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USE OF FORCE POLICY

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Department Manual Directive 304.2, USE OF FORCE

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DISTRIBUTION

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Purpose

The purpose of this policy is to establish guidelines and limitations for the Detroit Police Department (DPD) concerning the appropriate and acceptable use of deadly and less lethal force.

Policy

An improper use of authority and/or excessive or unjustified use of force undermine the legitimacy of an officer's authority and hinders the department's ability to provide effective law enforcement services to the community. Moreover, the tactics employed by an officer in the course of a use-of-force situation may result in an unnecessary escalation of subject resistance, expose an officer to further danger by extending the amount of time needed to take the subject into custody, evidence an improper motive or lack of professionalism on the officer's part, or otherwise subject the officer or the Department to unnecessary scrutiny.

Officers who use excessive force or an unauthorized use of force shall be subjected to discipline up to and including termination, possible criminal prosecution, and/or civil liability. Furthermore, the tactics utilized by an officer in response to a subject's resistance will undergo evaluation by the Department on a case-by-case basis. Officers are only authorized to employ tactics that are approved by the Department, that are reasonably certain to be effective in subduing the subject or mitigating the risks of injury involved in a particular incident. Use of force is only authorized when it is objectively reasonable and for a lawful purpose.

Research indicates that one of the most common factors found in both police excessive or unjustified use of force, and officer injuries and fatalities during force encounters, is an officer's perceived compulsion to press forward rather than to disengage (e.g., "back off") and explore other options. The most appropriate response choice to a situation often involves de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized commands.

Should a member determine that a use of force is objectively reasonable and for a lawful purpose based on the totality of the circumstances, they shall use the minimum necessary force as described in this Directive (304.2 – 5.2) and the Training Directive Use of Force Continuum (04-03). Following any use of force resulting in a citizen's injury, officers shall notify a supervisor and ensure that appropriate medical aid and/or emergency medical service is rendered as soon as possible.

Definitions

Command Investigation

An investigation conducted by a Detroit Police Department supervisor.

Control

The ability to command or direct with or without voluntary compliance. Officers shall control with the subject's consent, if possible, but force the subject to comply if necessary.

Critical Firearm Discharge

Each discharge of a firearm by a Department member, with the exception of range and training discharges and discharges at animals.

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.

Discipline

A written reprimand, suspension, demotion, or dismissal.

Duty to Intervene

A Department member's obligation to safely intercede to prevent the use of excessive force, if they are in a position to do so, upon observing another member using force that is clearly beyond that which is objectively reasonable under the circumstances.

Escorting

The use of light physical pressure to guide a person, or keep a person in place.

Force

1. The term "force" means the following actions by an officer:
 - a. Any physical strike of instrumental contact with a person;
 - b. Any intentional attempted physical strike or instrumental contact that does not take effect; or
 - c. Any significant physical contact that restricts the movement of a person.

2. The term "force" includes the following:
 - a. The discharge of firearms;
 - b. The discharge of Taser;
 - c. The use of chemical spray;
 - d. Choke holds or hard hands;
 - e. The taking of a subject to the ground; or
 - f. The deployment of a canine.

3. The term “force” does not include escorting or handcuffing a person with no or minimal resistance. Use of force is lawful if it is **objectively reasonable** under the circumstances and the minimum amount of force necessary to effect an arrest or protect the officer or other person is used.

Hard Hands

Using physical pressure to force a person against an object or the ground, or the use of physical strength or skill that causes pain or leaves a mark.

Imminent Threat

An imminent threat is an officer’s reasonable perception of impending danger of death or serious injury from any action or outcome that may occur during an encounter. Thus, a subject may pose an imminent or impending danger even if he/she is not at that very moment pointing a weapon at the officer. For example, he/she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available.

Injury

Any impairment of physical condition or pain.

Less Lethal Force

Any force used by an officer that would not reasonably be expected to cause death.

Objectively Reasonable

In determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community.

Detainee Injury

An injury or complaint of injury that occurs in the course of taking or after an individual was taken into DPD custody that is **not** attributed to a use of force by a DPD employee.

Proper Use of Force Decision Making

The use of reasonable force including proper tactics and de-escalation techniques.

Serious Bodily Injury

Serious bodily injury is any injury that involves any of the following conditions: a loss of consciousness; extreme physical pain; disfigurement; prolonged loss or impairment of the function of a body part or organ; or a substantial risk of death.

