

**WEBSTER POLICE DEPARTMENT
GENERAL ORDER**

| | |
|--|--|
| General Order: 335 | Rescinds: G.O. 335 of 01/23/19 |
| Subject: Use of Physical Force | NYS Accreditation: 20.1, 20.6, |
| Effective Date: 09/13/19 | |

I. PURPOSE

- A. To establish procedure for the use and investigation of physical force by members of the Webster Police Department.
- B. To provide guidelines for the maintenance, deployment, training, and handling of conducted electrical devices (Taser), and to establish a reporting procedure for its use.

II. POLICY

- A. Members of the WPD will use only that level of force and weaponry that is reasonable to overcome resistance, and/or aggression, or gain compliance. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, forced to make split-second judgements in circumstances that are often tense, uncertain and rapidly evolving. Members will follow all lawful objectives in accordance with Article 35 of the New York State Penal Law. The use of deadly physical force shall be governed by G.O. 340. It is the responsibility of each member to be aware of the requirements of Article 35 and to guide his or her actions based upon that Law and department policy and training.
- B. Members of the WPD are authorized to carry / use only those less lethal devices provided by the WPD:
 - 1. Aerosal weapons (ASR's) such as Oleoresin Capsicum (OC).
 - 2. Taser - Electronic Control Device (ECD).
 - 3. Expandable Baton.
- C. Any incident wherein an officer takes an action that results in or is alleged to have resulted in physical injury

shall be fully documented, reviewed, and disposed of pursuant to this and other directives.

D. The use of the Taser will be limited to the degree of force which is reasonably necessary to provide protection for the officer, the subject, and a third party and or to effect a legal arrest.

E. All applications of the Taser are listed at "level III" in the Force Continuum.

F. Members of the WPD will be trained in the proper use of less lethal substances, and other devices in which they did not receive training in the basic course for police officers, prior to being authorized to carry and use. All members using these less lethal substances and other devices must successfully complete an initial training course prior to issuance and annual training thereafter.

G. The carrying or use of these less-than-lethal devices off-duty is strictly prohibited.

III. DEFINITIONS

A. Objectively Reasonable - The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. (See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states in part, "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. The calculus of reasonableness must embody 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. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Fairport Police Department examines all uses of force from an objective standard, rather than a subjective standard.

B. Factors Used to Determine Reasonableness - The WPD examines reasonableness using *Graham* and from the articulated facts from the perspective of a Webster Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate

level of force, WPD members shall evaluate each situation in light of the facts and circumstances of each particular case. Those factors may include, but are not limited to:

1. The seriousness of the crime or suspected offense;
2. The level of threat or resistance presented by the subject;
3. Whether the subject was posing an imminent threat to officers or a danger to the community;
4. The potential for injury to citizens, officers or subjects;
5. The risk or apparent attempt by the subject to escape;
6. The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
7. The time available to an officer to make a decision;
8. The availability of other resources;
9. The proximity or access of weapons to the subject;
10. The knowledge, training and experience of the officer;
11. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and
12. The environmental factors and/or other exigent circumstances.

D. Deadly physical force - means physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

E. Physical Injury - Impairment of physical condition or substantial pain.

F. Serious physical injury - means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or loss or impairment of the function of any bodily organ.

G. Conducted Energy Weapons (Taser)-use propelled wires or direct contact to conduct energy to effect the sensory and motor functions of the nervous system. The Taser is designed to safely incapacitate potentially dangerous persons by:

1. Acting as a drive stun system when brought into immediate contact with the person's body.
2. Using compressed nitrogen to project two probes. An electrical signal is then sent to the probes, via small wires, which disrupt the body's ability to communicate messages from the brain to the muscles, causing motor skill dysfunction.

H. Taser (Equipment) Coordinator - Person(s) designated by the Webster Police Department to maintain an inventory of all Taser's and related equipment. The Taser coordinator will be a certified Taser instructor.

IV. TRAINING and CERTIFICATION

- A. Only departmentally approved Taser devices will be used.
- B. Only those personnel who have successfully completed an approved Taser training course will be authorized to carry and use the Taser.
- C. Taser certified personnel will be recertified annually.

V. GENERAL GUIDELINES AND PROCEDURES FOR GENERAL USE OF FORCE

- A. Any officer using physical force pursuant to his duties as a police officer (whether on or off duty) shall report or cause to be reported all facts relative to the incident on a Use of Physical Force Report.
- B. Only issued or approved equipment will be carried while on-duty and used when applying physical force, except in emergency situations when a member must use any resources at his disposal.

C. Members shall use less-than-lethal substances and devices, such as self-defense spray, expandable baton or Taser, pursuant to the use of force continuum (attachment A), training, and departmental policy.

H. Use of restraining devices is mandatory on all prisoners, unless in the member's judgment, unusual circumstances exist which make the use of restraining devices impossible or unnecessary (e.g.: prisoner is very elderly or handicapped, etc.). The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force. However, when 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.

