

RESPONSE TO RESISTANCE – USE OF FORCE

DISCLAIMER:

This policy is for Omaha Police Department (OPD) use only and does not apply in any criminal or civil proceeding. This policy should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for Departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

PREAMBLE:

The Department's highest priority is the sanctity of human life. In all aspects of their conduct, Omaha Police officers will act with the foremost regard for the preservation of human life and the safety of all persons involved. A strong partnership with the public is essential for effective law enforcement. Inappropriate or excessive use of force damages public partnerships and diminishes the public trust that is a cornerstone of policing in a free society.

The OPD seeks to gain the voluntary compliance of subjects, when consistent with personal safety, to eliminate the need to use force or to reduce the force that is needed. Omaha Police Officers are granted the responsibility and authority to apprehend criminal offenders and to protect life and property and are vested with lawful authority to use force to protect public welfare. The OPD recognizes officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain, and rapidly evolving. This requires a careful balancing of competing interests. Apprehension of criminal offenders must at all times be subordinate to the protection of innocent human life.

POLICY:

It is the policy of the Omaha Police Department (OPD) that OPD officers will use only that amount of force which is objectively reasonable to take a subject into custody or otherwise bring an incident under control while protecting the safety of the officer and others. Whether a use of force is reasonable is tested by balancing the type and quality of intrusion on the individual's rights against the governmental interests at stake. In determining what degree of force is objectively reasonable, officers shall evaluate the totality of the circumstances in each situation requiring the use of force in light of the known circumstances at the time of the event, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and/or the danger presented, including whether or not the subject poses an immediate threat to the safety of the officers or others. Officers maintain the right to self-defense and have a duty to protect the lives of others. Nothing in this policy requires officers to take actions, or fail to take actions, that unreasonably endanger themselves or others.

DEFINITIONS:

Deadly Force: Any use of force that is likely to cause death or serious bodily harm.

Force: Any physical effort used to control or restrain a subject, or to overcome the resistance of a subject.

Involved Officer: Any officer who uses force and/or discharges a weapon, and their actions result in the serious bodily injury or death of a subject.

Less-Lethal Force: Any use of force other than that which is considered deadly force.

Low Lethality Target Areas: Areas of the body that when struck have a low risk of causing serious bodily injury and will most likely only cause temporary discomfort. Motor nerve points, soft tissue areas, pit of the abdomen, and extremities of the body are low lethality target areas. The head will typically not be considered a low-lethality target area. The head may be such a target area only if, considering the nature, location of the strike, and the type of strike, there is a low degree of risk for serious bodily injury.

Objectively Reasonable Force: The amount of force that a reasonable officer would use when faced with the circumstances presented. An officer's use of force is governed by the reasonableness standard set forth in *Graham v. Connor*. The inquiry is an objective one. The question is whether the facts and circumstances make the force reasonable without regard to the officer's underlying intent or motivation. The reasonableness of a particular use of force will be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

Reasonable Belief: A belief that a reasonably prudent officer would hold given the facts and circumstances the officer knows or should know.

Serious Bodily Injury: Injury that creates a substantial risk of death, permanent disfigurement, or long-term loss or impairment of function of any bodily member or organ.

Vital Target Areas: Areas of the body that when struck with an empty hand tactic, a baton, or an improvised impact weapon have a high risk of causing serious bodily injury. These areas include: the midline of the neck, the spine, the sternum, the groin, joints, the kidneys and, as described herein, areas of the head.

PROCEDURE:

I. Variables in Use of Force Options

- A. The OPD's highest priority is the sanctity of human life. In all aspects of their conduct, OPD officers shall act with the foremost regard for the preservation of human life and the safety of all persons involved.
- B. OPD officers will demonstrate the highest degree of ethical behavior and professional conduct at all times.
- C. The OPD realizes and acknowledges that during intense, uncertain, and/or rapidly evolving confrontations it may be reasonable for officers to use improvised techniques and weapons that are not a part of OPD's formal training program. However, the Department expects that its training and policies will be followed except in rare and unique circumstances, and the use of improvised techniques and weapons will be an exception which is justified by the totality of the circumstances.
- D. When determining the reasonableness of an officer's actions, the totality of the circumstances will be considered. Circumstances such as the size disparity between the officer and the subject, the number of potential assailants and officers, environmental risk factors, and any other circumstances that can be articulated which would aggravate the danger level for officers or citizens will be considered.
- E. The use of excessive or unwarranted physical force is prohibited and will not be tolerated. Force used against a person as a punishment, retaliation, because of a bias, or in response to a person's lawful exercise of First Amendment rights (e.g., protected speech, lawful demonstrations, recording police activity) is prohibited.

