



<b>APD Policy Chapter 11</b>  <b>Response to Resistance</b>	<b>ABERDEEN POLICE DEPARTMENT</b>  <b>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 agency for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
<b>Applicable South Dakota Statutes:</b> 22-18-2; 22-18-3; 22-1804; 23A-3-5;	
<b>Related Policies: Chapter 5 Code of Conduct,</b> <b>Chapter 61 Duty to Intervene</b>	
<b>DATE IMPLEMENTED: January 13, 2021</b>	
<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 agency 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 agency 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. The Office and all officers recognize that the sanctity of human life serves as the guiding principle in use of force decisions.
- 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 are likely to cause serious bodily harm or death.
  - C. **Imminent:** Has a broader meaning than immediate or instantaneous, the concept of imminent should be understood to be elastic, involving an ongoing period of time depending on the circumstances rather than a moment in time under the definition of immediate.
  - D. **Immediate:** means, that the officer is faced with an instantaneous, or presently occurring threat of serious bodily harm or death.

- E. Chokehold:** means applying any direct pressure to the throat, windpipe, or airway of another with the intent to reduce or prevent the intake of air. "Chokehold" does not include any holding involving contact with the neck that is not intended to reduce the intake of air.
- F. Neck Restraint:** A method of rendering a person unconscious by restricting the flow of blood to the brain by compressing the sides of the neck where the carotid arteries are located.
- G. Intervene:** To come between, whether verbally or physically, so as to prevent or alter a result or course of events.
- H. De-escalation.** Force can often be avoided through the use of de-escalation techniques and other non-dynamic law-enforcement tools such as police presence, containment, and communication. When feasible, officers will use de-escalation and other techniques to reduce the immediacy of threats to peoples' safety and stabilize incidents. Whenever possible, officers will seek to slow things down. Not every situation or subject can be deescalated. Conversely, officer behavior can escalate a situation. Officers should not intentionally escalate situations unnecessarily.
- I. Duty of care:** Officers have an affirmative duty to care for persons in their custody. Officers and supervisors are responsible for providing or obtaining appropriate medical attention to any person in their custody who is injured or complains of injury. This pertains whether injuries preceded custody, occurred during apprehension, or were sustained during custody. Additionally, officers have an affirmative duty to provide or obtain medical attention for members of the public who are injured as a result of police involved actions.
- J. Positional asphyxia.** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- K. 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.
- L. Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person believes that the prescribed facts exist.
- M. Serious Bodily Harm: (18 U.S.C. § 1365 (h) (3)):** the term "serious bodily injury" means bodily injury which involves

  - a. a substantial risk of death;
  - b. extreme physical pain;
  - c. protracted and obvious disfigurement; or
  - d. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- N. Electronic Control Device:** Tasers or stunguns (electronic control weapons) that disrupt the central nervous system of the body.

- O. Active Resistance:** Affirmative steps taken by an individual to defeat an officer's ability to arrest or control them.
- P. Passive resistance:** A subject who takes no affirmative action to defeat the member's ability to make an arrest but who does not respond to verbal commands and presents a refusal to move by sitting down or acting as dead weight.
- Q. Active Aggression:** Behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include but are not limited to an attack on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks, shoves, or punches. Examples may also include words or behavior such as pre-assault cues that clearly indicate that such an attack or actions are imminent.
- R. Excessive Force:** is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. Excessive force will not be tolerated.
- S. Graham vs Connor located in attachments**
- T. Tennessee vs Garner located in attachments**

#### **IV. Procedure:**

- A.** In determining the appropriate level of force officers should apply the levels of force under the agency's trained use of force options along with the following three factor test:
  - a.** How serious is the offense the officer suspects at the time the particular force is used?
  - b.** What is the physical threat to the officer or others?
  - c.** Is the subject actively resisting or attempting to evade arrest by flight?
- B. South Dakota statutory law provides:**
  - a.** 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.
  - b.** 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.
  - c.** 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.
  - d.** 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.
- a. **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.
  - b. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
  - c. **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.
  - d. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
  - e. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject.
  - f. **Hard Hand Control:** Punches, kicks, palm heel strikes and other physical strikes, including knees, kicks, and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
  - g. **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 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.
  - h. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement shall be made. (Currently not applicable based on the type of canine the agency is currently implementing.)
  - i. **Deadly Force:** Force that creates a substantial likelihood of death or serious bodily harm.
- D. Deadly Force:** The use of deadly force is objectively reasonable when:
- a. The officer is faced with an immediate 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.

- E. 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.
- F. 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 stepping in front of a moving vehicle or 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 immediate 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 immediate threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
- G. **Chokeholds & Neck Restraints:** An officer shall not use a chokehold or neck restraint in the performance of his or her duties, **unless deadly force is justified.**
- i. In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers shall not use a chokehold, neck restraint, or any lesser contact with the throat or neck area of another in order to prevent the destruction of evidence by ingestion.
  - ii. Officers shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted for the purpose of seizing evidence.
  - iii. **Render Medical Aid:** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
  - iv. As soon as the subject stops resisting and is handcuffed and/or under control, monitor the person's vital signs closely. Take the following steps:
    - Roll the person onto his or her side, or into a sitting position
    - Monitor breathing
    - Check the pulse at the wrist

- Check the person's facial skin color (a gray or blue tint is a sign of severe medical distress)
- Determine if the person is functionally conscious (e.g., the person can exhibit voluntary movement, has the ability to converse, is aware of place/date/time)
- If the person has difficulty breathing, is not at a functional level of consciousness, exhibits symptoms of medical distress, or if you have any doubt regarding the person's medical condition, request an emergency medic response and administer appropriate first aid.
- If the person is being lodged at a correctional facility or taken to a medical facility, advise them if the person was rendered unconscious or subjected to a chokehold during restraint.

