



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT:
USE OF FORCE

GENERAL ORDER NO.
17-X

SUPERSEDES:
G.O. 63-2 (Revised March 4, 2013)

DATED:
May 31, 2017

SECTION CODE:
K-1

This Order consists of the following numbered sections:

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I. PURPOSE

The purpose of this order is to establish Newark Police Division policy and procedures that are designed to guide Police Division members in the use of force, and to further ensure that Police Division members treat all persons with dignity and respect as they execute the duties they have been entrusted to perform. The provisions of this order shall apply to regular Police Division members and officers assigned to special details within the Newark Police Division.

II. POLICY

The Police Division places the highest value on the sanctity of all human life. It is the policy of the Police Division to de-escalate situations without using force when possible. Police Division members shall de-escalate the use of force at the earliest opportunity, and make efforts to exhaust all other reasonable means available before resorting to the use of force, as long as the member's safety or that of other persons is not compromised.

The Police Division limits the use of force by its members to those situations where it is objectively reasonable to effect an arrest or protect the safety of the Police Division member or another person. The use of force shall never be considered routine. Any force used shall not create substantial risk of injury to innocent persons. Therefore, it is imperative that members make every effort to ensure that every use of force is not only legally warranted, but also rational and humane.

Police Division policy and training require that members not only follow the legal standard of using force, which was established in *Graham v. Connor*, 490 U.S. 386 (1989), but also strive to utilize the minimum amount of force necessary in order to bring about their lawful objectives.

This policy is not intended to limit the lawful authority of Police Division members to use objectively reasonable force or otherwise fulfill their law enforcement obligations. However, members must remain mindful that they derive their authority from the U.S. Constitution, Federal Laws, the Laws of the State of New Jersey and the community. The use of unreasonable and or illegal force undermines the legitimacy of that authority and shall not be tolerated.



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Police Division members are duty bound to prevent and or intervene when the use of force by other members or members from another law enforcement agency appears to be unreasonable and or illegal in type or amount. This policy sends a clear message that Police Division members share an obligation beyond the requirements of the law to intervene and prevent the application of unreasonable or unlawful use of force.

III. DEFINITIONS

A. Active Resistance

1. Active resistance occurs when a subject is uncooperative and takes some level of physical action to resist and prevent a Police Division member from taking control of the subject and or placing the subject in custody.
2. Examples include levels of resistance from non-assaultive actions such as pulling or running away all the way up to a lethal attack on the member.

B. Bodily Harm

1. Bodily harm means physical pain, temporary disfigurement, or impairment of physical condition.
2. An example is a subject who fell to the ground or was taken to the ground while resisting arrest and as a result he or she sustains minor scrapes and/or bruises to his knees and/or arms.

C. Constructive Authority

1. Constructive authority, as defined in the State of New Jersey Attorney General Guidelines, means using the Police Division members' authority to exert control over a subject that does not involve actual physical contact.
2. Examples include verbal commands, gestures, warnings, and unholstering, exhibiting, or pointing a firearm. Pointing a firearm at subject is an element of constructive authority to be used only in appropriate situations.

D. De-Escalation

1. De-escalation means steps taken 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



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situation without the use of force or with a reduction in the force necessary.

2. An example would be using verbal persuasion to calm down a person in crisis who is threatening to do harm to the member, but who has not actually taken any affirmative steps to harm the member.

E. Deadly Force (Synonymous w/Lethal Force)

Deadly force is any use of force which a Police Division member uses that is likely to cause death or serious bodily harm, including but not limited to using a firearm, neck hold, or strike to the head, neck, or throat with a hard object.

F. Feasible

Feasible means capable of being done or carried out, reasonable. It also means possible to do or accomplish.

G. Imminent Danger

1. Imminent danger describes threatened actions or outcomes that may occur during an encounter without action by the Police Division member.
2. The period of time involved is dependent of the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not need be instantaneous.
3. For example, imminent danger may be present if a subject is not at that instant pointing a weapon at the Police Division member, but is carrying a weapon and running towards the member.

H. Less-Lethal Force

Less-lethal force is force employed that is less likely and not intended to cause death or serious bodily harm.

I. Mechanical Force

1. Mechanical force involves the use of some device or substance, other than a firearm, to overcome a subject's active resistance.



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2. Examples include the use of a baton or other object, or chemical or natural agent spray.

