Asheville Police Department Policy Manual

Chapter: 4 - Law Enforcement Role and Authority **Original Issue**: 9/1/1993
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Policy 401 - Firearms
Policy 403 - Less Lethal Weapons
Policy 2301 - Administrative Investigations
SOP 3002 - Blue Team Reports
SOP 3016 - Officer-Involved Serious Incidents

Introduction

The Asheville Police Department is committed to preserving and protecting all lives and to upholding our community's values while inspiring mutual respect and public trust. Policing, at times, requires that officers may need to exercise control of a violent or resisting subject or a subject experiencing a mental or behavioral crisis. This policy provides officers with clear guidelines for the use of force in the performance of their official duties and seeks to ensure that these guidelines are consistently implemented.

Policy Statement

It is the policy of the Asheville Police Department (APD) that officers use only the force that is, under the circumstances, objectively reasonable, necessary, and proportional to the threat or resistance of a subject. Officers must perform their duties professionally, with respect for others, and in a manner that endeavors to protect and preserve life.

Definitions

Chokehold: a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. [EO 13929]

De-escalation Techniques: techniques that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of gaining voluntary compliance.

Lethal Force: any force that creates a substantial risk of causing death or serious bodily injury.

Controlled Directed-Fire: targeted fire that is controlled and deliberate based on a reasonable belief that a lethal threat is present. Controlled directed fire is only authorized when there is an immediate danger to human life from indiscriminate shooting by a suspect in order to protect citizens and/or officers.

Less Lethal Force: force employed that is neither likely nor intended to cause death or serious bodily injury.

Objectively Reasonable: the reasonableness of a particular use of force based on the totality of the circumstances known by an officer at the time of the use of force. Circumstances may include, but are not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.

Physical Force: any physical strike, instrumental contact with a person, or any physical contact that restricts the movement of a person. This term does not include the application of handcuffs with no resistance.

Proportional Force: application of force that reflects the circumstances, including the presence of imminent danger to officers or others. Proportional force does not require officers to use the same type or amount of force as the subject presents.

Serious Physical Injury: an injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term loss or impairment of the functioning of any body part or organ.

Show of Force: a gesture with a lethal and/or less-lethal weapon directed at a person as a means to coerce or gain compliance.

Vascular Neck Restriction: an intentional and sustained application of force intended to gain control of a subject by restricting blood flow to the neck/brain for the purpose of incapacitation. [4.1.6]

Rules and Procedures

402.1 De-escalation [4.1.1]

A. Prior to using force, when safe and without compromising law enforcement objectives, officers will use de-escalation techniques to attempt to slow down and/or stabilize a situation to allow for more time, options, and resources for incident resolution. De-escalation techniques may include, but are not limited to:

1. Mitigating the immediacy of the threat by containing or reducing exposure by moving to a safer position;
2. Establishing communication from a safe position;
3. Use of verbal techniques to promote rational decision-making; and/or
4. Avoidance of physical confrontation unless immediately necessary.

B. When safe and feasible, officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors such as, but not limited to, a medical condition, mental impairment, developmental disability, language barrier, the influence of drug or alcohol use, perceived age, and/or a behavioral crisis.

402.2 Use of Force

A. N.C. Gen. Stat. § 15A-401 grants law enforcement officers the right to use force in achieving lawful objectives. All officers should clearly understand that the policy of this department is more restrictive than the referenced statute. [4.1.1]

B. Officers must only use the amount of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject. Any use of force that is objectively unreasonable or unnecessary may subject officers to disciplinary action, up to and including dismissal, as well as civil and criminal liability. [4.1.1]

C. Officers in the line of duty who observe another law enforcement officer use force against another person clearly beyond that which is objectively reasonable under the circumstances and who possesses a reasonable opportunity to intervene will, if it is safe to do so, attempt to intervene to prevent the use of excessive force. [1.2.10]

1. The observing officer will report these observations as soon as feasible, but no later than seventy-two (72) hours after the observation, even if the officer did not have a reasonable opportunity to intervene. Any observation

of an incident in which the chief of police was involved or present should be reported to the next highest-ranking officer who was not present or involved in the use of force (N.C. Gen. Stat. § 15A-401).

D. Physical force will 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, another person, or property damage. In these situations, only the minimal amount of force necessary to control the situation will be used.

402.3 Use of Lethal Force

A. Law enforcement officers are authorized to use lethal force upon another person when it appears to be reasonably necessary to: [4.1.2] [5.03]

1. Protect the officer or another person from what is reasonably believed to be the use or imminent use of lethal physical force.
2. To prevent the escape from custody of a person the officer reasonably believes is attempting to escape by means of a deadly weapon or who, by his/her conduct or any other means, indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.
3. Stop an immediate life-endangering threat in order to protect others.
4. Stop the threat while advancing to or retreating with individuals when facing overwhelming gunfire.

B. Prior to the use of lethal force, where safe and feasible, officers will identify themselves as a law enforcement officer and order the subject to stop the activity which authorizes the use of lethal force.

402.4 Restrictions on the Use of Lethal Force

A. Officers will not use lethal force to subdue persons whose actions are a threat only to property or against persons whose conduct is a threat only to themselves.

