



<b>APD Policy CHAPTER 11 RESPONSE TO RESISTANCE</b>	<b>ABERDEEN POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL</b>
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
<b>Applicable State Statutes:</b> 22-18-2; 22-18-3; 22-1804; 23A-3-5;	
<b>RELATED POLICIES:</b>	
<b>DATE IMPLEMENTED:</b> June 15, 2020	
<b>SPECIAL INSTRUCTIONS:</b>	<b>NUMBER OF PAGES: 12</b>

- I. **PURPOSE:** The purpose of this policy is to direct officers in the appropriate use of force.
  
- II. **Policy:** The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in use of force events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All uses of force must be objectively reasonable.
  
- III. **DEFINITIONS**
  - A. **Deadly Force:** Force which creates a substantial likelihood of death or serious bodily harm.
  - B. **Non-Deadly Force:** All uses of force other than those that is likely to cause serious bodily harm or death.
  - C. **Imminent:** Impending or about to occur.
  - D. **Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer using the force is presented.
  - E. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person believes that the prescribed facts exist.

- F. **Serious Bodily Harm: (18 U.S.C. § 1365 (h) (3)):** the term "serious bodily injury" means bodily injury which involves;
  - 1. A substantial risk of death;
  - 2. Extreme physical pain;
  - 3. Protracted and obvious disfigurement; or
  - 4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- G. **Electronic Control Device:** Tasers or stun guns (electronic control weapons) that disrupt the central nervous system of the body.
- H. **Active Resistance:** Affirmative steps taken by an individual to defeat an officer's ability to arrest or control them.
- I. **Passive Resistance-** Suspect doesn't take any action to resist Officer but refuses to comply voluntarily to verbal commands. An Example, suspect becomes "dead weight".
- J. **Defensive Resistance:** Affirmative steps taken by an individual to defeat an officer's ability to arrest or control them. It is not an attack on the Officer, but an act designed to prevent the Officer from gaining control.
- K. **Active Aggression:** Physical actions/assaults against an Officer or civilian with less than deadly force. (punching, kicking, grabbing etc)
- L. **Respiratory Neck Restraint-**This type of neck restraint involves an officer applying direct pressure to the suspect's trachea, generating strangulation. The respiratory neck restraint should be considered deadly force.
- M. **Vascular neck restraint-**This type of neck restraint involves an officer applying pressure to the side of the suspect's neck, rather than the trachea. By impeding blood flow to the brain, this technique is meant to produce compliance or unconsciousness. The vascular neck restraint should be considered deadly force.
- N. **Graham vs Connor in attachments.**
- O. **Tennessee vs Garner in attachments.**

#### IV. RULES AND REGULATIONS

- A. **Procedure:**
  - 1. In determining the appropriate level of force officers should apply the response to resistance training provided by the department:
    - a. How serious is the offense the officer suspected at the time the particular force used?
    - b. What was the physical threat to the officer or others?
    - c. Was the subject actively resisting or attempting to evade arrest by flight?

- d. Size difference, age, special knowledge, exigent conditions, number of Officers involved, availability of backup, access to weapons, injury, exhaustion etc.

**B. South Dakota statutory law provides:**

1. To use, attempt, or offer to use force or violence upon or toward the person of another is not unlawful when necessarily committed by a public officer in the performance of any legal duty or by any other person assisting him or acting by his direction.
2. Under the South Dakota statutory authority, the force used by a police officer is unlawful when it becomes greater than necessary to carry out his duties.
3. An arrest is made by an actual or attempted restraint of the person arrested or by his submission to the custody of the person making the arrest. No person shall subject an arrested person to more physical restraint than is reasonably necessary to effect the arrest. Any person making an arrest may take from the arrested person all dangerous weapons and property as defined by state law, which the arrested person may have about his person.
4. To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by any person in arresting someone who has committed any felony or in delivering that person to a public officer competent to receive him or her in custody.

**C. Force Options:** Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.

1. **Command Presence:** Visual appearance of officer where it is obvious to the subject due to the officer's uniform or identification that the officer has the authority of law.
2. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
3. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; Techniques that have a low potential of injury to the subject. Includes pressure points, escort position, joint locks etc.
4. **Chemical Spray:** Where subject exhibits some level of defensive resistance/active aggression, officers may use chemical spray to gain compliance from the subject.
5. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to gain compliance from the subject.

6. **Hard Hand Control:** Punches, kicks, palm heels and other physical strikes that have a higher possibility injury. Hard empty hand tactics are designed to reverse momentum, create mental stunning and motor dysfunction.
7. **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and have failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
8. **Deadly Force:** Force that creates a substantial likelihood of death or serious bodily harm.

