

# USE OF FORCE: REVISED NYPD POLICY

*Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice, and warning is found to be insufficient.*

Sir Robert Peel (1829)

*June 2016*

## Revised Use-of-Force Policy

As officers, we understand that it's better to gain voluntary compliance, such as talking someone into handcuffs, than to use force. There are times, however, when force is necessary and unavoidable. The following information, based on newly created Patrol Guide Series 221 - Tactical Operations, is designed to consolidate and clarify policies on use-of-force. The policies apply only to the newly defined levels of force. Police actions such as grabbing a subject, putting a subject against a wall, or handcuffing do **NOT** rise to a Level 1 use of force, absent injury and, therefore, will continue to be documented as they have been.

The new policies reinforce the principles that underpin police actions: the use of objectively reasonable standards; the value of de-escalation; and the sanctity of life. Prior use-of-force guidelines and reporting standards were inconsistent and scattered throughout the Patrol Guide. Definitions about what constitutes force were often broad, unclear, or absent. By defining levels of force, Patrol Guide Series 221 amends NYPD procedures. There has been no change, however, in when police officers can or cannot use force.<sup>1</sup>

The introduction of the *Threat, Resistance or Injury (T.R.I.) Incident Worksheet*, designed to collect a wide range of pertinent data, will, for the first time, accurately capture how often and in what

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<sup>1</sup> The only exceptions include the explicit prohibition of force to prevent a subject from swallowing a controlled /illegal substance, the forcible removal of said substance from a subject's mouth or other body cavity, and the discharge of a CEW on a subject that is rear-cuffed.

circumstances officers use force and how often and in what circumstances it is used against them.

## **PG Series 221 – New Definitions (PG 221.01-03)**

1. **Physical injury:** Impairment of physical condition and/or substantial pain. The following examples constitute a physical injury:
  - a. Minor swelling, contusions, and/or abrasions
  - b. Complaint of substantial pain
2. **Substantial Physical Injury or Illness:** Any substantial impairment of physical condition or substantial protracted pain. This includes:
  - a. Significant contusion(s)
  - b. Laceration(s) requiring sutures
  - c. Any injury or condition, that resulted from police contact or action, requiring treatment at a hospital emergency room.<sup>2</sup>
3. **Serious Physical Injury or Illness:** Physical injury or illness 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 of any bodily organ or limb.
  - a. Broken/fractured bone(s)
  - b. Injury requiring hospital admission
  - c. Gunshot wound
  - d. Heart attack, stroke, or other life-threatening, serious illness or injury
4. **De-Escalation:** verbal techniques to avoid the use of force and gain voluntary compliance
5. **Excessive Force:** use of force deemed by the investigating supervisor as greater than that which a reasonable officer, in the same situation, would

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<sup>2</sup> This does not include the routine deployment of O.C. spray or a CEW in cartridge mode – and the obligatory medical attention that is associated with their intended use

use under the circumstances that existed and were known to the MOS at the time force was used

6. **Objectively Reasonable Standards:** the legal standard of the reasonableness of force, which is based on the totality of the circumstances
7. **Passive Resistance:** minimal physical action to prevent arrest (e.g., subject going limp when being taken into custody)
8. **Active Resisting:** physically evasive movements to defeat a member of the service's attempt to control a subject (e.g., bracing, tensing, pushing, verbally signaling an intention to avoid or prevent being taken into or retained in custody, etc.)
9. **Active Aggression:** threat or overt act of assault and the ability to carry it out
10. **Chokehold:** includes, but not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air

## **New Levels of Force (PG 221-03)**

1. **Level 1: Physical Force/Less Lethal Device**
  - a. Hand strikes
  - b. Foot strikes
  - c. Forcible take-downs
  - d. Wrestling subject to the ground
  - e. Use of OC spray (PG 221-07)
  - f. Use of a Conducted Electrical Weapon (CEW)<sup>3</sup> in cartridge mode (PG 221-08)
  - g. Use of a mesh restraining blanket

