

# TOWN OF NISKAYUNA DEPARTMENT OF POLICE GENERAL ORDER

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**PURPOSE:** *The purpose of this General Order is to establish the Niskayuna Police Department’s policy regarding the use of force by sworn members of the Department. This policy is not intended to endorse or prohibit any particular method, tactic or technique for the use of force. This policy is stated in recognition of the dignity and value of all human life without prejudice to anyone. Vesting police officers with the authority to use reasonable force and to protect the public welfare requires a careful and continuous balance of all interests.*

**I. POLICY**

*It shall be the policy of the Niskayuna Police Department that all police officers must respect the inherent life, liberty, dignity, and worth of all individuals by preserving human life, and minimizing physical harm and the reliance on use of force, and by conducting their duties without prejudice.*

*Police officers may use only the level of physical force necessary in the performance of their duties and in accordance with Article 35 of the New York State Penal Law. It is the responsibility of each police officer to be aware of Article 35 of the Penal Law, and to guide his/her actions based upon that law, as well as department policy and training. It is the policy of the Niskayuna Police Department that police officers will use no more force than is reasonably called for, given the facts and circumstances perceived by the police officer at the time of the event, to effectively bring an incident or person under control. The totality of the circumstances perceived by the police officer at the time when force is used may include, but shall not be limited to such factors as; resistance to the police officer, potential danger to persons, the need to act in a timely manner, or what and how much force was used. De-escalation techniques should be utilized whenever appropriate, but nothing in this policy shall be construed to mean that a police officer must begin at the lowest level of force when such an option is obviously inappropriate.*

**II. DEFINITIONS**

**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.*

**Force:** *The application of physical techniques or tactics, chemical agents, or weapons to compel a subject’s compliance. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.*

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



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**Serious Physical Injury:** Means a physical injury which creates a substantial risk of death, or which causes death and protracted disfigurement; protracted impairment of health; or protracted loss or impairment of the function of any bodily organ.

**Physical Injury:** Impairment of physical condition or substantial pain.

**Reasonably Necessary:** An action or response to which is reasonable given the circumstances present at the time and which is necessary to accomplish a lawful objective.

**Less Lethal (also known as Non-Deadly Force):** Force which is not intended to cause death or serious physical injury. The use of a baton, O.C. (Oleoresin Capsicum) spray, Taser, or "hands on" force is normally non-deadly force, but they may constitute deadly force, depending on the manner of use and other circumstances.

**Excessive Force:** Any force which is not reasonably necessary.

**Chokeholds or Similar Restraints:** A chokehold shall include, but is not limited to, any intentional direct pressure to the throat or windpipe which may prevent, obstruct or hinder breathing or blood flow.

A chokehold or a similar restraint shall be considered deadly physical force as defined by Article 10 of the New York State Penal Law. In any situation where a police officer is otherwise acting lawfully, the use of deadly physical force is justified in the defense of a police officer's life or a citizen's life whenever the police officer reasonably believes that deadly force is necessary to prevent or terminate deadly force directed towards that police officer or another person. A chokehold or similar restraint is prohibited for use solely for the purpose of gaining compliance.

Every police officer, who under color of authority and without lawful necessity, intentionally or recklessly provides pressure to the throat or windpipe, which may prevent, obstruct or hinder breathing or blood flow of any person, may be guilty of a felony as provided by law.

**III. USE OF FORCE**

- A. In general, force is authorized to be used when reasonably believed to be necessary to affect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one's self or another.
- B. Under the 4th 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 at the scene.

