PURPOSE
The purpose of this policy is to define how and when officers are authorized to use force or deadly force in response to resistance encountered while effecting an arrest, in defense of themselves or other persons, or while taking an emotionally disturbed person into custody.

This policy, together with the 4th Amendment of The Constitution, as held in Graham v. Connor, 490 U.S.386 and Article 35 of the New York State Penal Law identify the amount of force that police officers may use in the apprehension and arrest stages of law enforcement, as well as the circumstances in which that force may be employed.

DEFINITIONS

1. **Force**- any physical coercion other than ordinary handcuffing or de minimus force. It does not include physical interaction related to separating, guiding, or controlling, unless the officer uses control techniques that are intended to cause pain or injury.

2. **Deadly Physical Force**- any use of physical force that under the circumstances is readily capable of causing death or serious physical injury as defined in Article 10, section 11 of the New York State Penal Law. This category of force includes but is not limited to a critical firearm discharge.

3. **Critical Use of Force**- (1) all uses of force that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (2) all critical firearm discharges; (3) all uses of force resulting in significant injury, including a broken bone or an injury requiring contemporaneous hospital admission; (4) all intentional head, neck, and throat strikes; (5) intentional neck holds; (6) all uses of force resulting in a loss of consciousness; (7) all other uses of force apparently resulting in death; (8) all canine apprehensions that result in canine bite or visible injury to a suspect; (9) more than two applications of an Electronic Control Device (“ECD”) on an individual during a single interaction, regardless of the mode or duration of the application, and whether the application are by the same or different officers, or are for longer than 15 seconds, whether continuous or consecutive; (10) any intentional strike, blow, kick, ECD application, or similar use of force against a fully handcuffed subject.

4. **De Minimus Force**- physical interaction meant to separate, guide or control without the use of control techniques that are intended to, or reasonably likely, to cause pain or injury. Incidents involving this level of force without any complaint of pain or injury are not categorized as reportable.

5. **Objectively Reasonable Force**- as held in Graham v. Connor (490 U.S. 386) objectively
reasonable force is defined as the appropriate level of force used by a reasonable prudent officer(s) after evaluating the situation in light of known facts and circumstances, including, but not limited to; the severity of the crime at issue, the extent to which the subject poses an immediate threat to the safety of the officer or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.

6. **Exigent Circumstances**—emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the immediate destruction of evidence is likely.

7. **De-escalation**—taking action or communicating verbally or non-verbally before and during a potential force encounter. It is an attempt to stabilize the situation and reduce the immediacy of the threat or resistance by the subject so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include, without limitation; the use of command presence, verbal advisements, force warnings, verbal persuasion, tactical repositioning and crisis negotiation.

8. **Neck Hold**—refers to one of the following types of intentional holds:
   a. Bar-arm control: a hold that inhibits breathing by compression of the airway in the neck.
   b. Carotid restraint hold: a hold that inhibits blood flow by compression of the blood vessel in the neck.
   c. A lateral vascular neck constraint.
   d. A hold with a knee or other object to the back of a prone subject’s neck.

9. **Critical Firearm Discharge**—a discharge of a firearm by an officer, including accidental discharges and discharges at persons where no one is struck, with the exception of range and training discharges and discharges at animals.

10. **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 protracted loss or impairment of the function of any bodily organ as defined in Article 10, section 10 of the New York State Penal Law.

11. **Reasonable Cause To Believe**—Reasonable cause to believe that a person has committed an offense exists when evidence or information, that appears reliable, discloses facts or circumstances that are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment, and experience that it is reasonably likely that such offense was committed and that such person committed it, as defined in Article 70.10, section 2 of the New York Criminal Procedure Law. Such apparently reliable evidence may include or consist of hearsay.

12. **Probable Cause**—reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonably believe that an individual has committed or is committing a crime or violation of law.

13. **Involved Officer**—any officer(s) who used or attempted to use force in an incident.

14. **Uninvolved Officer**—any officer(s) who was in close proximity to a use of force but took no active role in the application of such force.
POLICY

It is the policy of the Yonkers Police Department that officers may use only the level of physical force that is objectively reasonable, and within the limits established by the 4th Amendment of The Constitution (as held in Graham v. Connor), by Article 35 of the New York State Penal Law, and which is consistent with the training and policies of the Yonkers Police Department. The appropriate level of force used is determined by the “totality of the circumstances” at the moment the force is exerted. This use of force policy is more restrictive than the limits established by the New York State Penal Law. It is the responsibility of all members of the Yonkers Police Department to be aware of the restrictions set forth in this policy and perform their duties accordingly.

