



PURPOSE

The purpose of this policy is to establish guidelines for the use of force by members of the New Castle County Division of Police. This policy is not all-inclusive and shall be used as a guideline. Deviation from this policy may be necessary as situations dictate.

The Criminal Investigation Unit and the Professional Standards Unit, in conjunction with the Use of Force Review Unit, will maintain separate responsibilities for investigating uses of deadly force, in accordance with Appendix 4-A.

I. DEFINITIONS

- A. ACCIDENTAL FIREARM DISCHARGE** – When an officer unintentionally discharges a firearm.
- B. CEW** – Conducted Energy Weapon (TASER)
- C. CHOKEHOLDS** - Any physical control technique in which an instrument or the officer's body is used to restrict, or should reasonably believe it would restrict, another subject's ability to breathe by exerting pressure on their neck is prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to self or others. These are also known as vascular neck restraints. **(4.1.6) (4.1.7)**
- D. CONTROL TACTICS** - are the employment of physical techniques, less lethal and deadly force options reasonably applied which are required to establish and maintain lawful control or compliance to ensure a resisting subject is adequately controlled in a reasonable manner while ensuring officer safety. Good judgment is extremely important in deciding which tactics to use and how much force to apply. **(4.1.2)**

- E. DIRECTED FIRE** - The purposeful and controlled fire directed at an offender or position of advantage held by the offender, if there is a direct threat to life and the location of the threat can be identified.
- F. DISPLAY** – when an officer unholsters a force option in a clearly downward manner relative to the officer’s position **and** provides a verbal warning of deploying that force option with the intent to gain the subject’s compliance. Or, when a canine officer utilizes the presence of their canine intending to gain the compliance of the subject.
1. Examples include:
 - a. ASP baton
 - b. Conducted Energy Weapon (TASER)
 - c. Firearm
 - d. Flashlight used as an impact weapon
 - e. Less lethal impact weapon
 - f. OC spray
 - g. Weapon of opportunity
- G. 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.
- H. FORCE REPORT** – Divisionally-approved force reporting and data collection software.
- I. INVOLVED OFFICER** - An officer who uses force and/or discharges a firearm in the direction of a person(s), regardless of whether or not the person(s) is struck by the projectile or utilizes any other force which results in death.
- J. SERIOUS PHYSICAL INJURY** - Physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.
- K. SHOW OF FORCE** – Any display and/or targeting of a weapon to gain the compliance of a subject.
- L. TARGETING** – When an officer unholsters a firearm or CEW (TASER) in any position (low ready, high ready, aiming) other than a clearly downward manner relative to the officer’s position or towards a subject intending to gain the compliance of the subject.

M. UFRU – Use of Force Review Unit

N. WEAPON OF OPPORTUNITY - Any other object that an officer uses to apply force to another individual. Examples of police issued equipment are handcuffs, portable radios, and flashlights or other available non-issued implements such as a vehicle, tools, or a bat, which are directed to cease the immediate threat of the assailant.

O. WITNESS OFFICER - An officer who was present at an incident where force and/or deadly force was utilized by an involved officer.

POLICY

Members of the New Castle County Division of Police will use reasonable force when force is necessary to effect lawful objectives. An officer has the legal authority to use force, including deadly force, in situations defined by **Title 11, Section 467 of the Delaware Code and Sec. 20.01.003 of the New Castle County Code**. Further, case 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 (F.L.E.T.C.).**

All officers will have a thorough understanding of the Delaware Code, New Castle County Code and U.S. Supreme Court case law and will act in accordance with these laws in all use of force situations. Officers need to be proficient in knowing when and when not to use force, as well as be effective in employing force. They also need to understand that it is acceptable to utilize reasonable force when necessary.

It is the policy of the New Castle County Division of Police to investigate all uses of force thoroughly and objectively with adherence to all due constitutional rights. Officers shall be treated with respect and professionalism during this investigation.

II. USE OF FORCE

The U.S. Supreme Court has stated in *Graham v. Connor*, 490 U.S. 386 (1989) that the use of force by an officer upon a “seized, free citizen” will be based on the standard of **“objectively reasonable”** under the Fourth Amendment of the United States Constitution.

The U.S. Supreme Court has stated that the objective reasonableness of the use of force is based on the **totality of the circumstances** “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20

vision of hindsight.” *Graham*, 490 U.S. at 396. “The calculus of reasonableness must embody allowance for the fact that **police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving** – about the amount of force that is necessary in a particular situation.” *Id.* at 396-97.

