



## 5:1 Response to Resistance

Effective 10/01/24

**This General Order establishes the policies and procedures regarding the Response to Resistance by employees of the University of Delaware Police.**

### 5:1.1 Policy Statement

The purpose of this General Order is to establish policy and procedures for the use of deadly and non-deadly applications of force by Departmental employees. The order is for Departmental use only and does not apply in any criminal or civil proceedings. Violations of this policy will only be the basis for administrative discipline. The General Order should not be construed as a creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims.

#### A. Value of Human Life

The value of human life is immeasurable in our community. University Police Officers have been delegated the considerable responsibility to protect life and property and to apprehend criminal offenders. The apprehension of criminal offenders and the protection of property must, at all times, be secondary in importance to the protection of life. The officer's responsibility for protecting life must include their own. As law enforcement professionals, a greater value must be placed on the preservation of human life than on the solution of criminal offenses or punishment for their commission. For this reason, Officers must be selective in accordance with policy and training when using force that could result in death.

#### B. Officer Protection

Officers are never expected to allow an assault upon their person or a third party before using force. Officers may need to use reasonable force to accomplish lawful objectives and to control a situation, effect an arrest, overcome resistance to arrest, or defend themselves or others from harm.

#### C. De-escalation of incidents

Officers shall use de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force. De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, creating distance (and thus the reactionary gap) between the member and the threat, along with requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident. De-escalation will not always be appropriate, and officers should not place themselves or others in danger by delaying the use of force where warranted.

1. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force.
2. Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance in order to de-escalate a situation or consider or deploy a greater variety of force options, including lesser force or no force at all.
3. Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

4. 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.

**D. Disengagement**

Officers who are involved in a critical incident where a deadly weapon or the apparent threat of deadly force is present must recognize that the dynamics of these types of situations can change dramatically. Officers should be cognizant of facts, information and/or circumstances that could change their course of action and that could necessitate them to withdraw (disengage) to a safer location while maintaining a perimeter of the incident, if possible, until proper resources arrive on the scene.

**E. General Response to Resistance**

An officer shall only use reasonable force to overcome resistance and affect a lawful arrest. The use of physical force is authorized when an officer must subdue a resisting subject, in self-defense, or in defense of a third party (*see Delaware Code Title 11 Chapter 4 Section 467 Justification-Use of force in law enforcement*). The use of force applied by the officer shall de-escalate as the subject's resistance decreases. Force will be discontinued when resistance ceases. Officers may also use reasonable force to move or arrest an individual who is impeding lawful police action.

1. Any physical strike or instrumental contact with a person, any intentional attempted physical strike or instrumental contact that does not take effect or any significant physical contact that restricts the movement of a person.
  - a. The U.S. Supreme Court has stated that the use of force by an officer upon a "seized, free citizen" will be based on the standards of "objectively reasonable" under the Fourth Amendment of the United States Constitution.
  - b. The U.S. Supreme Court further stated that "based on a totality of circumstances, the reasonableness of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than the 20/20 vision of hindsight (*Graham*, 490 U.S. at 396 ) and the calculus of reasonableness must embody allowances for the fact that police officers are often forced to make split second judgements- in circumstances that are tense, uncertain and rapidly evolving.
2. The standard of objective reasonableness set forth in the Fourth Amendment does not require that officers choose the least intrusive level of force, only a reasonable one.

**F. Totality of Circumstances**

1. In every use of force situation, officers must look at the totality of the circumstances that affect the reasonable use of force. There can be many aspects and considerations within the totality of the circumstances that affect the appropriate use of force. The life and safety of all citizens and officers is paramount.
2. Among the circumstances that may govern the reasonableness of using a particular level of force, the U.S. Supreme Court emphasized four key factors in *Graham*:
  - a. Severity of the crime.
  - b. Whether the suspect is an immediate threat to the safety of the officer or others.
  - c. Actively resisting arrest.
  - d. Attempting to evade by flight.
3. Additional factors used by courts when determining whether the particular level of force is objectively reasonable are:
  - a. The number of suspects and officers involved.

