



# Duke University Police Department

## RESPONSE TO AGGRESSION, RESISTANCE, AND USE OF FORCE

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| <b>General Order 401<br/>Revision 9</b> | <b>Rescinds:<br/>R-8<br/>12/17/20</b> | <b>Issue Date:<br/>12/13/1996</b> | <b>Revision Date:<br/>July 30, 2021</b> |
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### Purpose

The Duke University Police Department is committed to preserving and protecting all lives. Policing sometimes requires that officers need to exercise control of a violent or resisting subject. DUPD is committed to doing so while maintaining mutual respect and public trust.

It is the policy of the Duke University Police Department that officers respond to resistance or aggression in a manner that is objectively reasonable, necessary, and proportional to the threat or resistance of the subject. Officers must perform their duties professionally, with respect for others, and in a manner, which endeavors to protect and preserve life.

### Definitions

Assaultive Behavior: Acting in a way that provides a threat to, or an attempt to, strike another person, whether successful or not.

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.

Choke Hold: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.

Excessive Force: Force that is unreasonable under the totality of circumstances.

Less Lethal Force: Any use of force, other than deadly force, that involves physical effort to control, restrain or overcome the resistance of a subject. This may include soft hand techniques, Hard Hand Techniques, instrumental contact or application of chemical, electrical or pain compliance techniques.

Hard Hand Techniques (Weaponless physical strikes): Physical contact including punches, kicks, elbow strikes, knee spears, and head butts.

Soft Hand Techniques: Refers to physical contact that does not involve weaponless physical strikes, and includes: joint manipulation, pressure point techniques, take downs and balance disruption.

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

Objectively Reasonable: The determination that the necessity of using force and the amount of force used is based on the officer's evaluation of the totality of the circumstances known to the officer at the time. 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. It is what a reasonably prudent officer would do under the same or similar circumstances. *Graham v. Connor* [490 U.S. 386, 1989] is the primary legal reference for Objective Reasonableness.

Proportional Force: Application of force, which 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 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.

Vascular Neck Restraint: (i.e. sleeper hold) A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

## **Use of Force Guidelines**

[N.C.G.S. § 15A-401](#), grants law enforcement officers the right to use force upon another person to achieve certain lawful objectives (e.g. arrest). The policy of this department is more restrictive than the referenced statute. Although allowed by state law, DUPD officers are **not authorized** to use deadly force to prevent the escape of a person from custody imposed upon him or her as a result of a conviction for a felony.

Officers will only use the amount of force that is objectively reasonable, necessary under the circumstances and proportional to the threat or resistance of the subject. Any use of force that is objectively unreasonable, unnecessary or disproportional may subject officers to corrective action, dismissal or civil or criminal liability. Officers should refer to [Appendix 1, Officer Response...Option Model](#), for the types and levels of response available.

An officer may perform actions which are required to turn, guide, handcuff, or escort a subject who is exhibiting no or minimal resistance. These actions will not be considered a use of force.

Use of force by an officer in response to aggression or resistance requires a continual assessment of the suspect's behavior to allow for a reasonable response. Officers must continually assess a subject's behavior to allow for appropriate escalation / de-escalation in the use of force. Officers have been trained on a several evaluation tools to assist in their decision making process. Officers should use the decision making model in [Appendix 3](#), which is part of the ICAT training developed by PERF, as guidance when evaluating an incident.

Officers are never justified in using excessive force. 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. All members of the department must report any unreasonable use of force incident and may do so through their chain of command or by anonymously using the on-line crime-reporting link on the department website.

### **Security Officer Response to Resistance or Aggression**

Security Officers may not take physical action against any person except under the following specific circumstances:

- In legitimate self-defense when permitted by state law [N.C.G.S. § 14.51.3](#),
- To stop an assault in progress,
- To assist a law enforcement officer when explicitly directed to perform such an action by a law enforcement officer ([N.C.G.S 15A-405](#)),
- To provide assistance with patient restraints in the Duke Hospital (GO [434 Patient Response Services](#)).

The Security Officer's primary role is to observe and summon police assistance when he or she witnesses a crime in progress.