J. Neck Hold

A neck hold is considered **deadly force** and includes:

- a. A bar-arm control hold, which inhibits breathing by compression of the airway in the neck (choke hold);
- b. A carotid restraint hold, which inhibits blood flow by compression of the blood vessels in the neck;
- c. A lateral vascular neck constraint; or
- d. A hold with a knee or other object to the back of a prone subject's neck.

K. Passive Resistance

1. Passive Resistance occurs when a subject is uncooperative and is not complying with a Police Division member's lawful commands, but is not using physical force or minimal physical force to prevent a member from placing the subject in custody and taking control.
2. Examples include but are not limited to verbal non-compliance – such as stating, "No", refusing to move, going limp, locking arms, or holding onto a fixed object.

L. Physical Contact

1. Physical contact means routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective.
2. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting him or her, handcuffing a subject, and maneuvering or securing a subject for a frisk.



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M. Physical Force

1. Physical force means contact with a subject beyond physical contact that is used to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's active resistance to the Police Division member's authority or to protect persons or property.
2. Examples include wrestling a subject to the ground, using wrist locks or arm locks, striking with hands or feet, or other similar methods of hand-to-hand confrontation.

N. Serious Bodily Harm

Serious bodily harm means bodily harm, which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.

O. Substantial Risk

1. Any discharge of firearm entails some risk of an unintended outcome. A substantial risk exists when an officer disregards a foreseeable likelihood that innocent persons will be endangered.
2. For example, firing a weapon into a confined space (room, vehicle, etc.) occupied by innocent persons exposes those persons to a substantial risk of harm.

IV. USE OF FORCE STANDARDS

A. General Requirements

1. Policing at times requires that a member exercises control of a violent or resisting subject to make an arrest or to protect the member, other members, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated. However, members do have the ability to impact the direction and the outcome of many situations that they handle, based on their decision making and the tactics they choose to employ. The member shall consider and use de-escalation techniques where appropriate.



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2. Members should continually assess every situation in order to increase a member's ability to bring the situation to a safe, peaceful conclusion. This conclusion may be accomplished by using time, distance, information, isolation, teamwork, force option, coordination, and other techniques to maximize a member's advantage.

B. Objectively Reasonable Force

1. The test and analysis that courts will use to examine whether a use of force is constitutional was set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and the test has been expanded by subsequent court cases.
2. The United States Supreme Court decided in *Tennessee v. Garner*, 471 U.S. 1 (1985) that apprehension by the use of deadly force by police officers is a seizure under the Fourth Amendment of the United States Constitution.
3. The Court concluded in *Graham* that use of force by police officers during an arrest, investigatory stop, or other seizure of a person shall be analyzed under an objective reasonableness standard.
4. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than from 20/20 hindsight. The standard of reasonableness must take into account the fact that officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving.
5. The standard of reasonableness in reviewing use of force is an objective one: were the officer's actions objectively reasonable given the facts and circumstances confronting him or her? The facts available to the officer at the time along with other objective factors that may impact the reasonableness of an officer's actions must be considered. The courts analyze the reasonableness of an officer's use of force actions by utilizing the "test of reasonableness," which consists of the following "*Graham Factors*":
 - a. "the severity of the crime at issue";
 - b. "whether the suspect poses an imminent threat to the safety of the officers or others"; and



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- c. “whether he/she is actively resisting arrest or attempting to evade arrest by flight.”

C. Duty to Intervene

1. Police Division members present at the scene of a use of force incident shall ensure that the force used complies with the law, Division policies, rules and regulations.
2. Any member who witnesses force being used unreasonably or unlawfully shall, when reasonable to do so:
 - a. verbally and or physically intervene as necessary to prevent or stop the use of unreasonable or unlawful force;
 - b. safeguard the person upon whom the force was used;
 - c. if qualified to do so render aid, and notify E.M.S. to respond;
 - d. notify a non-involved supervisor to respond to the scene; and
 - e. report and document the incident on Police Division authorized forms (BlueTeam, etc.)

V. USE OF FORCE

A. General Requirements

Force may be used by a Police Division member in the following situations:

1. When the member reasonably believes that force is immediately necessary to make a lawful arrest and:
 - a. The member has advised the person of the reason for their arrest or reasonably believes that it is already known to the subject; or
 - b. The reason for the arrest cannot reasonably be made known to the person.
2. Against a person who is actively resisting arrest.