**H. Less-Lethal Weapons/Tactics:** 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 agency use of force training and policy.

**a. Chemical Spray:**

- i. 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.
- ii. Chemical Spray shall never be used as a punitive measure.
- iii. 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 longer) unless deadly force would be justified.
- iv. 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.
- v. 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.
- vi. Once control is gained, officers should immediately provide for the decontamination of the subject.
- vii. 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.

**b. Electronic Control Devices**

- i. An electronic control device as a force option is the same level of force as chemical spray.
- ii. Electronic Control Device must be worn on the weak-side in either a weak-

hand draw or cross-draw position.

- iii. Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance/active aggression shall be required.
- iv. 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.
- v. 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)
- vi. 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.
- vii. 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.
- viii. No more than one officer should deploy an electronic control device against a single individual at the same time.
- ix. 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.
- x. 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."
- xi. 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.
- xii. Where back-targeting is not possible, frontal targeting should be lower center mass, intentional deployments to the chest shall be avoided where possible.
- xiii. Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes, or genitals.
- xiv. Officers are prohibited from using the device as punitive measure.
- xv. Electronic Control Devices shall not be used against person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- xvi. 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).

- xvii.** Officers shall make all efforts to warn other officers that a deployment is about to occur.
- xviii.** 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.
- xix.** 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 elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. such that a secondary impact may cause serious injury or death.
- xx.** Officers should be aware that a subject's heavy clothing may impact the effectiveness of the electronic control device.
- xxi.** 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.
- xxii.** 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.
- xxiii.** 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.
- xxiv.** In cases where the probes have penetrated a subject's skin, removal shall be conducted by medically trained personnel. Deployed probes that have been removed from a suspect should be treated as a bio-hazard.
- xxv.** 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 medically 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. Yearly training on medical first aid should be documented in the officer's training folder.
- xxvi.** 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.

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

- (a) Persons struck in a sensitive area-eyes, head, genitals, female breasts.
- (b) Where the probes have penetrated the skin and EMS cannot safely remove darts in accord with this policy.
- (c) 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)
- (d) 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.
- (e) 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.
- (f) Subjects who request medical assistance.

**xxviii.** Documentation:

- (a) 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.
- (b) 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.
- (c) Supervisory personnel shall be notified and review all Electronic Control Device deployment for consistency with policy and training.
- (d) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.
- (e) 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.
- (f) A Response to Resistance 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.

- (g) All deployments shall be reviewed by the agency as well as training personnel.
- (h) Where there is any indication of lasting injury, a claim, or complaint, internal data from the device shall be maintained. All ECD units will be audited biannually by the Administrative Sgt. or his designee to ensure that all deployment/activations have been reported as required.

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

- i. 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.
- ii. Examples would be where other options have been utilized and 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.
- iii. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.

**V. Duty to Intervene:**

- A. Use of Force:** in accordance with the agency's **Duty to Intervene** policy Officers of this agency have an affirmative duty to intervene if they witness a use force that is clearly unreasonable. Any officer present and observing another officer using force that is clearly beyond that which is reasonable under the circumstances shall, when in a position to safely do so, intervene to prevent the use of unreasonable force. An officer who observes another employee use of force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

**VI. Reporting Response to Resistance:**

- A. Purpose:** It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting response to resistance. The agency will develop a Response to Resistance form to capture all required information described in this policy.
- B. Policy:** 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 agency accurately, completely, and timely report response to resistance and a supervisor conducts a prompt investigation and reports the investigation findings.

**C. Definitions:**

- a. Reportable Response to Resistance:** The following are 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:
- i. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporary incapacitate the subject.

- ii. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject. (See additional documentation-ECD section)
  - iii. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
  - iv. **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 failed or where based on the officer's perception at the time, the other options would not be successful.
  - v. **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.
  - vi. **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.
  - vii. **Canine use:** Use of a police canine will be reported on the Response to Resistance Form to capture any form of use whether there is contact with a subject or not.
  - viii. **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.
- b. Procedures:**
- i. 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.
  - ii. A Response to Resistance 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.
  - iii. The Response to Resistance form will be completed in detail including a narrative account of the following:
    - (a) The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
    - (b) The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
    - (c) Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.
- c. 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 Response to Resistance Form. The supervisor will accomplish the following investigative steps in conducting the investigation:

- i.** 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 an Internal Affairs Complaint Form. If have any type of injury, Internal Affairs or the designated agency 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.
- ii.** 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.
- iii.** 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.
- iv.** Interview, preferably recorded, all witnesses to the incident and document their description of the event.
- v.** Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
- vi.** The supervisor shall review any video recording of the incident, if available, prior to the completion of the Response to Resistance form and the approval of the officer's reports
- vii.** 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.
- viii.** The supervisor will complete the Response to Resistance form prior to completing their shift and submit it along with the officer's report to their chain of command for review.
- ix.** Exceptions to response to resistance report: Handcuffing or escorting compliant, cooperative subject(s).