



**DIRECTIVE: 6.7**

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ISSUED BY: <b>Robert J. Tracy</b> Chief of Police Reviewed: 12/1/2017			4.1.1	4.2.1a,b,c,d	4.3.1a
			4.1.2	4.2.2	4.3.2
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# USE OF FORCE

**I. PURPOSE AND OVERVIEW**

The purpose of this Directive is to establish guidelines for officers of the Department relative to the use of force, and to provide direction and clarity in those instances when a subject’s actions require an appropriate use of force response. (CALEA Chapter 4)

Section II of this Directive provides officers with the Department’s general policy regarding the use of force.

Section III of this Directive provides officers with definitions of terms used in the Department’s various use of force policies.

Section IV of this Directive sets out the Use of Force Model and definitions relating thereto. The Use of Force Model is intended to provide guidance for officers in the use of objectively reasonable and proportionate force responses.

Directive 6.7A provides officers with the Department’s guidelines relative to de-escalating situations, where safe and feasible to do so, in order to gain voluntary compliance and to reduce the need to use force.

Directive 6.7B sets out more specific policies governing use of less than lethal force.

Directive 6.7C sets out more specific policies governing the use of deadly force.

Directive 6.7D describes the reporting requirements for use of force.

## II. USE OF FORCE POLICY -- GENERAL

It is the policy of the Department that all officers shall hold the highest regard for the dignity and liberty of all persons, and shall carry out their duties with reverence for the sanctity of human life. Police officers have been delegated the ultimate responsibility to protect life, as well as to protect property and apprehend criminal offenders. The apprehension of criminal offenders and the protection of property must, at all times, be secondary to the protection of life. An officer's responsibility for protecting life must include his or her own.

In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this Department that an officer shall use only the degree of force that is necessary, proportional to the level of threat or resistance, and objectively reasonable, based on the totality of the circumstances confronting the officer. When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation techniques in order to reduce the need for force.

Any use of force that is not necessary, proportional and objectively reasonable, based on the totality of the circumstances confronting the officer, and does not reflect reasonable de-escalation efforts when safe and feasible to do so, is prohibited and inconsistent with the policy of this Department.

In determining whether there is a need to use force, and the appropriate level of force to use, officers must consider all of the relevant facts and circumstances leading up to the encounter that are reasonably believed to be true by the officer at the time of the encounter. Officers should consider those facts and circumstances in order to assess whether there is a need for the application of force, and the relationship between that need for force, if any, and the amount of force to be applied. The amount of force used must be no more than the amount a reasonable officer would use, under similar circumstances. Circumstances relevant to this assessment can include, but are not limited to:

- The severity of the crime at issue;
- whether the subject poses an immediate threat to the safety of the officer or others;
- the possibility that the subject is armed;
- the possibility that other persons subject to the police action are violent or dangerous;
- whether the subject is actively resisting arrest or attempting to evade arrest by flight;
- the duration of the subject's action;

- the number of persons with whom the officer has to contend; and
- whether the physical force applied is of such an extent as to lead to unnecessary injury.

The reasonableness of an officer's acts must be judged from the perspective of a reasonable officer on the scene. The concept of reasonableness makes allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are sometimes tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

The officer's actual motivation is irrelevant. If the force used was unreasonable, it does not matter whether the officer had good motivations. What matters is whether the officer's acts were objectively reasonable in light of the facts and circumstances confronting the officer.

Officers should continually assess the situation and changing circumstances, and should modulate the use of force appropriately. Once it is safe to do so and the threat is contained, the force must stop.

The use of force is regulated by state and federal law and is not left to the unregulated discretion of the officer. Use of force decisions are dictated by the actions of the resistant or combative subject, the law, Department policy, proper tactics and training.

In considering the application of force, officers may be guided by the Use of Force Model set out at Section IV of this Directive. The subject's actions will establish the resistance level; the officer shall exercise a level of control that is objectively reasonable and proportional based on the totality of the circumstances, in accordance with their training, which shall include training in the Use of Force Model among other concepts.

**Excessive force by an officer degrades the confidence of the community, violates the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards. Conversely, officers who fail to use timely and adequate force when necessary may endanger themselves, the community and fellow officers. An officer shall not unnecessarily or unreasonably endanger themselves or others when applying these guidelines.**

### **Duty to Intervene**

At the scene of a police incident, many officers of the Department may be present and some officers may not be directly involved in taking police actions. However, this does not relieve any officer present of the obligation to ensure that the requirements of the law and the Department regulations are complied with. Officers are required to maintain control or intervene if the use of force against a subject becomes excessive. Failure to do so may result in both criminal and civil liability.

### **Rendering Medical Aid**

After employing any force, and as soon as it is safe to do so, officers shall render appropriate medical aid and request further medical assistance, when necessary, for the suspect and any other injured individuals, to the extent training and equipment allow. (CALEA 4.1.5)

### **Policy and Training on Use of Force Directive**

The Chief of Police, or his/her designee, shall, on an annual basis, conduct a review of the Department's Use of Force Directives and revise same if necessary.