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:

1. Detentions
2. Frisks
3. Arrests
4. Self defense
5. Defense of others
6. Defense of property
7. Preventing a person(s) from self-injury or protective custody commitments
8. Preventing a person(s) from destroying evidence
9. Stopping a riot
10. Preventing prisoner escapes

A. Totality of Circumstances

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. **(4.1.1)**

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*:

1. Severity of the crime.
2. Whether the suspect is an immediate threat to the safety of the officer or others.
3. Actively resisting arrest.
4. Attempting to evade by flight.

Additional factors used by courts when determining whether the particular level of force is objectively reasonable are:

1. The number of suspects and officers involved.
2. The size, age, and condition of the officer and suspect.
3. The duration of the action.
4. Whether the force applied resulted in injury.
5. Previous violent history of the suspect, known to the officer at the time.

- B. When reasonable force is immediately applied without hesitation, the use of force typically results in fewer injuries to both the officer and the offender. The use of appropriate force to effect an arrest is justifiable when:
1. The suspect does not comply with the officer's lawful command / orders.
 2. 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
 3. The arrest is made under a warrant, and the warrant is valid or reasonably believed by the officer to be valid; or
 4. When the arrest is made without a warrant, the officer reasonably believes the arrest to be lawful.
- C. The use of force to prevent the escape of a person in custody is appropriate when the force could justifiably have been employed to effect the arrest for which the person is in custody.
- D. The use of force to prevent a crime is justifiable when the officer believes such force is necessary to protect the officer or another person against the use of unlawful force by another person. See 11 *Del. C.* § 467.

III. USE OF FORCE OPTIONS

- A. Presence/Appearance: The image that an officer conveys can influence the outcome of a situation. The officer should be mindful of body language and always maintain the highest level of professionalism.
- B. Verbal Communication/De-escalation: At times, effective verbal communication/de-escalation techniques can reduce anxious, aggressive, or violent behavior. The appropriate use of verbal persuasion can in some cases prevent or minimize the need for physical force.
1. Effective communication/de-escalation techniques with the subject are the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion and warnings before resorting to actual physical force. **(4.1.1)**
- C. Physical Force
1. Subjects may exhibit some degree of physical resistance when being taken into custody. Sometimes all that is required to control the resistance is physical strength and skill in control tactics.
 2. Control tactics are the employment of physical techniques, less lethal and deadly force options reasonably applied which are required to establish and maintain lawful control or compliance to ensure a resisting subject

is adequately controlled in a reasonable manner while ensuring officer safety. Good judgment is extremely important in deciding which tactics to use and how much force to apply. **(4.1.2)**

3. Officers must understand that the use of force in law enforcement is an offensive act.
4. It is critical to be proactive and react to the threat of violence as opposed to waiting for violence to occur. The law recognizes the fundamental principle of “if an officer is responding to an actual assault, there has been an unnecessary delay in that response.”

D. Deadly Force

The decision by a law enforcement officer to employ deadly force will be based on the standard of “objective reasonableness” set forth in the 4th Amendment which does not require that officers choose the least intrusive level of force, only a reasonable one.

In *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985), the Supreme Court held that a police officer may use deadly force to prevent the escape of a fleeing suspect only if the officer has a good faith belief the suspect poses a significant threat of death or serious physical injury to the officer or others. “Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

NOTE: The Division of Police recognizes certain extreme and exceptional circumstances may arise requiring the officer to employ the equipment authorized in this section as a deadly weapon and its use may, in fact, result in serious physical injury or death. These circumstances would be restricted to those requiring the use of deadly force and where it would not be practical or possible for the officer to use their handgun, shotgun, or rifle.

The following impact weapons are strictly prohibited:

1. Sap gloves
2. Brass Knuckles
3. Slapjacks
4. Blackjacks
5. Gloves with hard plastic, carbon fiber or other polymer coverings.

NOTE: Gloves worn by officers are solely for the protection of the officers' hands and those designed as a weapon are strictly prohibited.

