



East Rochester Police Department

East Rochester, New York

GENERAL ORDER



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| Subject: Response to Resistance/Aggression & Subject Management Report | Order Number: 335-19 |
| Effective Date: September 1, 2019 | Page 1 of 11 |
| Distribution: Sworn Personnel | Amends: 335-17 |
| Attachment(s): | Rescinds: GO 335 (04/24/2004) |
| Reference: NYSLEAP Standards: 14.1, 20.1, 20.6, 21.2, 32.4, 40.2, Article 35 NYS Penal Law | |
| Forms: Subject Management Resistance Form | |

PURPOSE

To establish guidelines affecting the use of force by members of the East Rochester Police Department (ERPD); 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 (14.1) (20.1)

- A. Members of the ERPD 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 judgments in circumstances that are often tense, uncertain and rapidly evolving. Staff 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 employee 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. **(14.1), (20.1)**

B. PROHIBITED USES OF FORCE

Force shall not be used by any officer for the following reasons:

1. To extract an item from the anus or vagina 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 fluids or cells, from an individual for the purpose of scientific testing in lieu of a court order where required.
4. Against any 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.

C. Members of the ERPD are authorized to carry / use only those less lethal devices provided by the ERPD. **(20.6)**

D. Members of the ERPD 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. **(20.6)**

E. The carrying or use of these less-than-lethal devices off-duty is strictly prohibited. **(20.6)**

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 East Rochester Police Department examines all uses of force from an objective standard, rather than a subjective standard.

- B. Factors Used to Determine Reasonableness - The ERPD examines reasonableness using Graham and from the articulated facts from the perspective of an East Rochester Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, ERPD 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. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects; and
 11. The environmental factors and/or other exigent circumstances.
- C. Dangerous instrument - means any instrument, article or substance, including a "vehicle" as that term is defined below, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
- 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. Deadly weapon - means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, dagger, billy, blackjack, or metal knuckles.

- F. Firearm - means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches; or (c) a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.
- G. Physical Force – Any force used against another person applied to overcome resistance and achieve compliance, including the use of agency issued and approved lethal or less lethal weapons.
- H. Reasonable belief that a person has committed an offense - means a reasonable belief in facts or circumstances which, if true, would constitute an offense.
- I. Physical Injury- Impairment of physical condition or substantial pain.
- J. 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.
- K. Vehicle - means a motor vehicle, trailer or semi- trailer as defined in the vehicle and traffic law, any snowmobile as defined in the parks and recreation law, any aircraft, or any vessel equipped for the propulsion by mechanical means or by sail.

L. Definitions for Executive Law mandated reporting

1. Brandishes: to menace or point the barrel end of a firearm or the cartridge or sparking end of an Electronic Control Device (Taser) or the valve end (i.e. the end discharging the oleoresin capsicum) at a subject, suspect, arrestee, prisoner or other person being detained for their safety. To withdraw an impact weapon and load it, so that it is held in a position to strike, use in a pain compliance technique, or escort a subject, arrestee, prisoner, or other person being detained for their safety.
2. Discharges: to fire any firearm at a subject, suspect arrestee, or prisoner.
3. Deploys: to deploy an Electronic Control Device: by either Air Cartridge Deployment, or a Drive Stun at a subject, suspect, arrestee, prisoner or other person being detained for their safety. To compress the trigger or push button of a canister of Oleoresin Capsicum in the direction of a subject, suspect, arrestee, prisoner or other person being detained for their safety or a group of people to gain compliance or to disperse them. This includes whether said person or persons was struck, contact was made or it was effective or not. To use or attempt to use a technique from an impact weapon to include strikes, escorts and pain compliance techniques.
4. Uses: Uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air. Chokeholds or

similar restraints are not a trained technique. They will only apply in a deadly physical force situation, i.e. when it would be permissible to discharge a firearm.

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 ERPD and:

- 1. Utilize only agency-issued weapons and equipment when applying the techniques of subject management.

Note: In accordance with Article 35 (NYSPL), should exigent circumstances exist, members may use such force as necessary to avoid imminent public or private injury which is about to occur.

- 2. Less – Lethal Weapons (**20.6**)
 - 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 electronic control device (ECD) 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 curricula.

- D. The mere placing of handcuffs on a prisoner will not require a Subject Management Report. However, if the handcuffs become an appliance to exert pressure necessary to further control a prisoner or where the suspect physically resists the application of handcuffs, a Subject Management Report must be completed.