At least annually, all Department personnel authorized to carry any weapon are required to receive in-service training on the Department's use of force policies.

## **III. DEFINITIONS**

### **1. De-escalation and De-escalate**

Taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary compliance of subjects, when it is safe and feasible to do so, and thereby to reduce or eliminate the necessity to use physical force.

### **2. De-escalation Techniques**

Actions used by an officer, when safe and without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident, and increase the likelihood of gaining voluntary compliance from a subject. Specific de-escalation techniques are described in Directive 6.7A ("De-escalation").

### **3. Excessive Force**

In general, strikes, blows, or other use of equipment (such as OC spray, Taser, ASP baton, etc.) is considered excessive and will not be tolerated once a subject is under control and no longer attacking or resisting and it is no longer objectively reasonable to perceive a threat. A degree of force which may have been justified earlier in an encounter does not remain justified indefinitely. As the circumstances change, so do the options.

### **4. Exigent Circumstances**

Circumstances that would cause a reasonable person to believe that prompt and unusual action is necessary to prevent physical injury to self or others.

### **5. Force**

Means any physical coercion by an officer in performance of official duties, including the following types of force:

#### **a) De Minimis Force**

Physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended, or reasonably likely, to cause an objective, reasonable person any pain or injury. These include, for example:

- Use of control holds or joint manipulation techniques in a manner that does not cause an objective, reasonable person any pain, and is not reasonably likely to cause any pain.
- Using hands or equipment to stop, push back, separate, or escort a person without causing an objective, reasonable person any pain, or in a manner that would not reasonably cause any pain.

**b) Less than Lethal Force**

An amount of force that, when properly used, is not likely to cause death or serious physical injury. Less than lethal force includes:

- Force that causes an objective, reasonable person transitory pain, the complaint of transitory pain, disorientation, or the intentional pointing a firearm or an extended range impact weapon at a person.
- Force that causes, or is reasonably expected to cause, physical injury greater than transitory pain, but less than serious physical injury, and/or the use of any of the following weapons or instruments: **(CALEA 4.3.1a)**
  - Conducted Electrical Weapon (CEW or Taser®).
  - Chemical Weapons such as Oleoresin Capsicum (OC spray) or Pepperball.
  - Impact Weapons, such as ASP baton or night stick.
  - Extended Range Impact Weapons, such as a foam baton.
  - Police Canine deployment.

**c) Deadly Force**

Deadly force is force which the actor uses with the purpose of causing or which creates a substantial risk of causing death or serious physical injury. Deadly force can result from a force option being improperly applied and is not limited to the use of firearms. By way of example (and not by limitation) deadly force may include the following:

- Discharging a firearm at or in the direction of a person
- A hard strike to a person's head, neck, or throat with an impact weapon
- Intentionally striking a person's head with force into a hard, fixed object, such as, but not limited to, concrete objects or surfaces, or solid metal structures such as bars or guardrails.

- Shooting a person in the head or neck with an Extended Range Impact Weapon or Pepperball.
- The intentional use of choke holds, “sleeper holds”, or other similar neck holds, to render a subject unconscious.
- Using stop-sticks on a moving motorcycle

#### 6. **Immediate Threat**

An articulable threat that currently exists or may happen within moments, with or without warning. The “immediacy” of a threat may be assessed through the following legal standards:

- a) **Intent:** The suspect demonstrates his/her intent to resist being controlled or to inflict physical injury (e.g., gives pre-assault indicators).
- b) **Means and Opportunity:** The subject is apparently capable of carrying out the perceived threat and is in a position to do so.

#### 7. **Injury Classifications**

- a) **Physical or Bodily Injury (also “Injury”):** Physical pain or injury, illness, or an impairment of physical condition greater than transitory pain but less than substantial bodily harm.
- b) **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 structure or involves serious concussive impact to the head.

#### 8. **Necessary Force**

Officers shall use physical force only when it is reasonable to do so in order to effect a law enforcement objective, considering the totality of the circumstances confronting the officer. Law enforcement objectives include for example (without limitation) the following:

- a) To effect the arrest or detention of a subject
- b) To gain control of a combative subject
- c) To prevent or terminate the commission of a crime
- d) To intervene in a suicide or self-inflicted injury
- e) To defend or protect an officer or an individual from the violent or resistant physical acts of another.
- f) To protect a person who is a danger to himself or others.

## 9. Objectively Reasonable Force

The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution (*See Graham v. Connor*, 490 U.S. 386 (1989)). An officer's use of force is considered a seizure under the 4<sup>th</sup> Amendment.

*Graham* states in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. 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- about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application."