- b. The size, age, and condition of the officer and suspect.
  - c. The duration of the action.
  - d. Whether the force applied resulted in injury.
  - e. Previous violent history of the suspect, known to the officer at the time.
4. The use of force to prevent the escape of a person in custody is appropriate when the force could justifiably have been employed to affect the arrest for which the person is in custody.
  5. The use of appropriate force to effect an arrest is justifiable when
    - a. The suspect does not comply with the officer's lawful command / orders.
    - b. The officer makes known the purpose of the arrest or reasonably believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; or
    - c. The arrest is made under a warrant, and the warrant is valid or reasonably believed by the officer to be valid; or
    - d. When the arrest is made without a warrant, the officer reasonably believes the arrest to be lawful.
  6. When evaluating a use of force, the Department will consider the following factors
    - a. The relationship between the need for the use of force and the amount of force used.
    - b. The extent of the injury inflicted.
    - c. Efforts made to temper or to limit the amount of force.
    - d. Threat reasonably perceived.
- (See, *Kingsley v. Hendrickson*, *Lombardo v. St. Louis*)

**G. Exigent Circumstances**

Should exigent circumstances exist that require an officer to violate this chapter in order to protect the life, safety, or health of themselves or others, no policy violation will occur.

**H. Duty to Intervene**

All University of Delaware Police Department employees have a duty to intervene within their scope of authority and training and notify appropriate supervisory authority if they observe another agency employee or public safety associate engage in any unreasonable use of force or if they become aware of any violation of departmental policy, state or federal law, or local ordinance. Every employee has an obligation to ensure compliance, by themselves and others, with Department directives and regulations, as well as all applicable laws, regarding responses to resistance and force applications. Any employee who observes an officer using force, or about to use force that is illegal, excessive, or otherwise inconsistent with this directive must, absent extraordinary circumstances, do whatever they can to interrupt the flow of events and stop the illegal, excessive, or otherwise inconsistent with this directive application of force.

1. If a supervisor observes such a violation, the supervisor must issue a direct order to stop the violation.
2. Employees have a duty to report illegal and inappropriate applications of force by other officers. Any employee who observes or has knowledge or belief of an application of force that is illegal, excessive, or otherwise inconsistent with this directive must notify a supervisor as soon as possible.
  - a. An employee may notify a supervisor either verbally or in writing about their observations, knowledge, or belief what is in violation of this chapter.
  - b. The receiving supervisor will document the information via a Significant Activity Form and submit to Command Staff only.
  - c. Upon receipt of the notification from the Supervisor the Professional Standards Officer will initiate an investigation into the information within the form.

3. No employee may retaliate, in any form, against another employee who intercedes in or reports a violation of this directive, or who cooperates with an investigation into a possible violation of this directive.

## 5:1.2 Definitions

### A. **Deadly Force**

Force which the officer uses with the purpose of causing or which the officer knows creates a substantial risk of causing death or serious physical injury, including the use of a chokehold as “chokehold” is defined under DE Code Title 11-607A. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the defendant’s purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force. (DE Code title 11-0471-000a)

### B. **Imminent Threat**

An appearance of threatened and impending injury as would put a reasonable and prudent person to their immediate defense or a danger that must be instantly met.

### C. **Reasonable Force**

A just, rational, and/or appropriate amount of force that is used under the circumstances that are presented. The authorized use of physical force ends when resistance ceases and/or the officer has accomplished the purpose necessitating the use of force.

### D. **Response to Resistance**

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

### E. **Objectively Reasonable**

The determination that the decision to use force, and the level of force used, is what a reasonable and prudent officer would use under the same or similar situations based upon the officer’s evaluation of the situation, experience, training, and the totality of the circumstances known to or believed to exist by the officer at the time the force is used and is consistent with U.S. Supreme Court precedent. *See Graham v. Connor, 490 U.S. 386 (1989)*

### F. **Reasonably Believes**

When applied to a defendant who is a law enforcement officer acting in the officer’s official capacity, means holds a belief that is reasonable from the viewpoint of a reasonable law enforcement officer in the defendant’s situation under the circumstances

### G. **Serious Physical Injury**

Physical injury that creates a substantial risk of death, or that causes serious and prolonged impairment of health, or prolonged loss or impairment of the use of any bodily function (Delaware Code Title 11 Section 222).