**D. Deadly Force**

1. The use of deadly force is objectively reasonable when:
  - a. The officer is faced with an imminent threat of serious bodily harm or death to him/herself, or some other person who is present, or;
  - b. To prevent the escape of an individual in cases where the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death AND by the subject's escape they pose an imminent threat of serious bodily harm or death to another.
  - c. Officers should warn the subject prior to using deadly force where feasible.
2. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and provide for emergency medical response where needed.
3. Discharge of Firearms Restrictions:
  - a. Warning Shots are prohibited
  - b. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
  - c. When a moving vehicle is involved, use of deadly force by discharging a firearm is dangerous, can be ineffective, and should not occur when there is an unreasonable risk to the safety of persons other than the subject. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.
  - d. Even when deadly force is justified, firearms shall not be discharged at a vehicle unless:
    - i. The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person, or

- ii. The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an imminent threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
- 4. Refer to Tennessee vs Garner in attachments.

**E. Less-Lethal Weapons/Tactics**

- 1. Prior to deployment of any less-lethal weapon, officers must be trained and certified in the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental use of force training and policy.
- 2. **Chemical Spray:**
  - a. Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant. Active resistance/active aggression shall be required.
  - b. Chemical Spray shall never be used as a punitive measure.
  - c. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the pressurized stream. Officers should never spray directly into a subject's eyes from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter) unless deadly force would be justified.
  - d. Officers shall consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
  - e. Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
  - f. Once control is gained, officers should immediately provide for the decontamination of the subject.
  - g. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.
- 3. **Electronic Control Devices**
  - a. An electronic control device as a force option is the same level of force as chemical spray.

- b.** Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
- c.** Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance/active aggression shall be required.
- d.** Flight from an officer, standing alone, is not a justification for the use of an electronic control device. Officers should consider the nature of the offense suspected the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately.
- e.** Officers must be trained concerning ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying an Electronic Control Device in the presence of open natural gas during suicidal person call)
- f.** Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other symptoms such as cocaine intoxication. Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.
- g.** The agency recognizes however, particularly where back-up officers are unavailable, that multiple applications may be necessary to gain or maintain control of a combative individual.
- h.** No more than one officer should deploy an electronic control device against a single individual at the same time.
- i.** A contributing factor to serious injury or death is the level of a subject's exhaustion. Studies recommend that when an officer believes that control of a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early on in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.
- j.** In cases where subject is actively resisting an officer's attempt to take them into custody but not threatening the officer with an assault-it is recommended that the Electronic Control Device be used in the "push stun mode."
- k.** The preferred targeting is the center mass of the subject's back; however, it is recognized that it is not always possible to get behind the subject.
  
- l.** Where back-targeting is not possible, frontal targeting should be lower center mass, intentional deployments to the chest shall be avoided where possible.

- m.** Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes, or genitals.
- n.** Officers are prohibited from using the device as punitive measure.
- o.** Electronic Control Devices shall not be used against a person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- p.** A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable, model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment. See: *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004).
- q.** Officers shall make all efforts to warn other officers that a deployment is about to occur.
- r.** The device shall never be used on a handcuffed person to force compliance unless the subject poses a violent threat to the officer through physical conduct and cannot otherwise be controlled by lesser force options.
- s.** Officers should consider the location and environment of the subject. i.e. Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device-they fall down the stairs causing a collateral injury. Officers shall avoid using an Electronic Control Device in cases where the subject is in water or elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. such that a secondary impact may cause serious injury or death.
- t.** Officers should be aware that a subject's heavy clothing may impact the effectiveness of the electronic control device.
- u.** Officers should consider whether the subject has been exposed to combustible elements that may be on their person such as gasoline. The use of an Electronic Control Device on such persons may cause an ignition and fire.
- v.** Officers should consider the particular subject and any vulnerabilities they may have such as: a person who is small in stature or very frail will be more dramatically impacted; some agencies have been criticized as well as sued for use on pregnant women, the very young, and the elderly.
- w.** Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability, which would increase the danger to that person by using the Electronic - Control Device. i.e. A person at the scene tells an officer that the subject has a heart condition.
- x** Where EMS is available, their services may be utilized for the removal of darts that have penetrated the skin as long as such removal can be accomplished without causing further injury or

pain to the subject. Where an officer has been trained to remove probes from non-sensitive areas the officer should provide first aid following the removal of the probes by applying iodine or alcohol wipes and apply band aids to the injury site as needed. Officers shall obtain from EMS a copy of Refusal of Medical Services form when one is filled out on subject. Deployed probes that have been removed from a suspect should be treated as a bio-hazard.

**y.** All persons who have been the subject of an Electronic Control Device deployment shall be cleared medically and monitored for a period of time with a focus on symptoms of physical distress. Any person, who appears to be having any form of physical distress following the deployment of an ECD, shall be transported to a medical facility for a medical examination. It should be noted that studies indicate that persons who suffer from excited delirium may not be immediately impacted and the onset of difficulty may occur a period of time after the police control event.

**aa.** Mandatory Medical Clearance at Hospital:

- 1)** Persons struck in a sensitive area-eyes, head, genitals, female breasts.
- 2)** Where the probes have penetrated the skin and EMS cannot safely remove darts in accord with this policy.
- 3)** Persons who do not appear to have fully recovered after a short period of time (Model Policies use a ten-minute time limit however officers who observe unusual physical distress should immediately call for medical assistance and should not wait the ten-minute recovery period recommended by some of the model policies).
- 4)** A person who has been subjected to a Taser deployment for more than 15 seconds through either extended deployment(s) or multiple deployments shall be evaluated by medically trained personnel EMS or in their absence at the hospital.
- 5)** Persons who fall into one of the vulnerable classes such as juveniles, pregnant women, persons who are small in stature, persons who officers become aware have a pre-existing medical condition that increases danger and the elderly.
- 6)** Subject who request medical assistance.