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3. To prevent an escape under New Jersey statute:
 - a. If it could be employed to effect an arrest for which the person is in custody.
 - b. The degree of force used shall be determined by the gravity of the offense committed.
 - c. The force employed shall not be excessive in either type or amount.
 - d. If immediately necessary to prevent escape of a person committed to a jail, prison or other detention facility, who has been charged with or convicted of a crime.
4. To prevent the commission of a crime involving the threatening of bodily harm, property damage, or suicide.

B. Restrictions

The Division strictly prohibits using force that is not objectively reasonable and proportional to the threat or resistance of the subject under the circumstances. For example:

1. Members shall not use force to affect compliance with a command that is knowingly unlawful. The use of force is unreasonable when the initial arrest or detention was knowingly unlawful to the member based on information known to the member at the time of the arrest or detention.
2. The Division strictly prohibits the use of force against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to a member or another person/s, or as objectively reasonable, where physical removal is necessary to overcome passive resistance.
3. The use of force beyond un-resisted handcuffing to overcome passive resistance, except that physical removal is permitted as necessary and objectively reasonable, is strictly prohibited.
4. The use of any type of retaliatory force by members including but not limited to:
 - a. force used after a threat has diminished or is otherwise not reasonably necessary;



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- b. force used to punish individuals for fleeing or otherwise resisting arrest; and
- c. force used in response to disrespectful language or actions is strictly prohibited.

VI. USE OF DEADLY FORCE

A. General Requirements

1. Police Division members are empowered to carry and use firearms in the exercise of their service to the citizens of the City of Newark. This power is based on trust, and therefore, must be balanced by a system of accountability.
2. Additionally, under current New Jersey statutes, the discharge of any projectile from a firearm, including less-lethal means such as bean bag ammunition or rubber bullets, is considered deadly force. Further, this policy recognizes that the use of an impact weapon may constitute deadly force.
3. For that reason, firearms, and similar less-lethal means of deadly force shall be used only under limited circumstances.
4. Deadly force may be used when the Police Division member reasonably believes that such action is immediately necessary to protect the member or another person from imminent danger of death or serious bodily harm.
5. Deadly force may be used to prevent the escape of a fleeing suspect:
 - a. Whom the member has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm;
 - b. Who will pose an imminent danger of death or serious bodily harm should escape succeed; and
 - c. When the use of deadly force presents no substantial risk of injury to bystanders.
6. When feasible, a Police Division member must identify himself/herself as an officer and state his/her intention to shoot before using the firearm.



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7. Police Division members may use their firearms to protect themselves or the public from vicious animals.
8. Police Division members may also use their firearm to destroy a sick or injured animal after obtaining authorization from a supervisor.
9. Police Division members shall be familiar with, and strictly adhere to: State of New Jersey Attorney General Guidelines, Division Memoranda and Orders, and the tenets of Chapter 8, of the Newark Police Division's Rules and Regulations, entitled: **FIREARMS**, including but not limited to using, carrying, handling, caring, storing, requalifying on all Division approved firearms, ammunition, and using special weapons.

B. Restrictions

1. Police Division members shall not use deadly force to subdue persons whose actions are only destructive to property.
2. Police Division members shall not use deadly force against persons whose conduct is injurious only to themselves.
3. Police Division members shall not discharge a firearm as a signal for help or as a warning shot.
4. Neck holds are prohibited, except under circumstance where deadly force would be authorized.

C. Unholstering, Exhibiting, or Pointing a Firearm

1. Police Division members shall not unholster, exhibit, or point a firearm except under the following circumstances:
 - a. Routine maintenance of a firearm,
 - b. To secure the firearm,
 - c. During firearms training exercises, qualifications, or re-qualifications, or



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- d. When the circumstances create an objectively reasonable belief that the unholstering and exhibiting of a firearm or pointing of a firearm will help establish control over a subject during an encounter that may escalate to create a risk of death or serious bodily harm to the member or another person.
2. These tactics are intended to give members a tactical advantage and opportunity to protect themselves or others from death or serious bodily harm prior to the threat becoming immediate, which may be too late.
3. The use of these tactics shall be reported and tracked (BlueTeam).