**IV. SCALE OF OPTIONS**

- A. Verbal Commands. (persuasion, direction)
  - 1. Control may be achieved through de-escalation strategies or other calming measures, advice, persuasion, commands or warnings prior to resorting to a higher level of force when appropriate. This control may be used with cooperative or semi-cooperative subjects.
- B. Physical directing techniques may include touching, grabbing, leading or escorting a subject. This option is generally used on a subject who is exhibiting passive resistance, (i.e. stiffening arms, unsupported body weight) but has not exhibited physical resistance. (i.e. fighting or fleeing, pulling away)

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- C. *Physical Force/O.C. (Oleoresin Capsicum) Spray/TASER device*
  - 1. *Non-deadly physical force using department approved and trained force techniques, and issued equipment may be used under circumstances where subjects refuse to be taken into custody and offer physical resistance, or exhibit overt signs of aggressive behavior. (i.e. assuming an offensive or defensive posture)*
  - 2. *If the department issued O.C. spray device or TASER device is going to be used by a police officer, a verbal warning in accordance with departmental training, should be given if practicable.*
- D. *Impact Weapons*
  - 1. *In cases of continued, active physical resistance, the officer may employ strikes, blows, or other techniques using the department issued collapsible Asp baton or riot baton, in accordance with applicable departmental training. The riot baton will only be authorized by the Chief of Police or the Chief's designee during crowd control details.*
- E. *Deadly Force*
  - 1. *A police officer may use deadly force against another person when the police officer believes it to be necessary to defend himself/herself, another police officer or another person from the use or imminent use of deadly physical force against a police officer or another person.*
  - 2. *A police officer is authorized to use any means at their disposal to defend themselves, another police officer or a citizen from the use or imminent use of deadly physical force.*

**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 police 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;*
  - 2. *The level and immediacy of threat or resistance posed by the suspect;*
  - 3. *The potential for injury to citizens, officers, and suspects;*
  - 4. *The risk or attempt of the suspect to escape;*
  - 5. *The knowledge, training, and experience of the officer;*
  - 6. *Police officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of police officers or subjects;*
  - 7. *Other environmental conditions or exigent circumstances.*
  - 8. *The time available to a police officer to evaluate the situation and to decide on an immediate course of action.*
  - 9. *The availability of other feasible and less intrusive force options.*

**VI. PROHIBITED USE OF FORCE:**



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- A. The use of excessive force, unwarranted physical force, or unlawful force by a Department member is prohibited.*
- B. Force used as punishment or retaliation (e.g., force used to punish or retaliate for fleeing, resisting arrest, or insulting a Department member) is prohibited.*
- C. Force used in response to a person's lawful exercise of First Amendment rights (e.g., protected speech, lawful demonstrations, observing or filming police activity, or criticizing a Department member or conduct) is prohibited.*
- D. Force shall not be used by a police officer for the following reasons:*
  - 1. To coerce a confession from an individual subject in custody*
  - 2. To obtain blood, saliva, urine, or other bodily fluid or tissue from an individual subject for the purposes of scientific testing in lieu of a court order as required by law;*
  - 3. Against an individual subject who is handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the individual subject.*

**VII. DUTY TO INTERVENE**

- A. Any police officer present and observing another police officer using force that he/she reasonably believes to be 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. Any police officer who observes another police officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a police supervisor.*

**VIII. Less Lethal or Non-Deadly Force**

**A. Use of physical force in general**

- 1. A police officer may use physical force when it is reasonable and necessary to affect a lawful arrest, to prevent or terminate the commission of a criminal offense and to prevent an escape from custody.*
- 2. A police officer may use physical force when it is reasonable and necessary to protect himself/herself or another person from the use of physical force.*
- 3. A police officer may use physical force when reasonable and necessary to take into custody any person who appears mentally ill and is conducting himself in a manner that is likely to result in harm to themselves or others.*
- 4. A police officer may detain a person when they have reasonable suspicion that criminal activity has occurred, is occurring or is about to occur. (Investigatory Stop) When a police officer has detained such person and the police officer reasonably suspects that he/she is in danger of physical injury, the police officer may search such person for a deadly weapon, or any instrument, article or substance readily capable of causing serious physical injury and which is not ordinarily carried by a person in public. (Stop and Frisk)*
- 5. A police officer may use physical force to execute a search warrant when a person resists or refuses to permit such search.*



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6. *While on-duty and in uniform for patrol duties, a police officer shall be equipped with a minimum of two (2) out of three (3) of the following: Asp baton, Taser, O.C. spray.*

