

**WEBSTER POLICE DEPARTMENT  
GENERAL ORDER**

<b>General Order:</b> 335	<b>Rescinds:</b> G.O. 335 of 09/13/19
<b>Subject:</b> Use of Physical Force	<b>NYS Accreditation:</b> 20.1, 20.6, 43.8
<b>Effective Date:</b> 11/02/2020	

**I. PURPOSE**

- A. To establish guidelines affecting the use of force by members of the Webster Police Department (WPD), the authority for such action, its legal limitations, and the necessity for determining what level of force is appropriate for each instance of response to resistance/aggression.

**PREAMBLE TO USE OF FORCE** - The use of force by members of law enforcement is a matter of critical concern both to the public and law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public.

**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. Aerosol weapons (ASR's) such as Oleoresin Capsicum (OC).
2. Taser - Conducted Electrical Weapon (CEW).
3. Pepperball Launching System (PLS).
4. 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. 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.

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

F. 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.

### III. DEFINITIONS

A. Objectively Reasonable - The legal standard used to determine the lawfulness of a use of force to effect an arrest, prevent an escape, take into custody, or defend themselves or others 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 Webster 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.

- C. 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.
- D. Physical Injury - Impairment of physical condition or substantial pain.
- E. 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.
- F. Brandishing a firearm, conducted energy weapon, impact weapon, or displaying a chemical agent - means pointing at a person or person(s).

#### IV. GENERAL GUIDELINES

- A. Members will, in all instances, seek to employ the minimum amount of force required to successfully overcome physical resistance, prevent escapes, and effect arrests.
- B. Justification for the use of force in response to resistance and/or aggression will be reasonable and based upon the totality of the circumstances in which the force is used.
- C. Members using physical force on another person will ensure that their actions are consistent with current training and policies of the WPD and:
  - 1. Only agency-issued weapons and equipment will be carried while on duty and used when applying the techniques of subject management, except in emergency situations when a member must use any resources at his disposal.
  - 2. Less - Lethal Weapons
    - a. Aerosol Weapons (ASR's) such as Oleoresin Capsicum (OC) are to be used according to the techniques trained through the Public Safety Training Facility, qualified instructors of this department, or other qualified ASR certified instructors.
    - b. Taser / Conducted Electrical Weapon (CEW) may be used according to the techniques trained through the Public Safety Training Facility, qualified

instructors of this department, or other qualified TASER certified instructors using approved TASER international curriculum.

- c. Pepperball Launching System (PLS) FTC: A non-lethal compliance product that is designed to give the operator the ability to safely:
  - i. Take into custody potentially dangerous person(s)
  - ii. Disperse subjects involved in a Civil Disorder

LIVE X Projectiles - Red and Black in color. Contains a 5% concentration PAVA (pelargonic acid vanillylamide: A pharmaceutical grade "pepper". PAVA, also known as Capsaicin II, is a synthetic product based on one of the active components naturally found in pepper plants).

d. Expandable Baton may be used according to the techniques trained through the Public Safety Training Facility, qualified instructors of this department, or other Expandable Baton qualified instructors.

- D. Members shall use less-than-lethal substances and devices, such as OC spray, expandable baton, Taser, Pepperball, pursuant to the use of force continuum (attachment A), training, and departmental policy.
- E. 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.
- F. The brandishing of a firearm, conducted electrical weapon, chemical agent, or impact weapon (straight baton) at a person shall be construed as a use of force and will require the completion of a Subject Management Report (Executive Law 837-t).

V. 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.

VI. Procedures

- A. A member of the WPD, while effecting or attempting to effect an arrest, take into custody, or preventing or attempting to prevent the escape from custody of a person who is reasonably believed to have committed an offense, may use physical force when and to the extent it is reasonably believed that such action is necessary to effect the arrest, take into custody, prevent the escape, or to defend oneself or a third party from what one reasonably believes to be the use or imminent use of physical force.
- B. A member of WPD 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.
  - 1. This includes appropriate and timely medical attention being provided to a party injured as a result of a use of force incident.
    - 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. 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.

- C. When a person refuses medical treatment, the refusal must be noted on the Use of Force Report. If the refusal is witnessed by hospital or ambulance, it should also be noted. A copy of the EMS release form signed by the person shall be attached to the Use of Force Report.
- D. Restrained subjects should not remain in a prone position any longer than necessary and should be moved to an upright or seated position.
- E. 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. Members shall report or cause to be reported all facts relative to the incident on the Use of Force Report. Members shall document any requests for necessary medical or mental health treatment as well as efforts to arrange such treatment. The completed Use of Force report will be submitted through chain of command.
- F. Members shall attempt to locate and identify any witnesses and document their statements.
- G. 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.
- H. 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.

## VII. 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.
- 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 will 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. Locate and identify any witnesses, documenting their statements as a deposition or affidavit.
- F. 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.

#### VIII. PROCEDURES FOR TASER (CEW) USE OF FORCE

A. 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.

B. All applications of the Taser are listed as "level III" in the Use of Force Continuum.

#### C. Modes

1. Drive Stun Mode - a method of deploying by removing the air cartridge and holding the CEW against the subjects' body causing the electrodes to come into contact with the subject, or by leaving the cartridge in place and deploying the CEW directly against the subject's body.

2. Probe Deployment Mode- deployment which propels two probes out of an attached cartridge. These probes are connected to the main unit by two conductive wires.

