

Response to Resistance

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the response to resistance and/or the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Choke hold - a physical maneuver that restricts an individual's ability to breathe or blood flow for the purpose of incapacitation.

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

300.2 POLICY

The response to resistance by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. On a daily basis Officers are involved in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

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300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or a member 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 law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible.

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

An officer may use reasonable force to effect an arrest if, after notice of intention to arrest the person, the person either flees or forcibly resists (N.D.C.C. § 29-06-13).

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300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with officer commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

300.3.3 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

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300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. When practical, a verbal warning should precede the use of deadly force. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:
 - 1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
 - 2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.
- (c) **The use of a carotid restraint, other "choke holds, or neck restraints are specifically and strictly prohibited for use by police personnel**
 - 1. **Exceptions**
 - (a) **If an officer, or other person, is in fear of death or serious bodily injury, and there is no other alternative available based on presenting circumstances, carotid restraints or other choke holds are permissible in defense of the officer or another's life.**

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective.

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 INTENTIONAL FIREARM DISCHARGE

The intentional discharge of a firearm by an officer at or towards any person shall be interpreted as the use of deadly force. Officers are prohibited from utilizing a "warning shot" from a firearm to gain compliance or otherwise overcome any resistance they encounter in the performance of their duties.

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Deadly force may be directed at any animal (wild or domestic) that poses an immediate threat to an officer, civilian employee, or other person, or when the animal is otherwise deemed to be a threat to public safety. Deadly force may also be directed at an injured animal for humanitarian reasons. When feasible, an on-duty supervisor shall be notified and approve the use of deadly force on any animal prior to an officer using such force.

If a firearm is used to dispose of an animal for humanitarian reasons, only the department's Response to Resistance report is required unless otherwise determined by a command officer or supervisor.

300.5 REPORTING THE USE OF FORCE

Any response to resistance that results in the death or serious bodily injury to any person, or if the force used by an officer results in an evident or claimed injury to the person who the force was used upon and the injury is attributable to the officer's actions, the officer using such force shall immediately notify an on-duty supervisor, or (when applicable) their shift commander. The incident shall be documented promptly, completely and accurately in a case report and/or supplement to the case report, as well as a department Response to Resistance Report (Attachment #1 or Attachment #2). Based upon the initial circumstances surrounding the incident the supervisor will make a determination regarding which Response to Resistance form is appropriate.

In addition, a sworn officer using force upon any person shall also complete a case report and/or supplement to the case report, as well as a department Response to Resistance report (see policy attachments), when:

- The officer uses pepper spray, police K9, defensive device, or an object of convenience upon any person ; or,
- The officer utilizes any strike, kick, punch, etc., upon a person to overcome resistance, regardless of whether the officer's actions result in an evident or claimed injury to the person who the force was used upon; or,
- The officer's actions result in a person impacting with any hard surface with such force that injury to the person is likely to have occurred

[See attachment: Response to Resistance Report.pdf](#)

300.5.1 NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The individual subjected to the force complained of injury or continuing pain.
- (c) The individual indicates intent to pursue litigation.
- (d) Any application of the TASER® device .

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- (e) The individual subjected to the force was rendered unconscious.
- (f) An individual was struck or kicked.
- (g) An individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically cleared at a medical facility. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

The Field Services Division supervisor shall respond to an incident in which there has been a reported application of force where an officer's use of force resulted in any evident or claimed injury to any person and the injury is attributable to the officer's actions. The on-duty Field Services Division supervisor shall do the following as soon as it is practical to do so:

- (a) Obtain the basic facts from the involved officers.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, interview the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. If a recorded interview was obtained it should be documented in the Response to Resistance Report and kept for use in an administrative review.
 - 3. The recording of the interview should be kept for use in an administrative review if applicable.
- (d) When possible, photograph any evident or claimed areas of injury on the person who force was used upon, including those areas on the person impacted by an officer's

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use of a Taser, pepper-spray, police K-9, defensive device, object of convenience, strike, kick, punch, etc

- (e) Identify any witnesses not already included in related case reports.
- (f) Review and approve all related case reports.
- (g) Evaluate the circumstances surrounding the incident and determine which Response to Resistance Report is appropriate based on the complexity or severity of the incident.

300.7.1 COMMANDER OFFICER RESPONSIBILITY

A Commander Officer shall review each response to resistance by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.8 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

Attachments

Response to Resistance Report.pdf

FARGO POLICE DEPARTMENT
RESPONSE TO RESISTANCE REPORT

OFFICER NAME: _____ COMPUTER #: _____ ICR #: _____
DATE OF INCIDENT: _____ TIME: _____ LOCATION: _____
DUTY STATUS: ☐ ON ☐ UNIFORMED
☐ OFF ☐ PLAIN CLOTHES CURRENT ASSIGNMENT: _____
SUBJECT: _____ DOB: _____ AGE: _____
RACE: (circle) White / Black / Hispanic / American Indian / Asian Pacific Islander / Other _____
GENDER (circle) M / F Photos (circle) Y/N (order two sets if yes)

FIREARMS

	<u>MAKE</u>	<u>MODEL</u>	<u>SERIAL NUMBER</u>	<u>CALIBER</u>
OFFICER:	_____	_____	_____	_____
SUSPECT:	_____	_____	_____	_____

WHY DID YOU USE YOUR FIREARM?
☐ ACCIDENTAL DISCHARGE ☐ TO DESTROY AN ANIMAL ☐ TO PROTECT OFFICER
☐ TO PREVENT/STOP FELONY ☐ TO PREVENT AN ESCAPE ☐ TO PROTECT CITIZEN

PHYSICAL FORCE/DEFENSIVE WEAPON

WHAT TYPE OF FORCE WAS USED?
☐ PHYSICAL ☐ CHEMICAL ☐ TASER ☐ OTHER _____

REASON FOR RESPONSE TO RESISTANCE

☐ Effect Arrest ☐ Effect Transport ☐ Defend Officer / Employee ☐ Defend Another
☐ Prevent Violent Act ☐ Restraint to protect others ☐ Other _____
☐ N/A

EFFECT / RESULT OF FORCE

Subject / Officer/ Employee
☐ 1 ☐ no visible injury, no complaint of injury
☐ 2 ☐ no visible injury, complaint of injury, no medical treatment required
☐ 3 ☐ OC (pepper spray) decontamination
☐ 4 ☐ minor visible injury, no medical treatment required
☐ 5 ☐ injury requiring outpatient treatment / facility: _____
☐ 6 ☐ injury requiring hospitalization / facility: _____
☐ 7 ☐ death
☐ 8 ☐ other
☐ 9 ☐ n/a

AT TIME OF CONTACT SUBJECT APPEARED TO BE:

☐ under influence of alcohol ☐ under influence of chemical drug
☐ emotionally disturbed person (explain) ☐ other (explain)
☐ n/a

OFFICER SIGNATURE: _____ DATE: _____

SUPERVISOR SIGNATURE: _____ DATE: _____