- E. Directed fire - Directed fire is defined as purposeful and controlled fire directed at an offender or position of advantage held by the offender, if there is a direct threat to life and the location of the threat can be identified. This tactic is primarily used for the purpose of rescuing victims and/or citizens as a means to get to them and/or remove them from danger. The use of directed fire is a tactic that must be viewed in the same light as deadly force and all legal principles and training policies on the use of deadly force apply. When the source of the gunfire or threat is known but not necessarily visible, officers may direct fire to that specific threat area. As a rule, directed fire must not create a greater hazard than the actions of the offender. Absent a life-threatening situation, police should avoid firing into a building that is occupied by innocent persons or where the backstop area presents a danger to others by the direct fire. Angle of fire, distance to the threat area, weapons type, caliber, and bullet type are important factors.
- F. Officers may employ deadly force when the officer reasonably believes that the force employed does not create a substantial risk of injury to an innocent person.
- G. Officers should not discharge their firearms at or from a moving vehicle, motorcycle, or bicycle unless the officer reasonably believes that such action is necessary to protect the officer(s) or an innocent person from the use or imminent use of deadly force against the officer(s) or innocent person.
- H. Warning shots are prohibited. **(4.1.3)**
- I. All officers will be issued copies of and receive instruction on the use of force/deadly force policies while in the police academy before being authorized to carry a firearm. In addition, all officers will receive in-service training on the use of force/deadly force on an annual basis. **(4.1.2)**
- J. Any physical control technique in which an instrument or the officer's body is used to restrict, or should reasonably believe it would restrict, another subject's ability to breathe by exerting pressure on their neck is prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to self or others. These physical control techniques include, but are not limited to, those commonly referred as "chokeholds" or vascular neck restraints. **(4.1.6) (4.1.7)** See also NCC Code § 20.01.003.

K. Less Lethal Weapons

An officer may elect to employ any of the following less lethal weapons which are approved for use by Division personnel. These weapons may be utilized to assist officers in effecting lawful arrests when resistance is encountered, to prevent an escape or for the purpose of protecting themselves or a third party from bodily harm. Officers are not authorized to carry any less lethal weapon until they are trained by a certified instructor and demonstrate proficiency in the use of the weapon. **(4.1.4)**

NOTE: Refer to Directive 4-B (Less Lethal Weapons).

IV. DUTY TO INTERVENE

- A. Any officer on-scene who is knowingly aware that another officer is using force which is beyond objectively reasonable under the circumstances, excessive, inappropriately applied, no longer needed, and/or inconsistent with divisional training and policy shall, intervene verbally and when in a position to do so, safely intercede to stop the use of such force. While still on scene, the intervening officer shall promptly report his/her observations to a supervisor, if safe and feasible to do so. Otherwise, it shall be reported as soon as practical. The supervisor will immediately respond to the scene if not present, notify their supervisor and conduct an investigation in accordance with the use of force policy. **(1.2.10)** See also NCC Code § 20.01.004.

V. PROVIDING MEDICAL ASSISTANCE

- A. If during any law enforcement action, any person(s) is injured, the officers on scene shall summon emergency medical personnel to render aid. Officers present shall render first-aid within their capabilities, until the arrival of such emergency medical personnel. Such person(s) shall be taken to the appropriate medical facility for treatment.
 - 1. If the person has a prior injury not sustained as a result of police contact, the officer shall ensure the person receives the necessary medical attention on scene or that the person is transported to the appropriate medical facility for treatment, if necessary. **(4.1.5)**
- B. In all arrest situations where it is necessary to place the defendant on the ground in order to successfully take him/her into custody, the arresting officers will, as soon as safely possible, put that defendant into an upright sitting or standing position.
- C. In any arrest situation in which the officer recognizes that the defendant exhibits signs of a medical emergency, the arresting officer should use

extreme caution. An ambulance (BLS) and a paramedic unit (ALS) should be requested immediately and the incident managed as a medical emergency. Once the defendant is in custody, officers will follow the procedure set forth in B and have the subject transported to the nearest medical facility. Medical clearance documents must be obtained from the treating physicians any time that a subject is treated at a medical facility.
(4.1.5)

1. Officers should be cognizant of certain behavioral patterns or physical symptoms that may indicate a serious medical condition. Symptoms and behavioral patterns may include but are not limited to:
 - a. Bizarre, aggressive and/or violent behavior.
 - b. Violence towards others, including law enforcement.
 - c. Aggression toward inanimate objects such as glass, mirrors, rotating lights, etc.
 - d. Shouting, often irrationally.
 - e. Incoherence.
 - f. Fear, panic and/or paranoia.
 - g. Dilated pupils.
 - h. High pain threshold.
 - i. High body temperature.
 - j. Labored breathing.
 - k. Public disrobing.
 - l. Profuse sweating and/or shivering.
 - m. Hiding behind objects.
 - n. Self-inflicted injuries.
 - o. Unexpected physical strength.