



# MANUAL ORDER

# No. 400

Subject: Necessary Force		Effective: 11/14/2022 Cancels: 03/08/2021
Issuing Authority: Chief of Police	NYS LEAP Standard: 20.1	Review Date: 08/21/2023

## NECESSARY FORCE

### I. PURPOSE

The purpose of this policy is to provide a written directive requiring all Rome Police Department personnel to use only the amount of force that is objectively reasonable under the circumstances for the officer involved to effect arrest, prevent escape, or in defense of themselves or others. This standard is in accordance with Article 35 of the New York State Penal Law.

### II. POLICY

At times, members of the public can become victims of violent crime including the crime of final resort – murder. Society chooses not to wage open warfare to control such violence. Rather, society places the responsibility for control on a few – the police. Society further chooses to provide these officers with the ultimate personal and public protection – a firearm. As long as we live in this free society, it will be necessary for police officers to be armed. Since society has given law enforcement officers the authority to carry firearms, society must also retain the right to control the use of such firearms.

The use of deadly physical force is the most serious act, which a law enforcement officer could possibly engage. It has the most far-reaching consequences for all of the parties involved. It is, therefore, imperative not only that the officers act within the boundaries of legal guide lines, ethics, good judgment, and accepted practices, but also that the officer be prepared by training, leadership, and direction to act wisely whenever using force readily capable of causing death or otherwise serious physical injury.

A reverence for the value for human life shall guide officers in considering the use of deadly physical force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly physical force is not justified merely to protect property interests.

This policy is not intended to create doubt in the mind of an officer at a moment when action is critical and there is little time for mediation or reflection. It provides basic guidelines governing the use of weapons so that officers can be confident in exercising judgment as to the use of physical force. Such a policy must be viewed as an

administrative guide for decision-making before the fact and as a standard for administrative judgment of the propriety of the action taken. It is not to be considered a standard for external judgment (civil or criminal litigation) of the propriety of an action taken. This is left a matter of established law and also a process for the courts and juries reviewing specific facts of a given incident.

Officers of this Department shall only resort to the lawful use of physical force as provided by Article 35.00 of the New York State Penal Law, and deadly physical force as provided by these procedures, when reasonably necessary. It is also the policy of the Department that members shall not unnecessarily or unreasonably endanger themselves or others in applying those guidelines to actual situations.

This directive is for Departmental use only and does not apply in any criminal or civil proceeding. The Department policy shall not be construed as a creation of higher legal standard of safety or care in an evidential sense with respect to third party claims. Violations of this directive will only form the basis for Departmental administrative sanctions. Violations of the law will form the basis for civil and criminal sanctions in a recognized judicial setting.

### III. DEFINITIONS

- a. **Objectively Reasonable** – An objective standard used to judge an officer’s actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based of the totality of the facts that are known to that officer at the time the force was used.
- b. **Use of Force**
  - i. In general terms, force is authorized to be used when reasonably believed to be necessary to effect a lawful arrest or detention, prevent the escape of a person from custody, or in defense of one’s self or another.
  - ii. Under the 4<sup>th</sup> Amendment, a police officer may use only such force as is “objectively reasonable” under the circumstances.
- c. **Deadly Physical Force** – Physical force which, under circumstances in which it is used, is readily capable of causing death or serious physical injury.
- d. **Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function or any bodily organ.
- e. **Physical Injury** – Impairment of physical condition or substantial pain.

#### **IV. PROCEDURE**

##### **A. Determining the Objective Reasonableness of Force**

- i.** When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.
- ii.** Factors that may be used in determining the reasonableness of force include, but are not limited to:
  1. The severity of the crime or circumstances;
  2. The level and immediacy of the 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. Officer/suspect considerations such as size, age, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
  7. Other environmental conditions or exigent circumstances.

##### **B. Use of Deadly Physical Force**

- iii.** Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.
- iv.** Deadly physical force may be used to stop a fleeing suspect where:
  1. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; and,
  2. The officer reasonably believes that the suspect poses an imminent threat of serious physical injury to the officer or to others.
  3. Where feasible, some warning should be given prior to the use of deadly physical force.

##### **C. Prohibited Use Of Force**

- v.** Force shall not be used by an 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 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.

