

	<h1 style="margin: 0;">Elmira Police Department</h1> <h2 style="margin: 0;">General Order 400</h2>		
	<h3 style="margin: 0;">USE OF PHYSICAL FORCE/DEADLY PHYSICAL FORCE & FIREARMS</h3>		
	<p><u>Effective Date:</u> 01/15/2021</p>	<p><u>Cross-Reference:</u> NYS Penal Law - Article 35, NYS Penal Law-121.13-a NYS Executive Law 840(4)(d)(3) G.O. 401; G.O. 403; G.O. 510</p>	<p><u>Accreditation Standards:</u> NYS L.E.A.P. - 20.1, 20.4, 20.7</p>
<h1 style="margin: 0;">400</h1>	<p><u>Department Mission Statement</u> “The mission of the Elmira Police Department is to ensure the safety and security of the community by providing exemplary law enforcement services.”</p>		

I. PURPOSE

- A. The purpose of this Order is to establish policies and procedures for the use of physical force and deadly physical force in general and firearms in particular.

II. POLICY

- A. The Elmira Police Department recognizes and respects the value and integrity of each human life. The Department also recognizes and accepts the profound responsibility that our lawful authority to use physical force and deadly physical force carries with it.
- B. All use of physical force and deadly physical force will be consistent with applicable legal principles and this Order.
- C. All use of physical force or deadly physical force will be to protect the officer or another person, or to effectuate a valid and lawful public safety or law enforcement purpose.
- D. This Order will govern the use of physical force and deadly physical force by whatever means including, but not limited to, firearms or other weapons. Any use of force that is readily capable of causing serious physical injury or death must meet the justification standards for deadly physical force.
- E. This Order applies to all use of physical force and deadly physical force by all employees of the Elmira Police Department while on duty. It also applies to all off-duty uses of physical force and deadly physical force in which the officer is acting pursuant to his or her authority as an Elmira Police Officer or using any Department-issued weapon, ammunition, or other equipment.

- F. In using physical force or deadly physical force, officers should avoid creating an unreasonable risk to bystanders or persons other than the intended subject of the force. However, nothing in this Order should be construed to restrict or limit an officer's legal right to self-defense or to defend another person.
- G. Personnel authorized to carry Department-issued firearms or less-lethal weapons will be issued copies of all General Orders pertaining to those weapons. Training for specific weapons will be conducted as directed by the General Order(s) associated with the specific weapon(s).
- H. This Order is for Departmental use only and does not apply in criminal or civil proceedings. It shall not create and it shall not be construed as creating or implying a higher legal standard of duty, care, or safety in an evidentiary sense with respect to any claims. Nothing in this Order is intended to create nor does create an enforceable legal right or private cause of action.

III. DEFINITIONS

- A. Physical Injury: Means any impairment of physical condition or substantial pain. New York Penal Law NYPL §10.00-9.
- B. Serious Physical Injury: Means physical injury which creates a substantial risk of death, or which caused death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ. NYPL§ 10.00-10.
- C. 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. NYPL§ 10.00-11.
- D. Physical Force: Means a level of force less than deadly physical force.
- E. Reasonable Belief: The facts or circumstances the officer knows or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- F. Objectively Reasonable: An objective standard used to judge an officer's actions established by the United State Supreme Court in *Graham v. Connor*. 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 the officer at the time that the force was used.

IV. USE OF PHYSICAL FORCE

A. Personnel will use only such force as is objectively reasonable under the circumstances to accomplish the lawful objectives set forth below:

1. Self-Defense or Defense of Another Person

a. An officer may use physical force when and to the extent he reasonably believes it to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force.

2. To Effect an Arrest or Prevent an Escape

a. An officer, in the course of effecting an arrest, or of preventing or attempting to prevent the escape from custody, or a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes it to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force.

3. Prevention of Suicide

a. An officer acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person only to the extent that he reasonably believes it necessary to prevent such result.

