



GENERAL ORDER No. 06.01

USE OF PHYSICAL FORCE

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ISSUING AUTHORITY: JOSEPH L. CENTANNI, CHIEF OF POLICE

I. PURPOSE

The purpose of this policy is to establish policies and procedures governing the use of physical force by sworn officers of this department and to establish procedures for investigating and reporting the use of such force.

II. POLICY

It is the policy of the Waterliet Police Department that sworn officers of this department shall only utilize the degree of physical force that is objectively reasonable¹ and necessary based on the totality of the circumstances to accomplish a lawful objectives as established by Article 35 of the New York State Penal Law and the policies and procedures set forth by this department.

Any officer present and observing another member utilizing force that they believe to be clearly beyond that of which is objectively reasonable under the circumstances shall have a duty to intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm. Any officer who observes another officer use force that exceeds what is authorized by applicable law and/or department policy and procedures shall immediately report such to a supervisor/OIC.

Members of the Waterliet Police Department who must exercise control of a situation or person should attempt to de-escalate the situation prior to utilizing force, if possible. The department recognizes that policing in general is dynamic and ever-evolving. Clearly not every potential violent confrontation can be de-escalated. However, officers should recognize they have the ability to impact the direction and the outcome of many situations they handle based on their decision making and tactics they choose to employ. Officers should use advisements, warnings, verbal persuasion and other strategies and alternatives rather than escalated levels of force, when possible.

¹ Force which is objectively reasonable is insulated from criminal liability through Article 35 of the NYS Penal Law and civil liability by the 4th Amendment standard of objective reasonableness.

III. DEFINITIONS

- A. Reasonable Cause to Believe that a Person has Committed an Offense:** Reasonable belief means those facts and circumstances within the knowledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.
- B. Physical Injury:** Impairment of physical condition or substantial pain.²
- C. 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.³
- D. Physical Force:** Physical presence, action, or exercise of strength to compel another to act or refrain from certain behavior, force which does not amount to deadly physical force.
- E. Deadly Physical Force:** Force which under the circumstances in which it is used, is readily capable of causing death or serious physical injury.⁴
- F. Less Lethal Weapons:** Weapons, devices and munitions that are explicitly designed and primarily employed to incapacitate targeted personnel or material immediately, while minimizing fatalities, permanent injury to personnel and undesired damage to property in the target area or environment. Less lethal weapons are intended to have reversible effects on personnel or material.
- G. Less Lethal Force:** Less lethal force means response options that are not designed or used with the intention of causing (and have less potential for causing) death or serious bodily injury, including but not limited to: impact weapons, chemical agents and Tasers.
- H. Imminent:** The determination of whether a particular threat or danger is “imminent” is based on an assessment of all the circumstances known to the officer at the time. “Imminent” does not necessarily mean “immediate” or “instantaneous.”
- I. 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 based on the totality of the facts that are known to that officer at the time the force was used.⁵

² NYS Penal Law §10 (9) (McKinney 2013)

³ NYS Penal Law §10 (10) (McKinney 2013)

⁴ NYS Penal Law §10 (11) (McKinney 2013)

⁵ Graham v Connor, 490 U.S. 396 (1989)

- J. Excessive Force:** Use of force greater than which a reasonable officer would use under the circumstances. A type or degree of force that is neither reasonable nor necessary, or utilizing any degree of force as summary punishment or vengeance.
- K. Carotid Restraint:** A control technique in which the carotid arteries on the side of the neck are compressed, restricting the blood flow to the brain, rendering a person unconscious.
- L. Conducted Energy Weapon (CEW/Taser):** A weapon designed primarily to discharge electrical charges into a person that will may cause involuntary muscle contractions and override the person's voluntary motor responses.
- M. Arcing:** The activation of a CEW without discharging the probes. This may be done as a warning to the person or to test the CEW prior to deployment (also referred to as a spark test). The Taser cartridge must be removed from the weapon prior to arcing.
- N. Drive Stun:** An action which requires pulling the trigger and placing a CEW in direct contact with the person causing the electric energy to enter the person directly. Drive stun is frequently used as a non-incapacitating persuasive compliance technique. It may also be used to incapacitate the person where at least one probe is attached to the person's body and the CEW contact will complete the circuit. A drive stun performed in absence of probe contacts will not result in neuro muscular incapacitation (NMI).
- O. Laser Painting:** The act of un-holstering and pointing a CEW at a person and activating the CEW's laser/LED light to show the weapon is aimed at the person.
- P. Impact Weapon:** A device used to apply force against another or to affect a blocking or defensive technique. This shall include cocobolo/composite wood batons and expandable batons.
- Q. Oleoresin Capsicum (OC):** A genus of plants, the ripe fruit of the capsicum mimum (or frutescans), contains the active principal capsaicin.
- R. Capsaicin:** A colorless, pungent crystalline compound that is derived from capsicum and is a strong irritant to skin and mucous membranes.
- S. Oleoresin:** A naturally occurring mixture of oil and resin extract from various plants.
- T. Orthochlorobenzal Malononitrile (CS):** A chemical agent causing tears, salivation and painful breathing, $C_6H_4ClCH:C(CN)_2$.
- U. Positional Asphyxia:** A medical emergency that occurs when a person's body position interferes with breathing, either when the chest is restricted from expanding properly or when the position of the person's head obstructs the airway which may lead to death or serious physical injury.

V. Excited Delirium: A condition in which a person presents with extreme agitation, aggression and acute distress. The condition is typically associated with the use of drugs that alter dopamine processing or hyperthermia⁶. The condition can be life threatening if immediate emergency measures are not taken.

W. Weapon of Opportunity: Consists of any object, other than a department approved less lethal or lethal weapon (i.e., flashlight, portable radio, etc.).

X. Strategically Disengage: Tactically withdrawing from a position when withdrawal does not increase the risk of injury to innocent persons which allows greater distance and additional security for an officer to gain additional time to consider or deploy a greater variety of force options.

Y. Deadly Force Investigation Team (DFIT): The DFIT is tasked to investigate and thoroughly document any officer-involved shooting or critical incident. Members will be selected by the Chief of Police.

IV. AUTHORIZED USE OF FORCE

A. While in the performance of official duties, officers shall only utilize the degree of physical force or deadly physical force that is objectively reasonable and necessary based on the totality of the circumstances to accomplish lawful objectives as established by Article 35 of the New York State Penal Law and the policies and procedures set forth by this department.

