

**CARY POLICE DEPARTMENT**  
*Cary, North Carolina*

## **GENERAL ORDERS**

### **CHAPTER 8 CRITICAL INCIDENTS**

#### **8.03 Response to Resistance or Aggression**

*In accordance with North Carolina General Statute 15A-401 (d), a Cary Police officer is justified in using force upon another person when and to the extent that he/she reasonably believes it necessary:*

- To prevent the escape from custody or to effect the arrest of a person who the officer reasonably believes has committed a criminal offense, unless the officer knows that the arrest is unauthorized; or*
- To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.*

*A Cary Police officer is justified in using DEADLY physical force upon another person only when it is or appears to be reasonably necessary:*

- To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of DEADLY force; or*
- To effect an arrest or to prevent the escape from custody of a person who the officer reasonably believes is attempting to escape by means of a deadly weapon, or who by his/her conduct or any other means indicates that he/she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.*

*The use of force is permissible only in response to actual or potential resistance or aggression and only to the extent reasonably necessary for an officer to accomplish his/her lawful purpose. EXCESSIVE FORCE IS PROHIBITED.*

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## ***Definitions***

*Force* - To compel by physical means; Physical contact or action beyond mere restraint (The use of handcuffs does not constitute the use of force.)

*Lethal Force* - That force which is intended to cause death or serious physical injury or which the officer reasonably believes will create a substantial risk of death or serious physical injury

*Lethal Weapons* - Weapons that, through normal and intended use, are likely to cause death or serious physical injury; This category includes all issued firearms

*Less-Lethal Weapons* - Weapons that, through normal and intended use, will not cause death or serious physical injury; This category includes batons and OC Spray

*Reasonable Belief* - That belief that would cause a reasonably trained law enforcement officer to act or think in a similar way under similar circumstances

*Serious Physical Injury* - An injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the function of any bodily member or organ

*OC Spray* - Aerosol spray based on the active natural ingredient oleoresin capsicum, a derivative of various species of cayenne pepper

*Conducted Electrical Weapon (CEW)* - Electro-muscular disruption device that uses electrical energy to incapacitate a subject

## ***Responding to Resistance or Aggression with Lethal Force***

- An officer may respond to resistance or aggression using lethal force to protect himself/herself or others from what the officer reasonably believes to be an imminent threat of death or serious physical injury.
- An officer may respond to resistance or aggression using lethal force to effect the capture or prevent the escape of any suspect that the officer reasonably believes to pose a significant and imminent threat of death or serious physical injury to the officer or others.
- The age and/or gender of the aggressor will not be considered a limiting factor for the officer who is threatened with death or serious physical injury.
- During the course of an arrest or investigation, an officer may draw and point his/her weapon whenever the officer reasonably believes that such action is necessary to protect against an imminent threat of death or serious physical injury to himself/herself or others.
- The use of lethal force against a fleeing felon who does not pose a significant and imminent threat of death or serious physical injury to the officer or others is prohibited.
- Justification for responding to resistance or aggression using lethal force must be limited to the facts known to the officer or perceived by the officer at the time of the decision.

Facts unknown to the officer must not be considered in later determining justification of the use of lethal force.

### ***Response to Resistance or Aggression Continuum***

The Response to Resistance or Aggression Continuum is a teaching device that relates approved force to a corresponding level of resistance to arrest or aggression.

In response to resistance or aggression, an officer is justified in using the degree of force that the officer reasonably believes to be necessary for self-defense or to defend others from circumstances that are reasonably believed to be life threatening or potentially the cause of serious physical injury. All force must be reasonably necessary. The primary goal in a law enforcement/subject confrontation is control of the subject. In each situation, the officer must make a conscious decision, based upon training and experience, to escalate or de-escalate the level of control.

An officer's decision regarding the level of his/her response to resistance or aggression must be based on the capacity for control vs. the potential for death or serious physical injury. Force must not start before resistance starts and must stop when resistance stops. Force cannot be used to effect an unlawful arrest, because an individual's resistance to unlawful arrest is lawful as long as it is not excessive.

The following graduated levels of force represent steps in the decision-making process that guide an officer's response to resistance or aggression:

#### ***Step One Professional Presence-Verbal Command***

The officer assumes control of the situation through announced and/or uniformed appearance and professional bearing. If presence alone fails, the officer begins verbal persuasion, dialog, and command warning if necessary.

