

## GENERAL ORDER

### A – 35 USE OF FORCE

(02/21/2020)

#### **PURPOSE**

The purpose of this policy is to establish guidelines and procedures regarding the Use of Force by members of the Kenmore Police Department. This policy is not intended to endorse or prohibit any particular tactic, technique, or method of employing force.

#### **POLICY**

The Kenmore Police Department recognizes the immeasurable value of human life in our society. Police Officers have the primary responsibility to protect life and property, and to apprehend criminal offenders. The amount of force that is used by the Officers of the Kenmore Police Department shall be the amount of force that is objectively reasonable under the circumstances for the officer involved to effect an arrest, prevent an escape, or in defense of themselves or others. The standard of objective reasonableness, established by the United States Supreme Court in *Graham v. Connor*, is used in this policy and is intended to provide officers with guidelines for the use of force, including deadly physical force. Additionally, Officers must be thoroughly familiar with Article 35 of the NYS Penal Law.

This policy is based on the Use of Force - Model Policy provided by the NYS Municipal Police Training Council (approved June 5, 2019).

#### **DEFINITIONS**

**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 on the totality of the facts that are known to that officer at the time that the force was used.

**Deadly Physical Force** - Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

**Physical Injury** – Impairment of physical condition or substantial pain.

**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 of any bodily organ.

#### **USE OF FORCE**

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.

Under the 4th Amendment, a police officer may use only such force as is “objectively reasonable” under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

## **DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE**

When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

Factors that may be used in determining the reasonableness of force include, but are not limited to:

The severity of the crime or circumstance;

The level and immediacy of threat or resistance posed by the suspect;

The potential for injury to citizens, officers, and suspects;

The risk or attempt of the suspect to escape;

The knowledge, training, and experience of the officer;

Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;

Other environmental conditions or exigent circumstances.

## **DUTY TO INTERVENE**

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.

An officer who observes another officer use force that exceeds the degree of force as described in the preceding paragraph should promptly report these observations to a supervisor.

## **USE OF DEADLY PHYSICAL FORCE**

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.

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.

## **PROHIBITED USES OF FORCE**

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.
5. Warning shots are PROHIBITED.
6. Officers will not fire a weapon at, or from, a moving vehicle, except as an ultimate measure of self-defense or defense of another.
7. Officers will not use a Police vehicle in an attempt to collide with another vehicle or to force any vehicle off the road, unless the Officer has reason to believe that the occupant has committed a felony involving serious physical injury or death, and that the delay in apprehension creates risk of death or serious physical injury to others. The use of a Police vehicle against persons will be considered use of Deadly Physical Force.
8. Officers are justified in using their firearm to kill an animal for self-defense, to prevent substantial harm to the Officer or another, or when the animal is injured to the degree that humanity requires its relief from further suffering, and all other methods of disposal are impractical. In all such cases, the officer shall ensure that the action taken does not endanger any person. A KPD 109 (Firearm Use) report will be completed.

## **REPORTING & REVIEWING THE USE OF FORCE**

Any injuries resulting from a use of force incident shall result in the appropriate and timely medical attention being provided to the injured party.

Members involved in use of force incidents as described below shall notify their supervisor as soon as practicable and shall complete a departmental use of force report.

1. Use of force that results in a physical injury.
2. Use of force incidents that a reasonable person would believe is likely to cause an injury.
3. Incidents where a Taser or other conducted energy device (CED) was intentionally discharged or accidentally discharged after being displayed.
4. Incidents where pepper spray was pointed at or deployed towards a suspect.
5. Use of an impact weapon.
6. Incidents where a firearm was discharged at a suspect.

A KPD 109A (Use of Force Report) will be used to document any reportable use of force incident.

Additionally, a KPD 109 (Firearms Use Report) will be used to document any time an Officer discharges any firearm, either accidentally or purposefully, whether on-duty or off-duty (except during authorized range practice or qualification).

The officer will protect his or her firearm for examination and submit it to the supervisor on duty. A replacement weapon may be issued to the Officer by the Range Officer.

The Officer will not discuss the incident with anyone except the investigating or supervising Officer, the Officer's attorney, clergy, psychologist, or immediate family. Officers involved will not make any statements, except as provided, without the express authority of the Chief of Police and the Officer's attorney.

## **PROCEDURES FOR INVESTIGATING USE OF FORCE INCIDENTS**

Where practicable, a Supervisor should respond to the scene to begin the preliminary force investigation.

A Supervisor that is made aware of a use of force incident shall ensure the completion of a KPD 109A (Use of Force report) by all Officers engaging in reportable use of force and, to the extent practical, make a record of all Officers present.

Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects.

The Patrol Captain will receive the Supervisor's report and conduct an investigation.

## **FIREARMS REVIEW**

The Firearms Review Panel will consist of the Range Officer/Firearms Instructor, the shift Lieutenants (other than the Officer's shift Lieutenant), and the Captains.

All reports and recommendations will be forwarded to the Chief of Police. He has the sole authority to make the final determination on any action taken.

## **AUTHORIZED WEAPONS**

1. Glock Model 21, .45 caliber semi-automatic pistol
2. Glock Model 30, .45 caliber semi-automatic pistol (Detectives/Captains/Chief)
3. It is the policy of the Kenmore Police Department that the issued Glock pistol must be locked in the employee's locker, locked using the provided cable lock or with an approved gun lock, or locked in a (gun) safe whenever not being carried on the Officer's person.
4. Ammunition which was issued by the Range Officer.
5. Colt M4 LE 6920 rifle
6. ASP expandable baton
7. Oleoresin-Capsicum (OC) Spray
8. TASER X26
9. The Chief of Police MUST authorize any weapon carried by the Officer other than the issued departmental weapon.