- i. Lawful objectives include, but not limited to: detentions, frisks, arrests, self defense and in defense of others, defense of property, preventing a person from self-injury or protective custody commitments, preventing a person from destroying evidence, preventing a prisoner escape, quelling a riot.
- ii. Factors that assist in determining the totality of the circumstances include:
 1. The severity of the crime or circumstance.
 2. The level and immediacy of threat or resistance posed by the suspect.
 3. The potential for injury to citizens, officers and suspects.⁷
 4. The risk or attempt of the suspect to escape.⁸
 5. The knowledge, training and experience of the officer.⁹
 6. Other environmental conditions or exigent circumstances.¹⁰
- iii. Other factors that assist in determining the necessity to use deadly physical force include, but are not limited to:¹¹

⁶ Takeuchi, Asia et al. "Excited delirium." The western journal of emergency medicine vol. 12,1 (2011): 77-83.

⁷ Scott v. Harris, 550 U.S. 372 (2007)

⁸ Graham, 490 U.S. at 396 (1989)

⁹ Analysis of cases under the 4th Amendment require the focus to be on the perspective of a reasonable officer on the scene which includes the training and experience of the officer. Graham v. Connor, 490 U.S. 386 (1989), Terry v. Ohio, 392 U.S. 1 (1968)

¹⁰ Courts have repeatedly declined to provide an exhaustive listing of factors. Chew v. Gates, 27 F. 3d 1432, 1475 n.5 9th Cir. (1994)

¹¹ Sharrar v. Felsing, 128 F. 3d 810 (3rd Cir. 1997) (numbers of officers or persons)

1. The number of persons present.
2. The number of suspect's present.
3. Pre-assault indicators (actions, statements, etc.).
4. Size, age and physical condition of the officer and person.
5. Known or perceived physical abilities of the suspect.
6. Previous violent or mental health history.
7. Perception of the use of alcohol or drugs by the person.
8. Perception of the suspect's mental or psychiatric history based on specific actions.
9. The availability and proximity to weapons.
10. Environmental factors (i.e., night/day, snow/ice, terrain, etc.).
11. Injury to the officer or prolonged duration of the incident.
12. Officer on the ground or other unfavorable position.
13. Characteristics of being armed (i.e., bulges, adjustment of clothing, "security touches.").

B. Deadly force should be used as a last resort when all other lesser alternatives have been considered and/or exhausted prior to the use of deadly force, including strategic disengagement.

C. **De-escalation:** Policing requires that at times an officer must exercise control of a violent or resisting person to effect an arrest, or to protect an officer or others from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated but officers do have the ability to impact the direction and the outcome of many situations they handle based on their decision-making and tactics they choose to utilize.

The person(s) actions will dictate the officers use of force. Force transition is the shift, escalation/de-escalation from the application from one type to another in conjunction with the "objective reasonableness" standard described in the above sections.

In use of force incidents, the officer will transition to different degrees or types of force, including attempts to de-escalate. Force situations are dynamic and require an officer to continually assess the person's actions to ensure a proportionate response. Officers shall modify their level of control in relation to the amount of resistance offered by a person.¹² The officer need not progress through each level of force before reaching the final level.

When reasonable under the totality of the circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with the person, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to higher levels of force. Officers should recognize that they may strategically disengage to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options¹³ when withdrawal does not increase the risk of innocent persons or themselves.

¹² Cops.usdoj.gov "Use of Force" PDF, §VII (retrieved 2019-07-10)

¹³ Cops.usdoj.gov "Use of Force" PDF, §VIII (retrieved 2019-07-10)

- D. **Sanctity of Life:** No person's life is intrinsically more valuable than another. The Watervliet Police Department holds all life in the highest regard. Factors that should influence the decision-making process in a critical incident where lives are in the balance shall be based on the totality of the circumstances known to law enforcement at that time. Generally, the safety priorities should be: hostage(s), innocent civilians, police officers, suspect.

Any prioritization of the efforts of law enforcement to effectively resolve a critical incident should be based primarily on the person's ability to remove themselves from the dire situation they may be in. Suspects have the most ability to remove themselves or affect the outcome of the situation through surrender.

Conversely, a hostage will have the highest priority, based not on any valuation of their life, but rather based on the fact that they are in the most peril with the least amount of control. When contemplating an action, officers must evaluate who would benefit or suffer the most.¹⁴

- E. **Duty to Intercede:** Any officer observing another officer using force that they reasonably believe to be beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable or excessive force, if and when the officer has a realistic opportunity to prevent harm.

Any officer observing another officer using force that they reasonably believe to be beyond that which is objectively reasonable under the circumstances shall promptly report these observations to a supervisor/OIC.

V. LEVELS OF RESISTANCE

Officers must consider several factors when dealing with a non-compliant person. A person may be non-compliant due to a medical condition, mental, physical, or hearing impairment, language barrier, drug interaction, or emotional crisis and have no criminal intent. This may not make the person any less dangerous but it may require a change in tactics that will be more effective while maintaining officer safety.

- A. **Compliant** - A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, aggravated aggressive resistance.
- B. **Passive Resistance** - The person is not complying with an officer's commands and is uncooperative but is taking only minimal physical action to prevent the officer from placing the person in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, falling limp and refusing to use their own power to move (becoming "dead weight"), holding onto a fixed object, or locking arms with another during a protest or demonstration.

¹⁴ National Tactical Officers Association Tactical Response and Operations Standard for Law Enforcement Agencies §2.3.3 (published April 2018)

- C. Active Resistance** - The person's verbal or physical actions are intended to prevent an officer from placing the person into custody and taking control but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip.
- D. Aggressive Resistance** - The person displays intent to harm the officer, themselves, or another person and prevent an officer from placing the person in custody and taking control. The aggression may manifest itself through a person taking a fighting stance, punching, kicking, striking, attacks with weapons, or other actions which present an imminent threat of physical injury to the officer or another.
- E. Aggravated Aggressive Resistance** - The person's actions are likely to result in serious physical injury or death to the officer, themselves, or another. These actions may include a firearm, use of blunt or bladed weapon and extreme physical force.

VI. LEVELS OF FORCE

The person's actions shall dictate the officer's use of force. Force transition is the shift to either de-escalate or escalate the application of force from one type to another. The force transition is determined by what the officer believes is objectively reasonable. Because use of force situations are dynamic and require an officer to continually measure the person's actions, officers shall modify their level of force in relation to the amount of resistance offered by a person. Nothing contained within this policy shall require an officer needing to progress through each level of force before reaching the final level of force.

