

August 06, 2020

Special Order

No. 20-10

TO: POLICE PERSONNEL

SUBJECT: General Order 303.00 – Response to Resistance

### **303.00 RESPONSE TO RESISTANCE**

#### **303.01 Philosophy**

A reverence and respect for the dignity of all people and the sanctity of human life shall guide all training, leadership, and procedures, as well as guide officers in the use of force.

#### **303.02 Purpose**

This policy provides police/detention officers of this agency with guidelines for responding to unlawful resistance with objectively reasonable force.

#### **303.03 Policy**

Irving Police Officers will continually assess options, utilizing de-escalation techniques when appropriate, and will only apply force that is objectively reasonable to effectively bring an incident under control while protecting officers and others. The reasonableness of the use of force cannot be supported solely by the subjective declaration of any one officer. Each incident is to be judged objectively and from the perspective of a reasonably prudent officer in light of the totality of the same or similar circumstances. The use of force will be in accordance with Irving Police Department training.

#### **303.04 Definitions**

**Objectively Reasonable:** The U.S. Supreme Court case of *Graham v. Connor, 490 U.S. 386 (1989)*, established "Objective Reasonableness" as the standard for all applications of force in the United States.

The reasonableness of an officer's use of force applications are judged based upon:

- the totality of the circumstances,
- from the perspective of a reasonable officer on the scene,
- at the moment force was used,
- without 20/20 hindsight,
- in circumstances that are tense, uncertain and rapidly evolving.

The court specified four specific factors, sometimes referred to as the "*Graham* factors," which assist in determining reasonableness. Proper application requires careful attention to the facts and circumstances of each particular case, including:

- the severity of the crime at issue,
- did the subject pose an immediate threat to the safety of the officer or others,
- was the subject actively resisting arrest (seizure) or
- was the subject attempting to evade arrest by flight?

**Assess:** The act of continuously evaluating a situation to select an objectively reasonable response based upon the totality of the circumstances. The selected response is dependent upon the subject's actions, known/perceived risks and other articulable factors such as likely effectiveness and may include the continued use of a chosen technique, de-escalation techniques, or an escalated response.

**Deadly Force:** Any use of force that creates a substantial risk of causing death or serious bodily injury.

**De-escalation:** Tactics, techniques and actions that seek to minimize the likelihood of using force or the amount of force required during an incident without compromising safety and law enforcement priorities.

**Elevated Health Risk Population Groups:** Individuals who are potentially at greater risk of injury or death, including those who reasonably appear or are known to be elderly, medically infirm, pregnant, users of cardiac devices, small children, or those persons who appear frail or morbidly obese.

**Non-deadly Force:** Any use of force other than deadly force, including physical effort used to control or restrain another, or to overcome resistance of another.

**Officers:** For the purposes of this policy, the term "officers" refers to both police and detention officers.

### 303.05 Procedures

#### A. Use of Deadly Force

1. When objectively reasonable, officers are authorized to use deadly force to protect officers or others from what is believed to be an immediate threat of death or serious bodily injury.
2. The use of a firearm at or from a moving vehicle is prohibited unless the officer reasonably believes that deadly force is immediately necessary to protect their life or the life of another. Officers shall, when feasible, move out of the path of a moving vehicle to a position of cover.

#### B. Deadly Force Restrictions

1. Firing warning shots is prohibited.

#### C. Use of Non-Deadly Force

1. Where deadly force is not authorized, officers may use only that level of force which is objectively reasonable to bring an incident under control.
2. Officers are authorized to use non-deadly force techniques and issued equipment to:
  - a. Protect the officer or others from physical harm to include preventing another from inflicting serious bodily injury to themselves;
  - b. Restrain or subdue a resisting individual; and/or
  - c. Bring an unlawful situation safely and effectively under control.

#### D. Considerations

1. The use of force on persons from an Elevated Health Risk Population Group is not prohibited, but officers will consider the totality of the circumstances prior to its application.
2. Officers should remain mindful that people with various autism spectrum disorders or intellectual disabilities may react negatively to loud commands or may not comprehend complex commands, and should, when feasible, attempt reasonable communicative techniques before applying force.
3. When feasible, prior to the application of force, officers should attempt to identify themselves and issue a verbal warning to comply with the verbal commands.
  - a. In determining whether a warning is feasible under the circumstances, an officer may be guided by a variety of considerations including, but not limited to, whether the resulting delay is likely to:
    - i. Increase the danger to the officer or others to include the subject involved;
    - ii. Result in the destruction of evidence;
    - iii. Allow for a subject's escape; or
    - iv. Result in the commission of a crime.
  - b. In the event that an officer issues such a warning, when feasible, the officer should afford the subject a reasonable opportunity to voluntarily comply before applying force.
4. In accordance with training, individual officers should avoid deploying more than one weapon at the same time.

