



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT


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ALAN G. DAVIS
CHIEF MAGISTRATE

POLICY DIRECTIVE 19-263 (REVISED)

TO: ALL UNIFORMED SERVICES EMPLOYEES

FROM: ALAN G. DAVIS
CHIEF MAGISTRATE 

RE: USE OF FORCE/ RESPONSE TO RESISTANCE

DATE: OCTOBER 30, 2020

Scope:

This Policy Directive provides members of the Uniformed Services Division of the Justice of the Peace Court with guidance for the use of less than lethal and deadly force.

This policy is not designed to be all-inclusive and is intended to be used as a guidance. Deviation from this policy may be necessary as circumstances dictate.

Policy Directives/Legal Memoranda Affected:

This policy rescinds and replaces the Use of Force section in the Justice of the Peace Court State Constable and Court Security Officer Handbook.

Effective Date:

This Policy shall take effect immediately and shall continue until further notice.

Definitions:

Agency: State of Delaware, Justice of the Peace Court.

Arrest: Is the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. Officers in the Justice of the Peace Court have arrest authority as granted by Title 10, Chapter 28 of the Delaware Code¹ This authority is limited to the arrest of individuals who have committed a crime on Court property or in instances where the Court has ordered someone be taken into custody or under any other circumstances when arrests are authorized under Title 10. Arrests made by our officers are with the expectation custody of the individual will be transferred to another agency which will complete the arrest and charging process.

Deadly Force: Force which an Officer uses with the purpose of causing or which an Officer knows creates a substantial risk of causing death or serious physical injury. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the Officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.²

De-escalation: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

Excessive Force: Force that is unreasonable or unnecessary under the circumstances.

Force: In addition to its ordinary meaning, includes confinement³

Less than Lethal Force: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another, including but not limited to manual handcuffs, expandable batons, un-holstered service weapons and electronic control weapons use of impact weapons (e.g. expandable batons), un-holstered service weapons and Conducted Electrical Weapon (CEW) including display of and/or conducting an CEW spark demonstration for the purpose of obtaining subject compliance.

Objectively reasonable: The determination that the necessity for using force and the level of force used is based upon the Officer's evaluation of the situation in light of the totality of the circumstances known to the Officer at the time the force is used and upon what a reasonably prudent Officer would use under the same or similar situations.⁴

¹ Title 10 Chapter 92. Section 9223 grants all Court Security Officers with the same powers as a Justice of the Peace Court constable, including powers of arrest, while performing Court-related functions throughout the State.

² 11 Del.C. §471(a)

³ 11 Del.C. §471(c). The phrase ordinary meaning indicates that there is no technical meaning peculiar to the law. State v. Harrigan, 1982, 447 A.2d 1194. Webster's defines force as, "violence or power used on a person or thing".

⁴ National Consensus Policy on Use of Force (October 2017), 2.

Officer: An employee of the Justice of the Peace Court, including full-time, part-time, contract and casual seasonal employees, assigned to the Uniformed Services Division, including but not limited to the Chief of Uniformed Services, Trainer/Educator II, Chiefs of Court Security, Deputy Chiefs of Court Security, Constables, and Court Security Officers.

Physical force: Any application of force upon or toward the body of another person.

Physical injury: Impairment of physical condition or substantial pain.⁵

Serious physical injury: Physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.⁶

Unlawful: Contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.⁷

Unlawful force: The legal definition of unlawful force is: force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

Webster Definition: Power or violence directed at another person without their consent.

Policy:

It is the policy of this agency to value and preserve human life. The life and safety of all citizens and Officers is paramount.

Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the Officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent Officer would use under the same or similar circumstances. The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the Officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."⁸ In addition, "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

⁵ 11 Del.C. §222(23)

⁶ 11 Del.C. §222(26)

⁷ 11 Del.C. §222(29)

⁸ *Graham v. Connor*, 490 U.S. 386 (1989).

hindsight... the question is whether the Officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them.

This policy shall be reviewed annually and signed off by each officer. Any questions or concerns should be addressed to the Officer's immediate supervisor for clarification.

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the Officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an Officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. Duty to Intercede

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use excessive force shall promptly report these observations to a supervisor.

