before applying reasonable force.
- F. In addition to the above, an Officer acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon themselves or a third party may, use force upon such person only to the extent that they reasonably believe it necessary to prevent such result.

II. Use of Force – Individuals Receiving OMH State Operated and Licensed Services

- A. When working with individuals receiving OMH services, Safety Officers must apply de-escalation techniques and other alternatives to force (i.e., use of local Mobile Crisis Team), consistent with OMH-approved techniques and practices. However, in a situation where a reasonably objective officer would find that the use of de-escalation techniques was ineffective and would prevent the officer from their lawful objective, the officer may use reasonable force without first applying de-escalation techniques. For example, if an Officer is called for a code response and a patient is involved in violent assault with a weapon, it may be appropriate for the Officer to apply reasonable force without first applying de-escalation techniques.
- B. Please see part III below for additional information regarding determining the objective reasonableness of force. Safety Officers should allow an individual time and opportunity to submit to verbal de-escalation before force is used 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, the escape of a suspect, or commission of a crime.

III. Determining the objective reasonableness of force

- A. When used, force should be only that which is objectively reasonable given the circumstances as perceived by a Safety Officer at the time of the event to accomplish a lawful objective.
- 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;¹²
 - 2. The level and immediacy of the threat or resistance posed by the suspect;¹³
 - 3. The potential for injury to citizens, officers, and suspects;¹⁴

¹²*Ibid.*

¹³*Ibid*

¹⁴*Scott v. Harris*, 550 U.S. 372 (2007)

4. The risk or attempt of the suspect to escape/elope;¹⁵
5. The knowledge, training, and experience of the officer;¹⁶
6. Officer/suspect considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;¹⁷
7. Other environmental conditions or exigent circumstances¹⁸

IV. Pain compliance techniques – General Public and OMH Employees

- A. Pain compliance techniques may be effective in controlling a physically resisting individual. Safety Officers may only apply those pain techniques for which they have successfully completed academy-approved training. These techniques should not be used on an individual unless the Safety Officer has reasonable cause to believe that the individual has committed a crime or to achieve a lawful objective. Safety Officers utilizing any pain compliance techniques must consider:
 1. The degree to which the application of the technique may be controlled given the level of resistance.
 2. Whether the individual can comply with the direction or orders of the safety officer.
 3. Whether the individual has been given sufficient opportunity to comply.
- B. The application of any pain compliance technique must be discontinued once the safety officer has determined that compliance has been achieved.

V. Pain compliance techniques – Individuals receiving OMH services

- A. Pain compliance techniques shall not be utilized by Safety Officers responding to behavioral codes or psychiatric crisis situations. Safety Officers should utilize only OMH approved techniques in these circumstances.

VI. Duty to intervene

¹⁵*Graham*, 490 U.S. at 396 (1989)

¹⁶Analysis of cases under the 4th 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)

¹⁷ *Sharrar v. Felsing*, 128 F. 3d 810 (3rd Cir. 1997) (number of officers or subjects)

¹⁸ Courts have repeatedly declined to provide an exhaustive listing of factors. *Chew v. Gates*, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

- A. Any Safety Officer present and observing another Officer using force that they reasonably believe to be clearly beyond that which is objectively reasonable under the circumstances must intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B. A Safety Officer who observes another Officer use force that exceeds the degree of force as described above must report these observations to the Chief of Safety. The Chief of Safety shall then notify the Director of Facility Administrative Services, and the Director of Environmental Health and Safety who shall inform the Director or Assistant Director of Internal Affairs. If the Chief of Safety is unavailable, the Safety Officer must report to the Safety Department supervisor on duty who shall then notify the Director of Facility Administrative Services and the Director of Environmental Health and Safety.

In addition, incidents involving excessive force by Safety Officers must be reported to the NYS Justice Center in appropriate cases, such as incidents involving individuals receiving OMH inpatient services.

VII. Use of deadly physical force

- A. Safety Officers are only authorized to use deadly physical force in situations where they must defend themselves or others against what the officer reasonably believes to be use or imminent use of unlawful deadly physical force.¹⁹
- B. Chokeholds and Obstruction of Breathing or Blood Circulation
 - 1. Any application of pressure to the throat, windpipe, or neck, kneeling on a person's chest or back (i.e., above the waistline), or blocking the mouth or nose in a manner that may hinder breathing, reduce air intake, or obstruct blood circulation is prohibited unless deadly physical force is authorized.²⁰

VIII. Prohibited uses of force

- A. Force shall not be used by a Safety Officer for the following reasons:
 - 1. To coerce a confession from a subject in custody; or
 - 2. Against persons unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

IX. Addressing the medical and psychiatric needs of a person in custody

- A. A Safety Officer 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.²¹
 - 1. This includes appropriate and timely medical attention being provided to a party injured because of a use of force incident.