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<sup>3</sup> To align with national standards, the Department has transitioned from the term Conducted Energy Device (CED) to Conducted Electrical Weapon (CEW)

## **2. Level 2: Use of Impact Weapon/Canine/Less Lethal Device**

- a. Use of a Conducted Energy Weapon in drive stun mode<sup>4</sup> (PG 221-08)
- b. Impact weapon
- c. Police canine bite

## **3. Level 3: Deadly physical force**

- a. Firearms discharge (PG 221-04)
- b. Physical force readily capable of causing death or serious physical injury

## **PG 221-03 – Force Investigations**

**Immediate Supervisor**<sup>5</sup> will conduct an inquiry into:

- a. Level 1 force
- b. Police action resulting in physical injury to any person
- c. Allegations of excessive Level 1 force with no injury
- d. Use of a CEW in cartridge mode<sup>6</sup>

**Duty Captain & Patrol Borough Inv. Unit** investigates:

- a. Level 2 force
- b. Any substantial physical injury to any person, which resulted from police activity
- c. Allegations of excessive force with a physical injury or substantial physical injury
- d. Suspected excessive force with a physical injury or substantial physical injury
- e. Attempted suicide by prisoner

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<sup>4</sup> The Less Lethal/Rescue Equipment Report will no longer be utilized to document CEW discharges

<sup>5</sup> A supervisor at least one rank above member using force

<sup>6</sup> Reporting supervisor must be in the rank of Lieutenant, or above (Sergeants assigned to ESU may report CEW incidents)

f. Use of a CEW in drive stun mode

**Internal Affairs** investigates:

- a. Level 3 force (except firearm discharge)
- b. Allegations or suspected excessive force resulting in serious physical injury (SPI)
- c. Any SPI injury to any person, resulting from police activity (except if a subject dies or is likely to die)
- d. Attempted suicide by prisoner resulting in serious physical injury

**Force Investigation Division** investigates:

- a. All firearm discharges by UMOS
- b. All incidents in which a subject of police action is seriously injured and likely to die or dies while in police custody, during apprehension, or immediately prior to police custody

Supervisory Responsibility	Level of Force	OR	Type of Injury	Method of Reporting
Immediate Supervisor (CEW = Lt or above)	Level 1 only		Physical injury only; alleged excessive (no injury); CEW in cartridge mode	T.R.I. Incident Worksheet
CO, XO, Duty Captain, Borough Investigations	Level 2		Substantial physical injury; alleged or suspected excessive (physical injury/substantial physical injury), attempted suicide by prisoner; CEW in drive stun mode	T.R.I. Incident Worksheet & T.R.I. Incident – Investigating Supervisor’s Assessment Report
Internal Affairs Bureau	Level 3		Serious physical injury; alleged or suspected excessive (serious physical injury); att. suicide by prisoner (serious physical injury)	T.R.I. Incident Worksheet & T.R.I. Incident – Investigating Supervisor’s Assessment Report
Force Investigation Division	Firearm Discharge		Person dies or seriously injured and likely to die	T.R.I. Incident Worksheet & Typed Letterhead

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1. **UMOS** notifies immediate supervisor regarding the type of force used, the reason force was used, and injuries to any person(s) involved
  2. For each officer who used force, discharged a less lethal device or firearm, or had force used against them, **UMOS** completes applicable portions of a ***Threat, Resistance or Injury (T.R.I.) Incident Worksheet***<sup>7</sup> and forwards it to the immediate supervisor
  3. **UMOS** also documents any use of force in Activity Log, Arrest Report, Aided Report, Stop Report, Medical Treatment of Prisoner Form, as necessary
  4. **Immediate supervisor** completes applicable captions and documents findings on the T.R.I. Incident Worksheet and recommends appropriate follow-up, as necessary. Signs T.R.I. Incident Worksheet and forwards to Desk Officer
  5. **Immediate supervisor** notifies the Desk Officer, precinct/police service area/transit district of occurrence of the level of force and/or type of injury or illness
  6. **Desk officer** records details of incident in Command Log, (including T.R.I. incident number) and ensures that

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<sup>7</sup> Only one TRI Incident number will be used for each incident regardless of the number of officers who used force or had force used against them



the T.R.I. Incident Worksheet is entered into the FORMS – T.R.I. application by the Command Clerk.

