



**DELAWARE CAPITOL POLICE**  
**Divisional Directive**

**Subject: Response to Resistance**  
**Number: 40**

**Effective Date: 11/04/20**

**Approved: Chief Michael F. Hertzfeld**

**I. PURPOSE**

The purpose of this policy is to provide officers with guidelines for the use of less-lethal and deadly force.

**II. POLICY**

It is the policy of this agency to value and preserve human life. This policy shall adhere to all federal, state and local laws. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent 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 he/she is actively resisting arrest or attempting to evade arrest by flight." In addition, "the 'reasonableness' of a particular use of force 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 them." This policy is to be reviewed semi-annually by all sworn Divisional personnel and any questions or concerns should be addressed to the immediate supervisor for clarification.

**III. DEFINITIONS**

**DEADLY FORCE:** Any use of force that creates a substantial risk of causing death or serious bodily injury.

**LESS-LETHAL FORCE:** Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

**PHYSICAL FORCE:** Any force used upon or directed at another person capable of causing pain and/or injury, with the exception of that used to take control of and direct a compliant

subject.

**OBJECTIVELY REASONABLE:** The determination that the necessity for using force and the level of force 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 reasonably prudent officer would use under the same or similar situations.

**SERIOUS BODILY INJURY:** Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

**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, verbal persuasion, and tactical repositioning.

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

**CHOKER HOLD:** A technique intended to restrict another person's airway, or prevent or restrict the breathing of another person, or intended to constrict the flow of blood by applying pressure or force to the carotid artery, the jugular vein, or the side of the neck of another person.

**WARNING SHOT:** Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

#### **IV. PROCEDURES**

##### **A. General Provisions**

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical 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. In these situations, only the minimal amount of force necessary to control the situation shall be used.

3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. An 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.
5. All response to resistance incidents shall be documented and investigated pursuant to this agency's policies.
6. Only Delaware Capitol Police personnel demonstrating proficiency in the use of agency-authorized weapons (lethal and less-lethal) shall be approved to carry such weapons.

B. De-Escalation

1. An officer shall use de-escalation techniques and other alternatives consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
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 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 agency approved, less-lethal force techniques and issued equipment;
  - a. To protect the officer or others from immediate physical harm
  - b. To restrain or subdue an individual who is actively resisting or evading arrest, or,
  - c. To bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when 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, and/or;
  - 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, 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. Deadly Force Restrictions
  - a. Deadly force should not be used against persons whose actions are a threat to only themselves or property.
  - b. Warning shots are prohibited
  - c. Firearms shall not be discharged at a moving vehicle unless:
    1. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
    2. The vehicle is operated in a manner deliberately intended to strike an 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.
  - d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.
  - e. Choke holds, knee holds and similar acts of applying force or pressure against the trachea, windpipe, carotid artery or jugular vein are prohibited unless deadly force is necessary.
  
4. A police officer obtains the legal right to use force, including deadly force, in certain situations from:

11 Del. C., ss 467 "Justification- Use of force in law enforcement"

11 Del. C., ss 464 "Use of force in self protection"

11 Del. C., ss 465 "Use of force for the protection of other persons"

All officers must recognize the legal standards set forth by the Delaware Legislature regarding response to resistance up to and including deadly force. In situations which may require the use of force, officers must not only consider the legality of the act, but moreover, the absolute necessity of their actions.

E. Training

1. All officers shall receive training, at least semi-annually, on this agency's response to resistance policy and related legal updates.
2. All Delaware Capitol Police personnel authorized to carry firearms and less lethal weapons shall receive all response to resistance policies and related instruction before being authorized to carry a weapon. Policy receipt and curriculum delivery must be documented.
3. In addition, training shall be provided on a regular and periodic basis and designed to:
  - a. Provide techniques for the use of, and reinforce the importance of, de-escalation;
  - b. Simulate actual shooting situations and conditions; and
  - c. Enhance officers discretion and judgment in using less-lethal and deadly force in accordance with this policy.
4. All response to resistance training shall be documented.

F. Reporting Response to Resistance Incidents

1. A Response to Resistance report (Attachment 40-2) shall be prepared by any officer who:
  - a. Displays (make a prominent exhibition of something in a place where it can be easily seen) a firearm, and/or discharges a firearm whether on or off duty, other than for routine training or recreational purposes
  - b. Takes any action (i.e. Taser, O.C. Spray, impact weapon, etc.) in an official capacity, that results in, or is alleged to have resulted in, any injury or death to another person; or,
  - c. Applies force through the use of lethal or less lethal weapons; or
  - d. Uses physical force, or is alleged to have used physical force, to another person.
2. Response to Resistance reports shall be completed by the assigned officer, or the on scene supervisor, when force is used against the same person by more than one officer.