### H. **Force** - Any physical strike or instrumental contact with a person, any intentional attempted physical strike or instrumental contact that does not take effect or any significant physical contact that restricts the movement of a person. Use of force is lawful if it is objectively reasonable under the circumstances to effect an arrest, or protect the officer or other person,”

1. The standard of objective reasonableness set forth in the Fourth Amendment does not require that officers choose the least intrusive level of force, only a reasonable one. Officers may use reasonable force to complete a variety of different objectives. These objectives may include:

- a. Detentions
- b. Frisks
- c. Arrests

- d. Self defense
- e. Defense of others
- f. Defense of property
- g. Preventing a person(s) from self-injury or protective custody commitments
- h. Preventing a person(s) from destroying evidence
- i. Stopping a riot
- j. Preventing prisoner escapes

The term includes the discharge of a firearm, or pointing a firearm at or in the direction of a human being, use of chemical spray, use of impact weapons, use of conducted electrical weapons (CEW), personal weapons hand or feet or the taking of a subject to the ground. The term does not include escorting or handcuffing a person with minimal or no resistance.

I. **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 application 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.

J. **Passive resistance**

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

K. **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.

L. **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 hindering legitimate law enforcement efforts.

M. **Less – lethal force**

Any force used by an officer that would not reasonably be expected to cause death.

N. **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.

### 5:1.3 Application of Force

A. Delaware Law

The pertinent sections of the Delaware criminal code dealing with the application of force by a police officer are found in Delaware Code Title 11 Chapter 4 Section 464 and Delaware Code Title 11 Chapter 4 Section 467. These sections also indicate when the use of deadly force is not justified. Officers of the University Police shall be familiar with these sections.

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.
  - d. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use force.
- 2. 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.
- B. Defense of Life/Deadly Force
  - 1. An officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or the defense of any person in imminent danger of serious physical injury or death.
  - 2. 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.
  - 3. 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.
  - 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 the officer must reasonably believe that the force employed creates no substantial risk of injury to innocent persons.
- C. Chokeholds and Vascular Restraints
  - 1. Due to the propensity to cause death or serious injury, the use of "chokeholds" and vascular restraint techniques are considered a use of deadly force and are not authorized for use by University of Delaware Police Department employees unless the situation where the application for deadly force is considered reasonable or appropriate.
    - a. Chokeholds are a technique intended to restrict another person's airway or prevent or restrict the breathing of another person.
    - b. Vascular restraints are a technique intended to restrict the flow of blood to and from the brain by applying pressure or force to the carotid artery, the jugular vein, or the side of the neck of another person.
  - 2. In all arrest situations where it is necessary to place the defendant on the ground in order to successfully take them into custody, the arresting officers will, as soon as safely possible, put that defendant into an upright sitting or standing position.

#### **5:1.4 Authorized Weapons**

Employees must demonstrate proficiency in the use of each weapon and receive approval from the Chief of Police or their designee before carrying each weapon. Departmentally issued service weapons will not be used for recreational purposes without prior written authorization from the Operations Commander or designee.

##### **A. OC Restraint Spray**

- B. Straight Extendable Baton
- C. Conducted Electrical Weapon
- D. Less Lethal Projectile Weapons
- E. Service Handgun
- F. Service Rifle
- G. Flashlights are not designed to be used as police batons and shall not be used to strike blows to the head, neck, or other potentially lethal areas of the body unless a life or death situation exists. However, nothing shall prevent an officer from using their flashlight as a defensive weapon (i.e. blocking blows) if the situation so dictates and the officer has no other weapon at their disposal.
- H. Hands and feet should typically be used to restrain, control, and perform take-downs in accordance with an officer's training. Nothing here shall preclude their use as a defensive measure.
- I. The Department does not issue knives; however, officers may carry a folding knife at their option. The blade shall not be longer than three (3) inches. The knife may be carried for such things as cutting ropes, seat belts, etc. The knife is not intended to be used as a weapon, but may be used in the defense of an officer's life.
- J. Local objects immediately available to officers may be used only for defensive purposes to prevent death or serious physical injury. In the absence an immediate threat of injury, local objects may not be used as weapons.
- K. Handcuffs are issued to all officers and are to be used to restrain and secure persons in police custody. Handcuffs are not to be used as weapons except for defensive purposes when the officer has no other immediate weapon at his disposal and the use of deadly force is justified.
- L. Remote Restraint Device - BolaWrap- is a hand-held, remote restraint device that discharges a 7'6" Kevlar cord to wrap an individual at a range of 10-25 feet. The BolaWrap is equipped with anchors at each end of the Kevlar cord.