## **De-escalation**

Officers will use de-escalation techniques prior to using physical force, when it is safe and does not compromise law enforcement objectives. [Appendix 2, the Verbal De-escalation Chart](#), is based on Verbal Judo by George Thompson and provides the five steps necessary for de-escalating a situation.

De-escalation attempts to slow down 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:

- Collecting more information and establishing communication from a safe position.
- Mitigating the immediacy of the threat by containing or reducing exposure so that the officer has time to assess the situation, evaluate threat and risks levels, consider agency policy and utilize police powers.
- Use of verbal techniques to promote rational decision-making. 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 a medical condition, mental impairment, developmental disability, language barrier, influence of drugs or alcohol, cognitive impairment or behavioral crisis.
- Avoidance of physical confrontation (unless immediately necessary) to identify options and the best course of action or reassess a strategy that did not work.

If an officer is unable to safely control a situation without physical force, they are authorized to tactically disengage or escape the threat and establish more distance and reaction time. The officer can then evaluate and employ the appropriate force options. ([A-1 Use of Force Options Model](#))

## **Use of Less Lethal Force**

When de-escalation techniques are not effective or not appropriate, an officer may consider less lethal force options to control a non-compliant or actively resisting individual, in order to achieve law enforcement objectives. An officer is authorized to use B.L.E.T. Subject Control and Arrest Techniques, and or DUPD authorized techniques and less than lethal weapons (e.g. OC Spray, ASP Baton, Taser) in accordance with this policy, state statute, and state and federal law.

Certain techniques, such as vascular type restraints (e.g. choke holds, sleeper holds) or any techniques, which put continuous pressure on the neck or spine, and/or restricts the intake of oxygen, are prohibited except in a **lethal force** situation. Continuous pressure does not include momentary grabbing or manipulation, which occurs during a dynamic situation, before a subject is controlled.

## **Rules Involving Department Tasers**

Tasers will only be used in situations where officers encounter assaultive behavior. The subject may engage in assaultive behavior through actions such as strikes, kicks, or balance disruption that would cause injury to the officer. Assaults typically involve the subject's use of personal weapons, i.e., hands, elbow, feet, etc... This can include aggressive body language that signals the intent to assault.

The Taser may be appropriate for use on subjects:

- Who do not appear to react to pain stimuli and are assaultive.
- Who are armed with a weapon, or dangerous item (e.g. syringe) and who are assaultive.
- Who are patients of Duke Hospital when the patient is exhibiting or threatening assaultive behavior, for which the elements of a criminal offense are met and the use of the Taser may prevent injury.

The Taser may be drawn, energized and the laser sight placed on an individual for de-escalation purposes.

Officers will issue verbal and visual warnings, consistent with training, prior to deploying/activating. The Taser may be used in the preferred "probe mode", in the "contact" or "Drive Stun" mode, or may be used in a combination of modes as necessary.

The Taser shall not be used on those who passively resist and should generally not be used:

- On a handcuffed or secured prisoner, unless they are assaultive, self-destructive, or violently resistive and that behavior cannot reasonably be controlled by other readily available means.

- In any environment where an officer reasonably believes that a flammable, volatile, or explosive material is present, including but not limited to OC spray with volatile propellant, gasoline, natural gas, oxygen or propane.
- In any situation where the officer has a reasonable belief that the subject might fall resulting in death or serious physical injury, and the circumstances presented do not justify that risk.
- On a patient of any Duke Health System Medical Facility (in-patient or outpatient) unless the patient is exhibiting assaultive behavior, for which the elements of a criminal offense are met. Patients who passively or actively resist (e.g. running away, refusing medications or uncooperative with nursing staff), but are not assaultive, should be subdued by other available means.

Upon activating the Taser against a subject, the officer shall energize the subject no longer than objectively reasonable to overcome resistance and bring the subject under control. In determining the need for additional energy cycles, officers should be aware that an energized subject might not be able to respond to commands during or immediately following exposure. The subject should be secured as soon as practical while affected by Taser effects or immediately thereafter to minimize the number of cycles needed to overcome resistance and bring the subject under control.

Officers shall be aware of the concerns raised when a Taser is used on a member of a sensitive population group (i.e., children under 80 lbs., elderly, the medically infirm (e.g. wheel chair), pregnant, or users of a cardiac pacemaker). Officers are not prohibited from using a Taser on such persons, but use is limited to those exceptional circumstances where the potential benefit of using the device (i.e., injury reduction) reasonably outweighs the risks and concerns.