The reasonableness inquiry with respect to force is an objective one. The question is whether the officer's actions are objectively reasonable considering the totality of the circumstances leading up to the encounter that the officer reasonably believed to be true at the time of the encounter. Relevant facts and circumstances can include, for example (and not by limitation):

- The severity of the crime at issue;
- whether the subject posed an immediate threat to the safety of the officer or others;
- the possibility that the subject was armed;
- the possibility that other persons subject to the police action were violent or dangerous;
- whether the subject was actively resisting arrest or attempting to evade arrest by flight;
- the duration of the subject's action;
- the number of persons with whom the officer had to contend; and
- whether the physical force applied was of such an extent as to lead to unnecessary injury.

When time and circumstances reasonably permit, factors such as those described in Directive 6.7A ("De-escalation") should also be considered.

Stated differently, "objectively reasonable" force is the amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances the officer using the force is presented with.

## 10. Proportional Force

Force must be proportional to the level of threat or resistance presented. To be proportional, the level of force applied must reflect the totality of the circumstances surrounding the immediate situation, including the presence of an immediate danger to officers or others. Officers must rely on training, experience, and assessment of the situation to decide on an appropriate level of force to be applied. In general, only the amount of force required to control the subject should be used by the officer. However, the more immediate the threat and the more likely the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable and necessary to counter it.

Proportional force does not require officers to use the same type or amount of force as the subject. In addition to officer training and experience, the *Use of Force Model* at Section IV of this Directive also provides guidance on proportional force responses.

#### **11. Reasonable Belief**

The facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

#### **12. Totality of Circumstances**

Those facts and circumstances that would be relevant to an objectively reasonable officer in determining whether to use force, and in deciding upon the level of force to be used. Depending on the nature of the encounter, facts and circumstances to consider may include those stated previously in Sections II and III. 9 of this Directive (without limitation), and others.

In addition, in choosing a force response officers shall also consider Directive 6.7A “De-escalation.”

### **IV. USE OF FORCE MODEL**

This section is intended to provide additional guidance to officers in determining the level of force that is necessary, proportional and objectively reasonable, under the totality of the circumstances, and that reflects reasonable de-escalation efforts where it is safe and feasible to attempt such. This section is subject to the foregoing provisions of this Directive, and to the additional provisions of Directive 6.7B (in the case of less than lethal force) and Directive 6.7C (in the case of deadly force).

#### **a. Use of Force Considerations**

- i. Is the use of force necessary? See Subsections II and III. 8 of this Directive. In determining whether to use force, the officer shall initially consider whether force is necessary. Officers shall use physical force only if it is reasonable to do so in order to effect a law enforcement objective.
- ii. How much force may be used? See Sections II, and III. 9, 10 and 12 of this Directive. The amount of force that may be used must be proportional to the

level of threat or resistance presented, and objectively reasonable, under the totality of the circumstances. The more immediate the threat and the more likely the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable and necessary to counter it.

Though not exhaustive, an officer should consider factors such as the following when determining whether to use physical force, and the level of force to be used:

- The severity of the crime at issue;
- whether the subject poses an immediate threat to the safety of the officer or others;
- the possibility that the subject is armed;
- the possibility that other persons subject to the police action are violent or dangerous;
- whether the subject is actively resisting arrest or attempting to evade arrest by flight;
- the duration of the subject's action;
- the number of persons with whom the officer must contend; and
- whether the physical force to be applied is of such an extent as to lead to unnecessary injury.