II. Authorization

- A. Where deadly force is not authorized, officers will use discretion to determine which less-lethal technique or less-lethal weapon will best de-escalate the incident and bring it safely under control.
- B. Officers are authorized to use Department-approved less-lethal force techniques and issued equipment to:
 - 1. Protect themselves, or others, from physical harm.
 - 2. Restrain or subdue a resistant individual.

3. Bring an unlawful situation effectively and safely under control.

III. Defense of Life

- A. Officers may use a firearm or other deadly force in the performance of their duties to defend themselves or others from what is reasonably believed to be imminent threat of death or serious bodily injury.
- B. Before using a firearm or other deadly force in defense of self or others, officers will attempt to give loud verbal warnings/commands, if possible.

NOTE: Due to the complexity of deadly force confrontations, the ability to give verbal commands may not be feasible in all situations.

IV. Use of Deadly Force to Make a Lawful Arrest

- A. The justification for the use of deadly force to make a lawful arrest is extremely limited. Officers shall strictly adhere to the Nebraska Statutory guidance below.
- B. The use of deadly force to make a lawful arrest is NOT justifiable per [NRS §28-1412](#) unless:
 1. The arrest is for a felony.
– AND –
 2. Such person making the arrest is authorized to act as a peace officer or is assisting a person whom they believe to be authorized to act as a peace officer.
– AND –
 3. The officer believes that the force employed creates no substantial risk of injury to innocent persons.
– AND –
 4. The officer believes that:
 - a. The crime for which the arrest is made involved conduct including the use or threatened use of deadly force.
– OR –
 - b. There is substantial risk that the person to be arrested will cause death or serious bodily harm if the apprehension is delayed.
- C. A fleeing felon shall not be presumed to pose an immediate threat of death or serious bodily injury if apprehension is delayed. The threat shall exist based on additional and separate articulable facts and circumstances.
- D. Before using a firearm or other deadly force to make a lawful arrest, officers will attempt to give loud verbal warnings/commands, if possible.

NOTE: Due to the complexity of deadly force confrontations, the ability to give verbal commands may not be feasible in all situations.

V. Use of Firearms

A. In addition to the reasons listed above, officers may use a firearm in the performance of their duties to:

1. Give alarm, or call for assistance, when no other means is available.
2. Kill a dangerous animal, or kill an animal so badly injured that humanity requires its removal from further suffering.

NOTE: All attempts will be made to request assistance from the agency (Humane Society, game warden, zoo representative, etc.) responsible for disposal of animals. Destruction of vicious animals will be guided by the same rules set forth for self-defense and defense and safety of others.

B. Officers will follow these guidelines when using firearms in the line of duty:

1. No distinction will be made relative to age or gender of the intended target of deadly force.
 - a. The only guideline for employing deadly force in defense of self or others will be whether or not an imminent threat of death or serious bodily harm is present.
2. Shots will not be fired at or from a moving vehicle except in self-defense or defense of another. Firing shots at a moving vehicle is only permissible in circumstances that justify the use of deadly force and do not present an undue threat to persons in the area.
 - a. If at all possible, officers shall avoid placing themselves in the path of an oncoming vehicle in a manner which would lead to the use of deadly force.
 - b. If a confrontation with an oncoming vehicle does occur, officers shall move out of the path of the vehicle, if possible, rather than fire at the vehicle.
3. Caution shall be exercised to prevent injury to innocent bystanders as a result of firing a firearm.
4. Warning shots will not be used by officers in effecting any type of arrest.
5. The playful drawing or unnecessary exhibition of any weapon is forbidden.