**B. Use of O.C. (Oleoresin Capsicum)**

1. *Department issued O.C. spray may be used when lower levels of force are not effective or appropriate. (i.e. hands on force)*
2. *O.C. spray is an inflammatory agent that will cause mucous membranes to swell, producing an immediate closing of the eyes, uncontrollable coughing, gagging, and gasping for breath. O.C. spray also produces a sensation of intense burning of the skin.*
3. *O.C. spray produces no lasting effects. If a person takes longer than 45 minutes to recover, they should be evaluated by medical personnel.*
4. *O.C. spray produces a cone shaped spray to incapacitate a person up to 8 feet away. The spray should be directed at the subject's face using a one second burst. Wind and weather conditions are factors that should be considered prior to use.*
5. *A police officer shall monitor an exposed subject for changes in his/her personal condition while in police custody.*

*DECONTAMINATION - Have subjects stay still and tell them to breathe normally and relax as much as possible. Try to move the subject to an uncontaminated area. Place the subject facing the wind or use a fan to aerate the area of the subject's face and eyes. Cool water may be used to flush the subject's face and eyes. DO NOT ALLOW THE SUBJECT TO RUB HIS EYES. Do not use hand lotions, salves or creams on the affected areas as these may trap the component resin against the skin. Do not use any commercial eyewash during the decontamination process. Subjects wearing contact lenses should remove them before flushing the eyes and soak the lenses with appropriate cleaning solutions.*

*DECONTAMINATION - A non-oil based soap or detergent can be used to help remove the resin from the skin. A wet towel or ice packs may be used on the affected areas to reduce inflammation. IF SYMPTOMS PERSIST BEYOND 45 MINUTES OR A PERSON REQUESTS FURTHER MEDICAL AID, SEEK MEDICAL ATTENTION AS SOON AS POSSIBLE. Oleoresin Capsicum is biodegradable and areas may be decontaminated by fans, normal ventilation and with soap and water.*

6. *Only an officially approved O.C. spray device shall be carried on duty.*

**C. Use of Taser (Conducted Electrical Weapons)**

1. *A Department issued Taser may be used when lower levels of force are not effective or appropriate.*
2. *A Taser is a Conducted Energy Weapon, also known as an electronic control device (ECD).*
3. *A Taser will be carried by a police officer on his/her opposite side of the police officer's service weapon.*
4. *A Taser may be used to project two probes up to 25 feet using a compressed nitrogen cartridge. Heavy clothing, etc. may reduce the effectiveness of a Taser deployed in this manner.*

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5. *A warning should be given by a police officer to a subject prior to activating the Taser unless doing so would place any person at risk. A warning may be in the form of verbalization, a display, a laser display, or a combination of these tactics.*
6. *When feasible, an announcement should be made by a police officer to other personnel at the scene when a Taser is going to be deployed for use.*
7. *A Taser should not generally be used by a police officer against women who a police officer reasonably believes to be pregnant, elderly persons, young children, and visibly frail persons.*
8. *When practical, a police officer should avoid the use of a Taser when dealing with a subject who is in an elevated position where a fall may cause substantial injury or death.*
9. *When actuating the Taser and deploying the probes, a police officer should attempt to aim the Taser device for the preferred target region as prescribed by training and should avoid sensitive areas such as the face, eyes, groin, neck, or breast area above the nipple line when practical.*
10. *A Taser may also be used as a touch/drive stun system when brought into immediate contact with a subject person's body. Sensitive areas such as face, eyes, groin, neck or breast should be avoided unless warranted.*
11. *When practical, avoid using a Taser in or near water.*
12. *When practical, avoid using a Taser after O.C. spray is deployed.*
13. *Once a Taser is deployed and the subject has complied, the Taser should be turned off. Any additional cycle shall be necessary and reasonable, and within the use of force policy.*
14. *When it is safe to do so, the probes may be removed by a police officer.*
15. *A police officer shall request EMS response, or the subject shall be otherwise transported to a medical facility for examination if any of the following occur:*
  - a. *The subject requests medical attention or there is an obvious need for medical attention,*
  - b. *The subject is hit in a sensitive area (for example: eye, face, head, breasts, genitals)*
  - c. *The officer has difficulty removing the probes or if a probe barb is broken off,*
  - d. *The subject is debilitated and does not appear to recover in a reasonable period of time after being exposed, as determined by the officer following training guidelines,*
  - e. *The subject is pregnant or unsure if she is pregnant,*
  - f. *The subject has been exposed to three or more Taser/ECD cycles,*
  - g. *The subject has been exposed to the effect of more than one Taser/ECD device,*
  - h. *The subject is reasonably believed to have been exposed to continuous cycles totaling 15 seconds or more,*
  - i. *The subject has exhibited signs of "excited delirium" as outlined and defined in prescribed training, prior to and/or during Taser/ECD exposure, or*
  - j. *The subject remains acutely agitated after exposure and is likely to have ingested, inhaled or injected potentially toxic street drugs or abused prescription drugs.*