- A. Presence** – The physical presence of an officer, whether uniformed or not, is considered the best method for deterring a crime or diffusing a situation. Presence may be accomplished by, but is not limited to: professional and non-threatening disposition of officer(s), marked patrol vehicle(s) and visible police canine(s).
- B. Verbal Persuasion** - The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment and often physical resistance. Simple directions that are complied with are by far the most desirable method of dealing with an arrest situation. Control may be obtained through advice, persuasion and warnings before resorting to physical force. This should not be construed to suggest that officers relax and lose control of a situation, thus endangering their personal safety or the safety of others. Officers may increase their volume and shorten commands in an attempt to gain compliance. Such short commands may include, "Stop" or "Don't Move."
- C. Empty-Hand Control** - Frequently, persons are reluctant to be taken into custody and offer some degree of physical resistance. Under circumstances when a person offers passive or active resistance, an officer may overcome this resistance through physical strength and skill in arrest tactics to include:
 - a. Soft-Hand Techniques - Officer's use of grabs, holds and joint locks to restrain an individual.
 - b. Hard-Hand Techniques - Officer's use of punches, kicks, strikes to gain compliance or assist in restraining an individual.

- D. Less-Lethal Weapons** - Officers who encounter a person(s) who is displaying active resistance and/or aggressive resistance, less-lethal weapons may be utilized.
- a. **Impact Weapons:** Officers will make every effort to use their primary department issued or approved impact weapon. In the event that the officer's primary impact weapon has been lost as a result of that confrontation, broken, or taken away, the officer may be justified in using an alternative impact weapon (flashlight, radio, or any other impact weapon not issued or approved specifically as a defensive weapon as a means of force). An alternative impact weapon should only be used when no other reasonable alternative is present.
 - b. **Oleoresin Capsicum (OC):** When properly used, OC is generally effective on humans. OC will incapacitate most people for a period of approximately thirty (30) minutes without permanent injury. Whenever possible, a verbal warning of OC deployment and a command to discontinue the undesirable behavior shall be given. A person exposed to OC must be decontaminated as soon as practical.
 - c. **Conducted Energy Weapon (Taser):** The department issued Taser shall be used in accordance with policy and procedure.
 - d. **Less Lethal Shotgun:** When deployed, the Less Lethal Shotgun may assist in de-escalation of potentially violent confrontations.

E. Weapon of Opportunity - An officer may be involved in a sudden use of force scenario or find themselves without the ability to utilize department issued equipment resulting in the utilization of an improvised weapon to assist them. An officer must be able to articulate a compelling need to use a weapon of opportunity.

F. Deadly Force - While in the performance of official duties, an officer may use deadly force only when it is objectively reasonable to believe that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury. In addition, officers may use deadly physical force as outlined in Article 35 of the New York State Penal law to prevent the escape of a fleeing felon who the officer has probable cause to believe has committed a violent felony crime and is an imminent threat to human life should escape occur. An officer in this scenario should give a verbal warning, if practical, prior to the use of deadly force.

Deadly force should be used as a last option when all other lesser alternatives have been considered and/or exhausted. This includes strategic disengagement.

VII. PROHIBITED USES OF FORCE & EQUIPMENT

- A. Discharging warning shots from a firearm is prohibited.
- B. **Risk to Innocent Persons** - Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured.

- C. The use of a carotid restraint shall be prohibited unless the member has no other means available to stop a deadly physical force situation and the member has received department-approved training on the carotid restraint technique. If a carotid restraint is applied, the officer shall immediately request for the on-duty supervisor/OIC and EMS to respond to the scene regardless if the restraint was effective or not.
- D. Moving Vehicles - Discharging a firearm at a moving vehicle is prohibited unless the officer reasonably believes that the occupant(s) of the vehicle is using or about to use deadly physical force against the officer or another person and other available options are not immediately available.

Officers should avoid positioning themselves in a tactically inferior location when working near a motor vehicle and the potential for harm exists and should note that a motor vehicle presents a formidable shield against most firearms and if the officer disables the operator, the vehicle can be expected to continue uncontrolled, creating a hazard to officers and the public.

- E. An officer is prohibited from using force for the following reasons;
 - i. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
 - ii. To coerce a confession from a person in custody.
 - iii. 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.
 - iv. 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 person.
- F. Only issued or approved equipment will be carried on duty and used when applying physical force, except in emergencies when an officer may use any resource at their disposal. The carrying or use of any instrument as a weapon not specifically authorized or issued by the Watervliet Police Department is prohibited. Examples of unauthorized weapons include, but are not limited to, a blackjack, weighted gloves, stun guns, brass knuckles, steel toe shoes or boots.

VI. UNLAWFUL ASSEMBLY/ CROWD DISPERSAL

- A. With the approval of the Chief of Police/designee, the use of chemical agents (CS), or OC, in response to an unlawful assembly may be reasonable depending on the totality of the circumstance. Members of the Watervliet Police Department should consider when, where and how chemical agents or OC may be deployed and consider potential collateral effects. The minimum amount of agent shall be used to obtain compliance.

- B. An audible warning of the imminent use and a reasonable amount of time should be provided to disperse the crowd, on-scene media, other observers and Watervliet Police Department members that are present prior to the use of any agents.
- C. If agent use is contemplated in crowd situations, Emergency Medical Services should be on site prior to its use and shall make provisions for decontamination and medical screening for those persons affected by the agent.
- D. The use of agents against passive resisters is prohibited absent exigent circumstances.
- E. Only members who have received specialized training in the deployment of agents are authorized to utilize such.
- F. Additional guidance is contained within this policy. See Section “IX” Less Lethal Weapons Operating Procedure, sub-section “C” Chemical Agents.