7. **Desk officer** must notify the Patrol Borough command, Operations Unit, and IAB (obtain log number) if a level 2 or 3 investigation is required.
8. **Desk officer** will ensure a criminal history check is completed for every subject arrested for Resisting Arrest and/or Assault on a Police Officer. If the subject has been arrested for either offence two or more times in the previous five years, they will be deemed a Resisting Recidivist. All arrests involving a Resisting Recidivist will be enhanced by the Precinct Detective Unit.

## **Threat, Resistance or Injury (T.R.I.) Incident Worksheet**

The **Threat, Resistance or Injury (T.R.I.) Incident Worksheet** is required to be completed whenever:

- a. A subject or any non-member sustains a physical injury or dies as a result of a police action or while in custody;
- b. A member of the service sustains a physical injury or dies as a result of apprehending or attempting to apprehend a subject or control an individual or individuals;
- c. A prisoner attempts or commits suicide;
- d. Any level of force, as described in PG 221-03 “Reporting and Investigation of Force Incident or Injury to Persons During Police Action” is used by a member of the service, whether or not an injury is sustained

- e. Any level of force, as described in PG 221-03 “Reporting and Investigation of Force Incident or Injury to Persons During Police Action” is alleged or suspected, whether or not an injury is sustained
- f. Force, as described in P.G. 221-06, “Member of the Service Subjected to Force While Performing Lawful Duty,” is used against a member of the service, whether or not an injury is sustained; and/or
- g. A member of the service discharges OC pepper spray, a Conducted Electrical Weapon, or firearm, regardless of whether an injury was caused. (e.g., accidental discharges, discharges against animals, etc.).

The T.R.I. Incident Worksheet is the primary method used by the Department to gather intelligence information regarding incidents which are life threatening.

### **T.R.I. Incident Worksheet Sections to be Completed**

Part A = MOS using force\*

Part B = Immediate Supervisor of MOS using force

\*In instances when a member claims that **no force** was used, the **immediate supervisor** will be responsible for completing Part A of the T.R.I. Incident Worksheet normally completed by the reporting MOS.

Supervisors on scene are required to make a **prompt assessment** of the circumstances and to categorize the force level for the purposes of appropriate reporting and/or investigation. The IAB Command Center may be contacted for assistance. The initial determination may change as additional information becomes known.

## Use of Force Considerations

1. **All MOS are responsible & accountable for the proper use of force**
2. The application of force by an MOS **must** be consistent with existing **law** and NYPD **policies**, even when NYPD policy is more restrictive than state or federal law
3. Federal and state laws provide for **criminal sanctions & civil liability** against MOS when force is deemed **excessive, wrongful, or improperly applied**
4. **Reasonable Force** may be used to:
  - a. *Protect self or a third person*
  - b. *Arrest/Custody*
  - c. *Prevent escape*
5. **Deadly Physical Force (DPF)**
  - a. Only to *protect* from imminent *SPI* or *death*
6. **Verbal de-escalation**
  - a. When time & circumstances permit
    - o Cover & distance provide time
  - b. *Safety* is paramount
  - c. *Goal* is *voluntary compliance*
7. **Non-Compliance (contributing factors)**
  - a. *Medical* condition
  - b. *Mental* impairment
  - c. *Developmental* disability
  - d. *Physical* limitation
  - e. *Language* barrier, and/or
  - f. *Drug* interaction
8. **Factors for Force Reasonableness**
  - a. Subject

1. Actions (passive vs active resisting, threatening posture)
  2. Weapon(s)
  3. Number of subjects
  4. Size (large v. small)
  5. Age (adult, youth, elderly)
  6. Condition (disability, impairment)
  7. History (if known)
- b. Nature/severity of crime or situation
  - c. Objective level of threat to:
    1. MOS
    2. Public
    3. Subject
  - d. Environmental Factors
    1. Hostile Crowd
    2. Low Visibility and/or Lighting
    3. Dangerous Conditions
      - i. Stairway
      - ii. Roadway
      - iii. Waterway
      - iv. Bridge
      - v. Confined space

## **MOS often have a choice to either Escalate or De-escalate the situation**

### **Emotional v. Rational**

When an individual is emotional or under the influence, their ability to be rational is diminished. By lowering their emotional state through de-escalation, you may be able to appeal to their rational mind, which may enhance the probability that the subject will voluntarily comply.