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16. *After a Taser has been deployed, any probes should be stored in the cartridge and disposed of in a sharps container.*
17. *When practicable, after a Taser has been deployed, photographs shall be taken of the probe sites as well as any other related injuries.*
18. *Only an officially issued Taser device shall be carried on duty.*

**D. Use of the ASP Expandable Baton**

1. *The Department issued ASP Expandable Baton may be used when lower levels of force are not effective or appropriate.*
2. *The ASP Expandable Baton may be used to deliver strikes to an appropriate target area.*
3. *When practicable, a police officer should avoid any strikes to the head, neck or spinal areas.*
4. *Only an officially issued Asp Expandable Baton shall be carried on duty.*

**E. 26" or 36" Riot Baton – (Only assigned during crowd control details)**

1. *The Department issued 26" or 36" Riot Baton may be used when lower levels of force are not effective or appropriate.*
2. *The 26" or 36" Riot Baton may be used to deliver strikes to an appropriate target area.*
3. *When practical, avoid any strikes to the head, neck or spinal areas.*
4. *Only an officially issued Riot Baton shall be carried on duty.*

**IX. DEADLY FORCE**

- A. *In any situation where a police officer is otherwise acting lawfully, the use of deadly physical force is justified in the defense of such police officer's life or a citizen's life whenever the police officer reasonably believes that deadly force is necessary to prevent or terminate deadly force directed towards him/her or another person.*
- B. *A police officer may use deadly physical force when he/she reasonably believes it is **necessary** to prevent / terminate the crimes or attempts of: kidnapping, forcible rape, forcible criminal sexual act, robbery, arson; or burglary in a dwelling or occupied building.*
- C. *A police officer may use deadly physical force when he/she reasonably believes it is **necessary** to affect an arrest, attempt an arrest, or prevent or attempt to prevent an escape from custody **and** reasonably believes that:*
  1. *The offense committed by such a person was:*
    - a. *A felony or attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or*
    - b. *Kidnapping, arson, escape in the 1<sup>st</sup>, burglary in the 1<sup>st</sup> or any attempt to commit such crime; or*
  2. *The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefore or attempting to escape, such person is armed with a firearm or deadly weapon.*



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- C. *The fact that a police officer is justified in using deadly physical force does not justify reckless conduct which may result in an injury to a citizen or bystander.*
- F. *When practicable, a police officer shall give a verbal warning prior to using deadly physical force.*