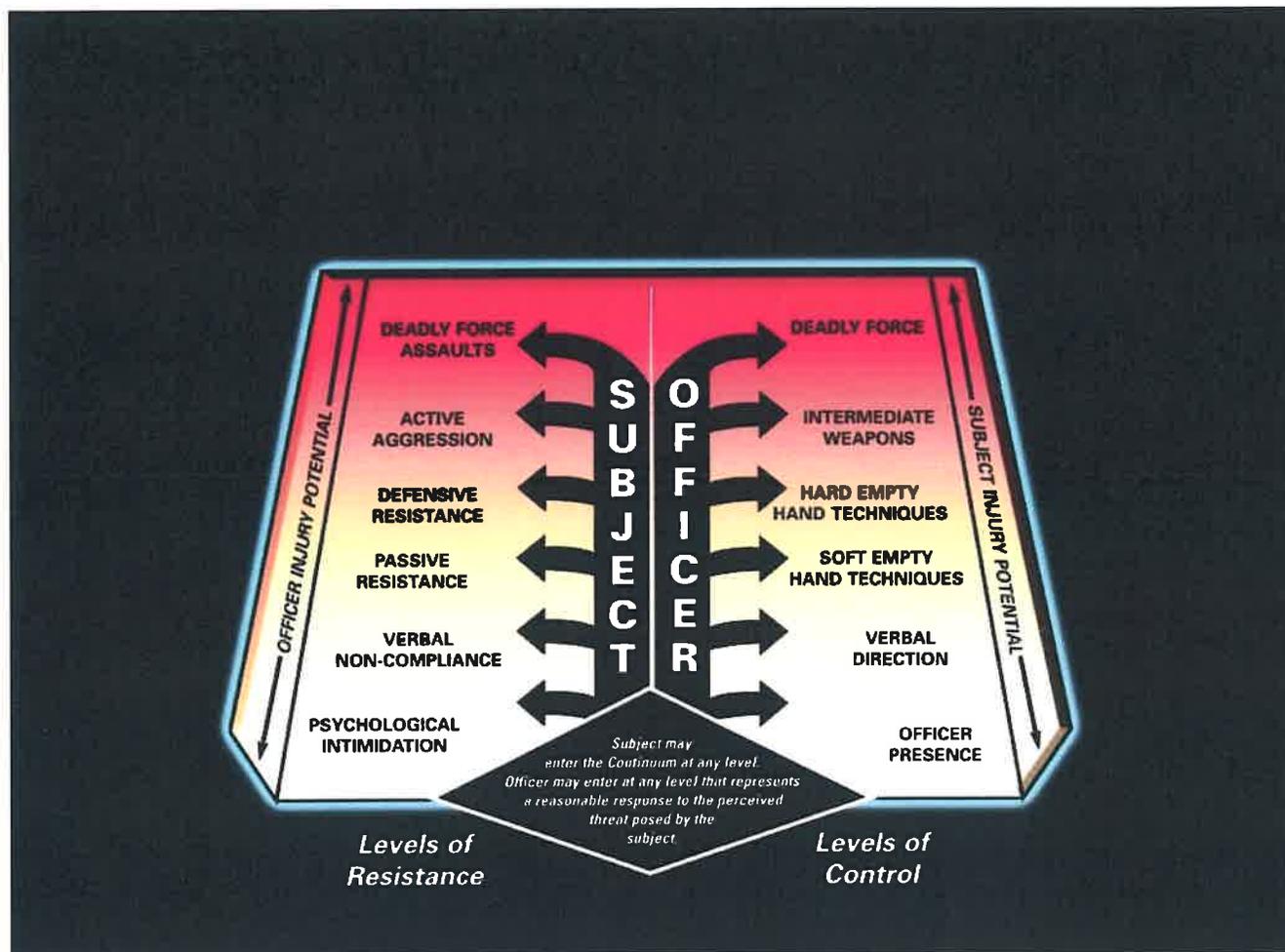
**b. De-escalation**

When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation techniques, in accordance with Directive 6.7A, in order to reduce the need for force.

**c. The Use of Force Model**

The following graphic is intended as a general guideline for an officer in determining the level of force that may be used when force is necessary to effect a law enforcement objective. The subject(s) actions will determine the level of resistance and officers will make an objectively reasonable choice among levels of control, and reasonably available force options, based on the totality of the circumstances. Terms used in the graphic are defined following the graphic.

In use of force incidents, the officer will transition to differing degrees or types of force, including attempts to de-escalate. Force situations are dynamic and require an officer to continually assess the subject's actions to ensure an objectively reasonable response. Officers shall modify their level of control in relation to the level of resistance offered by a subject.



### Levels of Resistance Encountered (Subject):

The levels of resistance to which the officer must react are:

- **Psychological Intimidation:** This includes non-verbal cues indicating a subject's attitude, appearance, and physical readiness.
- **Verbal Non-Compliance:** This involves verbal responses indicating unwillingness or threats.
- **Passive Resistance:** This includes action by a subject that hinders or prevents an officer's attempt to control, and by refusing to follow verbal commands.

- **Defensive Resistance:** This includes physical action that attempts to prevent an officer's control, but does not attempt to harm the officer.
- **Active Aggression:** This involves physical actions of assault against the officer or others, that are designed to prevent the officer from exercising control.
- **Deadly Force Assaults:** This involves conduct by a subject that a reasonably prudent person would believe, under the totality of the circumstances presented, poses an immediate threat of death or serious physical injury to the officer or others.

#### **Levels of Control (Officer):**

- **Presence/Appearance:** This reflects the officer's demeanor, attitude and the legal right to be there.
- **Verbal Direction:** This requires a show of authority by communication with verbal and non-verbal dialogue. The subject must be informed of what is required and given a chance to comply. Non-verbal dialogue includes assuming an empty hand defensive position, as well as the display of a defensive weapon.
- **Soft, Empty Hand Control:** When the subject resists in a defensive manner, the officer seeks compliance by the use of physical means. This could include empty hand control, pressure compliance holds, blocking, restraining, controlling or escorting holds.
- **Hard, Empty Hand Control:** These techniques are designed to control active aggression, but can be used to control defensive resistance when lower forms of control have failed or when the officer believes lower forms of control will fail. Hard, empty control techniques are defined as techniques that have a probability of injury in the forms of bruises, contusions or lacerations. These techniques could include strikes, kicks, stuns, or takedowns.
- **Intermediate or Less Than Lethal Weapon:** Is the application/use of any weapon/object that is not part of the human body to control resistance or an assault. Examples include, but are not limited to:
  - Conducted Electrical Weapons (CEW or Taser),
  - Impact weapons such as an ASP baton and night stick,
  - Extended Range Impact Weapons, such as a foam baton
  - Police Canine (K-9)
  - Chemical Weapons such as OC Spray or Pepperball.