B. Officers will not fire any weapon from or at a moving vehicle except to counter an imminent threat of death or serious physical injury to the officer or another person and no other means are available at that time to avoid or eliminate the danger. Officers will consider the following factors in determining whether shooting at or from a moving vehicle is justified:

1. An occupant of the vehicle is using or threatening to use lethal force by a means other than the vehicle.
2. The vehicle is being operated in a manner deliberately intended to strike a person.
3. All other reasonable means of defense (including taking cover or moving out of the path of the vehicle or other evasive action) have been exhausted, are not practical, or are not present.

C. Warning shots are prohibited. [4.1.3] [5.09]

D. Officers will avoid the use of the following unless lethal force is reasonably believed to be necessary within the guidelines and in compliance with the law and this directive:

1. Choke holds. [4.1.7] [EO 13929]
2. Vascular neck restrictions. [4.1.6] [EO 13929]
3. Strikes with an instrument other than hands or fists above a person's shoulders.

E. Where lethal force is not authorized, officers may use only that level of force that is objectively reasonable to bring an incident under control, according to the guidelines in Policy 403 - Less Lethal Weapons. [4.1.4]

F. Officers are permitted to euthanize a seriously injured or diseased animal with a firearm as a compassionate measure with the prior approval of a supervisor.

402.5 Rendering Aid [4.1.5]

A. Following any use of force and/or apprehension, when safe to do so, officers will evaluate the subject for injuries and render appropriate medical aid within their training as soon as practical. Officers will observe the subject for any possible changes.

B. Officers must immediately request an ambulance, paramedics, or other appropriate medical personnel for all subjects who show signs of injury or complain of injury following any use of force and/or apprehension.

C. Emergency medical personnel must be requested as quickly as reasonably possible if an obvious severe injury has occurred, medical distress is apparent, or the individual is unconscious.

402.6 Reporting Requirements

A. Any department member involved in a use of force or injured prisoner incident must notify a supervisor as soon as practical.

B. A department Blue Team report must be completed for the following:

1. Whenever a department member applies force through the use of a lethal or less-lethal weapon. [4.2.1 c]
2. Whenever a department member applies physical force as defined in this policy. [4.2.1 d]
3. Whenever an officer uses a show of force against another person as defined in this policy.

C. Notification, reporting, and review procedures for Blue Team reports are specifically addressed in SOP 3002 - Blue Team Reports. All reported use of force incidents will be reviewed by the employee's designated chain of command and Professional Standards. [4.2.2]

D. A supervisor will respond to the scene of all reportable incidents involving a use of force to conduct a preliminary investigation and collect supplemental documentation to be attached to the associated Blue Team report. This includes, but may not be limited to:

1. Obtaining or attempting to obtain a statement from the subject of the force or injury and all witnesses at the scene; and
2. When applicable, photograph all areas of contact located on the subject to document the injuries or lack of injuries.
3. Review of relevant body-worn camera footage related to the application of force.

E. If at any point while on the scene of a use of force incident, a supervisor has evidence of a law violation, inappropriate/excessive force, there is serious bodily injury to any person, and/or it is a potential high-profile incident, they must immediately contact Professional Standards and the watch commander, see Policy 2301 - Administrative Investigations.

F. Annually, the Professional Standards Section will conduct an analysis of all Blue Team reports related to uses of force to ensure department practices are

non-discriminatory and reveal any necessary training or policy modifications. [4.2.4]

G. Within five (5) days of receiving a use of force report, the Professional Standards Commander will submit a report to the FBI use-of-force data collection database if the use of force involved or resulted in:

   1. The death of a person due to an officer's force.

   2. The serious bodily injury (defined for these reporting purposes as bodily injury that involves substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) of a person due to an officer's use of force.

   3. The discharge of a firearm by an officer at or in the direction of a person that did not otherwise result in death or serious bodily injury.

H. The Professional Standards Commander will submit a zero report to the FBI database monthly if there were no uses of force as described above.

I. The Professional Standards Commander or designee is responsible for reporting any incident where a use of force by an officer results in death or serious bodily injury to a person to the NC Criminal Justice Standards Commission as required by N.C. Gen. Stat. § 17C-15. [1.17]

402.7 Lethal Force and Serious Injury Incident Response

A. The chief of police or designee will request the NC State Bureau of Investigation (SBI) to investigate any incident where an APD officer is involved in a use of force that results in the death or serious physical injury of any person.

B. Any employee whose actions or use of force result in serious physical injury or death to another person will be placed on administrative leave/duty by the chief of police or designee, pending an investigation of the incident. [4.2.3]

C. Response to the use of deadly force by a department employee or incidents involving death or serious physical injury of any person will follow SOP 3016 - Officer-Involved Serious Incidents.

402.8 Training

A. All department members approved to carry a department-authorized lethal or less lethal weapon must demonstrate proficiency with the weapon and be issued

copies of, and instructed in, the department's use of force policies and de-escalation techniques before carrying such a weapon. [4.3.2] [4.3.4]

B. All officers will receive annual in-service training on the department's use of force policies and de-escalation techniques. [4.1.2, 4.3.3]

C. A certified weapons instructor must monitor all weapons proficiency training. Firearms proficiency requirements are outlined in Policy 401 - Firearms. [4.3.3 a]

By order of:

David Zack
Chief of Police