Serious Use of Force

Any action by a Department member that involves:

- a. The use of deadly force, including all critical firearm discharges;
- b. The use of force in which the person suffers serious bodily injury or requires

- hospital admission;
- c. A canine bite; and
- d. The use of chemical spray against a restrained person.

Note: Officers are prohibited from spraying a handcuffed individual in a police vehicle (Directive 304.3 – 5.1).

Special Population

Individuals, who because of some condition (e.g. age, a medical or mental condition, size, or stature), are unable to comply with a member's verbal commands.

Authorization and Limitations

De-escalation

1. Members shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training, whenever possible and appropriate, before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the member or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, members shall allow an individual time and opportunity to submit to verbal commands before force is used, and consider any potential barriers to understanding the verbal commands (e.g. language barrier, behavioral crisis, etc).

Less Lethal Force

1. Sworn members are authorized to use DPD approved less lethal use of force techniques and DPD issued equipment where necessary to:
 - a. Protect the officer or another person from physical harm;
 - b. Make a lawful arrest when a subject offers resistance;
 - c. Stop potentially dangerous and/or criminal behavior; or
 - d. Protect subjects from injuring themselves.
2. Where less lethal force is authorized, members shall assess the incident to determine which less lethal technique or weapon will best de-escalate the incident and bring the situation under control in a safe manner.
3. Use of force restraints and/or weapons shall never be used as punishment or retaliation.

Deadly Force

1. Use of deadly force is only authorized:
 - a. Against a subject who poses an imminent threat of death or serious bodily injury to the officers or others, and only when bystanders are not in jeopardy;
 - b. To prevent a subject's escape from a violent felony crime and only if the officer has probable cause to believe that the subject poses a continuing threat of death or serious bodily injury to anyone should he or she

successfully escape, Tennessee v. Garner, 471 U.S.1, 85 (1985).

2. **Deadly force is not authorized** if less lethal force could reasonably be used to prevent the escape of a dangerous fleeing subject, or a subject fleeing from a violent felony crime.
3. If feasible, officers shall identify themselves and state his/her intention to shoot before using a firearm.
4. A strike to the head of any person with an instrument constitutes a use of deadly force.
5. In addition to the above, the DPD further limits the use of deadly force to effect the arrest or to prevent the escape of a fleeing felon to the following felonies, and only if the officer has probable cause to believe the fleeing felon will pose a significant threat of death or serious physical injury to the officer or others should he/she successfully escape:
 - a. Murder or attempted murder;
 - b. Assault with intent to commit murder;
 - c. Criminal sexual conduct, first and third degree;
 - d. Armed robbery or attempted armed robbery, and
 - e. Assaults that result in life-threatening bodily injury.

Prohibited Holds

1. The neck restraints set forth below have been found to be tactically ineffective in subduing a subject using minimal force:
 - a. Carotid submission hold;
 - b. A hold which interrupts the blood's flow to the brain;
 - c. A "sleeper hold" that can result in a person losing consciousness and/or death;
 - d. Bent arm submission hold/hammer lock carotid hold. This hold restricts airflow to the trachea and can result in a loss of consciousness and/or death; and
 - e. **All other chokeholds.**
2. As a general matter, officers are prohibited from employing any of the foregoing neck restraints. Any use of such techniques shall be presumed to be in violation of this policy, regardless of a later determination that use of such techniques was "objectively reasonable" under the circumstances.
3. Department members are strictly prohibited from participating in trainings teaching any of the neck restraints set forth above.

Unauthorized Use of Deadly Force

1. Deadly force shall not be used against persons whose conduct is injurious only to themselves.
2. Warning shots are strictly prohibited.
3. Under no circumstances can shooting a firearm be justified to make an arrest for a misdemeanor charge or to apprehend a person fleeing from such a charge.
4. An officer shall not shoot a firearm in an attempt to apprehend a person merely on suspicion that a crime has occurred, or if there is only a suspicion

that the person being pursued committed the crime, regardless of the severity of the crime. An officer shall either have witnessed the crime, or shall have probable cause to believe that the person committed an offense that allows using deadly force.