The use of an Intermediate or Less than Lethal Weapon is justified when lower forms of empty hand control have failed or when the officer believes that his/her skill in empty hand control will be insufficient, and the use of deadly force is not justified. (CALEA 4.1.4)

Police Canine Deployments: Police canines can inflict serious injury and should be only used when lesser means have failed, are not practical, or when the situation presents an unnecessary risk to a member of the Department.

The police canine may be used to apprehend suspects posing a serious threat to a member. Justification for the deployment of the police canine may include, but is not limited to the following;

- To gain control of a combative subject
- To disarm a subject
- To protect an officer or others from being injured by a subject
- To apprehend a suspect unlawfully fleeing from the police
- To find and apprehend a subject that is actively resisting arrest by hiding or secreting his body in order to evade arrest.

For further information on police canines consult Directive 6.39 of the Wilmington Police Officer's Manual.

- **Deadly Force:** Situations may occur when certain, immediate, and drastic measures must be undertaken by an officer to protect human life. Deadly force is any force used by an officer with the purpose of causing, or that creates a substantial risk of causing, death or serious physical injury.

See Directive 6.7C ("Deadly Force"). All of the provisions of this policy, including the Department's commitment to recognizing the sanctity of human life and requirements that officers use only the degree of force that is necessary, proportional and objectively reasonable under the circumstances governing force, also govern deadly force.

The use of deadly force by an officer is authorized when, considering the totality of the circumstances, the officer has probable cause to believe that the suspect poses an immediate threat of death or serious physical injury to the officer or others.

Deadly force may not be used to prevent a suspect from escaping unless deadly force is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses an imminent threat of death or serious physical injury to the officer or others.

Officers should be mindful that the force necessary to control an incident may not fall on the prescribed continuum sequentially in all circumstances. Force used must be proportional to the threat or resistance faced by the officer, and objectively reasonable considering the totality of the circumstances. See Subsections II and III. 8, 9, 10 and 12 of this Directive for further information and for definitions of "proportionality" "objective reasonableness" and "totality of the circumstances."

Officers should utilize this model in any particular circumstance in conjunction with their training and experience.

# De-escalation

## Dir. 6.7A

### **I. PURPOSE**

The purpose of this Directive is to establish guidelines for officers of the Department relative to de-escalating situations in order to gain voluntary compliance and to reduce the need to use force.

### **II. DE-ESCALATION POLICY**

Officers have the ability to impact the direction and outcome of the situation with their decision making and employed tactics. Policing, at times, requires that an officer may need to exercise control of a violent or resisting subject, or a subject experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation.

When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation techniques in order to reduce the need for force.

### **III. PRINCIPLES OF DE-ESCALATION**

De-escalation techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. Officers should rely on their training and experience in determining whether and how to employ de-escalation techniques.

In general, however, when safe and feasible under the totality of the circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.

When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors which may include, but are not limited to:

- Medical conditions
- Mental health crisis
- Developmental disability
- Physical limitation
- Language barrier

- Drug interaction
- Behavioral crisis

An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of the threat allows the officer time to utilize extra resources, and increases time available to call more officers or specialty units.

The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

Other examples include:

- Placing barriers between an uncooperative subject and an officer
- Containing a threat
- Moving from a position that exposes officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using:
  - Distance
  - Cover
  - Concealment
- Communication from a safe position intended to gain the subject's compliance, using:
  - Verbal persuasion
  - Advisements
  - Warnings
- The use of verbal techniques, such as Verbal Judo, or its equivalent training, to calm an agitated subject and promote rational decision making in an attempt to avoid a physical confrontation.

- Calling extra resources to assist, such as:
  - More officers
  - Crisis Intervention Team (CIT) officers
  - Officers equipped with Intermediate or Less Than Lethal tools
  
- Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

#### **IV. Additional Procedures**

- a. When feasible, officers shall attempt to identify themselves as police officers and make an attempt to advise subject(s) of their intent to detain, arrest, or search a subject before using force.
  
- b. Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.
  
- c. Officers shall take all reasonable steps under the circumstances, before and during any use of force, to avoid unnecessary risk to bystanders, victims, hostages, and other involved citizens, as well as their other and emergency personnel. **(CALEA 4.1.1)**

# Use of Less Than Lethal Force

## Dir. 6.7B

### I. PURPOSE

The purpose of this Directive is to establish additional guidelines for officers of the Department specific to the use of less than lethal force. This Directive is subject to, and incorporates by reference the policies, definitions and other provisions of Directive 6.7 "Use of Force" and Directive 6.7A on "De-escalation".