4. Protection of Property and Premises

a. An officer may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent what he reasonably believes to be the commission or attempted commission of a larceny, criminal mischief, or a crime involving damage to premise, or criminal trespass.

V. USE OF DEADLY PHYSICAL FORCE

A. Self-Defense or Defense of Another Person

1. An officer may use deadly physical force only when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

Note: Officers faced with an imminent threat of death or serious physical injury in the course of their police duties are not required to retreat or withdraw to avoid the necessity of using deadly physical force. See NYPL §35.15-2(a)(ii).

B. To Effect an Arrest or Prevent an Escape

1. This provision governs use of deadly physical force for the purpose of effecting or attempting to effect an arrest or of preventing or attempting to prevent an escape from custody. This provision is sometimes referred to as the "fleeing felons" provision.
2. An officer may use deadly physical force to effect the arrest or prevent the escape from custody only under the following circumstances:
 - a. The officer has probable cause to believe the subject has committed a felony or has attempted to commit a felony, involving the infliction or threatened infliction of death or serious physical injury; **AND**
 - b. The officer reasonably believes that deadly physical force is necessary to effect the arrest of the subject or to prevent his escape from custody; **AND**
 - c. The officer reasonably believes that deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force; **AND**
 - d. If feasible, the officer has issued a verbal warning.
3. Pursuant to NYS Penal Law, §35.30 (2): *"The fact that a police officer or peace officer is justified in using deadly physical force [for the purpose of effecting or attempting to effect an arrest or of preventing or attempting to prevent an escape from custody] does not constitute justification for reckless conduct by such police officer or peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody".*

VI. USE OF FIREARMS

A. Warning Shots

1. Warning shots are not permitted.

B. Moving Vehicles

1. An officer will not discharge a firearm **at** a moving vehicle, unless:
 - a. The officer reasonably believes the moving vehicle is being used as an

instrument of deadly physical force against the officer or another person (e.g., the operator of the vehicle is striking or attempting to strike the officer or another person with the vehicle); or

- b. The officer reasonably believes that an occupant of the vehicle is using or threatening the imminent use of deadly physical force against the officer or another person (e.g., shooting from the vehicle).
2. An officer **WILL NOT** discharge a firearm at a **fleeing vehicle** that does not constitute an imminent danger of death or serious physical injury to the officer or another person, or at any occupant of such a vehicle. An officer will not discharge a firearm at a vehicle solely to prevent the escape of the vehicle or any of its occupants.
3. An officer will not discharge a firearm **from** a moving vehicle unless the officer reasonably believes such action to be necessary to protect himself or another person from death or serious physical injury.
4. In deciding whether to discharge a firearm at or from a moving vehicle, officers will take into consideration the risk or such action to other persons.

C. Drawing or Exhibiting Firearms; Report of Action

1. An officer will not draw or exhibit his firearm unless there is reason to believe that circumstances exist which may justify the use of deadly physical force under this Order (e.g., conducting building searches, high risk vehicle stops, confronting a person who may be armed or dangerous, dealing with injured or dangerous animals).
2. If an officer points a firearm in the direction of another person or otherwise uses the firearm to control a person the officer will complete a Subject Management Report in accordance with G.O. 401 - *Subject Management Report*.

D. Intentional Discharge of Firearm

1. An officer will not intentionally discharge a firearm unless:
 - a. The officer reasonably believes that circumstances exist which justify the use of deadly physical force under this Order, or
 - b. The officer reasonably believes that circumstances exist justifying the use of a firearm against an injured or dangerous animal under this Order; or
 - c. The discharge is part of Department-authorized training.
2. All intentional discharges of a firearm will be reported on a Subject Management

Report a and investigated as a deadly physical force incident in accordance with G.O. 401 - *Subject Management Report* and G.O. 403 - *Deadly Physical Force Incidents*. This does not apply to training activities or those occasions when the firearms discharge was for the purpose of destroying an injured or dangerous animal.

