

	DELMAR POLICE DEPARTMENT	
	Policy 6.1 Response to Resistance	
	Effective Date: 07/01/14	Replaces: Chapter III, Sec. VI, 6.6 – 6.11 (1994 Manual)
	Approved: <u>Ivan Barkley</u> Chief of Police	
	Reference: DPAC: 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.9, 1.3.10	

I. POLICY

It is the policy of this department that officers use only the force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. The use of force must be objectively reasonable. The officer must only use that force which a reasonably prudent officer could use under the same or similar circumstances. The officer's actions will be reviewed based upon the information known to the officer at the time the force was used. Information discovered after the fact will not be considered when assessing the reasonableness of the use of force.

The United States Supreme Court, in the case of *Graham v. Connor*, 490 U.S. 386, (1989), held that when engaged in situations where the use of force is necessary to effect an arrest, or to protect an officer's life or that of another, a law enforcement officer must act as other objectively reasonable officers would have acted in a similar, tense, rapidly evolving situation. Such situations, once known as use of force incidents, are now commonly referred to as **response to resistance** incidents, because a law enforcement officer must respond to resistance offered by another.

II. PURPOSE

The purpose of this policy is to provide law enforcement officers of this agency with guidelines for the use of deadly and non-deadly force.

III. DEFINITIONS

A. Deadly force

Deadly Force: Force that is intended or known by the officer to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury.

B. Non-deadly force

Non-deadly Force: Any response to resistance other than that which is considered deadly force. This includes any physical effort used to control or restrain another, or to overcome the resistance of another.

C. Use of Objectively Reasonable Force

1. Officers may use only that amount of force necessary to effect lawful objectives that are **objectively reasonable** based on the totality of the circumstances they confront. This test of objective reasonableness embodies allowance for the fact that officers often are forced to make split second judgments about the amount of force that is necessary in circumstances that are tense, uncertain, and rapidly evolving. “Reasonableness” is judged from the perspective of a reasonable officer, not with the 20/20 vision of hindsight. This test of reasonableness is not capable of precise definition or mechanical application – it requires careful attention to the circumstances of the 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 or attempting to evade arrest by flight or concealment.
2. In evaluating the reasonable application of force, officers must be able to articulate the facts and circumstances that made the response to resistance objectively reasonable. Factors that may be considered in determining whether a response to resistance is objectively reasonable may include, but are not limited to:
 - a. Information reported to the officer;
 - b. Opportunity for de-escalation;
 - c. Opportunity to develop a coordinated plan or approach;
 - d. The subject’s response or lack of response to police commands;
 - e. Actions of the subject, including the degree of resistance by the subject;
 - f. Statements of intent by the subject who has the means and ability to carry out the threat;
 - g. Availability and utility of lesser force options;
 - h. The severity of any crime at issue;
 - i. The degree and immediacy of any threat posed by the subject;
 - j. The potential for injury to the officer, subject, bystanders or other persons;

- k. Risks posed by escape of the subject;
 - l. Physical differences between the subject and the officer that may affect the level of threat posed (including age, size, strength, skills, injuries, level of exhaustion);
 - m. Influence of drugs or alcohol on a subject;
 - n. Possession or proximity of weapons;
 - o. Experience and skill level of the officer;
 - p. Relative numbers of subjects and officers; or
 - q. Any exigent circumstances.
3. This policy provides guidance on specific situations, and the use of specific techniques and weapons, the violation of which may result in discipline. The department recognizes, however, that unusual or unanticipated circumstances do occur. **The ultimate test is whether the response to resistance was objectively reasonable.**

IV. PROCEDURES

A. Force Continuum / Force Options (DPAC: 1.3.1)

The force continuum or force options is a standard that provides law enforcement officers with guidelines as to what type of force may be used against a resisting subject in any given situation.

Generally, officers should adhere to the following continuum, however, no continuum model can provide for an entire set of circumstances that may present itself in each very unique situation. Officers should only use the force option necessary to bring an incident under control.

1. Presence The officer assumes control of the situation or suspect through his announced and / or uniform appearance and professional bearing.
2. Dialogue The officer uses verbal persuasion and, if needed, issues commands and or verbal warnings.
3. Empty Hand Control The officer places hands on the suspect.
4. Intermediate Weapons The officer uses a baton, Taser, pepper spray ect.
5. Lethal Force This option is only appropriate to protect yourself or another from death or serious bodily injury.

B. Use of Non-deadly Force

1. Where deadly force is not authorized, officers may use the level of force that is objectively reasonable to bring an incident under control. (DPAC: 1.3.1)
2. Officers are authorized to use department-approved, non-deadly force / intermediate weapons and techniques when one or more of the following apply: (DPAC: 1.3.4):
 - a. To protect the officer or others from physical harm.
 - b. To lawfully restrain or subdue a resistant individual.
 - c. To bring an unlawful situation safely and effectively under control.