Prohibit Firing at a Moving Motor Vehicle

1. Shooting at moving vehicles is generally not an effective means of immediately halting the progress of a closely approaching vehicle. Additionally, such action frequently produces unintended consequences. A moving vehicle may become an uncontrolled deadly weapon that could seriously injure or kill the occupants of the vehicle and/or subjects in its path. The potential harm to others in the area may outweigh the need to immediately apprehend the suspect.
2. Bullets fired at a moving vehicle may miss the intended target or ricochet and cause injury to officers or other innocent persons.
3. Officers shall not knowingly place themselves into the path of a moving vehicle or into the likely path of a vehicle that is currently stopped but is under the immediate control of a driver. When feasible, officers should attempt to move out of the path of any moving vehicle to a position of cover.
4. As a general matter, officers shall not discharge their firearms at a moving motor vehicle. Although rare exceptions to this general prohibition may exist, the burden of overcoming the presumption of non-compliance rests entirely with the member and is to be considered high. Such situations may only involve instances where an officer has no other recourse to protect his/her own life or where the suspect poses clear and present risks to the lives of others and where such action is reasonably certain to end the threat.

Firing from a Moving Motor Vehicle

Members must keep in mind that accuracy is adversely affected when shooting from a moving vehicle which increases the danger to the public. Therefore, members shall only shoot from a moving vehicle as a last resort and when the safety of bystanders is not jeopardized.

Dangerous Animals

1. The use of physical force against any animal will be used only to the extent that such force is necessary to prevent harm or injury to another person(s) or animal(s). An officer shall not discharge a firearm at a dog or other animal, except to protect a member or person from imminent physical injury and there is no opportunity to retreat or other reasonable means to eliminate the threat.
2. Before using deadly force, every attempt will be made to use other reasonable means to contain the threat of a dangerous animal.
3. If the circumstances permit, when a member of the department has to shoot an animal suspected of being afflicted with rabies, the dog shall NOT be shot in the head. The carcass of the animal should be preserved for analysis of rabies.
4. The carcass of any animal that has been shot and that is believed to be afflicted with rabies shall be taken to the Animal Control Center. Immediate refrigeration of the carcass is of the utmost importance in the determination of

- rabid content.
5. When an officer comes in contact with a seriously injured or dangerous animal, the officer shall notify the proper agency (e.g., City of Detroit Animal Control, Michigan Humane Society, etc.).
 6. In any instance where a member discharges a firearm at an animal with the intent to destroy, whether the animal is hit or missed, the officer's supervisor shall prepare a Destruction of Animal Report (DPD669).

Proper Use of Force Decision Making

General

When evaluating the force used by law enforcement, the U.S. Supreme Court, in the case of Graham v. Connor, 490 US 386 (1989), made clear that the determination requires a commonsense pragmatic approach stating that an officer's decision to use force occurs in "circumstances which are tense, uncertain, and rapidly evolving," and that there is no universal rule or "mechanical rule" that can be applied to all of the various situations encountered by a law enforcement officer.

Force Continuum

1. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to immediately de-escalate and/or disengage from the use of force as the subject de-escalates or comes under the officer's control. Often the most appropriate response option to a situation involves de-escalation, disengagement, area containment and/or surveillance, waiting out a subject, summoning reinforcements, or calling in specialized commands.
2. It is important for officers to remember that even at its lowest level; the use of force is a serious responsibility. The force continuum is a model developed for illustrative purposes, defining the various levels of resistance and force exercised during a use of force incident. [Refer to Training Directive 04-3 (Use of Force Continuum)]. The continuum is based on the concept that as the resistive individual(s) increases the level of resistance or threat to the officer, the officer may increase the level of force necessary to overcome the resistance and conversely de-escalate and/or disengage as compliance is attained. The levels of resistance include:
 - **Inactive Resistance:** Includes psychological intimidation (non-verbal cues indicating the subject's attitude, appearance and physical readiness) and verbal non-compliance (verbal responses indicating the subject's unwillingness to comply with direction may include verbal threats made by the subject).
 - **Passive Resistance:** Physical actions that do not directly prevent the member's attempt of control.
 - **Active Resistance:** Means the subject is making physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pulling away, or pushing.
 - **Active Aggression:** Physical acts **that are hostile, injurious, or destructive;**
 - **Deadly Force:** Physical acts of aggression directed toward a member or another that are likely to cause serious bodily injury or death.

3. The levels of force are:

- **Officer Presence/Verbal Direction:** The identification of authority through the officer's presence in uniform, or by other means such as a badge and identification card or apparel clearly identifying the member as an officer, and/or communication directed toward controlling the actions of a subject. This may include direction, orders, or commands;
- **Compliance Controls:** Physical techniques employed by officers (e.g., escorting, touch pressure, joint locks, etc.) and the PR-24 Collapsible Baton as a non-impact control device;
- **Physical Controls:** (e.g., pain compliance, hard hands, etc.)
- **Intermediate Weapons:** The use of authorized less lethal weapons including impact weapons, chemical agents, and canines; and
- **Deadly Force:** A tactic or use of force that is likely to cause serious bodily injury or death.

