

RESPONSE TO RESISTANCE

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I. PURPOSE

The purpose of this policy is to provide sworn officers with guidelines for responding to resistance.

II. POLICY

It is the policy of the New Castle City Police Department to value and preserve human life. Sworn officers shall use only force that is objectively reasonable to effectively bring an incident under control, while protecting their safety and/or the safety of others. Sworn officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonable officer would use under the same or similar circumstances.

The decision to use force requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

In addition, the “reasonableness” of a particular response to resistance must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting him or her.

III. DEFINITIONS

RESPONSE TO RESISTANCE: Any action taken by a sworn officer to control, restrain, or overcome an individual’s unlawful resistance.

OBJECTIVELY REASONABLE: The determination of the necessity for using

force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonable officer would use under the same or similar situations.

SWORN OFFICER / OFFICER: Sworn members of the New Castle Police Department. (See also 11 ¶ 8401).

PASSIVE RESISTANCE: Passive resistance occurs when a subject refuses to comply with a directive from a law enforcement officer, but does not attempt to engage in physical action likely to cause bodily harm to the officer or to another person.

ACTIVE RESISTANCE: Active resistance occurs when an officer encounters behavior which physically counteracts his or her attempt to control and/or which creates risk of bodily harm to the officer, subject, and/or other persons.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable officer to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a subject, or some other consequence improperly hindering legitimate law enforcement efforts.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat 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 the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

DE MINIMIS FORCE: Physical interaction meant to stop, push back, separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause injury. This includes use of control holds or joint manipulation techniques in a manner that are not reasonably likely to cause injury.

LESS LETHAL FORCE: Use of force other than that which is considered de minimis or deadly force that involves physical effort to control, restrain, or overcome the resistance of another. Less lethal force is force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.

DEADLY FORCE: Force which an individual uses for the purpose of causing, or which the individual knows to create substantial risk of death or serious physical injury. Deadly force is not limited to firearms, and may include impact weapons and other strikes or kicks, or other use of force when intentionally used in a manner that is likely to cause serious bodily harm or death. This will also include directed fire during an active shooter or similar incident.

INTERMEDIATE WEAPONS: Less lethal weapons not intended to cause serious physical injury or death. Intermediate weapons include impact weapons, OC/chemical agents, conducted electrical weapons, less lethal munitions, canines, and any other instrument of opportunity used not intended to cause serious physical injury or death.

SERIOUS PHYSICAL INJURY: Physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

EMPLOYMENT: When a weapon is displayed to a subject for the purpose of gaining the subject's compliance or stopping a threat. A weapon employment is a de minimis use of force and should be documented in the report. A Response to Resistance Report is required.

DEPLOYMENT: When a weapon is used upon a subject for purpose of gaining the subject's compliance or stopping a threat. A Weapon Deployment is less lethal or deadly force and must be documented on the report's narrative. A Response to Resistance Report is required.

CHOKER HOLD: A physical maneuver that restricts an individual's ability to breathe for the purpose of incapacitation.

IV: PROCEDURES

A. General Provisions

1. Sworn members of the New Castle Police Department will use reasonable force when necessary to affect a lawful objective. Sworn officers obtain the right to use force, including deadly force, in situations defined by Title 11 Section 467 of the Delaware Code.

Furthermore, law regarding the use of force is discussed in *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985). Moreover, this policy has been formulated using the best practices as established by the Federal Law Enforcement Training Center (FLETC) and the National Consensus Policy on the Use of Force.

2. Force should be discontinued when resistance ceases or when the incident is under control.
3. Force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person.
4. Choke holds are prohibited unless deadly force is authorized.
5. A sworn officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.
6. Reasonable force may be used against an animal to protect the officer or others from immediate physical harm.

B. De-Escalation

1. An officer shall use de-escalation techniques and/or other alternatives prior to using higher levels of force consistent with his or her training whenever possible and appropriate.
2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual reasonable time and opportunity to submit to verbal commands before force is used.

C. Use of Less Lethal Force

1. When de-escalation techniques are not effective or appropriate, an officer may consider the use of less lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use less lethal force techniques:
 - a. To protect the officer or others from immediate physical harm;
 - b. To bring an unlawful situation safely and effectively under control;
 - c. To restrain or subdue an individual who is actively resisting or

evading arrest.

2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use force.
3. The use of force *while making an arrest* is not justified unless:
 - a. The officer makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested;
 - b. When the arrest is made under a warrant, the warrant is valid or believed to be valid;
 - c. When the arrest is made without a warrant, the officer believes the arrest to be lawful.