All officers are to use only the force that is reasonable in light of the resistance encountered and they are to de-escalate force as resistance decreases. In all circumstances, when practical, persons are to be given a verbal warning of the opportunity to submit to arrest before force is used. Also, de-escalation measures may be appropriate, depending on the circumstances, to include; disengagement, area containment and surveillance, waiting out a subject, and summoning additional officers or specialized units.

At the scene of an incident, members of the Department may be present who are not directly involved in taking police action. However, that does not relieve officers from their obligation to ensure that the requirements of the law and Department regulations are complied with. Police officers of all ranks are required to maintain control or intervene if the use of force against a subject becomes excessive. Failure to do so may result in possible discipline, criminal prosecution and/or civil liability.

The following constraints are placed upon the use of force:

1. Only issued or approved equipment will be carried on duty and used when exerting force, except in emergency situations when a member may use any resource at his/her disposal.
2. The use of intentional neck holds is expressly prohibited unless the officer is authorized to use deadly physical force.
3. The use of intentional head strikes with a baton or hard object is expressly prohibited unless the officer is authorized to use deadly physical force.
4. The use of force to overcome passive resistance or against a person in handcuffs is prohibited except to the extent necessary to handcuff and transport a person, or in exigent circumstances.
5. Use of restraining devices is mandatory on all prisoners unless, in the officer’s judgment, unusual circumstances prevent their use. Such circumstances might include; injury, pregnancy, handicapped condition, the physical impossibility of using restraint devices, extreme age, young or old, or a judge’s order. The mere placing of handcuffs on a prisoner will not be construed to be a use of force. However, when the 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 force has occurred, and the necessary reports must be completed.
PROCEDURE

1. When officers have been properly trained, they are better prepared to make sound decisions when responding to resistance. All sworn members are to utilize the appropriate level of force consistent with the training provided by the Yonkers Police Department Training Division. Officers may be faced with various levels of resistance as well as life threatening situations, so they need clear and consistent guidelines to assist them in their duties. However, each situation is unique and officers must apply reasonable judgment during incidents that require force to be applied. Resistance shall be defined according to the following 3 levels:
   a. Passive Resistance
   b. Active Resistance
   c. Deadly Resistance

2. Subjects can move rapidly from one level of resistance to another. If force is necessary, all officers must use objectively reasonable force in response to a subject’s level of resistance and, as explained above, should de-escalate force as resistance decreases. Before force is used, and when circumstances permit, officers should verbally convey their intent to use force and provide the subject the opportunity to submit to arrest. Officers should recognize when a subject may become compliant or resistant to custody and adjust their response and tactics accordingly.

3. Officers should attempt to assess each situation prior to a use of force. Additionally, officers are to issue a verbal use of force warning prior to the application of force when practical. When possible, officers should attempt to employ de-escalation techniques such as:
   a. Obtain information about the incident and subject, and assess known risks
   b. Conduct surveillance of the location
   c. Consider tactical distance, cover, concealment, and protective barrier
   d. Identify themselves and announce their authority in addition to issuing verbal commands
   e. Request any other resources that may be required such as; ESU, Crisis Negotiation Team, and additional units
   f. Attempt verbal de-escalation techniques and consider other incident resolution options
   g. Attempt less lethal alternatives
   h. Attempt to contain the scene and subject
   i. Consider the application of alternative resolution tactics when practical

Response to Resistance

1. If the subject does not comply with de-escalation techniques, verbal commands or physically resists arrest, the officer(s) should apply objectively reasonable force in light of resistance encountered. If the subject eventually stops actively resisting arrest and complies, then the officer(s) should de-escalate the use of force accordingly

2. A fluid application of force techniques and authorized equipment/weapons should be utilized in response to any resistance encountered. An officer’s progression from a verbal warning to
the application of force should be flexible and based on the actions of the subject. If circumstances develop in which the officer(s) can safely de-escalate the situation, then verbal communication should be used to convey that to the subject.

**Passive Resistance**

1. The subject refuses to comply with verbal commands or other recognizable forms of lawful control.
2. The subject may stand or sit still and not respond to lawful direction, or
3. The subject may go limp as “dead weight.”
4. Also, persons who are protesting or engaging in mass demonstrations may lock arms as a form of resistance.
5. The use of force against passive subjects or persons in handcuffs is prohibited except to the extent necessary to handcuff and transport a person, or in exigent circumstances.