VI. LESS-LETHAL WEAPONS OPERATING PROCEDURES

- A. Conducted Energy Weapons (CEW/Taser)
 - 1. CEWs/Taser shall be carried and utilized only as authorized in accordance with department policies and procedures.
 - (i) The Watervliet Police Department’s authorized CEW is the Taser T7.
 - (ii) The use of personally owned CEWs while on duty is not authorized.
 - 2. CEWs shall be stored in a secure area when not in use. Upon starting their tour of duty, qualified members will be assigned a CEW by the on-duty shift supervisor/OIC. The on-duty supervisor/OIC shall log the CEW’s designated number and the name of the member carrying it in the daily blotter. Once issued, the member is required to complete the following:
 - (i) Turn the CEW to the “on” position and perform a conditions check of the CEW. Members must verify the battery life percentage of their CEW is above twenty percent (20%). If a battery level is below this level, the member will remove the depleted battery from the CEW and insert it into any open bay on the Axon Dock. The member will then replace the expended battery with a fully charged battery located on the dock. If there are no available fully charged CEW batteries, the CEW will be taken out of service & the departmental Taser instructor will be notified.
 - 3. A spark test (five-second cycle) of every CEW assigned will be conducted by the member assigned at the beginning of their tour. To complete the spark test, the assigned member will:

(i) Press & release both Arc switches simultaneously. Once this has been done, the CID will display the firmware version & remaining battery percentage. Axon signal will be disabled.

(ii) Move the safety switch to the armed position. This will place the CEW into Functional Test Mode and all functions to follow, save a trigger pull, will be logged as such.

(iii) Press either (but not both) Arc Switches to initiate the five second spark test. All spark tests will last the full five second cycle and will not be abbreviated.

(iv) At the conclusion of the five second spark test, the safety switch will be placed back into Safe mode & the CEW will revert to Operational mode.

(v) The trigger of the CEW will not be pulled during the spark test. Any trigger pull of a loaded Taser 7 will result in the weapon immediately reverting to Operational mode and deployment of the loaded cartridge.

(vi) If any member discovers a CEW is not functioning properly, or appears to be in need of repair, the CEW is to be immediately taken out of service and the CEW instructor is to be notified.

4. Each on-duty shift supervisor/OIC is to account for all CEWs and CEW related equipment at the beginning and end of their tour.
5. Members issued a CEW shall return said equipment at the end of their tour of duty. CEWs shall not be stored in any locations other than the designated secure area.
6. CEW operators shall use due care with any CEW or CEW related equipment.
7. Deployment/Use of a CEW:
 - (i) The CEW is a defensive operation weapon and shall be used in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department policies and procedures.
 - (ii) Generally, CEWs shall not be used against passive resistant persons, unless extenuating circumstances exist. Additionally, a fleeing person shall not be the sole justification for using a CEW against a person. Officers must consider and clearly articulate the following factors:
 1. The severity of the offense the officer has reasonable cause to believe occurred or about to occur.
 2. The person's threat levels to others.
 3. The risk of injury to the person.
 4. Prior to deploying a CEW, officers shall consider the following:
 5. The level of force exhibited by the person.
 6. Proximity and/or access to the person.

7. Safety of involved individuals to include hostages, uninvolved civilians, other first responders and the involved person.
- (iii) CEW's shall **not** be used under the following circumstances, unless deadly physical force is justified and in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department's policies and procedures:
1. Where the person is elevated on an object and has the potential to fall (e.g., building roof tops, trees, river banks, bridges, fences).
 2. Obviously pregnant or known to be pregnant woman.
 3. Apparent juveniles, unless personnel are justified in using deadly physical force.
 4. The elderly or visibly frail.
 5. Handcuffed persons unless it is necessary to prevent the person from causing harm to themselves, personnel, or others and all other lesser attempts of control are deemed ineffective.
 6. Persons that are in physical control of a vehicle in motion (e.g., driver of a car, truck, motorcycle, ATV, bicycle, scooter, etc.).
 7. Where the person has a known heart condition, or an apparent debilitating illness.
 8. Intentionally utilizing the CEW in the face or head area of a person.
 9. In areas where flammable liquids and/or gases are present due to the potential for ignition of said liquids and/or gases.
 10. CEWs shall not be deployed when a person has been sprayed with an alcohol based chemical spray or alcohol based pepper spray. Note: The Watervliet Police Department's issued OC spray is non-alcohol based and safe to be deployed in conjunction with a CEW.
 11. To threaten or elicit information from a person.
 12. As a means of punishment.
- (iv) Members should be aware that there is a higher risk to the person when the CEW is utilized when the person is in medical or mental crisis or the person is obviously under the influence of drugs and/or alcohol.
- (v) When safe and practical, members should give a verbal warning to the person that a CEW will be used if they do not comply. This can also include laser painting and/or arcing, as defined in this policy.
- (vi) When possible, personnel shall not use a CEW unless there is another officer present to provide lethal cover.
- (vii) The officer deploying the CEW shall inform all other present personnel that a CEW is being utilized.
- (viii) It is the responsibility of the cover officer to properly assess the situation and appropriately provide lethal cover as circumstance dictate.

- (ix) If compliance of the person is achieved, it shall be the responsibility of the back-up officer(s) to take control of the person (e.g., handcuffing).
- (x) Officers shall not intentionally use more than one (1) CEW against a person at a time.
- (xi) Officers should use a CEW for one (1) five second evolution and then evaluate the situation to determine if subsequent cycles are necessary.
 - 1. Personnel shall consider that exposure to the CEW for longer than fifteen (15) seconds, whether due to multiple applications or continuous cycling, may increase the risk of death or serious injury.
 - 2. Each application must be independently justified and the risks should be weighed against other force options.
 - 3. For maximum effectiveness, personnel shall use a CEW at distances between 7-14 feet, unless utilizing the drive stun method.
 - 4. Members shall not use a CEW on an individual more than three (3) times during a single incident (this includes both deployment of the probes and drive-stun).
- (xii) Drive Stun Utilization:
 - 1. Utilized to complete the circuit when one of the probes is ineffective or becomes dislodged.
 - 2. Utilized in close quarters to protect the officer, others, or to create a safe distance between the officer and the person.
 - 3. The primary function of the drive stun mode when not used to complete the circuit is to gain compliance through the administration of pain compliance.
 - 4. Using the CEW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the person.
- (xiii) Probe Mode Utilization:
 - 1. The CEW probes shall be delivered to the person's target areas based on the following circumstances:
 - a. Availability.
 - b. Clothing.
 - c. Established safety priorities.
 - d. Level of force necessary.

2. The person's lower center mass should be the target area unless exigent circumstances dictate otherwise.

(xiv) Personnel shall keep in mind that persons affected by the CEW may be unable to physically perform verbal commands given by personnel (e.g., "Put your hands on top of your head.") during the cycle.

