

Response to Resistance Policy

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I. PURPOSE

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

II. POLICY

It is the policy of this law enforcement agency to value and preserve human life. 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 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 officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”

This policy is to be reviewed annually 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: 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.

OBJECTIVELY REASONABLE: The determination that 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 reasonably prudent officer would use under the same or similar situations.

RESPONS TO RESISTANCE – Any action taken by a sworn officer to control

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.

SWORN OFFICER/OFFICER: Sworn members of the Cheswold Police Department.

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.

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.

CHOKE HOLD: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

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

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.

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.

IV. PROCEDURES

A. General Provisions

Sworn members of the Cheswold Police 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.

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. 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.
5. All uses of force shall be documented and investigated pursuant to this agency's policies. See Directive 10-4-1A, Response to Resistance Reporting.
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 other alternatives to higher levels of force 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 for which they are properly trained and certified (where applicable).
 - 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. Choke holds are PROHIBITED unless deadly force is authorized.
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 believe 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. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances; the use of Deadly Force is justifiable under Section 467, II Delaware Code. 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, 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 only to themselves or property.
 - b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless
 - (1) the use of deadly force is justified;
 - (2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and
 - (3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.
 - 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 are PROHIBITED unless deadly force is authorized.

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 required a response to resistance, 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 response to resistance.
 - 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 response to resistance.
 - b. The Response to Resistance Report will be completed and electronically 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 no later than the beginning of the officer's next tour of duty.
4. Should an employee become involved in an incident involving the use of deadly force that results in serious physical injury or death:

- a. The employee shall be placed on administrative duty with pay and 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 Chief of Police or his/her designee.
- b. The Delaware State Police Homicide Unit will conduct a criminal investigation of the incident in conjunction with the Attorney General's Office.
- c. The Cheswold Police Department will request an outside agency to 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 or designee 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.
 - i. The Chief of Police, or designee, will oversee the review board.
 - ii. The Homicide Unit will present information to the review board.
 - iii. Members of the review board shall include, but are not limited to, representatives from the following:
 - 1) Executive Staff
 - 2) Academy
 - 3) Firearms Training Officer
 - 4) Two (2) Representatives of Delaware Police Chiefs Council
 - iv. The review board will meet as soon as practical following the conclusion of the Homicide Unit's investigation.
- f. A Response to Resistance Report will be completed by the involved officer(s) prior to returning to full duty.

5. The following procedure will be followed when completing a Response to Resistance Report.

- a. All uses of force, except de minimis force, shall be documented in a Response to Resistance Report according to the reporting matrix.
- b. Any force used against an aggressive animal in these circumstances will be documented in the associated LEISS report narrative. If a firearm is discharged/ accidentally discharged or CEW deployed a Response to Resistance Report will also be written.

Force	Outcome	Examples*	Reporting and Investigation
De Minimis Force or Less Lethal Force or Deadly Force	Physical interaction meant to separate, guide, and/or control that are not reasonably likely to cause injury	Using hands or equipment to stop, push back, separate or escort; Use of compliance holds without the use of sufficient force to injure; Complaints of minor pain with no signs of injury; Weapon employments; and Compliant handcuffing	Document the De Minimis Force and/or complaints of pain in LEISS report; No Response to Resistance Report needed; No investigation or further reporting required
	Physical Injury; Deployment of CEW (Taser), Chemical Spray, Impact Weapon, Use of Beanbag Shotgun, K-9 apprehension with bite	Controlled takedown techniques; Strikes with sufficient force to cause injury; Cuts and abrasions; Bruising from hard strike and hard take downs; Broken bones	Immediately notify supervisor; Document the Less-Than-Lethal Force used in LEISS report; Completed a Response to Resistance Report (narrative should refer to LEISS report); Sergeant or Acting Supervisor will review incident
	Serious physical injury; Use of Deadly Force; Death	Deadly force; Discharging a firearm that creates a substantial risk of death or serious physical injury to a person**	Immediately notify supervisor; Criminal Investigation Unit and/or Homicide Unit investigates incident; Response to Resistance Report to be completed prior to returning to full duty (narrative should refer to investigator's LEISS report)

* This is not intended to be an all-inclusive list. These examples are provided merely to offer guidance when force is used on a human suspect.

G. Training

1. The Training Academy will ensure all recruit training is in compliance with Delaware Police Officer Standards and Training (POST) standards.
2. Officers shall receive annual training on this policy and demonstrate their knowledge and understanding. (DPAC 1.3.10, 1.3.11)
 - a. All officers are required to receive annual training on the Division's response to resistance policy and active shooter/violent intruder response.
 - b. Officers shall receive training on:
 1. Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
 2. De-Escalation tactics, including alternatives to force.
 3. Types of use of force
 4. Termination of use of force
 5. Duty to Intervene
3. Demonstrate Proficiency with Divisional Approved Weapons
 - a. Only those officers demonstrating proficiency in the use of Agency Approved Issued Equipment 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. These 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.

- d. Only Divisional issued weapons will be carried. No alterations will be made to those weapons unless authorized by the Chief of Police.
(1.) Part Time officers may use personal off-duty weapon that is properly registered with Chief of Police and is qualified with during regular firearms qualifications.
4. The Chief of Police or designee, , shall retain records of the issuance and instruction pertinent to policies.
5. The Chief of Police or designee shall analyze Response to Resistance Reports and prepare a documented annual summary noting:
 - a. date and time of incidents
 - b. types of incidents/encounters resulting in responses to resistance
 - c. trends or patterns related to race, age and gender
 - d. trends or patterns resulting in injury to any persons incl. officers
 - e. any patterns or trends that may need to be addressed by policy modification, practices, training, or equipment upgrades.

F. Policy Copyright

This policy has been revised to incorporate policy based on the IACP National Consensus Policy on Use of Force published in October 2017 along with Delaware Police Officer Standards and Training (POST) Model Policy, State and Federal Guidelines.

ORDERED and EXECUTED 22nd day of July, 2020

Christopher Workman
Chief of Police