I. The brandishing of a firearm, electronic control weapon, or chemical agent at or in the direction of another person shall be construed as a use of force and will require the completion of a Subject Management Report (Executive Law 837-t).

J. After physical force is used;

1. Members shall immediately evaluate the need for medical attention, or for treatment at a medical facility, for that person upon whom the physical force was used.

a. Medical attention is defined as the summons of an ambulance and/or a certified Emergency Medical Technician (EMT).

b. Medical treatment is defined as treatment received at a medical facility, e.g. hospital.

2. Members shall arrange for treatment at a medical facility when that person complains of injury, discomfort, or requests medical treatment.

*NOTE: When a person refuses medical attention or treatment, such refusal shall be noted on the Use of Physical Force report. A photocopy of the release form signed by the person shall also be attached to the Use of Physical Force report.

K. Members shall immediately notify their supervisory officer of the incident. Off-duty incidents should be reported to the on-duty shift supervisor as soon as

possible. The shift supervisor will then expeditiously notify the Patrol Division Commander. A subsequent Use of Force report shall be completed by the officer and submitted through chain of command.

L. Members shall attempt to locate and identify any witnesses and document their statements.

M. Members shall prepare and submit the reports required by current directives. If more than one (1) member is involved in a use of force, one (1) member shall complete Use of Physical Force Report outlining only the member's involvement in the incident. All other members shall complete an Investigative Action Report outlining their involvement/use of force. All copies of the report(s) will then be forwarded together, along with other applicable reports, to the shift supervisor for approval.

N. In the case of the use of force against an animal, a Use of Force report will not be required, however an Incident Report will be filed.

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.

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. PROCEDURES FOR TASER USE OF FORCE

A. Deployment

1. Taser devices will be secured to the officer's person in a department issued and approved carrying device.
2. At the beginning of each shift, the Taser officer shall conduct a spark test in a safe manner.
3. When carrying the Taser, officers shall have wire

cutters, sample barbs, tape and extra cartridges available.

4. If possible, and prior to the use of the Taser, an announcement should be made to the dispatcher. This is to alert other officers that the Taser is going to be used and so that it is not mistaken for gunshots.
5. When possible, EMS should be requested before taser deployment.
6. Backup Officers should accompany the Taser officer when practical. Backup officers should be designated as contact and cover and should be prepared to deploy higher use of force options when justified.
7. The Taser is not a replacement for the firearm and should not be used without a firearm backup in those incidents where there is a potential for a Deadly Physical Force Threat towards the officers and third parties on scene.
8. Officers should use verbal persuasion and loud verbal commands for suspects to obey police orders and cease unlawful behavior prior to the use of the Taser if the circumstances allow it without risk to the safety of officers or others.
9. Officers should announce "TASER, TASER, TASER!" in a loud voice when practical prior to discharge of the Taser.
10. The Taser is not to be used on a subject who is known to be obviously pregnant.
11. The Taser operates on the emission of an electrical charge and should not be used in an area where flammables are present.
12. The Taser will never be used punitively or for the purpose of coercion

B. Post Deployment

1. All persons subjected to the application of the Taser will be examined by qualified medical personnel at a hospital and be medically cleared for release.
2. If there is no immediate or obvious medical conditions, the subject may be transported to the hospital; via a police vehicle. Otherwise an ambulance should be summoned.
3. Only qualified medical personal at a hospital will remove barbs that have penetrated the skin. Imbedded Taser probes will not be removed from the subject's body by police personnel.
4. Officers will clip the lead wires nearest the barbs.
5. The lead wires, barbs, AFID tracking tags, and expended Taser cartridges will be collected and turned into the Property Clerk as evidence.
6. Probes that are collected as evidence must be labeled biohazard. Taser officers should invert the probes into the cartridge bores and tape them in place so as to render them safe.
7. Jail personal will be informed that a subject was exposed to the use of a Taser.
8. A Use of Force report and Taser Use Report will be completed after each Taser deployment.

C. Administrative Downloading of Taser Data

1. If equipped, the downloading of the Taser port will only be necessary where there is complaint generated by the use of the Taser.
2. When a complaint is generated, the Operations Bureau Commander will request the Taser (Equipment) Coordinator to secure the specified Taser and to complete a printout of it's use.

VIII. Supervisory Responsibilities

Supervisors shall:

- A. Respond to the scene of the incident immediately.

B. Ensure that members receive any necessary assistance, including medical treatment. They shall also ensure that any injuries to members are properly documented.

C. Ensure that medical treatment for the defendant is evaluated per Section III-E.

D. Determine if a technician should respond to the scene and the level of technician services to be utilized (including photos, measurements and diagrams). Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.

* NOTE: A photograph showing no injury may be as important as one that shows injury.

E. Ensure that a thorough investigation is conducted and all reports are prepared and submitted. In the event that a member is unable to complete reports due to injuries, the supervising officer will prepare or cause them to be prepared and submit them through the member's chain of command with his own report or comments. A complete package, including Use of Force Report and copies of all related reports will be forwarded through the chain of command.