3. Any officer who uses force in an official capacity, in any jurisdiction, either on or off-duty shall:
  - a. Report same immediately to their supervisor.
  - b. If on duty, submit the Response to Resistance report to their supervisor as soon as possible, but not later than the end of the shift.
  - c. If off duty and the incident occurred off-duty, submit a report as directed by the supervisor.
  - d. If the incident occurs in another jurisdiction, notify the local law enforcement agency, an operations Commander; and record these notifications in his/her report.
4. The submitted Response to Resistance report will be forwarded via the chain of command for administrative review by the Chief of Police or his/her designee. The report will then be filed appropriately.

G. Investigation- Non-Deadly Force

1. An investigation shall be initiated by the officer's immediate supervisor when a use of force incident occurs resulting in the completion of a Response to Resistance Report.
2. The investigation shall include:
  - a. A review of the report(s) submitted by the involved officer(s)
  - b. A review of any video available of the incident
  - c. A review of any photographs taken to include those of any injuries sustained by the subject or officer(s) involved
  - d. Any interview of the officer shall be limited to information immediately necessary (i.e. is there still a threat, are there any more victims, any suspects not accounted for, etc.)
  - e. An interview of the subject if deemed necessary.
3. The investigation should be completed with due diligence so as not to delay the submission of any required reports and/or initiation of a Professional Standards Investigation (PSI).
4. Once the preliminary investigation is received by the Major assigned to the operation where the incident occurred, he/she shall review it and if necessary, request a Professional Standards Investigation (PSI) be conducted.

H. Investigation- Serious Bodily Injury/Deadly Force

1. An investigation shall be initiated by the officer's immediate supervisor when a Response to Resistance incident occurs whereby the officer has;
  - a. Deployed a firearm and fired regardless of whether anyone was struck and/or injured.
    - i. The officer's firearm shall be taken as evidence, its condition documented (i.e. round in the chamber, loaded

magazine, etc.) and properly secured. If feasible, a replacement firearm should be provided to the officer involved if the circumstances permit.

- b. Caused serious bodily injury and/or death involving the deployment of a Taser.
  - c. Caused serious bodily injury and/or death involving the deployment of O.C. Spray.
  - d. Caused serious bodily injury and/or death involving the deployment of an impact weapon.
  - e. Caused serious bodily injury and/or death as a result of an officer applying physical force to defend against and/or affect the arrest of a physically resistant and/or combative subject.
2. The investigation shall include;
    - a. A review of the report(s) submitted by the involved officer(s)
    - b. A review of any video available of the incident
    - c. A review of any photographs taken to include those of any injuries sustained by the subject or officer(s) involved
    - d. Any interview of the officer shall be limited to information immediately necessary (i.e. is there still a threat, are there any more victims, any suspects not accounted for, etc.)
    - e. Interview of the subject if deemed necessary
  3. The investigation should be completed with due diligence so as not to delay the submission of any required reports and/or initiation of a Professional Standards Investigation (PSI).
  4. Once the preliminary investigation is received by the Major assigned to the operation where the incident occurred, he/she shall review it and request a Professional Standards Investigation (PSI) be completed.
- I. Release of Information
1. All information concerning a Response to Resistance incident shall emanate directly from the Chief of Police or his/her designee.
  2. Specifically, no member of the Division, other than the Chief of Police or his/her designee, shall be authorized to issue press releases or give interviews to representatives of the news media.
  3. Any member who violates this provision will be considered to have committed a most serious breach of conduct.
- J. Duty Status of Involved Officer
1. When an officer's actions result in serious physical injury or death, the officer shall:
    - a. Be immediately placed on Administrative Leave until the completion of the Professional Standards Investigation (PSI) and/or as directed by the Chief.
    - b. If the Professional Standards Investigation (PSI) is expected to be lengthy, the Chief of Police may elect to place the officer on

Administrative Duty until such time as the Professional Standards Investigation (PSI) is completed.

- c. Be required to keep the Division apprised of where they may be contacted at all times.
- d. The officer involved shall be encouraged to utilize the state's EAP (Employee Assistance Program) benefit.

K. Annual Response to Resistance Analysis

1. The Special Operations Commander shall complete an analysis on the Division's Response to Resistance activities, policies and practices no later than July 31 on an annual basis. Once completed, the analysis will be provided to the other Operations Commanders, the Majors and the Chief of Police. The analysis at a minimum will include the following information:
  - a. Date and time of incidents
  - b. Types of encounters resulting in Response to Resistance
  - c. Trends or patterns related to race, age, and gender of subjects involved
  - d. Trends or patterns resulting in injury to any person including employees
  - e. Impact of findings on policies, practices, equipment and training



DELAWARE CAPITOL POLICE

DIRECTIVE REVIEW

NUMBER 40

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|------------------|----------|-----|
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