If the subject does not respond to the Taser deployment in the anticipated control manner based on training and experience, officers should consider transitioning to alternative resistance control measures.

The Taser may be used on an aggressive or assaultive animal when objectively reasonable.

## **Use of Lethal Force**

Prior to the use of lethal force, when safe and feasible, officers will identify themselves as a law enforcement officer, order the subject to stop the activity that authorizes the use of lethal force, and warn of his or her intent to use lethal force.

An officer is authorized to use lethal force when it is objectively reasonable under the totality of the circumstances and all lesser means of force have failed or could not be reasonably employed. Use of lethal force is justified when the following apply:

- To protect the officers or another person from what is reasonably believed to be an immediate threat of death or serious bodily injury, **or**
- To prevent the escape of a fleeing subject when the officer has probable cause to believe that the subject has committed or intends to commit a felony involving serious bodily injury or death, **and**
- The officer believes that there is an imminent risk of serious bodily injury or death if the subject is not immediately apprehended, **and**
- Other reasonable means of apprehension have been considered.

Use of lethal force is prohibited against individuals who pose a danger only to themselves and not to other members of the public or to officers. Officers should be prepared to exercise considerable discretion to wait as long as necessary so that the situation can be resolved peacefully.

\* Techniques, such as vascular type restraints (e.g. choke holds, sleeper holds) or any techniques, which put continuous pressure on the neck or spine and/or restricts the intake of oxygen, are prohibited unless lethal force is justified.

## **Rules Involving Department Firearms**

- Officers will not draw, point, or exhibit a firearm unless the circumstances create a reasonable belief that it might be necessary to use the firearm in conformance with this policy. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in accidental discharge of the firearm. Officers should consider the danger of engaging or pursuing a subject with a firearm drawn.
- Officers will not use lethal force against a person whose actions are only a threat to themselves or to property.
- The use of warning shots are prohibited. Warning shots, such as a shot fired in the air, may strike an innocent bystander or may be mistaken for a shooting exchange that precipitates the use of firearms by other officers.
- Firing at a moving vehicle is **prohibited** except:
  - When a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle, or
  - The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
    - When the driver is attempting to use the vehicle as a weapon of mass destruction in an apparent terrorist attack.
- Firing from a moving vehicle is prohibited.
- Discharging a firearm at an animal is justified under the following situations:
  - Self-defense,
  - To prevent harm to an officer or another, or
  - For humanitarian reasons when the animal is seriously injured.

## Medical Aid after Use of Force

Following any use of force, officers will provide medical aid commensurate with their training.

Officers will request EMS whenever the use of force creates a visible injury, complaint of injury or a suspected injury.

Once the scene is safe, officers will monitor individuals closely for the following high risk indicators of sudden in-custody death and will request medical assistance as needed:

- Bizarre/violent behavior (prior to, during, and after arrest),
- Obesity,
- Drug or alcohol use,
- Ineffectiveness of spray, or
- Use of physical restraint techniques by officers.

Officers will not allow restrained subjects to remain face down. Once the subject is restrained, sit subject upright and monitor his or her condition (unless EMS advises otherwise and/or injuries do not allow).

Subjects should be transported in an upright, seated position.

## Taser Post-Deployment Aid

The Taser darts may be removed from the subject by an officer using the procedures outlined in training. The Taser darts should be treated as a biohazard risk.

All subjects who have been contacted by a Taser or darts should be monitored while in police custody even if they have already received medical care. Officers will advise other officers or jail personnel of the Taser activation upon transfer of custody. Officers shall request EMS or transport a subject to a medical facility if any of the following occur:

- Subject requests medical attention, or there is an obvious need for medical attention,
- Subject is hit in a sensitive area (for example, eye, face, neck, breasts, genitals),
- The officer has difficulty removing the probes,
- Subject does not appear to recover in a reasonable period of time after being exposed, as determined by Taser training guidelines,
- Subject is part of a sensitive population group as defined in this policy,
- Subject has been exposed to three or more Taser cycles,
- Subject has been exposed to the effects of more than one Taser device,
- Subject has been exposed to a continuous cycle of 15 seconds or more, or
- Subject exhibits signs of physical distress or a sudden change in mental state.