**bb.** Documentation:

- 1) All deployments of an Electronic Control Device shall be documented including those cases where a subject complies once threatened with such a device. By documenting the non-discharge uses, an agency establishes officer judgment and control as well as the deterrent effect of this tool.
- 2) Photographs of the affected area, shall be taken following the removal of darts from the subject to document any injury. Where the push-stun method has been used, photographs are extremely important due to the increased potential for this method to cause scarring.
- 3) Supervisory personnel shall be notified and review all Electronic Control Device deployment for consistency with policy and training.
- 4) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.
- 5) Supervisors are required to complete a "response to active resistance form" which shall be reviewed by administration following the ECD use.
- 6) All deployments shall be reviewed by the agency as well as training personnel.
- 7) Where there is any indication of lasting injury, claim, or complaint internal data from device shall be maintained. All ECD units will be audited bi-annually by the Administrative Sgt. or his designee to ensure that all deployment/activations have been reported as required.

**4. Impact Weapons: Batons, ASP/Expandable Baton**

- a. Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
- b. Examples would be where other options have been utilized and have failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
- c. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.

**F. Reporting Control to Active Resistance:**

**1. Purpose**

- a. It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting control to active resistance. The department will develop a Report to Control Active Resistance (RCAR) form to capture all required information described in this policy.

## 2. Policy

- a. Police officers are given the authority to use force to overcome a subject's resistance to the officer's order to comply, effect arrest, defend against assault, and prohibit flight. This policy mandates that members of the Department accurately, completely and timely report subject control of active resistance and a supervisor conducts a prompt investigation and reports these investigation findings.

## 3. Definitions

- a. **Reportable control to active resistance:** The following reportable force options used by an officer to compel compliance from a subject in conformance with the officer's official duties, whether on or off duty or while employed in an off duty paid detail, including:
  - 1) **Chemical Spray:** Where subject exhibits some level of defensive resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject. (gain compliance).
  - 2) **Electronic Control Devices:** Where subject exhibits some level of defensive resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject (gain compliance). (See additional documentation-ECD section)
  - 3) **Hard Hand Control:** Punches, kicks, palm heels and other physical strikes that have a higher possibility injury. Hard empty hand tactics are designed to reverse momentum, create mental stunning and motor dysfunction.
  - 4) **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
  - 5) **Pointing of Firearms:** Any time an officer points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed. This does not include drawing a firearm and maintaining at the low-ready position.
  - 6) **Firearms discharges:** Any discharge of a firearm other than at the range or during qualification whether unintentional, for animal dispatch, or whether a subject is hit or not will be reported in a separate manner consistent with these policies.
  - 7) **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

**4. Procedures:**

- a.** Officers who become involved in an incident that required any reportable force option are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the use of force utilized in the official police report prepared for the incident involved.
- b.** A Report to Control Active Resistance (RCAR) form shall be prepared by a supervisor whenever an officer of this agency utilizes reportable force, as described in the definition of this policy, in the performance of their duties.
- c.** The RCAR form will be completed in detail including a narrative account of the following:
  - 1)** The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
  - 2)** The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
  - 3)** Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.

**5. Supervisory Responsibilities:** Once notified of an incident in which an officer has utilized force, the supervisor, to the extent that one is available, will immediately respond to the scene to investigate the incident. If the involved officer's supervisor is not available to respond, another supervisor will be dispatched to complete the RCAR. The supervisor will accomplish the following investigative steps in conducting the investigation:

- a.** Interview the involved subject if they are cooperative, to determine their account of the incident. If they expressly indicate they have a complaint the supervisor shall complete a Citizen complaint form. If have any type of injury, Internal Affairs or the designated departmental IA person will be notified. Additionally, should the supervisor determine that unreasonable force was utilized, the Internal Affairs designated investigator will be notified and assume control of the response to resistance investigation.
- b.** If a crime scene exists; or police equipment exists, which may contain forensic evidence, the supervisor shall ensure that the scene and evidence is processed, photographed and preserved.
- c.** Take photographs of the involved officer(s) and subject(s) depicting any potential injuries or documenting the lack of any injuries to the parties involved.
- d.** Interview, preferably recorded, all witnesses to the incident and document their description of the event.
- e.** Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.

- f. The supervisor shall review any video recording of the incident, if available, prior to the completion of the RCAR and the approval of the officer's reports.
- g. The supervisor investigating the use of reportable force shall be responsible for the review and approval of the officer's reports of the incident, when practicable.
- h. The supervisor will complete the RCAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.
- i. **Exceptions: The following do not require the completion of a RCAR unless otherwise required by the above policy:**
  - 1). Handcuffing or escorting a compliant, cooperative subject.
  - 2). Physical removal of peaceful demonstrators whom do not resist.