D. Motor Vehicle and Use of Deadly Force

1. While any discharge of a firearm entails some risk, discharging a firearm at or from a moving vehicle entails even greater risk of death or serious bodily injury to innocent persons. The safety of innocent people is jeopardized when a fleeing suspect is disabled and loses control of his or her vehicle. There is also a substantial risk of harm to occupants of the suspect vehicle who may not be involved, or involved to a lesser extent, in the actions which necessitated the use of deadly force.
2. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, Police Division members shall not fire from a moving vehicle or at the driver or occupant of a moving vehicle unless the member reasonably believes:
 - a. there exists an imminent danger of death or serious bodily harm to the member or another person; and
 - b. no other means are available at that time to avert or eliminate the danger.
3. Police Division members shall not fire a weapon solely to disable a moving vehicle.
4. When confronting an oncoming vehicle, Police Division members shall make every effort to move out of its path, rather than discharge their firearms at the oncoming vehicle.



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5. Police Division members shall not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearms.

Police Division members shall not discharge their firearms at a fleeing vehicle (a vehicle moving in the direction away from the members) or its driver.

VII. USE OF FORCE LEVELS OF CONTROL

A. Levels of Control Categories

1. Police Division members shall consider a subject's level of resistance when using force. When feasible, members should use the minimum force necessary to perform their duty and not expose themselves to unreasonable risk of injury. The level of control used shall be proportional to the threat or resistance the member encounters, whether passive or active.
2. Police Division members are not limited to using equal force, but may use a higher level of force than the subject's resistance as long as it is necessary and objectively reasonable to accomplish a lawful purpose. Similarly, force shall be appropriately de-escalated as resistance decreases. When feasible, members shall allow individuals the opportunity to submit to arrest before using force.
3. The Police Division classifies use of force into three categories based on the seriousness of any injuries that are likely to or actually result from the force employed. These categories determine the Police Division's supervisory and investigative response to a use of force incident. The three categories are:
 - a. **"Low Level Force" or "Low Level Use of Force"** – any use of force that is not likely to and does not result in bodily harm or complaint of bodily harm.
 - b. **"Intermediate Force" or "Intermediate Use of Force"** – any use of force that is likely to or actually does result in bodily harm or complaint of bodily harm.
 - c. **"Serious Force" or "Serious Use of Force"** – any use of force that results or is likely to result in loss of consciousness, any canine bite, any strike, blow, or kick against a handcuffed or



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restrained subject, or any head, neck, or throat strike with a hard object, or neck hold resulting in serious bodily harm or death that is not investigated by the Essex County Prosecutor's Office pursuant to New Jersey Attorney General Directive 2005-06.

These three categories broadly encompass the more specific use of force control tactics defined in the State of New Jersey Attorney General Guidelines, which include: the member's presence, physical contact, constructive authority, physical force, mechanical force, enhanced mechanical force, and deadly force (**Cross Ref. G.O. #17-?? Firearms and Other Weapons**). Members should take into account the three categories and the State of New Jersey Attorney General Guidelines when determining whether to use force. In all instances, members should exhaust all other reasonable means before resorting to using force tactics, recognizing that members will use only force which is objectively reasonable and necessary.

VIII. DE-ESCALATION TECHNIQUES

A. Tactics and Techniques

1. De-escalation tactics and techniques are actions used by members, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.
2. Division members shall look for opportunities to de-escalate situations. When reasonable and based on the totality of the circumstances and where it may be accomplished without increasing the risk of harm to the member or others, members shall:
 - a. gather information about the incident;
 - b. assess the risks to the subject(s), officer(s) and general public;
 - c. assemble resources;
 - d. communicate and coordinate a response; and
 - e. attempt to slow the momentum of the incident.



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3. When feasible, members will rely on area containment; employ surveillance; wait out the subjects; summon reinforcements; or call in specialized tactical units, in order to reduce the need for force and increase the member and civilian safety.

B. Special Considerations

1. When time and circumstances reasonably permit, members shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 - a. Medical Condition;
 - b. Mental Impairment;
 - c. Developmental Disability;
 - d. Physical Limitation;
 - e. Language Barrier;
 - f. Under the Influence of Drugs/Alcohol;
 - g. Behavioral Crisis; or
 - h. Hearing, Speech, or Vision Impairment.
2. Members are expected to recognize that their approach to a civilian interaction may influence whether a situation escalates to the need for using force.
3. Supervisors will become involved as soon as practical in managing an overall response to potentially violent encounters by coordinating resources and members' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that members under their supervision perform to Division standards.
4. Members are reminded that a degree of force, which may have been justified earlier in an encounter does not remain justified indefinitely. Force shall be decreased as subject's resistance or threat decreases.
5. The number of Police Division members on scene may increase the available force options and may increase the ability to reduce the overall force used.



