

Use of Force Policy

New York State Board of Elections

I. PURPOSE

Part ZZ of Chapter 55 of the Laws of 2019 amend Executive Law § 840(4)(d) to require the Municipal Police Training Council of the Division of Criminal Justice Services to "(e)stablish and regularly update a model law enforcement use of force policy suitable for adoption by any agency that employs police or peace officers."

Executive Law § 840(4)(d)(3) requires all agencies that employ a peace officer to adopt and implement a use of force policy. " Such use of force policy shall be consistent with the model law enforcement use of force policy established pursuant to this subdivision, except that such agencies that employ a peace officer may impose further and additional restrictions on the use of force, in such use of force policy or otherwise."

Election Law § 3-107 gives the State Board of Elections authority to name "special investigators" who are peace officers pursuant to § 2.10(35) of the criminal procedure law. Election Law § 3-107 provides that any such special investigator "shall have all the powers of a peace officer as set forth in section 2.20 of the criminal procedure law, for the purpose of enforcing the provisions of (the Election Law)."

Given the nature of the work involved in Election Law enforcement, the State Board has opted to further restrict the model policy opted by the Municipal Police Training Council. As requested by the memorandum accompanying the Model Policy, case law citations are supplied where applicable. Where case law citations are not supplied, the State Board notes that while enforcement policies are often influenced by judicial doctrine, agencies often provide greater restrictions on the use of force when deemed appropriate. See David B. Goode, *Law Enforcement Policies and the Reasonable Use of Force*, 54 *Willamette L Rev* 371, 385 [2018].

II. POLICY

Generally, a peace officer's authorized powers may include; "(t)he power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to section 35.30 of the penal law;" and "(t)he power to possess and take custody of firearms not owned by the peace officer, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer." Criminal Procedure Law 2.20(1)(b) and (h). However, an agency may opt to prohibit its peace officers from carrying or possessing firearms and deadly weapons. See *County of Orange v New York State Div. of Criminal Justice Services*, 3 AD3d 206, 207 [3d Dept 2003]; see also Assembly Memorandum in Support for Chapter 491 of the Laws of 2010.

On December 12, 2019, State Board of Elections unanimously adopted the following resolution:

BE IT RESOLVED that effective immediately Special Investigators of the state board of elections shall not be permitted to possess or use any firearm in their capacity as a Special Investigator for the State Board of Elections, and it is the policy of the State Board of Elections that its Special Investigators shall not be armed(.

Given the above, the State Board of Elections has determined that no State Board of Elections' employee is authorized to use physical force in conducting their duties. If a State Board employee, including special investigators, determines that it is may be necessary to use physical force to carry out

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their duties as a State Board of Elections employee, they shall contact the State Police or local law enforcement, who are far better trained and experienced in such matters, for assistance. See Election Law § 3-104 (2) (b)

It is the policy of the State Board of Elections that election law enforcement should be accomplished by the agency exclusively by means of judicial and administrative proceedings provided for by the election law.

While this policy confers no authority to board of elections employees to effectuate election law enforcement by means of physical force, nothing herein shall prevent any person from acting in self-defense or defense of others in a lawful manner.