VI. Use of Force Subject Categories and Officer Responses

A. Officers interact with five (5) types of subjects. Each subject category may require a different officer response depending on the subject's behavior.

1. As a subject's behavior changes during the interaction, the officer's response must escalate or de-escalate accordingly.
2. The officer's response to the subject interaction may be lower than the responses listed for the subject category.
3. The officer's response will use the least amount of force necessary to control the subject.
4. Officers shall be cognizant that not all persons respond to use of force and/or pain compliance techniques in the same manner. When any officer response technique, after repeated attempts, does not appear to be effective, officers will consider alternative officer response techniques or methods, including de-escalation, to control the subject/situation.

B. Cooperative Subjects. Cooperative interactions with subjects are defined as interactions with another person to achieve a particular goal. No physical force is needed to gain cooperation. The majority of interactions with subjects fit into this category. Cooperative individuals respond in a positive way to professional presence and are easily directed with verbal requests and demands. Cooperative Subjects allow control or searching to take place with no resistance. General control is achieved by the use of non-verbal actions, such as gestures, stance, and facial expressions.

1. Cooperative Subject officer responses include the following:

- a. Professional Presence: The presence of an officer, either uniformed or plain clothes, acting in an official capacity, who have identified themselves by clothing, word, identification, or action.
- b. Non-verbal Directions/Commands: This includes but is not limited to gestures, stances, and facial expressions.
- c. Verbal Commands: Lawful orders given as direction to a subject to perform a specific action.
- d. Control, Handcuff, Search: Escorting of a subject, handcuffing per OPD policy, and/or performing a pat-down or other lawful search of a subject.

C. Passively Resistive Subjects: Passively Resistive Subjects interact with officers by failing to follow the lawful orders of the officers. Most commonly, these subjects will fail to complete a physical action upon lawful direction. An example of a Passively Resistive subject is one who, when lawfully ordered to do so, fails to place their hands behind their back for handcuffing purposes but offers no physical resistance.

1. Passively Resistive Subject officer responses include the following:

- a. Control Holds and Leverage Techniques: Utilization of strength, body weight, and/or trained techniques to attempt to get or maintain a position of control over a subject.
- b. Strength Techniques: A maneuver performed by an officer to overpower and take control of a subject without using strikes or pressure points, or takedowns.
- c. Pressure Points/Joint Locks: Locations on the human body that will, with adequate pressure, cause temporary discomfort to subjects in order to make them vulnerable to specific arrest and control techniques.

D. Actively Resistive Subjects: Actively Resistant Subjects interact with officers by physically impeding the officer's effort to exert control over them. They may display a number of actions including, but not limited to the following: running away, pulling away, flailing their arms, circling to face an officer, and/or knowingly hiding from law enforcement efforts to locate them.

1. An Actively Resistive Subject may simply assume a stance or posture that would reasonably indicate the subject will physically resist efforts to secure, control, or handcuff the subject. In these cases, the subject need not appear to be attacking the officer; but is simply using active conduct to not allow the officer to exert control over them.

2. Actively Resistive Subject officer responses include the following:

- a. Empty Hand Techniques (Low Lethality Targets): The use of various parts of an officer's body (without use of a weapon or tool) directed to Low Lethality target areas on a subject in an attempt to get or maintain a position of control over a subject.
- b. Electronic Control Device (ECD): An ECD is a battery powered device that uses propelled wires and probes, or direct contact, to conduct sufficient electrical energy to affect sensory and motor functions of human and animal nervous systems. The ECD's intended purpose is to temporarily incapacitate subjects and enable the officer to gain control without serious injury.
- c. Chemical Agent: An approved chemical compound used to gain control of a subject. Chemical agents may be a solid, liquid, or gaseous substance that on dispersion in the atmosphere irritates mucous membranes in the eyes, nose, mouth, and lungs, and causes tearing of the eyes, sneezing, coughing, difficulty breathing, pain in the eyes, temporary blindness, etc.
- d. Pepperball Launcher: Pepperball is a system that consists of a launcher and chemical agent projectiles. The projectiles contain a live active irritant compound engineered to burst on impact into a temporarily incapacitating cloud with no harmful after-effects. The purpose is to deploy the projectiles to saturate an area to gain control of a subject(s) and enable the officer to gain control without serious injury. Pepperball may also be used as a direct impact device for pain compliance.
- e. Takedown Techniques: Manipulation of a subject's balance using force to move the subject to a grounded position to take control.
- f. Canine (K-9)/Police Service Dog (PSD): A dog trained to aid the police by tracking subjects, detecting controlled substances, detecting explosives, recovering evidence, and assisting in locating and/or physically apprehending subjects.
- g. Carotid Restraint Control Hold (CRCH): Neck restraint technique that relies on lateral compression of the arterial and venous systems within the neck, rather than the airway. This technique is used by officers to stop physical resistance from a subject or to prevent the imminent destruction of evidence.
- h. Impact Weapons: An object intended to be used to strike a subject's Low Lethality Target Areas in a manner to create temporary motor dysfunction or mental distraction by creating pain.