If the probes penetrate the flesh, photographs of the contact area should be taken after they are removed. The photos will be submitted as part of the report. The officer should collect the cartridge, wire leads, darts, and at least one anti-felon identification device (AFID), and secure them as evidence.

## Reporting Use of Force

Members will immediately notify their supervisor of all incidents involving use of force and will document the occurrence on an Incident Report. The supervisor will respond to all use of force incidents and conduct a preliminary investigation. The supervisor will complete the Use of Force Investigation in the Use of Force database within 72 hours of the incident. All information pertaining to the use of force should be considered confidential.

Incidents of use of force that require reporting include:

- Discharge of a department issued firearm, on or off-duty, for anything other than training;
- Drawing or Pointing a department issued firearm or Taser for anything other than training;
- Application of less than lethal weapons (Taser, OC Spray, Baton, etc.), on or off-duty, outside of training;
- Application of weaponless physical force, such as Soft Hand Techniques or Hard Hand Techniques.
- Any action that results in injury or death to a subject, an officer, or another,
- Accidental discharge of a department issued firearm or Taser whether on or off-duty.

\* Use of Force reporting is not required to turn, guide, handcuff, or escort a subject; or to grab, hold, or move a patient.

For the purpose of this policy, patient restraints requested by a medical professional are not considered use of force incidents and therefore will not be reported on the Use of Force Investigation form, but will instead be reported on a Patient Response Form (See [GO 434 Appendix 1](#)).

The supervisor will immediately notify the Chief of Police through the chain of command of incidents involving the discharge of a firearm, discharge of a Taser, or those that result in serious injury or death. When a use of force incident results in death or serious injury, the involved officer(s) will be placed on administrative leave with pay until cleared for return to duty. The Supervisor will ensure they receive the appropriate guidance to follow departmental procedures including the Critical Incident Stress procedures.

The Chief of Police or designee may notify the North Carolina State Bureau of Investigation to investigate incidents involving the discharge of a firearm, discharge of a Taser, or other use of force that results in serious injury or death.

## **Use of Force Review**

The DUPD Professional Standards unit will review all Use of Force incidents.

In addition, Professional Standards will conduct an annual written statistical analysis of use of force incidents to identify trends or patterns that may indicate department modifications.

The analysis will include a review of

- The date and time of incidents,
- The types of encounters resulting in the use force,
- Trends and patterns relating to race, age, and gender of involved individuals,
- Trends and patterns resulting in injury to any involved party,
- Impact of analysis on policies, practices, equipment, and training.

This analysis will be forwarded to the Chief of Police for review and dissemination.

## **Training**

The department's Training Division is responsible for training all officers in:

- Use of Force policies and related legal issues and updates annually.
- Firearms, Tasers, OC Spray and Baton annually.
- All other subject control techniques biennially.

All classes will be taught by certified instructors in accordance with NC Administrative code and will be documented by the Training Division.

Officers on duty may only carry and use weapons approved by the department, for which they have received training and with which they have qualified. See [GO 301 Weapons and Range Guidelines](#).

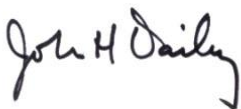
## **Off-Duty Police Officer Response**

For the purpose of this policy, off-duty officers refers to those police officers who are not working for DUPD and are carrying a department issued weapon or a personal weapon in which they have qualified for through the department. Off-duty DUPD police officers have only that authority to detain, to use force to detain, or to use deadly force as that available to any other private citizen of North Carolina. Off-duty officers are under no obligation to act and may find that the safest and best course of action is to contact law enforcement and act as a good witness.

Off-duty Police Officers will turn over any person they lawfully detain to an on-duty police officer with appropriate jurisdiction.

Off-duty Police Officers may use deadly force only under "Justified Self Defense" in accordance with [N.C.G.S § 14-51.3](#).

## **Approved**



**John H. Dailey**  
**Chief of Police**

[Appendix 1](#): DUPD Officer Response to Aggression and/or Resistance Option Model

[Appendix 2](#): Verbal De-escalation Chart

[Appendix 3](#): Decision Making Model