#### ***Step Two Soft Hands***

The officer places hand(s) on the suspect and advises the suspect that he/she is under arrest. Any resistance beyond this point is unlawful and must be countered by the officer.

#### ***Step Three Pain Compliance***

Officers may use pressure point control or OC Spray. If practical, the subject should be warned that OC Spray will be used. Once the suspect is under control, the pain application must be released.

#### *Step Four Mechanical Compliance*

Usual methods of mechanical compliance include wrist-locks and arm bar or other "come along" techniques. These techniques counter joint pressure using leverage that may be applied using handcuffs, the PR-24 baton, or expandable baton. Orthopedic injury may occur at this step.

#### *Step Five Impact*

Impact weapons are used only when mechanical control methods are ineffective or inappropriate. Authorized impact weapons include the expandable baton and the PR-24 baton, which an officer may carry only after being trained. The expandable baton is the only impact weapon issued by the Department. The PR-24 baton will only be carried under circumstances authorized by the Chief of Police, and only by officers certified to use the PR-24. Blows should be initially directed toward non-lethal areas of the body. Use of Conducted Electrical Weapons (commercial name of Taser) is authorized by properly trained officers. ACO's are authorized to use the CEW in limited situations. The intentional use of punches, kicks, strikes, or like maneuvers falls at this step of the continuum. Force used by the officer should be appropriate to the force used against the officer.

#### *Step Six Exact Impact*

Exact impact weapons are employed only after lethal cover is in place. These weapons are designed to provide a level of force stronger than an impact weapon, but less than lethal force. Officers must be trained to employ a specific exact impact weapon before being authorized to use that specific weapon.

#### *Step Seven Lethal Force*

An officer will respond to resistance or aggression by applying lethal force using a firearm only to protect himself/herself or others from death or serious injury, or to apprehend a fleeing felon when all other means of apprehension have been exhausted and the suspect presents an imminent risk to the community. When practical, a verbal warning will be given. A warning shot may also be used at this step as appropriate. Officers' reactions will be dictated by the hostile actions of the suspect and the need for immediate control.

### ***Limitations on the Response to Resistance or Aggression***

#### **Lethal Force**

The use of a firearm for the application of lethal force in response to resistance or aggression is authorized only as justified by state law and departmental directives. Officers will exhaust all other practical and effective means of control before using a firearm. Officers are authorized to discharge a firearm at another person in the performance of duty only when lethal force is justified.

Officers will fire their weapons only to stop and prevent an assailant from completing a potentially deadly act. For maximum stopping effectiveness and minimal danger to innocent bystanders, that objective is best accomplished by shooting at the center of the target presented.

Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured, except as an ultimate measure of self-defense or in the defense of another person when the suspect or violator is using lethal force.

Officers are prohibited from discharging firearms at or from a moving vehicle except as an ultimate measure of self-defense or in the defense of another person when the suspect or violator is using lethal force.

### Canine

The deployment of a properly trained police service dog may, under certain circumstances, be considered a use of force. Canine deployments will be scrutinized in the context of individual circumstances as with any response to resistance or aggression. (See 4.12 [Canine Team](#))

### Display of a Firearm

Except for general maintenance, storage, or authorized training, officers should not draw, point, or exhibit their firearms unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with state law and departmental directives. The pointing of a firearm toward another person constitutes a response to resistance or aggression.

After such an incident occurs, the officer will verbally notify his/her supervisor as soon as possible, complete an *Incident Report*, if appropriate, or written memorandum detailing the circumstances of the incident, and forward through his/her supervisor to the Team Commander. The Team Commander will conduct a preliminary investigation of the incident and will submit an overview memorandum to the appropriate District Captain along with the *Incident Report* or officer's memorandum. The District Captain will review all reports and may refer the incident to the Internal Affairs Investigator for further follow-up. The District Captain will advise the Chief of Police of the incident and any recommendations.

### Killing of Animals

The killing of an animal by firearm is justified:

- For self-defense

- To prevent substantial harm to the officer or another person
- When the animal is so badly injured or sick that compassion requires its relief from further suffering *and* there is need for immediate action; In such instances the Team Commander should be notified prior to the firearm use, if possible. A seriously sick or injured animal may be destroyed only after reasonable efforts have been made to request assistance from the owner or agency responsible for the disposal of animals.

The destruction of a vicious animal by firearm will be reported as a response to resistance or aggression and guided by the same directives set forth for self-defense and to ensure the safety of others.