**Active Resistance**

1. The subject physically resists by; stiffening arms or hands, pushing the officer away,
   a. fleeing from the officer on foot or in a motor vehicle, resisting the use of control holds, attempting to strike the officer, striking the officer with personal weapons, threatening by physical menace, barricading themselves in a premises or vehicle, or any action other than those defined as passive or deadly resistance.
   - If an officer is met with active resistance while effecting an arrest or attempting to place a subject in custody, de-escalation techniques and verbal commands advising the subject to comply should be continuously given when practical.
   - When encountering active resistance, officers may apply some or all of the following use of force techniques or equipment:
     a. Pressure point control techniques or holds
     b. Grappling or wrestling takedowns
     c. Hand, elbow, knee, foot strikes
     d. Oleoresin Capsicum
     e. ECD/Taser
     f. Baton
     g. ESU less lethal special weapons (as defined in P&P 160-10)
     h. Any other type of force techniques that do not rise to the level of deadly physical force

**Deadly Resistance**

1. Circumstances in which a threat of death or serious physical injury to an officer or any person(s) is imminent. A danger is imminent when an objectively reasonable person would conclude that a subject is threatening to cause death or serious physical injury and has the means (whether real or perceived) to do so, and the subject has the opportunity and ability to cause such injury. Only when encountering deadly resistance are officers authorized to use the following force techniques and equipment to protect themselves or another person(s):
   a. Intentional neck or throat strikes
b. Intentional neck holds

c. Intentional strikes to the head area with a baton or hard object

d. Critical use of a firearm

e. Any other force readily capable of causing serious physical injury or death

**Officers are authorized to utilize deadly physical force under the following circumstances**

1. To prevent or terminate what the officer reasonably believes to be the use or imminent use of deadly physical force against the officer or any person(s).

2. To apprehend a subject when the officer has reasonable cause to believe that a subject(s) is armed with a deadly weapon and has committed a felony or has attempted to commit a felony that involved the use or attempted use or threatened imminent use of deadly physical force against a person **and**:
   a. The officer has reasonable cause to believe that the subject they are pursuing did commit that offense **and**
   b. There is a substantial risk that the fleeing subject will cause death or serious physical injury if not immediately apprehended **and**
   c. There are no other reasonable means for effecting the arrest **and**
   d. The use of deadly physical force does not appear to present a danger to other persons.

*The foundation of these parameters are found in section 35.30 of the NYS Penal Law as modified by the U.S. Supreme Court in Tennessee vs. Garner. The court held that discharging a firearm at a fleeing felon is unconstitutional unless the officer has reasonable cause to believe that the suspected person poses a significant threat of death or serious physical injury to the officer or others. Officers are required to follow this ruling.*

**All officers are prohibited from discharging firearms in the following instances:**

1. For any misdemeanor, city ordinance, traffic violation, or felony not involving the use or attempted use or imminent threat of deadly physical force.

2. When it appears likely that any other person(s) will be hit and there is no immediate threat of death or serious physical injury to the officer or other person(s).

3. At or from any type of moving vehicle unless a firearm is being discharged by an occupant of the vehicle at a police officer or another person present.
   a. If a vehicle is being utilized as a weapon to cause mass casualties or terror, the officer(s) should consider all circumstances, known at the time, when deciding to discharge a firearm at such vehicle. Officers are not to place themselves in the path of a motor vehicle.

4. As warning shots.

5. In defense of property.
Procedures following the Use of Physical Force and Deadly Physical Force:

1. After any use of physical force or deadly physical force, an officer shall immediately evaluate the need for medical attention or treatment for the subject upon whom the force was used and arrange for medical treatment when:
   a. The subject has a visible injury, including any injuries prior to the use of force.
   b. The subject complains of injury or pain, or requests medical attention.
      Any subject who refuses medical attention must still be transported to a hospital where the refusal is to be witnessed by a medical professional. The arresting/assisting officer is to document this in the appropriate report(s).
   c. As required by the department policies which outline the use of; oleoresin capsicum, batons, canine deployment, Kinetic Energy Impact Projectile, or the Taser.

2. As soon as practical, the officer shall notify his/her immediate supervisor of the incident.

3. When an officer is off-duty, he or she is to notify the on duty supervisor of the YPD Communications Center. And if the use of force occurred within the jurisdiction of a law enforcement agency outside Yonkers, the officer must also report it there. All requirements of Policy and Procedure Section 120-5: Reporting Use of Force, shall be followed to properly document the use of force.