C. Use of Deadly Force

Law Enforcement Officers shall only utilize deadly force when necessary and justified to effect lawful objectives in conformance to the provisions of Maryland, Delaware and Federal Laws. (DPAC: 1.3.2)

The use of Deadly Force is justifiable under Section 467, II Delaware Code if all other reasonable means of apprehension have been exhausted, and; (DPAC: 1.3.1)

1. The police officer believes that the force employed creates no substantial risk of injury to innocent persons; and
2. The police officer believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury, or will never be captured if his apprehension is delayed.
3. The police officer believes that there is a substantial risk the person whom he/she seeks to prevent from committing a crime will cause death or serious physical injury to another unless the commission of the crime is prevented and the use of Deadly Force presents no substantial risk of injury to innocent persons.

D. Deadly Force Restrictions

1. Warning shots shall not be fired. (DPAC: 1.3.3)
2. Firearms shall not be discharged at a moving vehicle in an attempt to disable the vehicle.
3. Because of the low probability of penetrating a vehicle with a handgun, officers threatened by an oncoming vehicle should attempt to move out of its path, if possible, instead of discharging a firearm at it or any of its occupants. However, if an officer reasonably believes that a person is immediately threatening the officer or another person with deadly force by means of a vehicle, an officer may use deadly force against the driver of the vehicle.
4. Officers may use deadly force to destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured, when the officer reasonably believes that deadly force can be used

without harm to the officer or others. In these circumstances, a supervisor shall be contacted prior to the use of deadly force if time permits.

V. LIMITATIONS ON FORCE

The following acts associated with the response to resistance are prohibited.

- A. Application of choke hold or carotid control holds, except when the officer reasonably believes such holds are the only means of protecting himself, herself or another person from an imminent threat of serious physical injury or death and the use of deadly force would be authorized.
- B. Use of flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon only to defend himself or herself or another from imminent serious bodily injury or death and then only if departmentally sanctioned methods are not available or are impractical. The use of a flashlight or other alternative weapon under such circumstances, depending on the manner of use, may be deemed an application of deadly force.

VI. TRAINING

- A. All officers shall receive training in the use of their firearms, all non-lethal weapons, authorized by the department, hands-on arrest and defensive tactics, as well as the Response to Resistance policy prior to performing any law enforcement duties. (DPAC: 1.3.9)
- B. The Chief of Police may exempt Command Staff personnel from the requirement to carry certain non-lethal weapons. If such exemption is given for a particular non-lethal weapon, there shall be no requirement that the exempted Command Staff officer qualify with the specified non-lethal weapon.
- C. All officers shall be trained and qualified with their firearms at least annually. (DPAC: 1.3.10) Officers who fail to qualify will be provided two additional opportunities to qualify during the same day. Any officer who fails to qualify after three attempts will be assigned to remedial training with the Firearms Instructor. Upon completion of remedial training the officer will be given an opportunity to qualify. If the officer again fails to qualify the officer will be removed from enforcement duty and may be considered for termination.
- D. All officers shall receive training in the department's Response to Resistance policy at least annually. (DPAC: 1.3.10)
- E. All officers shall receive hands-on arrest and defensive tactics training at least every two years.
- F. Officers shall receive training in all non-lethal weapons issued or used by the department and demonstrate proficiency with those weapons at least every two years.

(DPAC: 1.3.10) Officers who fail to demonstrate proficiency with a non-lethal weapon will be given two additional opportunities to demonstrate proficiency during the same day. Any Officer who fails to demonstrate proficiency after three attempts will be assigned to remedial training with the instructor for the non-lethal weapon. Upon completion of remedial training the officer will be given an opportunity to demonstrate proficiency. If the officer again fails to demonstrate proficiency the officer will be removed from enforcement duty may be considered for termination.

VII. FORCE LEVELS

The following force levels are established for inquiry, reporting and review purposes only. If in the circumstances of a particular incident, the correct level is uncertain, the higher level will be used.

A. Level 1

1. Any force incident resulting in death;
2. Any intentional or unintentional discharge at a person, vehicle, animal, or structure regardless of injury;
3. Any force that resulted in a substantial risk of death;
4. Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ), to include a loss of consciousness. For the purposes of this policy, an evaluation by a medical professional to assess a complaint of injury is not emergency medical treatment.
5. Any impact weapon strike to the head.
6. Use of impact weapons, including specialty impact munitions or any other object, to strike a subject, regardless of injury;
7. Any deployment of a police canine resulting in a bite to a subject's clothing or skin, or which results in any injury to a subject.