#### D. 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 will never be used punitively or for the purpose of coercion

#### E. Post Deployment

1. Local EMS will be requested to respond to the scene and evaluate all persons subjected to an CEW application.
2. All decisions for treatment (including probe removal) should be made by EMS until such time the exposed is released by medical personnel, whether post treatment or by a refusal by the exposed for further treatment, as documented by the EMS responders or a physician.
3. A person refusing medical treatment in such cases where the EMS/Officer reasonable believes medical attention is warranted will be transported to the hospital while in custody, where hospital personnel will accept the refusal of medical care. This refusal and the witness will be documented in the Officer's report.
4. If there are no immediate or obvious medical conditions, the subject may be transported to the hospital, via a police vehicle. Otherwise an ambulance should be summoned.
5. Only qualified medical personal will remove barbs that have penetrated the skin. Imbedded Taser probes will not be removed from the subject's body by police personnel.
6. Officers will clip the lead wires nearest the barbs.
7. The lead wires, barbs, AFID tracking tags, and expended Taser cartridges will be collected and turned into the Property Clerk as evidence.

8. 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 to render them safe.
9. All persons subjected to an CEW application should be medically cleared before beginning post arrest processing procedures.
10. Photographs will be taken of the subject and the exposed area. If the subject refuses to comply with a photograph of the specific exposure site a photograph will be taken of the overall body and circumstances documented.
11. Jail personal will be informed that a subject was exposed to the use of a Taser.
12. A Use of Force report and Taser Use Report will be completed after each Taser deployment.

**F. Administrative Downloading of Taser Data**

1. The CEW coordinator will be notified of each taser deployment. The CEW coordinator will secure the specified CEW and complete a printout of its use. The printout will be attached to the completed Use of Force Report.

**G. Elevated Risk Populations:**

1. CEW deployment on certain populations may increase risk of injury. Because of the lack of independent research which definitively predicts the effects of CEW exposure on these groups added caution should be used when deploying an CEW on the below mentioned persons. Although there are perceived heightened risk factors and societal perceptions which generally assume that many of these individuals are not capable of being an imminent threat, officers should understand individuals from this elevated risk population can potentially be an imminent threat to officers, others, and themselves which may ultimately require the use of an CEW:
  - a. Individuals with a known diseased heart
  - b. Elderly

- c. Children
- d. Subject who is obviously pregnant
- e. Medically frail or infirm
- f. Subjects in an elevated position and may fall, causing injury
- g. Areas that are potentially flammable, such as areas that contain gasoline, explosives etc.
- h. Subject who is in a body of water and there is a risk of drowning
- i. Individuals with known neuromuscular illness (i.e. multiple sclerosis, muscular dystrophy)
- j. Individuals that require multiple applications
- k. Subject operating a motor vehicle

#### IX. 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.
- D. 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.

#### X. Procedures for OC spray use of force

- A. Members of the WPD will be issued a canister of OC spray containing Oleoresin Capsicum. They will also be issued a belt holster to carry the canister of OC Spray.
- B. Members issued OC Spray are trained in accordance with

the standards set forth by MPTC. Members will receive initial training in the police academy and thereafter receive annual refresher training.

C. Members will carry the issued OC Spray while on duty. It will be carried in such a location as to be readily available to the officer.

D. Officers may employ the use of OC spray where a subject is non-compliant in order to gain compliance or overcome resistance.

E. When OC spray is deployed on a subject, police personnel will have an ambulance dispatched to evaluate any medical needs or treatment of the subject.

F. An officer utilizing OC spray will immediately notify a supervisor and complete a use of force report following procedures outlined in this directive.

XI. Procedure for Pepperball Launch System (PLS) use of force.

A. The decision to use the PLS will be made by the certified PLS officer and the supervisor on scene.

B. The PLS is not a replacement for deadly physical force (DPF) and should not be used without DPF back up in those incidents where there is a potential of a DPF threat towards the officer(s) or third parties involved in the incident.

C. Officers should use verbal persuasion and commands for suspects to obey police orders and cease illegal behavior prior to the use of PLS, if circumstances allow it, without risk to the safety of the officer or others.

D. Use of PLS on Individuals:

1. Subject Conduct: Active Aggression - May include: fighting stance, subject(s) closes distance, attacking, combative approach, punching, kicking, biting, and tackling.

2. Application: Target area- Projectile(s) launched

at a subject with potential direct hits but avoiding face, throat, base of the neck and spine, unless justified.

3. Impact area: Projectile(s) not fired directly at the subject(s) causing them to strike areas surrounding the subject, in order to saturate the area with PAVA agent.

**E. Civil Disorder/Large Fights:**

1. Subject(s) Conduct: During a civil disorder event or large fight, an action is taken by a subject or subjects who are participating in the civil disorder or large fight that displays active aggression towards officer(s) or a third party.
2. Application: Target area- Projectile launched at a subject with potential direct hits, avoiding face, throat, base of the neck and spine unless justified.
3. Impact area: Projectile(s) not fired directly at the subject(s) causing them to strike areas surrounding the subject, in order to saturate the area with PAVA agent.

F. When PLS is deployed on a subject, police personnel will request an ambulance to evaluate any medical needs or treatment of the subject.

G. An officer utilizing PLS will immediately notify a supervisor and complete a subject control report following procedures outlined in this directive.

**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 it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.
5. "Choke Holds" or any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing, reduce intake of air or obstruct blood circulation, is prohibited, UNLESS the Officer is in fear of imminent serious physical injury or death, and the use of a "Choke Hold" can save the Officer or the life of another.

XIII. 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.

XIV. 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.

XV. Completion of Use of Physical Force Report

FRONT PAGE Top Left - enter CR#, date, time, 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 TASER REPORT

To be completed only if taser is used or presented.

XVI. The WPD use of physical force policy (GO 335) will be posted to the Town of Webster website, under the Department of Police.

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Attachments