8. Post Deployment:

(i) Following a CEW usage, the on-duty supervisor/OIC shall be immediately notified and, if possible, respond to the scene. The supervisor shall:

1. Ascertain the facts surrounding the incident.
2. Conduct interviews of all involved parties and witnesses.
3. Photograph the impact site where the CEW was deployed. (It may be more feasible to photograph the site in the Watervliet Police Department booking facility). If a person refuses to submit to photographs, or if the impact site is a sensitive/private area (groin, breast, etc.), the supervisor/OIC is to photograph the clothed area of the site instead.
4. Make an initial determination that the CEW deployment was in compliance with applicable laws, policies and procedures.

(ii) When a CEW is deployed on a person, personnel shall, as soon as safe and practical, request Emergency Medical Services.

(iii) These procedures shall be followed for deployment of the probes and for drive-stuns and shall occur before transporting any person to Watervliet Police Headquarters.

1. In accordance with a member's training, the department is responsible for the removal of the probes from any person.
2. If a CEW is deployed on any person by members of this department, that person is assumed to be in custody and cannot refuse medical attention.
3. Emergency Medical Services personnel shall determine if a person should be treated at the scene or if they should be transported to a hospital for medical attention, via an ambulance.
4. Once removed, the probes, expended cartridge and any collected AFIDs (anti-felon identification) shall be packaged as evidence and treated as a biohazard due possible tissue and blood remnants on the probe.

(iv) Personnel need to be cognizant of how positional asphyxia may exacerbate the condition of any individual who has received a CEW application. Personnel shall utilize a restraint technique that does not impair a person's respiration following a CEW application.

B. Impact Weapons

1. Impact weapons shall be carried and/or utilized only as authorized and in accordance with department policies and procedures.
 - (i) The Watervliet Police Department's authorized impact weapons are:
 1. Cocobolo Police Baton - Up to 26"
 2. Composite Wood Police Baton - Up to 26"
 3. ASP Expandable Baton - Up to 26"
 4. Riot Batons – up to 36"
 5. A retention end cap, window breaker cap and/or a combo of them both are authorized.
 6. The use of personally owned impact weapons is not authorized.
2. For uniformed members, at least one impact weapon shall be carried on their persons while on duty. For non-uniformed members, at least one impact weapon shall be immediately available for potential use while on duty.
3. Officers will make every effort to use their primary department issued or approved impact weapon. In the event that the officer's primary impact weapon has been lost as a result of that confrontation, broken, or taken away, the officer may be justified in using an alternative impact weapon (flashlight, radio, or any other impact weapon not issued or approved specifically as a defensive weapon as a means of force). An alternative impact weapon should only be used when no other reasonable alternative is present. If an alternative impact weapon is used, it will be used in a manner consistent with the training given for department issued or approved impact weapons.
4. Members shall use due care when utilizing any impact weapon.
5. General deployment/use of an impact weapon:
 - (i) A impact weapon is a defensive operation weapon and shall be used in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department policies and procedures
 - (ii) Generally, impact weapons shall not be used against passive resistant persons, unless extenuating circumstances exist. Officers must consider and clearly articulate the following factors:
 1. The severity of the offense the officer has reasonable cause to believe occurred or is about to occur.
 2. The person's threat levels to others.
 3. The risk of injury to the person.
 - (iii) Prior to utilizing an impact weapon, officers shall consider the following:
 1. The level of force exhibited by the person.
 2. Proximity and/or access to the person.
 3. Safety of involved individuals to include hostages, uninvolved civilians, other first responders and the involved person.

(iv) Impact weapons shall not be used under the following circumstances, unless deadly physical force is justifiable and in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department policies and procedures:

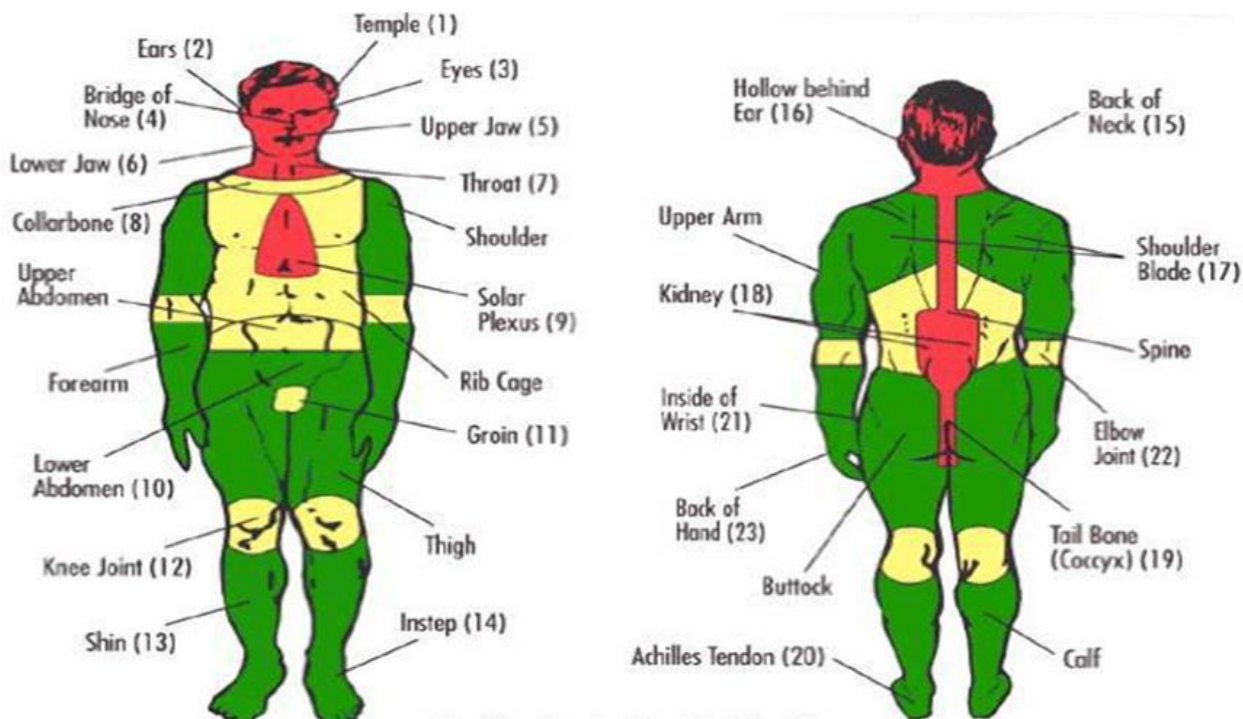
1. Obviously pregnant or known to be pregnant woman.
2. Apparent juveniles, unless personnel are justified in using deadly physical force.
3. The elderly or visibly frail.
4. Handcuffed persons unless it is necessary to prevent the person from causing harm to themselves, personnel, or others and all other lesser attempts of control are deemed ineffective.
5. To threaten or elicit information from a person.
6. As a means of punishment.