### **5:1.5 Prohibited Weapons**

Sap gloves, brass knuckles, slapjacks, blackjacks and Mace or other similar such instruments are specifically prohibited. Officers are authorized to carry and use only those weapons, ammunition, and equipment approved by this Department.

### **5:1.6 Restraint Devices**

As soon as the officer is able to, a resisting subject should be restrained using the department approved handcuffs. If after being handcuffed the subject is still actively resisting, officers may employ the use of hobble restraints during transport. Actively resisting subjects will only be transported in a patrol vehicle with a cage. Hobble restraints, used in conjunction with a seatbelt may be used to secure the subjects feet together, thus stopping them from causing injury or damage by kicking. The hobble restraint is not meant to and shall not be used to secure the subject's feet to their hands or any other object.

### **5:1.7 Training**

- A. All employees who are authorized to carry weapons shall be issued a copy of and instructed in this General Order before being authorized to carry such weapon(s), (see Appendix 5.1). This will be completed prior to the employee working any shift with the issued weapons except for using them in a training environment (i.e. Police Academy). The Training Officer will plan semi-annual mandatory training sessions dealing with this General Order and definitions within. All recruit training and in-service curriculum will be in compliance with

Police Officer Standards and Training (POST). Training will emphasize the use of minimal force, the proper situations in which to use force, the conditions necessary to use deadly force against a “fleeing felon”, and de-escalation tactics review.

- B. All members that may be responsible for managing application of force or response to resistance incidents or other law enforcement actions that result in death or serious bodily injury will receive training for managing and processing such incidents. All potentially impacted members will receive awareness level training regarding such incidents annually that will review the administrative reporting and administrative investigatory steps and expectations of the agency at a minimum to include review of this policy.
- C. All officers have an ongoing obligation to review the Department’s response to resistance force application directives and training materials, and to seek clarification any time they have questions or need guidance.

### **5:1.8 First Aid**

If there is an application of force in response to a subject’s resistance that is initiated, the officer involved or an officer responding to the incident will render appropriate medical aid to injured subjects, if first aid is feasible under the circumstances. If necessary, the officer will immediately contact an ambulance for evaluation and/or transportation to a medical facility.

- A. When safe to do so, officers using force on a subject(s) shall:
  - 1. Assess the subject’s injuries
  - 2. Request an emergency medical response for a subject(s) who has serious or potentially fatal injuries or loss of consciousness; and
  - 3. Request that a supervisor be dispatched to the scene.
- B. Officers who provide a subject with first aid on scene shall document same, along with the nature of the injury or complaint of injury, in the Incident Report and Response to Resistance Report.
- C. If the subject(s) refuses medical treatment the investigating officer will note the refusal in the Incident Report and Response to Resistance Report.
- D. If the person is transported to a medical facility for additional treatment at least one officer, if possible not the one who applied force, should be assigned to guard the person at the medical facility. If possible UDPD Communications should contact the medical facility and advise them of the pending transport so the medical facility can take any precautionary or additional security steps required prior to the arrival of the person. If the treatment is going to be lengthy in nature or the person is going to be admitted for a specified period of time the On-Duty Supervisor in conjunction with the On-Call Command Staff Officer will coordinate with the medical staff security to provide adequate security measures to prevent escape or unauthorized release of the subject.
- E. Prior to an emergency medical facility releasing custody of the subject from the medical facility, receiving officers must receive written authorization from the attending physician to remove the individual from the facility.
- F. The rendering of first aid following any law enforcement action or event is not limited to a direct application of force upon a subject by an officer. Departmental employees must insure that appropriate medical aid is rendered as quickly as reasonably possible following any law enforcement action or event in which injuries have been sustained. Employees are required to request medical assistance for a subject anytime the employee observes:
  - 1. Serious injuries or medical distress is apparent.
  - 2. The individual is unconscious.
- G. Medical aid should be rendered as quickly as reasonably possible, recognizing scene safety, control of the individual if applicable, and environmental circumstances which may influence



- these actions and timing of medical responses. Employees will notify the UDPD Communications Center or appropriate dispatch center to initiate the medical response.
- H. Employees will provide appropriate medical aid until medical personnel arrive and assume the scene and care for the patient. Medical aid may include any of the following, increased observation to detect obvious changes in condition, obvious severe injuries, or unconsciousness.