E. Accidental Discharge of Firearm

1. Officers will exercise due care to handle and store firearms properly and safely and to prevent an accidental discharge.
2. An accidental discharge of a firearm issued by the Department or possessed by an officer as an exempt person, whether on-duty or off-duty, will be reported immediately to the on-duty Officer-in-Charge (OIC) by the involved officers.

Note: Officers will report off-duty accidental discharges of other firearms in accordance with applicable laws.

3. If any person is injured as a result of the accidental discharge the incident will be investigated as a deadly physical force incident in accordance with the procedures set forth in G.O. 403 - *Deadly Physical Force Incidents*.
4. If no one is injured as a result of the accidental discharge the OIC will notify the Chief of Police, or designee. The OIC will ensure that a full investigation is conducted including all appropriate reports and evidence work. The OIC will request whatever assistance may be required to accomplish this.
5. The case file, including all reports and documentation, will be forwarded to the Chief of Police via the chain-of-command.
6. In all cases of an accidental discharge of an issued firearm possessed as an exempt person the Chief of Police, or designee, will also conduct an internal investigation.

VII. GENERAL CONSIDERATIONS

A. Determining the Objective Reasonableness of Force

1. Factors that may be used in determining the reasonableness of force include, but are not limited to:
 - a. The severity of the crime or circumstance;
 - b. The level and immediacy of threat or resistance posed by the suspect;
 - c. The potential for injury to citizens, officers, and suspects;

- d. The risk or attempt of the suspect to escape;
- e. The knowledge, training, and experience of the officer;
- f. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
- g. Other environmental conditions or exigent circumstances.

B. Duty to Intervene

- 1. 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.
- 2. An officer who observes another officer use force that exceeds the degree of force as described above should promptly report these observations to a supervisor.

C. Notification

- 1. Any time physical force or deadly physical force is used the officer(s) involved will notify an on-duty supervisor(s).

D. Verbal Warnings

- 1. If feasible, officers will identify themselves and issue a verbal warning before using physical force or deadly physical force.
- 2. Verbal warnings need not be issued when the officer reasonably believes that doing so would increase the danger to the officer or another person.

E. Equipment and Techniques

- 1. In using physical force or deadly physical force an officer will generally use Department-issued equipment and Department-approved techniques. However, in cases in which the officer reasonably believes it is necessary to protect himself or another person, the officer may utilize any readily available weapon, instrument, or technique provided the level and nature of such force is legally justifiable.
- 2. 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 deadly physical force is authorized.

F. Prohibited Uses of Force

1. Force shall not be used by an officer to extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
2. Force shall not be used to coerce a confession from a subject in custody;
3. Force shall not be used 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. Force shall not be used 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.

- G. After force has been used, whether or not the subject has been arrested, officers will immediately evaluate the need for medical attention or treatment for the subject in accordance with the procedures set forth in G.O. 511 - *Prisoner Medical, Safety, and Decontamination Procedures*.

VII. USE OF FIREARMS ON ANIMALS

- A. An officer may use his firearm to destroy an animal under the following circumstances:
1. The officer reasonably believes that the animal is so badly injured that it is appropriate to destroy the animal for humanitarian reasons; or
 2. The officer reasonably believes that the animal is presenting a danger or threat of injury to the officer or another person.
- B. In using firearms to destroy animals officers will adhere to the following procedures:
1. In the event an officer believes it is or may be appropriate to destroy an animal the officer will first contact an on-duty supervisor and notify him or her unless not feasible.
 2. Officers shall exercise due care to ensure that no person is endangered or injured by the discharge of the firearm.
 3. In the case of an injured animal, permission should be obtained if possible. If the owner is present and declines permission the officer will require the owner to remove the animal.
 4. Destroying an animal in the presence of children should be avoided.

5. Officers will make arrangements to remove the remains as soon as possible.
6. A Case Report documenting the circumstances will be completed by the officer destroying the animal.

BY ORDER OF:

A handwritten signature in blue ink that reads "Joseph J. Kane". The signature is written in a cursive style with large, looped letters.

JOSEPH J. KANE
Chief of Police