IX. ADMINISTRATIVE ASSIGNMENT

A. Members involved in a use of force situation resulting in serious physical injury or death of another person shall be placed on administrative assignment until it is deemed appropriate to return them to their assignment.

B. The nature of the administrative assignment shall be determined by the Chief.

C. The member shall be available at all times for official interviews and statement regarding the case and shall be subject to recall to duty at any time.

D. Members shall not discuss the case with anyone except members of the District Attorney's Office, their personal attorney, union representative, and authorized department personnel as designated by the Chief.

E. Upon completion of the investigation the Chief will determine what course of action shall be taken.

F. The failure to adhere to the use of force guidelines may result in disciplinary action outlined in G.O. 301.

X. Completion of Use of Physical Force Report

FRONT PAGE Top Right - enter CR#, date, time, location, enter and check if incident was on duty or off duty.

BLOCK #1-3 Enter information of person upon whom physical force was used.

BLOCK # 4 WITNESS TO INCIDENT IF NOT LISTED ON CRIME

REPORT: Enter names, addresses and telephone numbers of persons who witnessed the use of force, but who are not listed on the Crime Report (person who did not necessarily see the original crime, but witnessed the arrest and use of physical force).

BLOCK # 5 NATURE OF INJURIES BEFORE FORCE USED: Described any injuries, cuts, scratches, or bruises that the defendant had before force was applied. If none, so indicate.

BLOCK # 6 NATURE OF INJURIES AFTER FORCED USED: Describe all injuries received by defendant during application of force (include complaints of injury or discomfort).

BLOCK # 7 DEFENDANT TRANSPORTED TO HOSPITAL VIA: Check the appropriate box. If defendant transported by ambulance, enter the ambulance company; if police vehicle, give car number, or if other (private vehicle, taxi, etc), describe in narrative.

BLOCK # 8 NAME OF HOSPITAL: Enter name of the hospital defendant was taken.

BLOCK # 9 DOCTOR'S NAME: Enter Doctor's name that treated defendant.

BLOCK #10 DEFENDANT AT HOSPITAL WAS: Check the appropriate box. If "refused treatment" box is checked, Block #11 must be completed.

BLOCK #11 NAME OF WITNESS TO TREATMENT REFUSAL: Enter the hospital member's full name and title in the appropriate space along with a telephone number at work where this person can be reached.

BLOCK #12 CONDITION OF DEFENDANT: Check the appropriate box which most accurately describes the condition of the defendant at the time of force being applied.

BLOCK #13 CHARGES PLACED AGAINST DEFENDANT: List all charges placed against defendant including mental hygiene and juvenile charges.

BLOCK #14 TECH WORK PERFORMED: Check the appropriate boxes and list the member's name.

BLOCK #15 NARRATIVE: Describe fully, using an Addendum Report, if necessary, the reasons:

A) Why force was necessary. Justification of force used can also include situations involving:

1. Psychological intimidation (staring at officer, fixation on officer's weapon)
2. Verbal threats or statements displaying a lack of cooperation ("I'm not going anywhere")
3. Passive Resistance (Sitting down and refusing to move)
4. Defensive Resistance (Pulling away, tightening of arm during escort)
5. Active aggression (Pushing, kicking, punching)
6. Aggravated Aggression (displays/threatens weapon)

B) Who used force;

C) What force was used;

D) How force was applied;

E) Type of equipment was used (OC spray, handcuffs, PR-24 baton, etc.)

F) Indicate effectiveness of force used.

BLOCK #16 NAMES OF OTHER POLICE MEMBERS AT SCENE: List the names and sections of all other members who were present at the scene, participated, or witnessed the application of physical force. Indicate whether or not any members were injured. An Officer Injured Report will be made out for each member injured on duty.

BLOCK #17 REPORTING MEMBER: Enter the name of member completing this report and his platoon.

BLOCK #18 SUPERVISING OFFICER REVIEWING REPORT:

Enter the name and rank of the supervising officer reviewing the report.

BLOCK #19 Operations Commander: Enter the name and rank of the Operations Commander reviewing the Use of Force Report.

BLOCK #20 COPIES ATTACHED: Indicate any additional reports attached.

BACK PAGE to be completed only if custody log is not filed and transport involves locations other than the scene and the Police Department.

1. NAME OF DEFENDANT: self explanatory.

2. CR#: of incident.

3. TIME: detail each block of time, location and activity involved in, and officers present.

XII. PROHIBITED USES OF FORCE

A. Force shall not be used by an officer for the following reasons:

1. To conduct a cavity search 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;
4. Against persons who are handcuffed or restrained unless if is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.
5. Choke holds are not authorized or permitted unless necessary prevent one from imminent lethal force.

XIII. TRAINING

A. All officers shall 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, including, but not limited to, interaction with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

XIV. This use of physical force policy will be posted to the Town of Webster website, under the Department of Police.

* * *

Attachments