### **303.06 Use of Force Options**

- A. Officer Presence: identification of authority
- B. Verbal Direction: commands of direction or arrest
- C. Soft empty-hand control techniques
  1. When objectively reasonable, officers are authorized to use soft empty hand control techniques.
  2. Soft empty-hand control techniques generally will not cause injury and include joint locks, pressure points, and knee strike distraction techniques to the thigh. Note: knee strikes to the common peroneal that are intended to create a motor dysfunction are more likely to cause an injury and are considered hard empty hand control.
- D. Oleoresin Capsicum (OC) Spray
  1. When objectively reasonable, officers are authorized to use OC spray issued by the department.
  2. Officers must be certified through a departmentally sanctioned program before being authorized to carry OC spray on-duty.

E. Conducted Energy Weapon (CEW)

1. When objectively reasonable, officers are authorized to use the CEW
2. Additional cycles should not be deployed unless they are reasonably necessary to bring the subject under control.
3. When feasible, officers should notify assisting officers that they intend to deploy the CEW.
4. Officers must be certified through a departmentally sanctioned program before being authorized to carry a CEW on-duty.

F. Hard Empty Hand Control

1. When objectively reasonable, officers are authorized to use hard empty-hand control techniques.
2. Hard empty-hand control techniques are likely to cause injuries such as bruises, contusions, or lacerations.

G. Intermediate Weapons

1. Baton

- a. When objectively reasonable, officers are authorized to use departmentally approved expandable batons.
- b. Officers must be certified through a departmentally sanctioned program before being authorized to carry an expandable baton on-duty.

2. Less Lethal Impact Munitions

- a. When objectively reasonable, officers are authorized to use departmentally approved less lethal impact munitions to restrain and/or control violent or potentially violent suspects when it is perceived that:
  1. Attempts to subdue the suspect by conventional tactics have been or will likely be ineffective, futile, or pose risk to officers or others; and
  2. It would be unsafe for officers to approach to within contact range of the suspect.
- b. Officers must be certified through a departmentally sanctioned program before being authorized to carry less lethal impact munitions on-duty.
- c. When deployed in response to a riot or civil unrest, Officers will follow the directives provided by their immediate supervisor or the event commander.
3. When feasible, officers should notify assisting officers that they intend to deploy a less lethal impact munition.

H. Deadly Force

1. When objectively reasonable, officers are authorized to use deadly force to protect officers or others from what is believed to be an immediate threat of death or serious bodily injury.

**303.07 Medical Response**

- A. Officers shall request a medical assessment prior to transport if any of the following occurs:
  - 1. The subject is injured, shows signs of medical distress, or requests medical attention.
  - 2. The subject was contaminated by an OC spray deployment.
  - 3. The subject was the object of a CEW probe deployment.
  - 4. The subject would reasonably be considered a member of an elevated risk population group and the force used may have resulted in an undetected injury.
- B. The medical assessment shall be documented in the Incident Report and Use of Force Report.

**303.08 Reporting**

- A. Officers are required to report to their immediate supervisor the following events:
  - 1. Any use of force greater than soft empty-hand control;
  - 2. Any use of force which results in injury or claims of injury;
  - 3. Displaying a CEW in the presence of anyone with the intent to gain compliance; or
  - 4. Displaying a firearm in the presence of anyone with the intent to gain compliance.
- B. Officers will complete the Response to Resistance Report in Blue Team and forward it to their immediate supervisor.
  - 1. A Response to Resistance Report is required for any use of force greater than soft empty-hand control or any use of force that results in injury or claims of injury.
  - 2. A Response to Resistance Report is required for displaying a CEW or firearm in the presence of anyone with the intent to gain compliance unless:
    - a. The firearm or CEW display occurred pursuant to an operational plan; or
    - b. The officer displaying the firearm or CEW was a back-up officer on a high-risk traffic stop; or
    - c. The incident was video and audio recorded on the body camera of the officer who displayed the CEW or firearm; and
    - d. The body camera recording provides sufficient information for the supervisor to adequately review the incident.
  - 3. Officers shall tag and categorize the body camera video recordings that depict all reportable uses of force, CEW displays or firearm displays using the retention categories designated for those events.
- C. Supervisor's Responsibilities