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IX. EMOTIONALLY DISTURBED PERSON(S) (E.D.P.s)

Police Division members responding to or encountering a subject suffering from mental illness (E.D.P.- Emotionally Disturbed Person) and in need of assistance shall be guided by Newark Police Division G.O. #08-05.

X. DUTY TO PROVIDE MEDICAL AID

Police Division members are duty bound to ensure that injured persons or those alleging injury, including complains of pain, as a result of the use of force receive immediate medical aid.

Whenever a Division member observes or is made aware of the presence of an injury, including, complaints of pain, the member shall ensure that Emergency Medical Services (E.M.S.) is requested to respond. If trained to do so, and when necessary, the member shall also render immediate aid. If a Division member uses any weapon against a person such as, but not limited to, less-lethal ammunition, OC spray, or a conductive energy device and contact is made with the subject with any of these weapons, E.M.S. shall be notified to respond.

If a person subjected to use of force exhibits signs of injury or complains of pain and refuses medical aid, the Division member shall still notify E.M.S. and have the refusal documented by E.M.S. The member shall also document the refusal on the corresponding Police Division form (Use of Force Report (BlueTeam/Incident Report/Arrest Report)).

XI. USE OF FORCE REPORTING

Police Division members shall report every time they use constructive authority whenever a firearm is unholstered or exhibited in the presence of a member of the public or pointed at a subject. Members shall also report every time they use physical force, mechanical force, enhanced mechanical force, or deadly force.

Members who witness the use of physical, mechanical, enhanced mechanical, or deadly force shall also file a use of force report (BlueTeam).

Members are also required to immediately notify an on-duty supervisor who did not use, direct, or was otherwise involved in the use of force incident. The supervisor must then respond to the scene. If the immediate supervisor is not available any other on-duty supervisor must respond.



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All reporting of use of force shall be documented on Police Division authorized forms (BlueTeam, etc.).

The specific requirements associated with reporting, investigating, and reviewing of use of force incidents can be found in Use of Force Reporting, Investigation, and Review General Order.

XII. TRAINING

Police Division members are required to receive and maintain Police Division in-service training and weapons certification requirements, and the proper use of firearms, as per the State of New Jersey Attorney General Guidelines; as well as all relevant Division Policies and Rules & Regulations.

In addition, Police Division members are required to attend in-service emergency first aid training to enable them to provide emergency first aid until professional medical care providers are on the scene.

Members must complete and pass a Division-approved certification course of instruction for all mechanical, enhanced mechanical, or deadly force options.

Members are required to receive annual or biannual recertification training, or as directed, in order to maintain their certification to utilize any Division-authorized use of force option.

Any member who does not complete required certifications, and/or re-certifications will be prohibited from carrying/using any Division-authorized use of force option for which they did not certify/re-certify. Similarly, if a member fails any certification/re-certification course the member shall be prohibited from utilizing the affected force option.

For training and certification requirements and for all training in use of force options, please refer to the Newark Police Training Division and State of New Jersey Attorney General Guidelines.



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XIII. EFFECTS OF THIS ORDER

All previous Memorandums and Orders that are in conflict with this Order are repealed.

BY ORDER OF:

**ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR**

AFA/JR/ma

Related General Orders

G.O. #67-04 Secondary Firearms
G.O. #84-01 Firearms Range
G.O. #05-03 Police Officers Carrying Firearms
G.O. #08-05 Emotionally Disturbed Persons
G.O. #94-03 Vehicle Pursuit Policy
G.O. #16-02 Officer Involved Critical Incident Management
G.O. #17-?? Use of Force Reporting, Investigation and Review
G.O. #17-?? Firearms and Other Weapons

Related Rules and Regulations

Chapters 8, 12, 15, and 18

Department of Public Safety Police Division Memoranda

DPS #16-737 Critical Incident Response Team
DPS #16-856 Ammunition Change

Attorney General Guidelines & Directives