### II. DEFINITIONS:

#### 1. Less than Lethal Force

The term "less than lethal force" is defined at Directive 6.7 III. 5. b.

#### 2. Intermediate or Less than Lethal Weapons

The application/use of any weapon/object that is not part of the human body to control resistance or an assault. Intermediate or Less than Lethal weapons include, but are not limited to:

- Conducted Electrical Weapons (CEW or Taser),
- Impact weapons such as an ASP baton and night stick,
- Extended Range Impact Weapons, such as a foam baton
- Police Canine (K-9)
- Chemical Weapons such as OC Spray or Pepperball.

### III. PARAMETERS FOR THE USE OF LESS THAN LETHAL FORCE.

Use of less than lethal force by officers of the Department is governed by the provisions of Directives 6.7 and 6.7A, to which officers are referred. In summary, use of less than lethal force is permitted only when (i) necessary, (ii) proportional to the level of threat or resistance, and (iii) objectively reasonable, based on the totality of the circumstances confronting and known to the officer that the officer reasonably believes to be true at the time of the encounter. When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation techniques in order to reduce the need for force.

**Excessive force by an officer degrades the confidence of the community, violates the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards. Conversely, officers who fail to use timely and adequate force when necessary may endanger themselves, the community and fellow**

**officers. An officer shall not unnecessarily or unreasonably endanger themselves or others when applying these guidelines.**

The Department's policies and guidelines for the use of less than lethal force are set forth in Section II ("Use of Force Policy -- General"), Section III (Definitions), and Section IV ("Use of Force Model") of Directive 6.7, in Directive 6.7A ("De-escalation") and in the Department's use of force training.

**1. Additional Parameters for Use of Less Than Lethal Force**

- (a) Where deadly force is not authorized, officers should assess the incident in order to determine which de-escalation techniques could be utilized and which, if any, Intermediate or Less Than Lethal Weapon or technique will best bring the situation under control in a safe manner.
- (b) Officers are authorized to use Departmental approved and issued Intermediate or Less Than Lethal Weapons, such as, but not limited to, an ASP baton, OC Spray, and/or CEW, for resolution of incidents, as follows:
  - i. protect themselves or another from physical harm, or
  - ii. To restrain or subdue an actively resisting individual, or
  - iii. To bring an unlawful situation safely and effectively under control.

**IV. TRAINING AND QUALIFICATIONS**

**1. Intermediate or Less Than Lethal Weapons:**

- a. An officer is not permitted to use an Intermediate or Less than Lethal weapon unless qualified in its proficient use as determined by training procedures.
  - i. See Directive 6.79 "Taser (Conducted Electrical Weapon)" for policies and procedures relating to the use of CEW's.
  - ii. Extended range impact weapons shall only be used by the Crisis Management Tactical Team (C.M.T.T.) and members of the Tactical Support Mobile Field Force (M.F.F.) Unit trained in the weapons use.
- b. Chemical weapons, night sticks, the ASP Baton, the Conducted Electrical Weapon, extended range impact weapons, and police canines, when used in accordance with Departmental policy and training, are the only Intermediate or Less than Lethal weapons which are authorized by the Department. (CALEA 4.3.1a)

# Use of Deadly Force

## Dir. 6.7C

### I. PURPOSE

The purpose of this Directive is to establish additional guidelines for officers of the Department specific to the use of deadly force. This Directive is subject to, and incorporates by reference the policies, definitions and other provisions of Directive 6.7 "Use of Force" and Directive 6.7A on "De-escalation".

### II. DEFINITIONS.

1. **Deadly Force.** The term "deadly force" is defined at Directive 6.7 III. 5. c.

### III. PARAMETERS FOR THE USE OF DEADLY FORCE.

All of the provisions of the Department's Use of Force policies, including the Department's commitment to recognizing the sanctity of human life and the requirements that officers use only the degree of force that is necessary, proportional and objectively reasonable, under the totality of the circumstances, also govern deadly force. These include, without limitation, the policies and guidelines set forth in Directives 6.7 (Use of Force) and 6.7A (De-escalation).

**Excessive force by an officer degrades the confidence of the community, violates the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards. Conversely, officers who fail to use timely and adequate force when necessary may endanger themselves, the community and fellow officers. An officer shall not unnecessarily or unreasonably endanger themselves or others when applying these guidelines.**

In addition to the considerations specified in Directive 6.7 and 6.7A, in assessing the reasonableness of the use of deadly force officers shall also consider the following:

1. If feasible, prior to using a firearm, the officer should identify himself as a police officer and give warning.
2. The use of deadly force by an officer must comply with the objective reasonableness standard. In general, the use of deadly force will be considered objectively reasonable where, considering the totality of the circumstances, a

reasonable officer would conclude that there is probable cause to believe that the suspect poses a substantial and immediate threat of death or serious physical injury to the officer or others.