### **Signs of Emotional Distress or Agitation**

1. Voice & Language
  - a. Raised, High-pitched, Rapid
  - b. Angry, Abusive, Vulgar
2. Movement & Posture
  - a. Erratic, Pacing, Fidgeting, Shaking
  - b. Fighting Stance, Aggressive Posture, Balled fists
  - c. Excessive hand gestures
3. Excessive sweating

## **Distance and/or Cover provide Time for De-Escalation Techniques**

1. Isolate and contain (maintain zone of safety)
2. Introduce Self
  - “I am [name] and I’m here to help”
3. Active Listening (80% listen/20% talk)
  - Listening may decrease subject’s emotional state & enhance subject’s rational state
  - Identify what the subject wants so you can determine solutions that incorporate the concerns of the subject
  - Use open ended questions
4. Paraphrasing
  - “You seem to be saying [insert]”
5. Emotional Labeling
  - “You seem [insert appropriate emotion]”
6. Minimal Encouragers
  - brief phrases to show you are listening and allow the other person to continue talking
    - “I see”; “OK”; “Yes”; Head nod
7. Establish Rapport & Trust
8. Express Empathy – not Sympathy
9. Honesty – False statements undermine rapport

*For more information on De-Escalation Techniques reference **Crisis Intervention Team (CIT) training***

## Force/Restraint Prohibitions

### As per PG 221.01, MOS will NOT:

1. Employ a **chokehold**
2. Use force:
  - a. to *punish, retaliate* or *coerce*
  - b. on handcuffed subjects, *unless* to prevent:
    - i. injury
    - ii. *escape* or overcome resistance or assault<sup>8</sup>
  - c. to prevent from swallowing contraband
  - d. to remove contraband from subject mouth
3. Connect or tie rear-cuffed hands to cuffed or restrained ankles or legs
4. Transport subject facedown
5. Discharge firearm:
  - a. When unnecessarily endangers public
  - b. In defense of property
  - c. To subdue a fleeing suspect, *unless* suspect presents threat of serious physical injury or death to MOS or other person present
  - d. Warning shots
  - e. To summons assistance, *unless* emergency situation and no other reasonable means available
  - f. At or from a moving vehicle, *unless* deadly physical force is being used against MOS or another person present, by means other than the moving vehicle

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<sup>8</sup> There is an absolute prohibition on the use of a CEW on a subject that is rear-cuffed

- g. At dog or other animal, *except* to protect MOS from imminent physical injury and no opportunity to retreat or other reasonable means to eliminate threat
- h. Cock a firearm (double action only)

### **All MOS will:**

1. Protect human life
  - a. Self & other MOS
  - b. Members of the public
  - c. Persons in custody
2. A T.R.I. Incident Worksheet must be completed if a MOS uses or is alleged to have used Level 1 force or higher OR if force is used against a MOS
  - a. If a MOS is unable to do so, the immediate supervisor will complete the T.R.I. Incident Worksheet
3. Immediate supervisor will make a prompt assessment of the circumstances and categorize the force level for the purposes of appropriate reporting and/or investigation
4. Use de-escalation techniques, when possible
  - a. De-escalation techniques may diminish the need to use force
  - b. Cover and distance increase the time necessary to use de-escalation techniques
  - c. Avoiding use of force via de-escalation increases safety for MOS & public – you can't lose the fight that you don't have
5. Request medical assistance for any person involved in any incident in which any level of force was used when requested or required
6. Notify IAB when you observe another MOS:



- a. use excessive force
- b. fail to obtain medical assistance when requested or required