NOTE: Officers shall articulate in the Chief's Report why lesser officer response would have been ineffective against Actively Resistive Subjects when an ECD or less-lethal launcher is used.

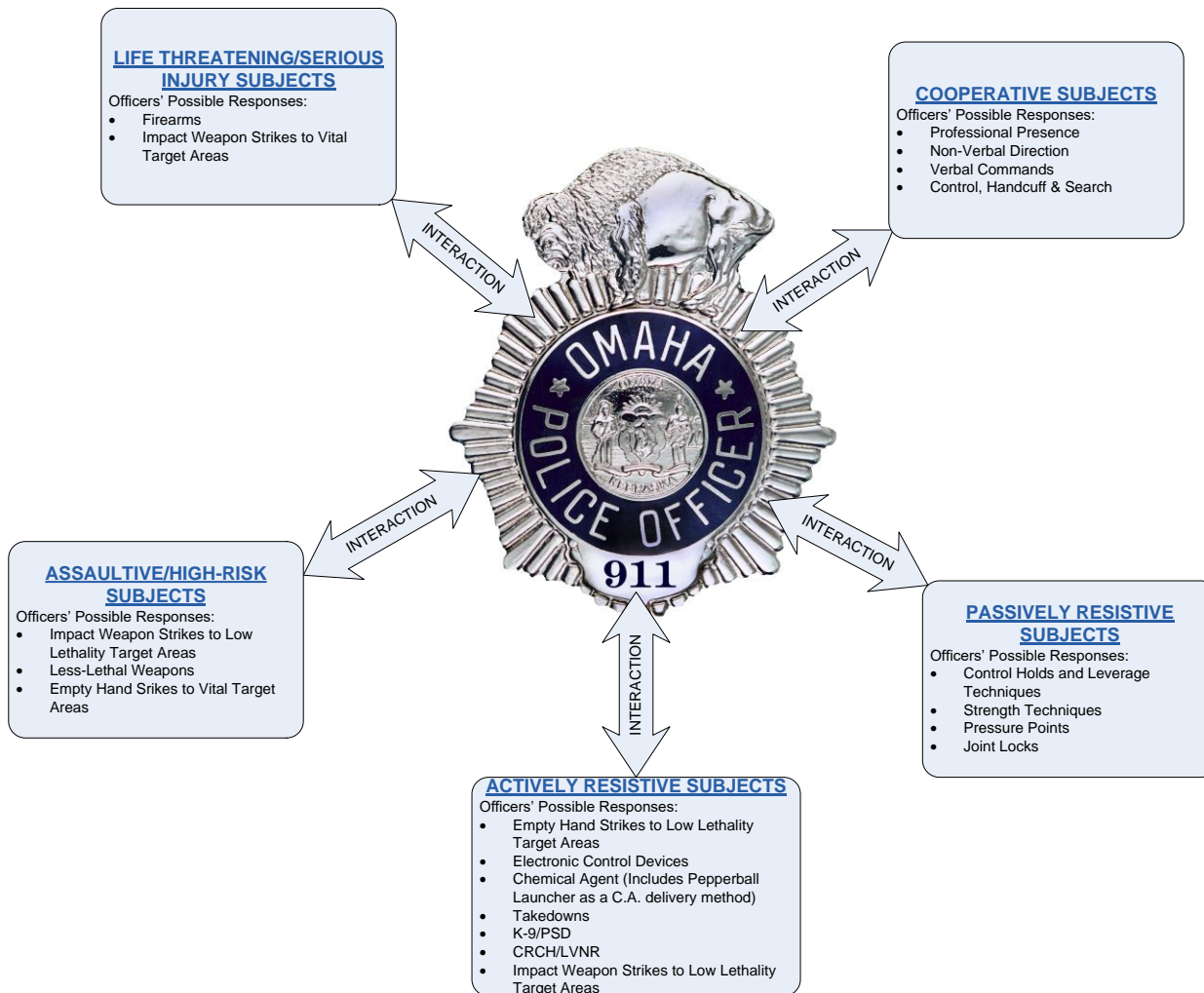
E. Assaultive/High-Risk Subjects: Assaultive/High-Risk Subject interactions include those in which there is a threat or unsuccessful attempt to do physical harm to the officer or others, causing a present fear of immediate harm; a violent physical attack; a situation in which the totality of articulable facts would cause a reasonable officer to believe that a significant and credible threat of violence exists. The assaultive individual threatens an assault, attempts an assault, or physically assaults an officer or others. This category includes high-risk situations.