**D. Duty To Intervene**

vi. Any member of the Rome Police Department 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 come between. Whether verbally or physically) to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

1. The following **Circle of Force Methodology** is to be used as a guideline to help Department officers keep their use of force reasonable:



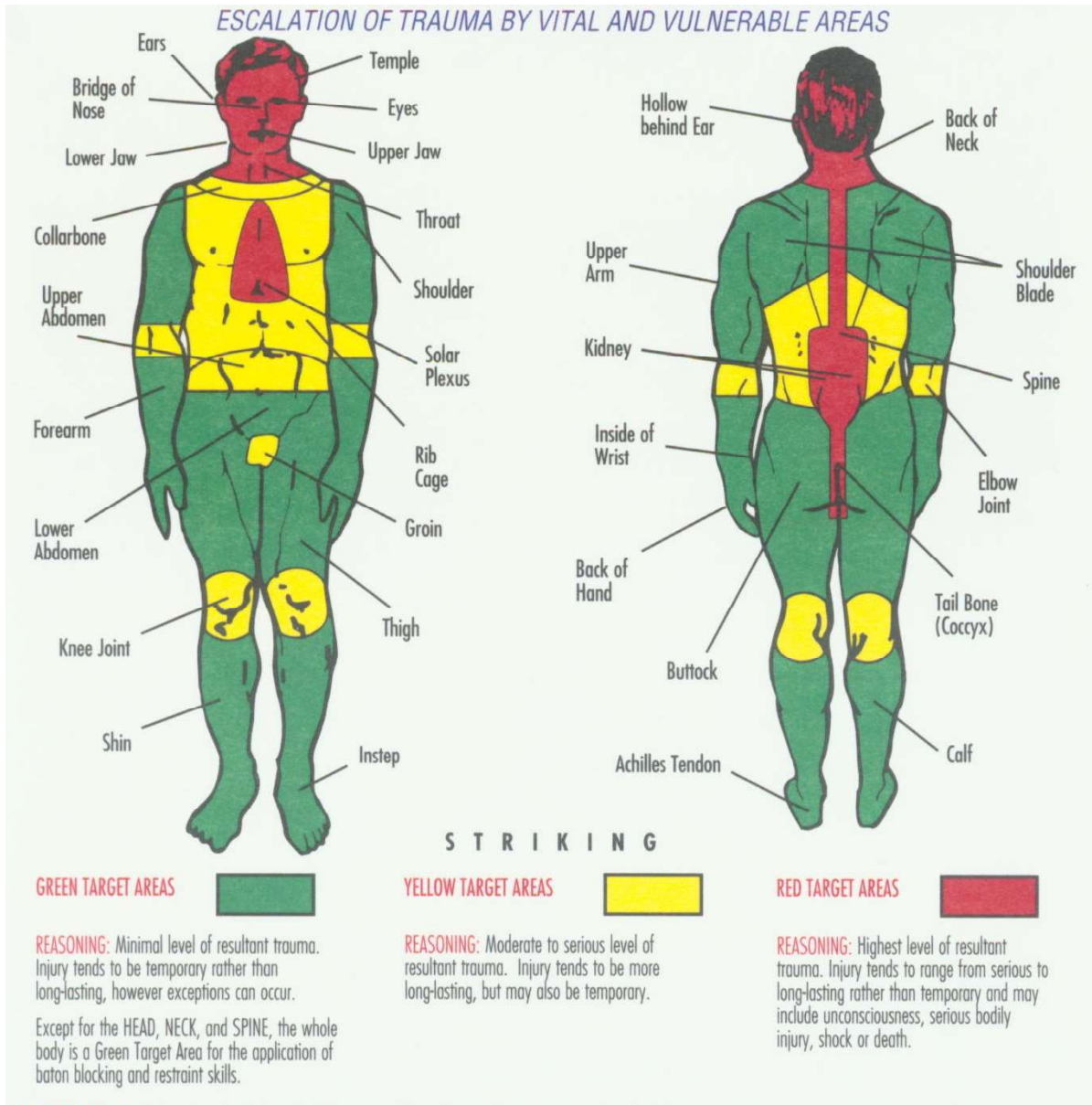
- a. This methodology shows a relationship between a suspect's behavior and an officer's appropriate response. It includes certain response options that are prevalent today and whose relative ranking in terms of force intensity is confusing to many officers. It also allows for adaptation, according to training and experience, to Rome Police Department policies, and to new tools, techniques and legal decisions that may develop in the future.