The destruction of a sick or injured animal by firearm will be reported by a supervisor to the following staff:

- Chief
- Professional Standards Commander
- Operations Bureau Commander
- Services Bureau Commander
- Firearms Coordinator
- Firearms Instructor responsible for the annual summary report
- Specific unit commander of the officer who euthanized the animal

Notification will happen as soon as possible. A supervisor will be consulted prior to euthanasia if time permits. An annual summary report of all occurrences will be completed by the Firearms Coordinator and forwarded to the Chief of Police. The following information will be reported about the incident:

- Location
- Animal injury source
- Officer/supervisor involved
- Safe location to discharge a weapon
- Weapon used
- Number of rounds fired
- Disposal of the animal
- Unusual incident that might draw attention to the Town or the Department.

### Warning Shots

Officers may discharge a warning shot only when all of the following criteria are met:

- It can be fired safely, and
- It does not put the officer in jeopardy, and
- It is appropriate and reasonable for self-defense of the officer or the defense of others, and
- The use of lethal force in response to resistance or aggression would be authorized

### Strangle and Choke Holds

Strangle and choke holds and other similar holds that choke or restrict a person's ability to breathe or flow of blood to the brain are prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person.

### Head Blows with Impact Tools

An officer's use of any inanimate object to strike a blow to a person's head is prohibited, except when the officer reasonably believes there is an imminent threat of serious physical injury or death to himself/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person.

### Off-Duty Actions

Off-duty officers should refrain from taking forcible police action except in circumstances that seriously threaten life, valuable property, or public order.

In other circumstances, the most appropriate police action is to request the assistance of an on-duty officer at the first opportunity.

Before taking any action while off duty, officers should carefully consider the risks to themselves and to others that may be caused by sudden confrontation with armed criminals or suspects. If possible, the off-duty officer should identify himself/herself as a law enforcement officer before taking action.

No unarmed off-duty officer will be subjected to disciplinary action for failure to take action if that action would reasonably require being armed.

### ***Issuance of Weapons/Training on Response to Resistance or Aggression***

The use of unapproved, non-issued weapons or ammunition, either lethal or less-lethal, is prohibited. All weapons, lethal and less-lethal, and ammunition must be either issued by the Department or approved by the Chief of Police or designee.

No weapon will be issued for field use until the weapon has been inspected and the employee has demonstrated an acceptable level of proficiency in its use as established by the Chief of Police. Before being authorized to carry a firearm or other approved weapon, employees will be issued copies of and instructed in departmental directives governing use of force and weapons. In-

service training for all sworn employees on the use of lethal and less-lethal force will occur annually.

### ***Use of Unconventional Weapons***

Officers may be required to defend themselves against an attack with whatever means are available, which may include items not normally considered to be weapons. These incidents will not be considered as evidence that establishes an inappropriate response to resistance or aggression. Each incident resulting in an injury or death will be investigated to determine the factual circumstances surrounding the event.

### ***Post-Incident Response Procedures***

#### **All Response to Resistance or Aggression Incidents**

Whenever an officer:

- Takes any action that results or is alleged to have resulted in the injury or death of another person, *and/or*
- Responds to resistance or aggression with or without the use of lethal or less-lethal weapons, including the accidental or intentional discharge of a weapon (excludes training, ballistics examinations, incidents involving the destroying of animals, and lawful recreational shooting or hunting in any jurisdiction, unless such lawful recreational shooting results in death or injury to any person or damage to any property)

The officer will immediately:

1. Determine the physical condition of any injured person and render first aid when appropriate
2. Request necessary emergency aid
3. Notify the Communications Center of the incident and location
4. Notify the District Supervisor and Team Commander
5. Protect his/her weapon for examination and submit the weapon to a supervisor upon request

If a firearm was used as lethal force in response to resistance or aggression, a supervisor will take the weapon from the officer and submit to the Evidence Custodian for entry as evidence. If possible, the officer's supervisor should take the weapon from the officer after returning to the Department. The weapon will be handled in the same manner as any other firearm seized as evidence. The Team Commander will ensure that the officer is issued and re-qualified with a replacement weapon as soon as possible.



6. Remain at the scene, unless injured, until instructed otherwise by the responding supervisor

The ranking commander at the scene may instruct the officer to respond to another more appropriate location. For incidents involving the use of lethal force in response to resistance or aggression, the officer's supervisor should remove the officer from the scene and return to the Department as soon as possible.