V. PROCEDURES

- A. A member of the ERPD, while effecting or attempting to effect an arrest, 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, 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.** Any officer using physical force pursuant to his/her duties (whether on or off duty) shall report or cause to be reported all facts related to the incident on a Subject Management Report. **(21.2.A, B)**

- C.** Immediately notify his supervisor to respond to the scene of the incident: **(40.2)**
 - 1. If the supervisor is not on duty, and there is no injury to the Officer or the subject, officer will complete a Subject Management Report, and leave for supervisory review. **(21.1.A)**
 - 2. If the supervisor is not on duty, and/or there is an injury to the Officer or the subject the Chief will be notified and respond as needed. **(21.1.A), (40.2)**
 - 3. If a supervisor is at the scene of an incident at the time force is used and use force themselves, the Chief will be notified and respond as needed. **(21.1.A)**
 - 4. Ensure that the subject has been properly restrained, or no longer poses an immediate threat to the safety of agency members and others. Discretion may be used if exceptional circumstances exist, such as a person is very elderly, handicapped etc.

- D.** After countermeasures are used, Supervisor/Officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the techniques were used.
 - 1. Persons being taken into custody that have a visible injury or complain of injury will be immediately evaluated by EMS.
 - 2. When a person refuses medical treatment, the refusal must be witnessed by hospital or ambulance personnel and noted on the Subject Management Report.
 - 3. Restrained subjects should be in an upright or seated position and should not remain in a prone position.

- E.** Prepare and submit Subject Management Report, Incident Report and any other report as directed by supervisor/command officer prior to completing their tour of duty. Each officer using force must submit a separate Subject Management Report. **(21.1.A)**

F. State mandated Use of Force Data Collection

Members will complete the online Use of Force Data Collection in compliance with NYS Executive Law 837t. They will answer all questions on the Data Collection. Further to ensure that they are answering said questions correctly and are in compliance they will refer to the definitions section of this order under III. Definitions L, Use of Force Data Collection: 1. Brandishes, 2. Discharges, 3. Deploys, 4. Uses. Members will not complete a Subject Management Report when Brandishes only applies. When Brandishes only applies members will notify a supervisor of the incident who will determine if an Incident Report needs to be written based upon the circumstances and details of the incident. This does not preclude members from notifying a supervisor as order in other portions of this order or other orders. To complete the Use of Force Data Collection members will go to;

www.surveygizmo.com/s3/5075589/NYS-Use-of-Force-Reporting

G. If an injury or complaint of pain exists, members will obtain photographs of the person involved.

H. Supervisors Responsibilities:

1. Respond to the scene. **(40.2)**
2. Ensure members receive necessary assistance including medical treatment for any injuries or exposures and that any injuries are properly documented per current directive.
3. Conduct a thorough field investigation of the nature, circumstances, and subject factors that resulted in the use of subject management techniques.
4. Determine the level of technician services that are needed (photographs, measurements, diagrams, etc. note - A photograph showing lack of injury may be as important as one that shows injury.)
5. Locate and identify any witnesses, documenting their statements as a deposition or affidavit. The written special report should include the findings for compliance with Article 35 of the NYSPL and this policy. **(21.1.C)**

VI. PROCEDURE FOR ELECTRONIC CONTROL DEVICE USE OF FORCE (20.6)

A. Modes

1. Drive Stun Mode – a method of deploying by removing the air cartridge and holding the ECD against the subjects’ body causing the electrodes to come into contact with the subject, or by leaving the cartridge in place and deploying the ECD directly against the subject’s body.
2. Probe Deployment Mode- deployment which propels two probes out of an attached air cartridge. These probes are connected to the main unit by two conductive wires.

B. Deployment

1. An ECD will be assigned to each member and be the responsibility of that member. Officers will conduct a spark test on their assigned ECD in a safe manner to verify the battery has more than 20% life remaining. If below 20% the ECD coordinator will be advised to replace the battery. Officers other than the ECD coordinator will not replace the battery. ECD's will not be tested with the air cartridge attached.
2. ECD's will be carried on the weak side of the duty belt, using only department issue holsters or carrying devices.
3. The ECD will be carried with the safety on until ready to deployed or displayed.
4. If possible, officers should attempt to confirm if OC spray has been used. The ECD will not be deployed on a subject who has been sprayed with alcohol based OC spray (See Taser SOP).
5. When practical, backup officers should be present when an ECD is deployed. Backup officers should be designated as contact and cover and should be prepared to deploy higher use of force options when justified.
6. The ECD is not a replacement for the firearm and should not be used without firearm backup in those incidents where there is potential for a deadly physical force threat towards the officers or third parties on scene
7. The ECD operator will give a loud verbal warning of "Taser, Taser, Taser" prior to the deployment unless doing so would place any other person at risk or if tactically unsound.