D. Use of Deadly Force

1. A sworn officer is authorized to use deadly force when other reasonable and available means of apprehension have been exhausted and it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
 - a. To protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury;
 - b. To prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death or threat thereof, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.
2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.
3. No warning shots shall be fired;
4. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
5. When deadly force is justified under this policy, the implement used to apply that force is of no consequence; however:
 - a. The officer must reasonably believe that the force employed creates no substantial risk of injury to innocent persons;
 - b. Firearms shall not be discharged at a moving vehicle or from a

moving vehicle unless:

- (1) A person is threatening the officer or another person with deadly force by means other than a vehicle; or
- (2) The vehicle is operated in a manner that would lead a reasonable officer to believe it creates a substantial risk of serious physical injury or death to the officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

E. Ensuring Medical Aid

1. Once the scene is safe and as soon as practical, the officer shall provide appropriate medical care to any injured subject(s) consistent with his or her training.
2. If emergency medical services are required, the officer will ensure appropriate medical aid is administered consistent with training until their arrival.
3. IF the injury is minor, emergency medical services may be arranged.
4. If the person refuses treatment, it will be documented in the report's investigative narrative.

F. After Action Procedures

1. Officers who become involved in an incident that requires the use of force, other than de minimis, are required to immediately notify their supervisor.
2. Should an employee become involved in an incident involving the use of de minimis force:
 - a. The report narrative will document the circumstances leading up to the use of force.
 - b. No Response to Resistance Report is required.
3. Should an employee become involved in an incident involving the use of less lethal force:
 - a. The report narrative will document the circumstances leading up to use of force.
 - b. The Response to Resistance Report will be completed and submitted to a supervisor prior to the end of the shift unless an

- extension is granted by a supervisor due to extenuating circumstances (i.e. the officer is injured). If an extension is granted, the Response to Resistance Report must be completed not later than the beginning of the officer's next tour of duty.
4. Should an employee become involved in an incident involving any action or the use of deadly force that results in serious physical injury or death:
 - a. The employee shall be placed on administrative duty and pay with benefits to facilitate an evaluation of the incident and to promote the employee's well-being. The evaluation shall take place in an expeditious manner, and all efforts will be made to reinstate the employee to regular duty as soon as possible. The decision as to when the employee will return to full duty will be at the discretion of the Executive Staff.
 - b. The New Castle City Police Administrative Captain will conduct a criminal investigation of the incident in conjunction with the Attorney General's Office.
 - c. The New Castle City Police Operations Captain will conduct an administrative investigation of the incident if there is any allegation of policy violation.
 - d. A formal assessment will be overseen by the Chief of Police to ensure the employee is prepared to return to full duty. The assessment will include a mandatory meeting with the Critical Incident Stress Management (CISM).
 - e. A Deadly Force Review Board will be convened to review the use of deadly force and identify any training issues that may result from the use of deadly force. The review board will consist of members selected by the Chief of Police and should include at least a certified firearms instructor, a certified use of force instructor and an executive staff officer from another Delaware law enforcement agency.
 - f. A Response to Resistance Report will be completed by the involved officer(s) prior to returning to full duty.
 5. All uses of force, except de minimis force, shall be documented in a Response to Resistance Report.
 6. Any force used against an aggressive animal in these circumstances will be documented in the associated LEISS report narrative. If a firearm is used a supervisor must be notified
 7. When a firearm is discharged outside of training or recreational environment, a supervisor must be notified immediately and an investigation conducted.

G. Training

1. The Training Officer will ensure the in-service curriculum is in compliance with Council on Police Training (COPT) standards.
2. Use of Force and Weapons Training
 - a. All officers are required to receive annual training on Department's response to resistance policy and active shooter/violent intruder response.
 - b. Officers are required to participate in schedule use of force and weapons training programs.
 - (1) Annual Training: Firearms and conducted electrical weapons.
 - (2) Biennial Training: Impact weapons, chemical spray, handcuffing, and defensive tactics.
 - (3) Training will be conducted by a certified weapons or tactics instructor.
 - c. Response to resistance policy and active shooter/violent intruder response training may be completed in conjunction with weapons training.
3. Demonstrate Proficiency with Departmental Approved Weapons
 - a. Only those officers demonstrating proficiency in the use of Departmental authorized weapons will be approved to carry such weapons.
 - b. Proficiency includes attaining knowledge and demonstrating appropriate use of the weapon. For firearms, this includes receiving a minimum score on a prescribed course of fire.
 - c. This may include firearms, chemical sprays, conducted electrical weapons, striking, impact weapons, and extended range less than lethal impact weapons. See specific policies relating to each approved weapon for further details.
4. The Administrative Captain shall analyze Response to Resistance Reports and prepare a documented annual summary noting any patterns or trends that may need to be addressed by policy modification, training, or equipment upgrades.

V. Related Policies

Directive	33-1-25	Authorized Weapons
Directive	33-4-4	Oleoresin Capsicum O.C. Spray
Directive	33-4-5	Conducted Electrical Weapons (Taser)
Directive	33-4-6	Expandable Baton / Flashlight
Directive	33-4-7	Handcuffing
Directive	33-4-8	Less Lethal Impact Munitions

This order supersedes all previous procedures, written or oral, not in total conformity herewith.

ORDERED and EXECUTED this 21st Day of July, 2020.

Richard P. McCabe
Chief of Police