1. Ensure the use of force, CEW display or firearm display conforms to department policy and training.
  2. Ensure the Response to Resistance Report is completed when applicable and the body camera video recordings are properly tagged and categorized.
  3. Ensure injured officers/subjects receive or are offered treatment for their injuries
  4. Notify their division commander, the Criminal Investigations Division, and Professional Standards when deadly force is used or when there is serious bodily injury.
  5. When practical, ensure that digital photographs are taken of any observed or reported injury and of any involved person or officer and included with the Response to Resistance Report.
  6. Ensure that relevant audio, video or other evidence is attached or linked to the Blue Team entry.
- D. Sworn personnel are required to immediately report off-duty use of force incidents to an on-duty supervisor.

**303.09            Training**

- A. Officers shall receive annual training on the following topics;
1. Use of Force - objectively reasonable standard
  2. Use of deadly force
  3. Firearms proficiency
  4. Empty-hand control techniques
  5. Oleoresin capsicum (OC) spray
  6. Conducted Energy Weapon (CEW) (if assigned one)
  7. Baton
  8. Less Lethal Impact Munitions (if applicable)

**303.10            Departmental Review of Deadly Force**

- A. The Professional Standards Section will conduct an investigation into all instances of deadly force. This investigation is separate and independent from any criminal investigation. Under the following situations, Professional Standards shall be notified immediately:
1. When officers discharge firearms under any circumstances, on or off-duty, except during training sessions or recreational activities.
  2. When the use or attempted use of deadly force causes serious injury or death to any person as the result of police action or the conduct of an officer whether on or off-duty.

- B. Professional Standards will immediately place on administrative leave any employee, whose actions cause serious injury or death, pending a preliminary review of the incident.
- C. If injury or death to any person is caused by an officer discharging a firearm in the performance of an official duty, Professional Standards will complete the Peace Officer Involved Injuries or Death Form and submit it to the State Attorney General's Office by the prescribed deadline. A copy of each report submitted shall be available for public viewing on the police department website.
- D. The completed deadly force review will be forwarded to the Chief of Police.

**303.11 Use of Force Review**

- A. All response to resistance reports are forwarded to and reviewed by the appropriate chain of command.
- B. The Use of Force Review Board meets at least quarterly to review all use force. The review board's purpose is to ensure policy compliance and to identify areas for improvement or needed training.
- C. The Field Operations Bureau Chief chairs the Use of Force Review Board. The board is comprised of the following personnel:
  - 1. Legal advisor,
  - 2. South Patrol Deputy Chief
  - 3. North Patrol Deputy Chief
  - 4. Detention and Evidence Deputy Chief,
  - 5. Jail Lieutenant,
  - 6. Professional Standards Lieutenant and Sergeant
  - 7. Personnel & Training Section Lieutenant,
  - 8. Training Academy Sergeant,
  - 9. Defensive Tactics/Use of Force Instructors and,
  - 10. Representatives from organizations representing department employees.
- D. The board will submit a written annual report outlining its conclusions and recommendations to the chief of police. This report will include, but not be limited to:
  - 1. Trends or patterns
  - 2. Number of use of force incidents by division
  - 3. Number of uses of force involving arrest
  - 4. Number of incidents by use of force option
  - 5. Number of uses of force resulting in injury
  - 6. Number of civilians injured/severity

7. Number of officers injured/severity
  8. Recommendations for improvements in use of force training or policy
  9. Recommendations regarding prevention of use of force injuries
  10. Other recommendations or comments determined necessary by the panel
- E. The board will convene as soon as practical after the last day of the calendar year and meet at the discretion of the board chair. The board's final report will be due within forty-five (45) calendar days from the date of the first meeting.
- F. The results will be presented to the staff and training academy personnel.
- G. The final report will be available for review by members of the department.

## **APPLICATION**

Professional Standards will ensure that the above policy is incorporated into the proper General Order. Division/section supervisors shall ensure any necessary Standard Operating Procedures are created to abide by the policy.

## **EFFECTIVE DATE**

This Special Order is effective immediately and shall remain in effect until incorporated into the General Orders. This Special Order supersedes any previous directive that may be in conflict.

A handwritten signature in black ink, appearing to read "J. Spivey", with a long horizontal stroke extending to the right.

Jeff Spivey

Chief of Police