**X. DISCHARGE OF SERVICE WEAPON/FIREARM**

- A. *Shooting at or from a vehicle shall be avoided except to defend a police officer's life or a citizen's life or as proscribed in Article 35 of the Penal Law. Police officers should note that a motor vehicle presents a formidable shield against the effects of most service weapons and firearms, and if a police officer disables the vehicle operator, the subject vehicle can be expected to continue uncontrolled thereby creating a hazard to other police officers and the public.*
- B. *A police officer is authorized to use a service weapon and other firearms to destroy an animal for self-defense, and to prevent substantial harm to the police officer or another person. A police officer may also destroy severely injured/sick non-domestic animals after being authorized by a Supervisory Officer. In any case where a police officer discharges a service weapon to destroy an animal, it shall be done in a manner so as not to endanger a citizen(s).*
- C. *Any use of a service weapon or firearm must be reasonable, necessary and in accordance with departmental policy. A police officer shall exercise caution at all times when handling a service weapon or other firearm. Service weapons and other firearms shall not be aimed at any person except as necessary in the line of duty.*
- D. *Any police officer who discharges a service weapon or firearm shall document the incident on an Incident Report and/or Use of Force report (NPD 111-a). A Supervisory Officer shall be notified immediately, and he/she shall conduct an investigation as to the circumstances of the service weapon or weapon discharge.*
  - 1. *If a police officer is in another jurisdiction and discharges his/her service weapon or firearm in accordance with his/her official duties, or pursuant to Article 35 of the Penal Law; he/she shall notify the police agency having jurisdiction and notify a Supervisory Officer.*
  - 2. *In any case where a service weapon or firearm is discharged in accordance with Article 35 of the Penal Law, and a person is injured as a result, or it occurs under special circumstances, a Supervisory Officer shall take possession of the police officer's service weapon or firearm. The Supervisory Officer may give the involved officer a replacement service weapon until the discharged service weapon can be replaced. An investigation of the incident shall be subsequently conducted at the direction of the Chief of Police.*
  - 3. *A police officer who discharges a service weapon or firearm which is in accordance with Article 35 of the Penal Law, or which results in the injury of a person, or occurs under special circumstances shall be allowed to communicate with authorized personnel. Such personnel are; the Chief of Police, the Chief's designee, a Supervisory Officer, investigating personnel, PBA representative/attorney, the Town Attorney or his representative, a chaplain, healthcare personnel, and immediate family.*
- E. *Only an officially issued service weapon shall be carried on duty.*





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F. *Only an officially issued longarm (firearm) shall be carried on duty.*

**XI. DOCUMENTATION/REPORTING**

*In all instances where force is used, threatened or when a less lethal weapon (i.e. O.C. spray, Taser) is displayed or deployed by a member of this department the Niskayuna Police Use of Force Report (NPD Form 111-a) will be prepared and filed along with any other necessary reports by a police officer involved in such incident.*

*A Supervisory Officer shall review all use of force incidents. Any injury to a subject shall be documented, appropriate medical care shall be provided, and a Supervisory Officer notified. At the direction of a Supervisory Officer, a police officer shall guard any prisoner who is transported to a medical facility for treatment until the prisoner is discharged, issued an appearance ticket and/or arraigned. Transportation to a medical facility will be by an ambulance with a police officer accompanying the prisoner unless otherwise directed by a Supervisory Officer. A Supervisory Officer may request any other documentation regarding an incident when he/she deems it to be necessary.*

**XII. TRAINING**

*Use of Force training shall be conducted annually, and all members of the force shall demonstrate proficiency with the concepts and application of the use of force.*

*Firearms training shall be conducted annually, and all members of the force shall demonstrate proficiency with the use of departmentally issued service weapons.*

*Taser/ECD training shall be conducted annually, and all members of the force shall demonstrate proficiency with the use of departmentally issued Taser/ECD devices.*

*O.C. (Oleoresin Capsicum) spray training shall be conducted annually, and all members of the force shall demonstrate proficiency with the use of departmentally issued O.C. spray devices.*

*Defensive tactics training shall be conducted annually, and all members of the force shall demonstrate proficiency in the execution of defensive tactics.*

**XIII. INVESTIGATING USE OF FORCE**

*Supervisory Officers shall respond to all incidents involving use of force, and shall review the circumstances of all such incidents and the associated documentation. Any complaints of excessive use of force or incidents that come to a Supervisory Officer's attention shall be investigated. The investigating Supervisory Officer shall then document the allegations and forward his findings through the chain of command, to the office of the Chief of Police.*

**XIV. USE OF FORCE REPORTING**

*The Chief of Police or his/her designee shall be responsible for the reporting of Use of Force data to the Division of Criminal Justice Services (DCJS) as required by Executive Law §837-t.*



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***XV. POLICY AVAILABILITY***

*As provided for in the New York State Executive Law § 840(4)(d), this policy "shall be a public document, and shall be made available without charge" upon request and shall be conspicuously posted on the [Town] website. . . [and] Revisions to such Use of Force Policy shall be updated on the agency's public website within seventy-two hours of approval of any amendment*



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*Chief [Signature]*