3. An officer should not use deadly force to prevent a suspect from escaping unless deadly force is necessary to prevent the escape and a reasonable officer would conclude, considering the totality of the circumstances, that there is probable cause to believe that the suspect poses a substantial and immediate threat of death or serious physical injury to the officer or others should escape occur.
4. An officer may also discharge a firearm under the following circumstances:
  - a. To destroy an animal under the following circumstances:
  - b. For self-defense,
  - c. To prevent substantial harm to the officer or another,
  - d. When the animal is so badly injured that it is humane to relieve suffering. When feasible, a seriously injured or wounded animal may be destroyed only after all attempts have been made to request assistance from the Delaware Animal Control and/or with the approval of a supervisor.
  - e. Whenever an animal is shot by an officer or an officer discharges a firearm for the purpose of destroying an animal, the officer's immediate supervisor will conduct an investigation of the incident.

#### **IV. SPECIFIC PROHIBITIONS FOR THE USE OF FIREARMS**

1. Police officers shall not point or exhibit a firearm at any person unless:
  - a. They reasonably believe that the person poses an immediate threat of death or serious bodily injury to themselves or another person; or
  - b. they are involved in a high risk tactical situation where a reasonable officer would have specific and good faith reason to believe, based on the totality of the circumstances, that there exists a risk of death or serious physical injury to themselves or others, such as a felony car stop or the execution of a search warrant in a high risk situation.
2. Police officers shall not discharge their firearms in defense of property.
3. Except under exigent, life threatening circumstances, police officers shall not use a firearm as an impact weapon.
4. Police officers shall not fire warning shots.

5. Police officers shall not discharge their firearms to subdue a fleeing individual who presents no imminent threat of death or serious physical injury to the officer or another person.
6. Deadly force shall not be used against persons whose conduct is injurious only to themselves.
7. Police officers shall not discharge their firearms from a moving vehicle unless they have probable cause to believe that it is necessary to prevent immediate death or serious physical injury to the officer or another person. Shooting accurately from a moving vehicle is extremely difficult and therefore, unlikely to successfully stop a threat of another person.
8. A moving vehicle alone shall not presumptively constitute a threat that justifies an officer's use of deadly force.
9. An officer shall not move into or remain in the path of a moving vehicle. An officer should not place himself or another person in jeopardy in an attempt to stop a vehicle.

## **V. TRAINING AND QUALIFICATIONS**

1. **Deadly Weapons:**
  - a. While on and off-duty, officers shall carry only weapons and ammunition authorized by and registered with the Department in accordance with Departmental policy.
  - b. Authorized weapons are those with which the officer has qualified and received Departmental training on proper and safe usage, and that are registered and comply with Departmental specifications. Refer to Directive 6.48, entitled "Annual Firearms Training and Qualifications."
  - c. The Firearms Instructor shall schedule regular training and qualification sessions for duty, off-duty and specialized weapons.
  - d. Officers who fail to receive a passing score with their duty weapon(s) in accordance with Departmental testing procedures shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
  - e. An officer shall not be permitted to carry any weapon with which the officer has not been able to qualify during the most recent qualification period.
  - f. An officer who has taken extended leave or suffered an illness or injury that could affect his use of firearms ability will be required to re-qualify before returning to enforcement duties.

# Administrative Procedures for Use of Force

Dir. 6.7D

## I. PURPOSE

The purpose of this directive is to establish a uniform policy for the administrative procedures and reporting of situations involving the use of force.

## II. REPORTING USE OF FORCE

1. Officers shall immediately report to their immediate supervisor the following uses of force:
  - a. When a firearm is discharged outside of the firing range.
  - b. When a use of force results in an injury, complaint of injury, or death to any person including officers.
  - c. When an Intermediate or Less Than Lethal weapon, such as chemical weapons or CEW, is used on a person.
  - d. Whenever an impact weapon or extended range impact weapon is used.
  - e. Whenever an officer strikes, punches, or kicks a subject.
  - f. Whenever an officer shoots an animal, or discharges a firearm for the purpose of destroying an animal.
  - g. Whenever an officer draws, points, or exhibits a firearm while off-duty. An officer shall immediately report such incident to his or her immediate supervisor, or, if that is not possible, the House Sergeant. After reporting the incident, the officer shall submit a written report of the incident to his or her immediate supervisor as soon as possible.
2. A supervisor will be immediately summoned to the scene and conduct an investigation of the incident. The supervisor shall complete a Supervisor's Investigative Report – Use of Force, detailing the circumstances and facts surrounding the incident along with any medical results/findings and his conclusions as a result of the investigation. A Supervisor's Investigative Report – Use of Force, shall be submitted via the Blue Team system in each of the circumstances enumerated above. **The incident will be entered into the Blue Team computer system ON THE DATE OF THE INCIDENT.**
  - a. The Supervisor's Investigative Report – Use of Force is in addition to other departmental paperwork, such as a Crime Report, etc., that may be required by the supervisor and/or involved officers.
  - b. The Supervisor's Investigative Report – Use of Force, will be completed within 30 days of the incident.