C. Post Deployment

1. Local EMS will be requested to respond to the scene and evaluate all persons subjected to a ECD 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. At no time will a member attempt to remove embedded barbs from a subject's body. Probes that have penetrated the body should be considered a biohazard and should be handled and labeled as such. The probes should be inverted into the cartridge bores and taped securely in place.

5. All persons subjected to an ECD application should be medically cleared before beginning post arrest processing procedures.
6. The lead wires, barbs, AFID tracking tags, and expended ECD cartridge will be collected and turned into the property clerk as evidence.
7. 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.
8. The deployment will also be documented on the prisoner data report and/or mental hygiene arrest report. In addition, the arresting officer will verbally notify the Central Booking staff or hospital staff that the subject was exposed to an ECD, so that they may observe the subject's physical condition.

D. ECD Coordinator Responsibilities

1. The ECD coordinator will be notified of a deployment by the Chief of Police.
2. Secure the specified ECD and complete a printout of its use. The printout will be attached to the completed SMR.
3. Will maintain an inventory of the ECD, and ECD equipment.
4. ECD maintenance.
5. Coordinate department recertification and training.
6. Conduct an annual audit of all ECD's and equipment.

E. Elevated Risk Populations:

1. ECD deployment on certain populations may increase risk of injury. Because of the lack of independent research which definitively predicts the effects of ECD exposure on these groups added caution should be used when deploying an ECD 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 individual from this elevated risk population can potentially be an imminent threat to officers, others, and themselves which may ultimately require the use of an ECD:
 - 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

VII. PROCEDURE FOR OC SPRAY USE OF FORCE (20.6)

- A. Members of the ERPD will be issued a canister of defense spray containing Oleoresin Capsicum – OC Spray. 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 periodic refresher training. **(32.4)**
- 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 subject control report following procedures outlined in this directive.

VIII. 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.

IX. PREPARATION OF SUBJECT MANAGEMENT REPORT (21.2.B)

- A. Members are to enter the appropriate data in Block I, including date, military time, nature and location of the incident and the CR number. This block also contains subject information. Enter the subject's name, address sex, height, weight, DOB, MoRIS number and whether the subject was arrested/charged, based upon the force that was used.
- B. Block II contains information regarding the subject's behavior, condition and possible injuries before and after force was used. All appropriate sections must be completed.
- C. Block III outlines the reason for the use of the subject management techniques. Members must check all applicable boxes.
- D. Block IV identifies the resistance on the part of the subject. Members must check all of the appropriate boxes and provide a brief description of the subject's conduct.

Examples:

Non-Verbal Intimidation: A "stare down," an intimidation tactic used to see if an Officer will break eye contact and, if so, is seen as a sign of weakness. Other example may be clenching of fists, defensive stance, etc.

Verbal Threats: May be direct or indirect statements. "I'm not going anywhere, get lost."

Passive Resistance: Non-aggressive and non-compliant to lawful orders. Sitting down and refusing to move.

Defensive Resistance: Physical actions that attempt to prevent the staff member's control, but make no direct attempt to harm the officer. Pulling away or running from a deputy.

Active Aggression: The subject is actively combative with staff or another. Pushing, punching and/or shoving.

Aggravated Aggression: The subject's action poses a threat of serious physical injury or death to another. Displays or threatens a weapon.

- E. Block V notes any other LEO's, civilian witnesses and shall be used when such witnesses are available. This section also addresses injuries to members and tech work that is performed. All appropriate information must be completed.
- F. Block VI requires a narrative, chronological summary of the details of the incident.
- G. Block VII identifies the tactical effectiveness of the techniques utilized. The member should check all of the appropriate boxes with comments as appropriate.
- H. Block VIII is reserved for the member's printed name, signature and IBM# and supervisor review.

Note: Not applicable (N/A) shall be noted where appropriate, as lines shall not be left blank. Use an Addendum Report if additional narrative space is needed.

X. REVIEW AND DISTRIBUTION (21.1.2.C)

- A. Following first line review, the Subject Management Report will be forwarded to the Chief for final review and resolution and will be kept on file in the Chief's Office.
- B. On an annual basis, the Chief will perform a written analysis of the Subject Management Reports to determine if there are trends, patterns, or issues related to using force by members of the East Rochester Police for the purposes of training, policy revision/development or the need for individualized remedial training.

BY ORDER OF:

Steven J. Clancy

Steven J. Clancy
Chief of Police