(v) Accurately directed strikes to the following areas are usually effective, with less chance of serious physical injury to the intended person.

1. A hard forehand/backhand strike to the non-compliant person's thigh (inside or outside). The intent is to cause temporary cramping, as well as a temporary inability to walk.
2. A hard forehand/backhand strike to the outside of the forearm or upper arm should also stop an attacker. The intent is to cause temporary immobility to said arm.
3. A directed strike to the back of the hand or wrist. The intent is to cause temporary immobility to said hand.
4. Directed defensive strikes to the shin area.
5. Strikes to center mass targets. The intent is to generate fluid shockwaves which may assist in gaining control over the person.
6. Thrust or jab to the solar plexus. Short jabs, with the end of the baton, to the stomach areas are effective in clearing away crowds or clearing a pathway through a large, combative group.

(vi) Officers must always attempt to avoid jabbing, striking, or pressing on a person's head, neck, spine, sternum, or groin, as these areas have a higher chance of resulting in serious physical injuries or death.

- (vii) The following illustration depicts vital and vulnerable areas in red. Those areas shall be avoided unless deadly physical force is authorized. Members are cautioned against strikes or jabs to the yellow areas unless a



specific purpose or response is desired. The green areas are ideal for jabbing, striking, or pressing an impact weapon.

6. Post Deployment:

- (i) Following any strike, jab, or other use of an impact weapon, the on-duty supervisor/OIC shall be immediately notified and, if possible, respond to the scene. The supervisor/OIC shall:
1. Ascertain the facts surrounding the incident.
 2. Conduct interviews of all involved parties and witnesses.
 3. Photograph the impact site (It may be more feasible to photograph the site in the Watervliet Police Department booking facility). If a person refuses to submit to photographs, or if the impact site is a sensitive/private area (groin, breast, etc.), the supervisor is to photograph the clothed area of the site instead.
 4. Conduct an initial analysis of the situation and document it accordingly.
- (ii) When an impact weapons is used on a person, personnel shall, as soon as safe and practical, assess the need for Emergency Medical Services.
1. If a visible injury is present, EMS shall be dispatched to evaluate the person, regardless if the person refuses treatment.

2. If an impact weapon is deployed on any person by members of this department, that person is assumed to be in custody and cannot refuse medical attention if it appears it is necessary.
3. If a person complains of pain or requests EMS, members shall immediately dispatch EMS for an evaluation, regardless of the presence of a visible injury or level of force used.

C. Chemical Agents:

1. Chemical agents shall be carried and/or utilized only as authorized and in accordance with department policies and procedures. The Watervliet Police Department's authorized chemical agent is:

(i) Chemical Agent Orthochlorobenzal Malononitrile (CS).

Note: Oleoresin Capsicum (OC) is not classified as a chemical agent but its deployment requirements are the same.

2. The use of personally owned chemical agents is not authorized.
3. For uniformed members, the department issues a 1.5 ounce OC canister. It shall be carried on their person while on duty. For non-uniformed members, the department issues a 1.5 ounce OC canister. It shall be immediately available for use while on duty.
4. Larger 18.5 ounce fogger-style OC canisters shall be available for use and carried, at a minimal, in the supervisor's/OIC vehicle. Deployment of additional 18.5 ounce canisters may be authorized in additional police department vehicles by the Office of the Chief. When deployed on a scene and not in use, the 18.5 ounce canister is to be carried in the accompanying holster.
5. Members shall use due care when utilizing any chemical agents/OC.
6. Deployment/Use of a agents/OC:
 - (i) Chemical agents/OC are defensive weapons and shall be used in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department's policies and procedures.
 - (ii) Generally, chemical agents/OC shall not be used against passive resistant persons, unless extenuating circumstances exist. Officers must consider and clearly articulate the following factors:
 1. The severity of the offense that occurred or is about to occur.
 2. The person's threat levels to others.
 3. The risk of injury to the person.
 - (iii) Prior to utilizing chemical agents/OC, officers shall consider the following:

1. The level of force exhibited by the person.
2. Proximity and/or access to the person.
3. Safety of involved individuals to include hostages, uninvolved civilians, other first responders and the involved persons.
4. Third party contamination (to include other officers).
5. Wind direction and other weather conditions.
6. The adverse effects if deployed in confined or enclosed space.

(iv) Chemical agents/OC shall not be used under the following circumstances, unless deadly physical force is justified and in accordance with Article 35 of the New York State Penal Law and Watervliet Police Department's policies and procedures:

1. Where the person is elevated on an object and has the potential to fall (e.g., building roof tops, trees, river banks, bridges, fences).
2. Obviously pregnant or known to be pregnant woman.
3. Apparent juveniles, unless personnel are justified in using deadly physical force.
4. The elderly or visibly frail.
5. Handcuffed persons unless it is necessary to prevent the person from causing harm to themselves, personnel, or others and all other lesser attempts of control are deemed ineffective.
6. Persons that are in physical control of a vehicle in motion (e.g., driver of a car, truck, motorcycle, ATV, bicycle, scooter).
7. Where a person has a known heart condition, or an apparent debilitating illness to include respiratory conditions.
8. Civil demonstrations in which the persons are passively resisting.
9. Indiscriminately in crowded areas, except with supervisor/OIC approval or in exigent circumstances.
10. To threaten or elicit information from a person.
11. As a means of punishment.

(v) Whenever possible, a verbal warning of OC deployment and a command to discontinue the undesirable behavior shall be given.

1. OC may be deployed effectively up to 12 feet away. The stream should be directed at the intended person's face, at a minimum distance of three (3) feet, utilizing a one to two second burst.
2. Post Deployment:
 - a. Following the deployment of chemical agents/OC, the on-duty supervisor/OIC shall be immediately notified and, if possible, respond to the scene. The supervisor/OIC shall:
 - i. Ascertain the facts surrounding the incident.
 - ii. Conduct interviews of all involved parties and witnesses.