C. De-escalation

1. An Officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force in order to reduce the need for force and/or allow for additional resources to arrive.
2. Whenever possible and when such delay will not compromise the safety of the Officer or another, an Officer shall allow an individual time and opportunity to submit to verbal commands before force is used.
3. Effective de-escalation techniques are the desired method of handling any confrontational situation.

D. Use of Less Than Lethal Force

When de-escalation techniques are not effective or appropriate, an Officer may consider the use of less than lethal force to control a non-compliant or actively resistant individual. An Officer is authorized to use agency-approved, less than lethal force techniques and issued equipment:

1. When Officer believes such force is immediately necessary to protect the Officer or others against the use of unlawful force.
2. To bring an unlawful situation safely and effectively under control.
3. To prevent the escape of an arrested person from custody.
4. When Officer is making an arrest and believes such force is immediately necessary to effect the arrest.
 - a. Officer must make known the purpose of the arrest or must believe that it is otherwise known or cannot reasonably be made known, and
 - b. Arrest must be made under warrant or without warrant when the Officer believes the arrest to be lawful.

E. Use of Deadly Force

1. An Officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
 - a. To protect the Officer or others from what is reasonably believed to be an imminent threat of death or serious physical injury, 11 Del. C §467 allows the use of deadly force due to the Officer's status as a Peace Officer.⁹
 - b. To prevent the escape of subject under arrest when the Officer believes:
 - i. that the arrest is for a felony involving physical injury or threat thereof, and
 - ii. the Officer reasonably believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury to the Officer or another if the subject is not immediately apprehended or the Officer believes that the person will never be captured if apprehension is delayed, and

111. the Officer believes that the use of deadly force creates no substantial risk of injury to innocent persons

⁹ 11 Del.C. §467 refers to the use of force by law enforcement officers.

2. Where feasible, the Officer shall identify himself or herself as a peace Officer and warn of his or her intent to use deadly force.¹⁰
3. Officers are prohibited from discharging their weapon:
 - a. If it appears likely an innocent person will be struck by a projectile.
 - b. At a motor vehicle or the occupants of a motor vehicle, unless the occupants are directing deadly force at the officer or another person from inside of the vehicle, and then only if the officer believes there is no risk of injury to innocent persons. In all cases, officers should never place themselves in the path of a moving vehicle.
 - c. Warning shots are strictly prohibited.
4. Use of Chokeholds
 - a. All officers as defined in 10 Del. C § 2802 and 10 Del. C § 9223 respectively, while acting in their official capacity shall not knowingly or intentionally use any technique intended to restrict another person's airway, or prevent or restrict the breathing of another person or constrict the flow of blood by applying pressure or force to the carotid artery, the jugular vein or the side of the neck of another person.
 - i. Notwithstanding 11 Del. C § 462-468 to the contrary, the use of a chokehold is only justifiable when the officer reasonably believes that the use of deadly force is necessary to protect the life of a civilian or an officer.¹¹

F. Training

1. All Officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
2. In addition, training shall be provided on a regular and periodic basis and designed to provide techniques for the use of and reinforce the importance of de-escalation and enhance Officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.
3. All use-of-force training shall be documented.

G. Documentation

1. All incidents involving Use of Force must be documented as prescribed by operational procedures.

¹⁰ *Tennessee v. Garner*, 471 U.S. 1 (1985).

¹¹ 11 Del.C. §462-468 refers to Use of Force and Justification- A defense.

H. Use of Force Incident Investigation and Review:

A. Use of Force other than Deadly Force

1. The officer will comply with the General Provisions listed under Section A and immediately contact a supervisor if the person to whom the force was directed is injured or complains of injury. The supervisor will conduct a review of the incident.
 - a. Officers are required to complete an incident report thoroughly documenting the use of force as soon as practical. (See Attached Incident Report Form) The officer shall include any pertinent attachments to the report. These could include: Photographs of any injuries to the person to whom the force was directed.
 - b. If the person is treated for injuries or refuses treatment, every effort will be made to obtain a copy of a medical release document or refusal to accept treatment document.