4. When applying the concept of a force continuum, the totality of the circumstances involved in the incident must also be considered. Officers may initiate the use of force at any level of the force continuum that is appropriate under the circumstances. However, circumstances that may influence an officer or may **impact** an officer's decision to escalate or de-escalate the amount of force used include, but are not limited to:

- The nature of the offense;
- Influence of drugs or alcohol;
- Presence/proximity of weapons;
- Officer/subject factors (e.g., age, size, strength, etc.);
- Subject is suspected to be a special population;
- The feasibility and availability of alternative responses; and/or
- The availability of additional officers.

5. For any subject offering inactive resistance, members should consider requesting a supervisor for assistance before escalating to force beyond officer presence and verbal direction.

Duty to Intervene

Consistent with Manual Directive 102.11, members who have reasonable opportunity, must act to prevent or stop any member from conducting any act that is unethical, or that violates law or Department policy (for example, excessive force, theft, fraud, inappropriate language, sexual misconduct, harassment, falsifying documents, inappropriate behavior, etc.).

1. Members must have reasonable opportunity to intervene in an incident.
2. Intervention is verbal and/or physical.
3. The level of intervention depends upon reasonable opportunity and the totality of the circumstances.

4. Failure to Intervene may subject a member to disciplinary action.

Training and Qualifications

General

1. All DPD members that are authorized to carry lethal and less than lethal weapons shall be issued a copy of this department's Use of Force Policy (Directive 304.2), Use of Force Continuum (Training Directive 04-03) and any other policies or training directive that is specific to the weapon being trained on.
2. All members shall be trained by qualified instructors in any authorized lethal or less lethal weapon he/she carries.

Firearms

1. While on and off duty, officers shall carry only weapons and ammunition authorized and approved by this department.
2. 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 department specifications.
3. Officers are required to attend regular use of force training and qualification sessions for duty and off-duty weapons (bi-annually). An off-duty weapon that is approved by DPD's Firearms Training, and that the member has qualified with, may be carried by members as a secondary weapon while on-duty.
4. An officer who has suffered from an illness or injury that could affect his/her use of firearms ability shall be required to re-qualify prior to returning to enforcement duties.

Less Lethal Weapons and Methods

1. No department issued piece of equipment that is not designed or authorized to be used as a weapon (for example, flashlight, prep radio, handcuffs), shall be used as a weapon unless deadly force is authorized.
2. An officer is not permitted to use a less lethal weapon unless qualified in its proficient use as determined by Training.
3. Intermediate weapons shall be carried or used as issued and authorized by the department. No changes, alterations, or modifications are permitted.
4. Officers may use weaponless defense or arrest tactics in which departmental training has been given to control or arrest uncooperative suspects.
5. The use of a police canine to search for or apprehend suspects is considered a use of force under this policy. [Refer to Directive 201.4 (Canine)].
6. **Chemical Spray:** Is authorized for on-duty or off-duty use. Members, when assigned to patrol or investigative duties, shall carry the device. [Refer to Directive 304.3 (Chemical Spray Device)].
7. **Taser X2 Conducted Energy Weapon:** *is the only Department-approved CEW. No other CEW or comparable device may be carried while a member is on duty or working Secondary Employment. Only those members who have been trained may carry and use the TASER X2 CEW [Refer to Directive 304.7 Taser X2 Conducted Energy Weapon CEW].*
8. **40 mm Launcher with a Foam Impact Round:** *Only those members trained and*

approved by the department shall carry the device while on duty.

9. **Pepperball Tac-SA with Pepperball Projectiles:** *Only members trained and approved by the department shall carry the device while on duty.*
10. **PR-24:** Is a compliance control device that offers a less lethal method for apprehending and subduing actively resisting and/or violent subjects. Officers should target a subject's torso, arms, and legs (green areas) when using the PR-24 as an impact weapon (striking) for an actively aggressive subject. A PR-24 may also be used as a non-impact control device (come-along holds, escorts, etc.) for actively resistive subjects. Only members trained on the PR-24 baton may be equipped and/or carry the PR-24 baton. [Refer to Directive 304.4 (PR-24 Collapsible Baton)].
11. Weapons used for striking, other than the PR-24 side-handle baton, are strictly prohibited. Prohibited weapons include, but are not limited to: brass knuckles, blackjacks, nunchukus, saps, slapjacks, and other sticks or clubs.