B. Level 2

1. Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a person.
2. Use of a Conductive Energy Device (CED) (Taser) when;

- a. One or more probes impacts or penetrates the subjects clothing or skin.
 - b. The drive stun arc touches the subjects clothing or skin.
 - c. The CED is fired at a person but misses;
3. The baton is used for a non-striking purpose (e.g., prying limbs, moving or controlling a person).
 4. Any force incident resulting in injury or a complaint of pain beyond the discomfort un-resisted handcuffing, but not rising to a level 1 incident.
 5. A **weaponless** technique is used with or without complaint of injury or pain, Examples include:
 - a. Strikes to the head;
 - b. Hand/palm/elbow strikes;
 - c. Kicks or leg sweeps;
 - d. Pressure points; or
 - e. Takedowns

C. Level 3

1. Display only of Firearm (e.g., felony stop)
2. Display only of CED
3. Display only of Impact weapons (Impact munition weapons included)
4. Emergency Restraint Chair

VIII. REPORTING RESPONSE TO RESISTNACE

- A. Officers shall document any application of force on a departmental Response to resistance Form (DPD Form 6.1) except for those arising in training or departmental demonstrations. Response to Resistance Forms will be maintained within a separate file with the agency. (DPAC: 1.3.6)
- B. If officers have employed any use of physical force (other than the routine use of handcuffs or use of a firm grip to direct the movements of a subject) or used any impact, electrical, or chemical weapons, or pointed or discharged any firearm, they shall first provide for appropriate medical aid for the subject (DPAC: 1.3.5) and then:

1. Immediately notify the on-duty supervisor. It is the on-duty supervisor's responsibility to notify the Patrol Commander who will immediately notify the Chief of Police or his designee of any response to resistance resulting in:
 - a. discharge a firearm, other than for routine training or recreational purposes; (DPAC: 1.3.6, a)
 - b. takes any action that results in, or is alleged to have resulted in, any injury to another person; or (DPAC: 1.3.6, b)
 - c. uses physical forces, or is alleged to have used physical force, to another person (DPAC 1.3.6, c)

The Chief of Police shall determine if an immediate internal affairs investigation is required. In the case of an officer-involved-shooting the on-duty supervisor will follow the emergency notification protocol.

2. Photographs of the subject will be taken as soon as possible after the response to resistance to document any injury or lack of injury.
3. Submit a Response to Resistance Report to the Chief of Police (DPAC: 1.3.6) through the normal chain of command reporting procedures prior to the end of shift describing the incident, the force used, and any medical aid rendered. The Response to Resistance Report shall be in addition to any other required reports.

IX. DEPARTMENTAL REVIEW

A. Review

1. The officer's supervisor, division commander and the Chief of Police shall review all reported uses of force to determine whether:
 - a. Departmental orders were violated.
 - b. Relevant departmental policy was clearly understandable and effective to cover the situation.
 - c. Departmental training was adequate.
 - d. Departmental equipment operated properly.
2. The Chief of Police shall conduct an analysis of use-of force incidents annually to determine if additional training, equipment, or policy modifications may be necessary.

B. Internal investigations

1. An internal investigation will be conducted on any firearms discharge (other than training), and any other use of deadly force by members of the department. An internal investigation may be conducted on other uses of force incidents if a violation of law or department policy is suspected. In addition to the internal investigation, a criminal investigation shall also be conducted in any firearms discharge or other response to resistance incident where an officer or other person is injured or killed and in any other circumstances where a violation of law is suspected. The criminal investigation may be conducted by another law enforcement agency with concurrent jurisdiction and the results may be presented to the grand jury for review.
2. Procedures for Officer Involved Shooting Investigations are covered in Policy 6.6.

C. Force Review Board

The FRB shall identify any policy, training, tactical, equipment, or other improvements related to the force incident that may be needed. The Board will also review the quality and timeliness of the response to resistance reporting, investigation, and chain of command review, and take appropriate action. The Chief of Police may direct the Board to review any response to resistance incident.

1. Scope of Responsibility

The Force Review Board will review the following types of incidents;

- a. Level 1 and Level 2 force incidents
 - b. In-custody death;
 - c. Vehicle pursuits;
 - d. Any incident causing serious injury or death as a result of DPD's actions;
 - e. Any firearms discharge other than those in the course of authorized training, practice, legal recreational activities while off duty, during an organized competitive event, or at an animal other than humane destruction.
 - f. Any Commander may request that an incident occurring within their area of responsibility be reviewed.
- #### 2. Authority of Force Review Board

The Force Review Board shall have the authority to:

- a. Direct department personnel to appear before the Board;
 - b. Request any private person to appear as a witness;
 - c. Access all relevant documents, records, recording, including any video, audio, text messages, and transcripts of interviews of all involved personnel, including non-departmental witnesses, as provided by law; and
 - d. Make recommendations concerning any policy, training, tactics, or other improvements based upon a majority vote. Any recommendations will be referred to the Chief of Police.
3. The FRB will be comprised of department members assigned by the Chief of Police.
 4. The Training Division Commander shall ensure all FRB members received continued professional training in the following subjects;
 - a. Departmental force policies, force application, and practices;
 - b. Departmental force investigation procedures;
 - c. Criminal and administrative investigation, practices, and standards;
 - d. Legal updates on force case law;
 - e. Officer-involved shootings, vehicle pursuit-related matters, and in-custody death investigations.

D. Assignment

Pending administrative review, any officer whose actions have resulted in the death or serious bodily injury of another person shall be removed from line-duty assignment. This action protects both the officer's and the community's interest until the situation is resolved or reinstated by the Chief of Police. This re-assignment is not considered punitive in nature. (DPAC: 1.3.7)