B. Use of Force Review

1. The officer's immediate supervisor is responsible to review the incident report and ensure all available supporting documents are attached. If the report appears to be accurate and all required/available documentation is attached, the supervisor should approve the report and forward it to the Chief of Uniform Services for review. If the report requires any corrections, the supervisor is to return the report to the officer. The supervisor must include comments explaining the reason(s) for rejecting the report.
 - a. The supervisor should prepare a separate internal memorandum to the Chief of Uniform Services indicating whether they believe the level of force used was in compliance with Justice of the Peace Court policy.
 - b. The supervisor should also secure any available video footage, Conducted Electrical Weapon (CEW) CD Reports, or other evidentiary items relevant to the incident.
- a. Ensure all documentation is completed timely.
2. The Chief of Uniform Services is responsible to review the incident report(s) as well as the memorandum completed by the immediate supervisor. If the report requires any corrections, the Chief of Uniform Services is to return the report to the immediate supervisor. The Chief of Uniform Services must include comments explaining the reason(s) for rejecting the report.
3. Once all documents are completed and approved, the Chief of Uniform Services

will schedule a meeting with the Chief Magistrate, Court Administrator, Human Resources manager and staff attorney, as appropriate, in order to brief them on the incident and review with them whether the officer's use of force was in compliance with Justice of the Peace Court policies.

4. If, at the above referenced meeting, it is determined the use of force was to such a degree that it could be considered Unlawful Force, the Chief of Uniformed Services will contact the appropriate law enforcement agency to conduct a further investigation of the incident.
5. Every aspect of the Use of Force Review shall occur as soon as practicable.

C. Accidental Discharge of Firearm

1. Whenever an officer discharges a firearm accidentally, they must contact a supervisor immediately.
 - a. The supervisor will immediately notify the Chief of Uniformed Services.
 - b. The involved officer will complete an incident report documenting the circumstances of the incident as soon as practical. The supervisor will conduct an investigation and submit a memorandum to the Chief of Uniformed Services documenting his/her findings.
 - c. If the investigating supervisor, after review with the Chief of Uniformed Services, determines the incident to be the result of negligence, the officer will be required to undergo remedial firearms training and recertification.
 - d. As soon as practical, the Chief of Uniform Services will schedule a meeting with the Chief Magistrate, Court Administrator, Human Resources manager and staff attorney, as appropriate, in order to brief them on the incident and review with them if additional action is appropriate. Additional action may be taken, up to and including dismissal, depending upon the circumstances of the incident.

D. Use of Deadly Force

A. Definitions:

1. Involved officer(s):
 - a. An officer who discharges a firearm in the direction of a person(s), regardless of whether the person(s) is struck by the projectile.
 - b. An officer(s) who utilizes any other force which results in death, or any

other force the officer(s) knows creates a substantial risk of death or serious physical injury.

2. Witness officer(s): Any officer who was present when deadly force was utilized by another officer(s), but did not utilize such force themselves.
3. Modified Duty: Modified duty, for the purposes of this policy, is a work status that is less than full duty. Officer(s) placed in this status are limited to administrative desk duty and any other restricted duty provided by the Justice of the Peace Court Chief of Uniform Services.
4. Public Safety Statement: A limited statement provided by an involved officer to a supervisor intended to establish the level of danger that may still exist, determine if there may be any other injured parties, and preserve evidence.
5. Investigating Agency: A law enforcement agency responsible for thoroughly investigating any Use of Deadly Force and other Uses of Force by a Justice of the Peace Court Officer which is believed to be Unlawful Force. The Investigating Agency will be determined by established jurisdiction where the Use of Force incident occurred and/or Memorandum of Understanding with the Justice of the Peace Court.

B. On Scene Procedures

1. Involved/Witness officer(s) shall:
 - a. Immediately request medical assistance, if necessary, and request the appropriate law enforcement agency and a Justice of the Peace Court Uniform Services supervisor respond to the scene.
 - b. Once the scene is safe and as soon as practical, an Officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
 - c. Protect the scene by ensuring no potential evidence is removed or altered and that no unauthorized individuals enter. This can be done by locking doors, setting up physical barriers such as tape or cones, or utilizing officers to prohibit access. Document any entry/exit from the scene once barriers are established, securing the incident area.