¹⁹ NY Penal Law and §35.30 (1)(c)

²⁰ NY Penal Law §121.13-a establishes the crime of Aggravated Strangulation.

²¹ NY Civil Rights Law §28

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 serious harm to themselves or others.²²
3. Safety Officers who reasonably suspect an individual is experiencing a medical emergency must immediately follow their respective facility's written facility plan to secure emergency medical services. The statewide facility policy for the provision of Emergency Services can be found on the OMH website and is labeled PC-605.

X. Reporting use of force

- A. Safety Officers involved in use of force incidents as described below must notify their supervisor as soon as practicable and shall complete a departmental use of force report. Use of force incidents include situations where:
 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 an impact weapon was brandished/used/deployed.
 5. The individual indicates intent to pursue litigation.
 6. An individual was struck or kicked.
- B. Safety Officers should document any requests for medical or mental health treatment as well as the efforts of the Safety Department and/or police to arrange for such treatment.

XI. Procedures for investigating use of force incidents

- A. Use of force incidents involving individuals receiving OMH services
 1. A supervisor and/or local law enforcement must respond to the scene, as soon as possible to begin a preliminary investigation.
 - i. A supervisor who is made aware of a use of force incident shall ensure the completion of a Use of Force Form by all Officers engaging in the reportable use of force and, to the extent practicable, make a record of all Officers present at the incident as soon as possible after the incident.
 - ii. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
 2. If it's determined that a use of force incident must be reported to the NYS Justice Center, the report must be completed within 24 hours of discovery of the incident.

²² NY Mental Hygiene Law §9.41

3. If the Justice Center assumes investigatory responsibility of the incident, the facility must cease any interviews and interrogations of staff.
 4. If the Justice Center and the OMH Office of Quality Improvement assign the investigation to the facility, the Chief of Safety and the Director of Risk Management must coordinate investigatory efforts.
- B. Use of force incidents involving OMH employees and the general public
1. A supervisor and/or local law enforcement must respond to the scene, as soon as possible to begin a preliminary force investigation.
 - i. A supervisor who is made aware of a use of force incident shall ensure the completion of a Use of Force Form by all Officers engaging in the reportable use of force and, to the extent practicable, make a record of all Officers present at the incident as soon as possible after the incident.
 - ii. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.
- C. The Chief of Safety through the chain of command will receive the supervisor's report and conduct an investigation. Certain use of force incidents may be investigated by OMH Internal Affairs at the discretion of the Director of Internal Affairs. Outside law enforcement agencies including the New York State Inspector General may also investigate use of force incidents at their discretion.
- D. All use of force reports must be completed within 24 hours and submitted to the Chief of Safety.
- E. Upon receiving all Use of Force Forms, but in no event more than 48 hours after the use of force incident, the Chief of Safety will submit all Use of Force Forms to the facility's Risk Management Department and the Director of Environmental Health and Safety, who shall provide copies of the forms to the Director and Assistant Director of Internal Affairs.
- F. Consistent with NYS OMH disciplinary protocols, and any applicable collective bargaining agreements, agency policy should establish standards for addressing the failure to adhere to the use of force guidelines.²³

XII. TRAINING

- A. All Officers must receive academy training and demonstrate their understanding of and competence in the proper application of force.
- B. Training topics will include the 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.²⁴
- C. Awareness of the policy is required of every officer; however, it does not substitute for proper academy training in the use of force. Safety Officers are not permitted to utilize force until such academy training has been completed. Comprehensive training is the

²³ NY Exec §840(4)(d)(2)(vi)

²⁴ NY Exec §840(4)(d)(2)(vii)

key to real-world application of the concepts discussed within this policy. Safety officers must be placed on posts that involve no physical contact until their academy training is complete.

- D. All Safety Officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
- E. All use of force training shall be documented.

Forms

"Use of Force Report"

Index Terms

Use of Force

Law enforcement

De-escalation

Suspect

REFERENCES

NYS Criminal Procedure Law 2.10 (12)

NYS Mental Hygiene Law 7.25

Footnotes