- b. Understand that any force methodology is merely a **starting point** for discussing a very complex issue: the justification for the use of force. It represents an ideal, orderly world – not necessarily the real world, where officer actions in the midst of violent turmoil often are judged long afterward in calm and distant settings.
- c. Resistance and response are dynamic. The suspect’s behavior and an officer’s use of force to control it may move in and/or out of the methodology during any given encounter, as indicated by the two-way arrows. Moreover, this movement will not always be in an incremental step-by-step sequence. In selecting the use of force, an officer may need to skip one or more entire steps while using the methodology depending on how he/she “normally” perceive key variables, namely:
  - i. **Threat Assessment Observations** – The factors that bear on an officer’s perception of dangerousness. The evaluation should include:
    - . emotional state
    - . resistive tension
    - . early warning signs
    - . pre-attack postures
    - . access to weapon(s)
    - . apparent willingness to sustain injury
  - ii. **Officer/Subject Factors** – The strengths and weakness an officer brings to an encounter compare to the subject’s strengths and weaknesses. The evaluation should include respective:
    - . age
    - . sex
    - . size
    - . strength
    - . skill level (Training/Experience)
    - . backup (Officer’s/Subjects)
  - iii. **Special Circumstances** – What is unique about the confrontation, if anything, that requires a higher or lower level of response than would “normally” seem justified? The evaluation may include:
    - . a sudden, unexpected assault
    - . the officer’s physical position
    - . the officer’s reasonable perception of danger
    - . the subject’s ability to escalate force rapidly

- . an officer's special knowledge about the subject
- . officers' injuries or exhaustion
- . timing, tools, tactics, training
- . other factors necessitating unusual control measures, such as crime rate in the neighborhood, nature of the call, etc.

These important variables should always be reviewed and explained in an officer's report and/or testimony, if pertinent, to documentation **in detail** that the level of force used was necessary and appropriate, considering all circumstances.

2. Whenever an officer finds it necessary to use physical force to gain and maintain control of a subject, consideration must be given to minimizing the injury to that person. Target selection is based on the amount of force the officer perceives as reasonably necessary to bring the subject under control. The concept of **PRIMARY, SECONDARY** and **FINAL** target areas was developed to assist officers in responding appropriately to varying levels of danger. Officers target selection will then depend on a comparison of the degree of imminent harm to the officer versus potential injury to the subject.
  - a. **PRIMARY TARGETS** are for non-lethal confrontations where the necessary physical force is not intended to, nor likely to cause serious bodily harm and/or death.
  - b. **SECONDARY TARGETS** are employed when a **PRIMARY TARGET** fails or does not correspond with the threat level. **SECONDARY TARGETS** represent the upper limits of non-lethal force because the force directed at a joint or an area in close proximity to a **FINAL TARGET** area.
  - c. **FINAL TARGETS** are designated for situations where **PRIMARY** and **SECONDARY TARGET** areas either fail or do not match the level of threat present. Physical force directed at **FINAL TARGETS** may be considered lethal force because of the potential result of serious injury and/or death.



3. The fact that an officer is justified in using physical force under the circumstances prescribed in Article 35 of the New York State Penal Law does not constitute justification for reckless conduct by such officer amounting to an offense against or with respect to innocent persons



whom he/she is not seeking to arrest or retain in custody.

*You are authorized to use Deadly Physical Force in certain situations.*

***You are never ordered to!***

4. Deadly physical force may be used on an animal under the following conditions:
  - a. For self-defense.
  - b. To prevent substantial harm to another.
  - c. When an animal is so badly injured that humanity requires its relief from further suffering. The officer in such incidents will notify a supervisor and the 911 Dispatch Center of the circumstance. He/She will obtain a sworn statement from the owner of the animal giving permission to destroy the animal or a sworn statement of two reputable and uninvolved citizens that the animal is near death and is suffering. The officer will then, using his/her own weapon, humanely destroy the animal. (Agriculture and Market Law, Section 374.)

The officer will complete a Use of Force Report, Discharge of Weapon report, Investigation Report, and any other reports necessary to explain the incident. The reports will be forwarded to the shift Commanding Officer.

5. Officers are **prohibited** from discharging their firearms:
  - a. When it appears likely that an innocent person may be injured.
  - b. From a moving vehicle, except as the ultimate measure of self-defense or defense of another when the suspect is using deadly physical force.
  - c. To fire a warning shot.

**E. Procedure when an officer's firearm is discharged.**

1. It is the responsibility of the involved officer, when his/her firearm has been discharged, including accidental discharges, to:
  - a. Determine the existing danger level.