- d. Provide a public safety statement to a supervisor and/or any responding law enforcement officer. After providing a public safety statement, the officer will refrain from discussing the incident, except as required during the course of the investigation.
- e. All potential evidence, weapons, equipment should be left in their original positions, unless it is necessary to move them in order to provide medical assistance. The original positions of any moved items should be reported to the Officer's supervisor and/or the Investigating Agency representative.

C. Public Safety Statement

1. Any public safety statement taken from an officer should be limited to following information.
 - a. Are you injured?
 - b. Is anyone else injured? If so, what is his or her location?
 - c. In what direction did you fire your weapon(s)?
 - d. Are there any suspects at large? If so:
 - i. What is their description?
 - ii. What was their direction of travel and mode of transportation?
 - m. With what types of weapon(s) were they armed?
 - e. Does any evidence need to be preserved? If so, where is it located?
 - f. Are there any witnesses to the incident? If so, where are they located?

D. Post-Incident Procedures

1. Involved officers are required to maintain their weapons and magazines in their immediate post-incident condition. In order to ensure evidentiary integrity, the officer's weapon and magazine will be collected by the investigating law enforcement agency.
2. The involved officer(s) will be transported to a medical facility, accompanied by a peer officer or supervisor, for a wellness check by a doctor. The accompanying officer is not to discuss the incident with the involved officer. The accompanying officer will remain with the involved officer until otherwise instructed by their supervisor.
3. Involved officers will be given the opportunity to notify their families as soon

as possible after the incident. When an officer is unable to notify their family, a Court official shall personally do so. Arrangements will be made to transport family members to the hospital, if necessary.

4. All uses of Deadly Force by a Justice of the Peace Court Officer will be investigated by the Delaware State Police with the resources and expertise to do so. The Delaware State Police will be determined by established jurisdiction where the Use of Deadly Force occurred and/or Memorandum of Understanding.
5. Additional steps by Justice of the Peace Court personnel will be taken as directed by the Delaware State Police.

Attachments: Justice of the Peace Court Incident Report

cc: Honorable Collins Seitz, Jr.
Honorable Andre Bouchard
Honorable Jan Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
Gayle Lafferty, State Court Administrator
Justice of the Peace Court Uniformed Services Employees
Marianne Kennedy, JP Court Administrator
Mark Hitch, Operations Manager
Stephanie Parker, Operations, Manager
Michael Iglie, JP Chief of Uniform Services
Col. Melissa Zebley
Alderman's Courts
Law Libraries: New Castle County, Kent County, Sussex County,
Widener University School of Law



STATE OF DELAWARE JUSTICE OF THE PEACE COURT INCIDENT REPORT

Report Number	Incident Date	Incident Time	Incident Type	If Other; Briefly Describe
CCNC-2019-1-18-14-8	1/18/2019	2:05:00 PM	2:05:00 PM	Sample

Submitting Officer Information

Name	Court Name	Business Phone No.
Walter.W.Newton	Constable Central New Castle County	

Reporting Person Information

Name	Address	Contact Phone No.
Uniform Services	2 Penns Way, Suite 1008, New Castle, DE 19720	

Complainant/Victim Information

Victim #1 Name	Date of Birth	Sex	Race
	Home Address	Home Phone No.	Alt Phone No.

Injuries? **If Inured, Briefly Describe Type of Injuries**

Victim #2 Name	Date of Birth	Sex	Race
	Home Address	Home Phone No.	Alt Phone No.

Injuries? **If Inured, Briefly Describe Type of Injuries**

Victim #3 Name	Date of Birth	Sex	Race
	Home Address	Home Phone No.	Alt Phone No.

Injuries? **If Inured, Briefly Describe Type of Injuries**



STATE OF DELAWARE JUSTICE OF THE PEACE COURT INCIDENT REPORT

IncJden Narr attve

N/A

No. of Attachments: 0

Date/Time of Report	Report Status	Approving Supervisor	Approval Status
1/18/2019 2:08:21 PM	Closed	Walter.W.Newton	Approved