Duty to Report/Render Aid

Whenever a DPD member employs any use of force as defined by this Directive, such member shall, unless physically incapacitated:

1. Ensure that the subject has been properly restrained or no longer poses an immediate threat to the safety of officers or others;
2. Render first aid and summon Emergency Medical Services (EMS) if needed; and
3. Provide assistance to persons subjected to the effects of a Chemical Spray Devices, including:
 - a. Immediately after spraying a suspect or *pepperball*, officers shall be alert to any indications that the individual needs medical care. This includes, but is not limited to, breathing difficulties, gagging, profuse sweating, or loss of consciousness. Upon observing these or other medical problems, or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid;
 - b. Provide an opportunity for decontamination to a sprayed subject within twenty (20) minutes of the application of the spray or the apprehension of the subject;
 - c. Sprayed subject(s) shall be continuously monitored for signs of a medical complaint. If a person complains of continued effects after having been decontaminated or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by chemical spray, the subject shall immediately be conveyed to Detroit Receiving Hospital (DRH) for medical treatment; and
 - d. Restrained subjects should be placed in an upright or seated position to avoid Positional Asphyxia which can lead to death, when a subject's body position interferes with breathing. [Refer to Training Directive 05-04 (Positional Asphyxia)].

Use of Force Reporting

1. Officers shall notify his/her Zone Dispatcher following any use of force or a prisoner injury. The Zone Dispatcher shall notify a non-involved sworn

- supervisor.
2. A non-involved sworn supervisor shall respond to the scene following any use of force that involves a firearm discharge, *40 mm launcher with foam impact round, pepperball Tac-SA with pepperball projectiles*, a visible injury, or a complaint of injury.
 3. A non-involved sworn supervisor shall respond to all other uses of force on a priority basis. For the purpose of this Directive a "priority basis" is defined by the current availability of supervisors and the nature of the situation (e.g., highly charged situations, agitated by-standers, potential for violence) whereas response to the scene may increase volatility or be impracticable.
 4. Upon arrival at the scene, the supervisor shall interview the officer(s), canvass for witnesses and examine the subject(s) for injury, and ensure that the subject(s) receives, or has received, needed medical attention. No member shall delay rendering medical attention, requesting EMS or the conveyance of any subject to a medical treatment facility pending the arrival of a supervisor.
 5. In the event an injured person has been conveyed for medical treatment prior to the supervisor's arrival at the scene, the supervisor shall interview the subject at the medical facility provided the interview will not interfere with the subject's medical treatment.
 6. The supervisor responding to the scene shall notify Internal Affairs (IA) of all serious uses of force, uses of force that result in a visible injury, uses of force that a reasonable officer should have known were likely to result in injury, and uses of force where there is evidence of possible criminal misconduct by an officer.
 7. Internal Affairs shall respond to the scene and investigate all incidents where there is evidence of possible criminal misconduct by an officer, where a prisoner dies, suffers serious bodily injury, or requires hospital admission, or where there is a serious use of force. Force Investigation may delegate all other use of force or prisoner injury investigations to the responding supervisor for a command investigation, if deemed appropriate by Force Investigation.

Use of Force Report

In all instances when officers use force, as defined in Section 3.8 of this Directive, each officer who has employed such force shall complete:

1. Any reports made necessary by the nature of the underlying incident;
2. Each member using force shall ensure that a declarative statement is included at the beginning of the narrative section of the arrest report indicating whether or not force was used during the incident;
3. Each individual officer who uses force in an incident shall submit a separate Use of Force Report (UF-002) documenting any force, any prisoner injury, and any instance in which an officer draws a firearm and acquires a target;
4. Allegation of force shall only be taken by a supervisor. (reference 201.11 Use of Force and Detainee Injury Reporting/Investigation);
5. All Use of Force Reports shall specify the actions of the subject that necessitated the use of force, the reasons why the officer used force, any subject complaints of injury, medical treatment received, or refusal of medical treatment;

6. The Use of Force Report shall be submitted as soon as possible following the incident but prior to the end of the member's tour of duty; and
7. All reports/forms completed as a result of an incident shall be reviewed and updated by a supervisor prior to the end of his/her tour of duty.

Updates to the Department Manual are forthcoming.

JAMES E. WHITE
Chief of Police