7. Prepare and submit a detailed *Incident Report and Response to Resistance or Aggression Report* through the District Supervisor to the Team Commander

#### Incidents Involving Lethal Force

See General Order 8.07 Officer Involved Shootings and In Custody Deaths.

#### Weapon Discharge in Another Jurisdiction

In the event that an officer's weapon is discharged in another jurisdiction, the officer will immediately notify the appropriate law enforcement agency in that jurisdiction and contact an on-duty Cary Police Department supervisor as soon as practical.

#### Weapon Discharge Off-Duty

In the event that an officer's weapon is discharged outside the line of duty, the officer will immediately advise the Communications Center of the incident and request that the appropriate supervisor be notified. The officer should secure the area of the shooting, if appropriate, and await the arrival of the supervisor. The supervisor will determine if an investigation is required and, if so, will conduct an investigation as if the weapon was discharged within the officer's official capacity. If the supervisor determines that an investigation is not required, the officer will forward a memorandum detailing the facts of the incident to his/her Team Commander as soon as practical.

#### Weapon Discharge by Non-Employee

In the event that an officer's weapon is discharged by an individual who is not employed by the Department, the officer will follow the same procedure as if he/she had fired the weapon.

## ***Documentation and Reporting***

### **Preliminary Investigation**

A neutral and detached supervisor, one not present or involved in the incident, will conduct a preliminary investigation of the incident and will submit an overview memorandum through the chain of command along with the *Incident Report* and *Response to Resistance or Aggression Report*.

### **Management Review**

The District Captain will review all reports and may refer the incident to the Internal Affairs Investigator for further follow-up. The District Captain will forward all reports and recommendations to the Chief of Police.

The Internal Affairs Investigator will follow up in accordance with departmental directives pertaining to internal affairs. (See 3.06 [Internal Affairs](#))

The Chief of Police will review all *Response to Resistance or Aggression Reports* and will determine what further action is required.

### **Dissemination and Analysis**

*Response to Resistance or Aggression Reports* may be disseminated to appropriate Town personnel in accordance with state law and Town ordinances.

A person designated by the Chief of Police will conduct and document an annual analysis of *Response to Resistance or Aggression Reports* to reveal any patterns or trends that could indicate training needs, equipment upgrades, and/or policy modifications.

### ***Investigation of Lethal Force***

The Chief of Police may request that the State Bureau of Investigation (SBI) assume responsibility for any criminal investigation arising from an incident involving the use of lethal force in response to resistance or aggression.

An administrative investigation will be conducted for each incident involving the use of lethal force in response to resistance or aggression. This investigation will be the responsibility of the Chief of Police or designee and will be subordinate to any criminal investigation.

### Lethal Force Data

The Chief of Police will submit data to the Uniform Crime Records Section of the Federal Bureau of Investigation (FBI) for every incident that culminates in the death of a citizen as a result of the response to resistance or aggression by a police officer employed by the Department.

The Department will compile data on every non-training shot fired by departmental employees.

### Relief from Duty

Any employee whose action(s) or use of force in an official capacity results in death or serious injury to any person shall be placed on administrative leave directly upon his preliminary report of the incident. This leave shall not be interpreted to imply or indicate that the employee has acted improperly. While on administrative leave, the employee shall remain available for official department business, including interviews and statements regarding the incident, and may be recalled to duty at any time. Upon returning to duty, the employee may be assigned to administrative duties for a period of time deemed appropriate by the Chief of Police

If on non-disciplinary suspension without an administrative duty assignment, the employee will remain available for departmental interviews and will be subject to recall to duty at any time. Upon returning to duty, the employee may be assigned to an administrative duty assignment for a period of time determined appropriate by the Chief of Police.

### ***Critical Incident Debriefing***

All employees directly involved in any incident involving the use of lethal force *that results in serious physical injury or death* will be required to undergo a debriefing with a psychologist provided by the Department as soon as possible within 48 hours. (See 2.09 [Compensation, Benefits, and Conditions of Work](#))

### ***References***

- North Carolina General Statute 15A-401 (d)
- CALEA [1.3.1](#), [1.3.2](#), [1.3.3](#), [1.3.4](#), [1.3.5](#), [1.3.6](#), [1.3.7](#), [1.3.8](#), [1.3.9](#), [1.3.10](#), [1.3.11](#), [1.3.12](#), [1.3.13](#)