- c. Except under extenuating circumstances, and only with the authorization of the immediate supervisor of the investigating supervisor, no investigation shall go beyond 30 days.
- d. The investigating supervisor will be required to submit a Departmental Information Report detailing the reason(s) for the delay and forward same through the chain of command.

### III. THE DEPARTMENTAL SHOOTING INVESTIGATION PROCESS

The following Departmental Shooting Investigation Process will be used to investigate EVERY incident involving the discharge of a firearm, or incidents involving the use of an extended range impact weapon in which serious physical injury, penetration, or death occurs. The aforementioned applies to every member of the Department.

#### 1. Front Line Supervisor Responsibility:

- a. A supervisor will be dispatched to the scene of the incident and will assume the responsibility of caring for the involved personnel.
- b. The supervisor will make appropriate arrangements for all necessary medical treatment.

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

- g. Arrangements should be made for a peer counselor or other supportive friend or officer uninvolved in the incident itself to remain with the involved officer(s). They should be advised not to discuss the incident with the involved officer.

- 2. Whenever a firearm is used in the performance of an officer's duty, the incident will be investigated by the Captain of Criminal Investigations or his/her designee. The Inspector of Investigative Operations will assume the role when the Captain of Criminal Investigations is not available. The Captain of Criminal Investigations or his/her designee will conduct a complete investigation and report his findings directly to the Chief of Police. It shall be the duty of the Captain of Criminal Investigations or the Inspector of Investigative Operations to notify the City Solicitor and the Attorney General's Office as soon as possible.

The Office of Professional Standards shall be notified when any departmental shooting occurs. They will contact the Captain of Criminal Investigations or his/her designee and monitor the investigation being conducted by the detectives. The Office of Professional Standards will review the incident for violations of internal Departmental procedures governing the Wilmington Department of Police.

The Internal Review Committee, as impaneled by the Chief of Police, will review all departmental shootings.

3. When a police officer discharges a firearm which does not result in injury or death, or uses an extended range impact weapon which results in serious physical injury or penetration, the officer shall be temporarily assigned to administrative duty. The officer shall remain on this assignment until a preliminary internal review of the incident is completed by the Internal Review Committee.
4. When a police officer discharges a firearm which results in injury or death, or uses an extended range impact weapon which results in death, the officer(s) will be directly placed on administrative leave.
  - a. This leave shall be without loss of pay or benefits.
  - b. The assignment to administrative leave shall not be a presumption that the officer has acted improperly.
  - c. While on administrative leave, the officer shall remain available at all times for official departmental interviews and statements regarding the shooting incident, and shall be subject to recall to duty at any time.
  - d. The officer shall remain on administrative leave after completing all internal investigative requirements, and until determined by a mental health professional that the officer is ready to return to duty.
  - e. The officer may be returned to administrative duty or full duty following an internal review of the incident by the Internal Review Committee.
5. All press releases related to the incident will only be made by the Public Information Officer, the Chief of Police, or his/her designee. These releases must first be approved by the Chief of Police.
6. The Commanding Officer of the Human Resources Division or his/her designee shall interview the officer involved in the shooting. Upon completion of this interview, the Commanding Officer of the Human Resources Division shall submit a report directly to the Chief of Police which will include his/her recommendations.
7. The Captain of Criminal Investigations will apprise the President of Lodge #1 of the Fraternal Order of Police of the nature of the investigation to afford the Lodge President the

opportunity to determine if the officer is eligible to receive the services of an F.O.P. paid attorney.

8. Psychological Services for the Officer:

- a. The Commanding Officer of the Human Resources Division will, in all cases when an officer discharges his weapon at a person or is fired upon by another, ensure that the following guidelines are followed:
  - 1) The officer will be required to meet with a Department furnished psychologist within five days of the incident. The session will remain protected by the privileged Professional Psychologist Code of Ethics.
  - 2) If a person has been injured or killed as a result of a firearm discharged by a police officer, the involved officer and his family will have available to them services provided by the Employee Assistance Program. The consultation sessions will remain protected by the privileged relationship.
  - 3) The involved officer will be required to re-qualify with his/her firearm prior to returning to on-duty status. The re-qualification shall be accomplished in the presence of a firearms training officer.
  - 4) After the officer completes his examination with the department furnished psychologist, he/she will have up to 10 days to respond to the range to qualify with a new departmental issued firearm.

9. Records as Training Aids:

- a. Annually, the training officer will study all pertinent Crime Reports and Supervisor's Investigative Reports – Use of Force. Based on his/her findings thereof, a curriculum will be developed to address specific areas which need attention.

*NOTE: This Directive is for Departmental use only and does not apply in any criminal or civil proceeding. The Department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this Directive will only form the basis for Departmental Administrative Sanctions.*