- 1. In Assaultive/High-Risk interactions, there is a reasonable likelihood of injury due to the assaultive actions or other significant threatened actions.
- 2. Assaultive/High-Risk Subject officer responses include the following:

- a. Impact Weapons: An object intended to be used to strike a subject's Low Lethality Target Areas in a manner to create temporary motor dysfunction or mental distraction by creating pain.
 - b. Less-Lethal Weapons: Weapons that are not reasonably likely to cause death or serious bodily injury. A weapon will be considered less-lethal even if its deployment may, in rare cases, cause injury that results in death under unique circumstances.
 - c. Empty Hand Techniques (Vital Targets): The use of various parts of an officer's body (without use of a weapon or tool) directed to Vital Target Areas on a subject in an attempt to get or maintain a position of control over a subject.
- F. Life-Threatening/Serious Bodily Injury Subjects: Life-Threatening/Serious Bodily Injury Subject interactions encompass actions by suspects that are likely to immediately result in serious bodily injury or death of a person. These actions are reasonable cause for officers to use a deadly force response in self-defense or the defense of others. Officers shall continue to exercise caution that their use of deadly force does not unreasonably threaten the safety of fellow officers and/or innocent parties.
- 1. Life-Threatening/Serious Bodily Injury Subject officer responses include the following:
 - a. Firearms: A weapon, typically a pistol, rifle, or shotgun, capable of firing a projectile and using an explosive charge as a propellant.
 - b. Impact Weapon strikes to Vital Target Areas.

VII. OPD Officers' Use of Force Options

- A. Officers may use the below-illustrated techniques and weapons to control a subject.
- B. Officers' responses may include techniques and weapons from a lower subject category than the current subject interaction.
- C. Officers' responses will not include techniques and weapons from a higher subject category than the current subject interaction.



REFERENCES:

I. Court Cases

A. *Graham v. Connor*, 490 US 386, 395, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)

II. Nebraska Revised Statutes

A. NRS [§28-1412](#) and [§28-1414](#) are relevant to this policy.

III. Previous OPD Orders

A. Previous OPD General Orders include #51-87, 2-95, 3-95, 34-95, 35-96, 6-99, 14-99, 38-99, 38-99, 11-14 Supplement #1, 15-01, 15-01 Supplement #1, 16-02, 24-04, 35-06, 35-06 Supplement #1, 27-07, 23-08, 26-09, 25-11, 12-12, 10-13, 11-14, 66-15, 19-16, 115-16, 41-18, 41-18 Supplement #1 and 17-20.

IV. Accreditation Standards

A. CALEA accreditation standards 1.2.2, 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.8, 1.3.9, 1.3.10, 1.3.13, 52.2.7, 70.2.1, and 70.3.2.

V. Other

A. Chicago Police Department "Use of Force" policy