- b. Determine the physical condition of any injured person and render first aid when appropriate.
- c. Request the necessary emergency medical aid.
- d. Notify their supervisor of the specifics regarding the incident.
- e. Remain at the scene (unless they themselves are injured) until the arrival of the appropriate investigators. However, if the circumstances are such that the continued presence of the officer(s) at the scene might cause a more hazardous situation to develop (such as a violent crowd), the officer in charge at the scene shall have the direction to instruct the officer(s) to respond to another, more appropriate location.
- f. Protect his/her weapon for examination and submit said weapon to the person indicated by the officer in charge.
- g. Provide a Public Safety Statement. The investigating officer will complete the Investigation Report.
- h. The involved officer shall not discuss the incident with anyone, including the accompanying officer. However, the involved officer may discuss the incident with the following authorized personnel:
  - (1) Authorized investigative personnel;
  - (2) Attorney's representing the involved officer;
  - (3) Qualified mental health professionals; or Union representatives.
- i. Be available at all times for official interviews and statements regarding the case and shall be subject to recall to duty at any time.
- j. Submit to blood and urine tests.
- k. Prepare a Weapons Use Report, as is required when they remove his/her weapon from the holster in the line of duty. This report will be immediately forwarded to his/her Commanding Officer for review and then submitted to the Captain of Administration prior to forwarding it to the Chief of Police.

## 2. Commanding Officer

The Commanding Officer shall investigate the circumstances of the firearms discharge and include in his/her report any observations or conclusions by him/her from the information obtained.

### **Refer to Section 404 - Reportable Use of Force Reporting Requirements - Subdivision IV C-4 a & b**

#### **F. Carrying of Firearms On-duty**

Officers shall carry firearms in accordance with laws and established departmental procedures. Officers shall not carry any rifle, shotgun, machine gun, gas gun, or substitute their regulation service weapon with any weapon, without the expressed authorization of the Chief of Police. Officers shall not add a concealed auxiliary weapon while on duty not authorized by the Chief of Police.

#### **G. Display of Firearms**

Officers shall never display firearms unnecessarily or draw them in any place, either public or private, except for the purpose of inspection or cleaning, or in the official discharge of their duties. The use of a firearm must be totally justified and in strict accordance with law and departmental policy. Officers shall exhaust all other means of apprehension before resorting to the use of firearms. Officers shall be required to report in writing, any deliberate or accidental discharge of firearms to their Patrol Commander (except routine target practice).

#### **H. Carrying Service Firearm Off-duty**

Officers may carry Department issued firearms off-duty whenever legal to do so within New York State. If the Department issued firearm is carried off-duty, it must be in an approved secure holster, be loaded with issued ammunition, and worn in an approved manner.

*Commentary: The Firearms Officer must give approval for the carry holster that the officer desires to use while off-duty.*

#### **I. Security of Firearms**

Officers are responsible for the safety and security of their firearms. When off duty, weapons must be stored in a locked cabinet, closet or locker, and the use

of a locking mechanism through the trigger guard is recommended. Weapons and ammunition should be stored separately.

#### J. Firearms Training

**Refer to Section 601, Firearms Training.**

#### K. Legal Issues

An officer involved in the use of deadly force can be subjected to several areas of criminal and civil jeopardy in addition to being vulnerable to potential departmental discipline. Individually, the officer involved in a shooting can be held culpable for violation of state criminal statutes. Civil liability can also be imposed for the use of deadly force under state sanctioned civil causes of action. In addition, an officer faces individual civil and criminal jeopardy under federal law for violation of the Federal Civil Rights Act (18 U.S.C. 241 and 242 criminally and 42 U.S.C. 1983 civilly).

#### L. Psychological Services Provided Officers

1. Counseling services will be made available to the involved officer separate and independent from the required mental health review and any Departmental investigation of the incident. All information exchanged between the involved officer and the counselor will be protected, privileged communication. Any participation beyond the initial session is encouraged but will be at the officer's discretion.

#### 2. Refer to Section 114 Peer Support

#### M. Administrative Leave

1. An officer directly involved in a deadly force incident may be placed on "administrative leave" upon completion of his/her Public Safety Statement of the incident. This leave shall be, with the authority of the Chief of Police, without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly.
2. While on administrative leave, the officer shall remain available at all times for official departmental interviews and statements regarding the shooting incident, and shall be subject to recall to duty at any time. The officer shall not discuss the incident with anyone except the District Attorney's Office, the Corporation Counsel, department personnel assigned to the investigation, the officer's private attorney, the officer's psychologist, the officer's clergy, and the officer's immediate family.

3. Upon returning to duty, the officer may be assigned to “administrative duty” for a period of time deemed appropriate by the officer, his psychologist, and the Chief of Police.