- iii. Photograph the site where the chemical agent/OC was deployed. (It may be more feasible to photograph the site in the Watervliet Police Department booking facility).
 - iv. Conduct an initial analysis of the situation and document it accordingly.
 - b. When chemical agents/OC are deployed on a person, personnel shall, as soon as safe and practical, request Emergency Medical Services.
 - i. The person shall be provided the opportunity to wash the affected areas as soon as practical after the application of the spray, absent exigent circumstances.
 - ii. Officers shall not use any creams, ointments, or bandages on affected areas.
 - iii. Personnel need to be cognizant of how positional asphyxia may exacerbate the condition of any individual who has been exposed to chemical agents. Personnel shall utilize a restraint technique that does not impair a person's respiration following a chemical agent/OC application.
 - iv. Officers shall not keep a sprayed person in a face-down position for a period longer than necessary in order to avoid positional asphyxia.
- 3. Authorized use of Chemical Agent Orthochlorobenzal Malononitrile (CS):
 - a. The use of CS is reserved for the following applications:
 - i. Barricaded persons.
 - ii. Unlawful Assembly/Crowd Dispersal.
 - iii. Other situations as deemed necessary by the Chief of Police.
 - b. Only those members who are specifically authorized by the Watervliet Police Department may use CS. At a minimum, the Municipal Police Training Counsel's Chemical Agent Instructor course, or its equivalent, is required for Watervliet Police Officers to deploy CS.
 - c. Prior to the usage of CS, the incident shall be contained with a command structure in place that is appropriate for the time frame, location and tactical situation presented. CS must have the approval of the Chief of Police, or their designee, prior to usage. Several factors shall be considered. Some include:
 - i. The seriousness of the offense or civil unrest.
 - ii. The threat to the community posed by the persons.

- iii. Location demographics: size, single level or multi-level, available windows or area for insertion of chemical agents, wind and weather, secondary exposure to others.
 - iv. The available positions and locations from which chemical agents can be deployed.
 - v. The potential for injury to person(s) at the location of use.
 - vi. Other uninvolved persons present at the location of use.
- d. Only the volume of chemical agents that is reasonable shall be used.
 - e. For Unlawful Assembly/Crowd Dispersal situations, an audible warning of the imminent use and a reasonable amount of time should be provided to disperse the crowd, on-scene media, other observers and Watervliet Police Department members that are present prior to the use of any CS.
 - f. If CS use is contemplated, Emergency Medical Services should be on site prior to its use and shall make provisions for decontamination and medical screening for those persons affected by the chemical agent.
 - g. Decontamination for CS should include:
 - i. The removal of any person from a contaminated area.
 - ii. Removal of clothing items.
 - iii. Transportation to a local hospital, if needed.

VII. RENDERING AID/MEDICAL TREATMENT

- A. Members of the Watervliet Police Department have the duty to provide attention to the medical and immediate mental health needs of any person(s) in custody and to obtain assistance and treatment of such needs which are reasonable and provided in good faith¹⁵.
 - 1. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person who appears mentally ill, is conducting

¹⁵ NYS Civil Rights Law §28

themselves in a manner which is likely to result in serious harm to themselves or others¹⁶.

- B. When physical force is used and when it is safe to do so, the officer utilizing force shall evaluate the need for medical attention/treatment for that person upon whom the physical force was used as soon as is feasible and without unnecessary delay. Depending on the seriousness of the resulting injuries to either the officer or person, Emergency Medical Services shall be dispatched to the scene or to police headquarters once the officer and/or person are secured in the station. Officers and/or the on-duty supervisor/OIC shall exercise prudent discretion regarding the need for medical services.
- C. When an officer has used force, the Watervliet Fire Department Emergency Medical Services shall be requested when:
 - 1. There is visible injury.
 - 2. The person complains of injury or discomfort.
 - 3. The person is in custody and the officer reasonably believes that medical attention is needed, even if the person refuses medical attention.
 - 4. In cases where an officer suspects excited delirium.
 - 5. Whenever a person receives an exposure to a Taser, regardless of whether or not the exposure was effective.
 - 6. Whenever a person receives an exposure to chemical agents or OC.
 - 7. Whenever a person is struck by a SIMS round from a less lethal shotgun.
- D. In the case of a person in custody who refuses medical attention from the Watervliet Fire Department medical personnel, officers shall note such refusal on the person's arrest report.
- E. Injuries sustained to a person in custody prior to police contact or sustained as the result of some reason other than the use of force, shall be documented on the person's arrest sheet. Medical attention shall be provided to that person, as required per applicable department rules and regulations.
- F. In all cases where a person sustains an injury during an arrest, the on-duty supervisor/OIC shall immediately be notified. If the injured person requires hospital or emergency care, the patrol supervisor/OIC shall notify the Office of the Chief.
- G. In all cases, injuries should be photographed, whether visible or not.
- H. All officers shall be cautious of positional asphyxia and take necessary measures to reduce potential contributing factors.
- I. All officers should be alert for a person manifesting signs of an excited delirium episode. This condition can be life threatening if immediate emergency medical treatment is not provided. If suspected, the on-duty supervisor/OIC and Emergency Medical Services are to be immediately requested to the scene. If in doubt, members should err on the side of caution and request a medical evaluation.

¹⁶ NYS MHL §9.41

VIII. ADMINISTRATION

A. Reporting Requirements:

1. Any officer using physical force in the performance of duty shall report, or cause to be reported, all facts about the incident on a Use of Force report (WPD137). In the event of an injury to the officer that prevents his or her completion of this report, the immediate supervisor/OIC shall be responsible for preparing this report.
2. The Use of Force report (WPD137) shall be used in situations when a duty firearm had been displayed or “pointed only”.
 - i) If multiple officers are involved in the incident, a notation of the names of the involved officers that displayed their duty weapons shall be made on the Use of Force report (WPD137). This shall suffice for reporting requirement purposes. Each involved officer does not need to complete their own Use of Force report or Use of Force Supplemental report (WPD137-b) for instances of this nature.
3. If more than one officer is involved in the use of force incident upon an individual person, the primary officer shall complete the Use of Force report (WPD137) and each assisting officer shall complete a Use of Force Supplemental (WPD137-b).
4. Members completing a use of force or a supplemental report shall clearly articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.
5. Injuries to any person involved and the medical attention received shall be detailed in the report(s).
6. The use or displaying of a CED (Taser), impact weapon, chemical agent, pepper spray (OC), Less Lethal Shotgun are considered a use of force and all necessary reports must be completed.
7. Injuries to any person involved and the medical attention received shall be detailed in the report(s).
8. The arresting officer shall attempt to locate and identify any witnesses and document their statements.
9. The arresting officer shall prepare and submit reports required by current directives. Reports shall be submitted to the on-duty supervisor/OIC for review. The on-duty supervisor/OIC shall be responsible for conducting an administrative review to determine whether policy, training, equipment, or discipline issues should be addressed. If such opinion is made, the on-duty supervisor/OIC shall notify the Office of the Chief via email/Inter-Office mail and document the reasons why.
10. Photographs of the injured areas, regardless of whether or not a visible injury is observed, shall be secured and kept with the Use of Force form.

11. The Office of the Chief shall ensure that reports are submitted to the Department of Criminal Justice Services when an officer¹⁷:
 - i) Displays, uses, or discharges a firearm at or in the direction of another person.
 - ii) Uses a carotid control hold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that is reasonably likely to hinder breathing or reduce intake of air.
 - iii) Uses, or deploys a chemical agent or control device, including but not limited to Oleoresin Capsicum (OC), pepper projectiles, tear gas, batons, or kinetic energy projectiles.
 - iv) Displays, uses, or deploys an impact weapon.
 - v) Displays, uses, or deploys an electronic control weapon (Taser), including an electronic stun gun, flash bomb, or long-range acoustic device.
 - vi) Engages in conduct which results in the death or serious bodily injury of another person.
12. All officers utilizing physical force shall make immediate notification to their supervisor/OIC and document such on applicable reports.
13. If physical injury is sustained by a person or officer, notification shall be made to the Office of the Chief by the on-duty supervisor/OIC.
 - i) Serious physical injury to any involved person shall require immediate notification to the Office of the Chief.

B. RESPONSIBILITIES

1. On-duty supervisor/OIC.
 - i) Where practicable, the on-duty supervisor/OIC should respond to the scene of a use of force incident and begin a preliminary investigation into the use of force incident. The on-duty supervisor/OIC will document the results of their initial investigation on the Use of Force report (WPD137) under the “Review” section.
 - (1) If an on-duty supervisor/OIC preliminary investigation determines a perceived failure from an officer to adhere to the use of force guidelines, they shall document such on an Inner-Office memo and notify the Office of the Chief.
 - ii) The on-duty supervisor/OIC shall ensure the immediate completion of a use of force report by all officers engaged in a reportable use of force incident.
 - iii) Ensure photographs and video (if available) are secured. The photographs (and video) should sufficiently document any injuries, or lack thereof, to the officers or suspect. When video is available showing the use of force incident, such as street cameras, security cameras, body cameras, etc, the on-duty

¹⁷ NYS Executive Law §837-t

supervisor/OIC shall make every attempt to secure it at the time of the incident. If the video is unavailable at the time of the incident, the on-duty supervisor/OIC shall make arrangements to attain the video. The supervisor/OIC shall document the disposition on the Use of Force report (WPD137) under the “Audio/Video (A/V) Review” section of said report.

- iv) The on-duty supervisor/OIC shall immediately notify the Office of the Chief under the following circumstances:
 - (1) An officer discharging their firearm for any reason, other than to humanely dispatch a sick or injured animal.
 - (2) An officer or person sustains serious physical injury.
 - (3) An officer or person sustains physical injury which requires them to seek hospital/emergency room care.
 - (4) Any gross deviation from an officer in established policies, procedures, or laws.
 - (5) Any use of force incident which would may result in significant public/media attention.
 - (6) Any other circumstance the supervisor/OIC deems necessary.
- v) Submit the original Use of Force reports (WPD137) and photographs to the Office of the Chief without unnecessary delay. Photocopies of the Use of Force report shall be placed in the applicable arrest folder and/or attached to the incident report. Use of Force reports shall be included in the discovery file for an incident.

2. Office of the Chief

- i) The Office of the Chief shall conduct an administrative review of all use of force incidents. In cases of unauthorized force or other applicable circumstances, the Chief of Police may direct an immediate investigation into the incident.
- ii) The Office of the Chief shall retain all original Use of Force reports (WPD137) and comply with directives contained in NYS Executive Law §837-t, or its revised equivalent.

C. TRAINING

- 1. All sworn members of the Watervliet Police Department shall receive training to demonstrate their understanding on the proper application of force.
- 2. Training topics will include use of force, conflict prevention, conflict resolution and negotiation and de-escalation techniques and strategies including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct.

3. This policy is not intended to be a substitute for proper training in the use of force. Comprehensive training is the key to real-world application of the concepts discussed within this policy.
4. Members will receive annual CEW (Taser) training by a qualified instructor.
5. Officers shall demonstrate proficiency in the use of less-lethal and lethal weapons prior to being authorized to carry said weapons. Training shall be completed by a certified weapons instructor and documented.
6. Annual training in CEWs (Taser) and firearms shall be required.
7. Members should receive annual training with regard to recognizing the signs of excited delirium and the hazards associated with positional asphyxia.

D. Public Information & Community Relations

1. An annual use of force analysis shall be completed by the Office of the Chief.
 - i) The lieutenant shall ensure an annual analysis is conducted of the department's use of force activities, policies and practices to determine any patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications. The results of this analysis shall be documented on an Inner-Office memo to the Chief of Police.
 - ii) The annual analysis shall utilize data from Use of Force Reports and PowerDMS between the dates of January 1st and December 31st of each calendar year.
 - iii) The annual analysis shall be completed by March 31st of each calendar year.
2. The department's use of physical force policy shall be made available and conspicuously posted on the department's website¹⁸.
 - i) Revisions to such use of force policies shall be updated on the department's website within seventy-two hours of approval of any amendment.
3. The department will comply with Freedom of Information Law (FOIL) requests to inspect Use of Force reports as per applicable laws and procedures set forth by the City of Watervliet's records access officer. Redactions to protected information shall be made prior to release.
 - i) If audio/video is secured following a use of force incident, the Chief of Police shall have sole discretion regarding its release.
 - ii) Members are forbidden to release documents or audio/video surrounding any use of force incident without permission from the Chief of Police.

¹⁸ NYS Executive Law §840(4)(d)(4)