

USE OF FORCE POLICY

Office of the Attorney General | State of New Jersey

December 2020
Version

Contents

Core Principles ii

Definitions..... iii

Core Principle One 1

Core Principle Two 2

Core Principle Three 6

Core Principle Four 13

Core Principle Five 17

Core Principle Six 18

Core Principle Seven 19

Appendices

- Addendum A Conducted Energy Devices and Other Less-Lethal Devices and Ammunition
- Addendum B Vehicular Pursuit Policy

Core Principles

1 The Sanctity of Human Life and Serving the Community.

In serving the community, law enforcement officers (hereinafter “officers”) shall make every effort to preserve and protect human life and the safety of all persons. Officers shall respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

2 Force as a Last Resort and Duty to De-Escalate.

Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

3 Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force.

Officers shall use the least amount of force that is objectively reasonable, necessary and proportional to safely achieve the legitimate law enforcement objective under the circumstances.

4 Duty to Use Deadly Force Only as an Absolute Last Resort and Duty to Avoid Actions Which Create a Substantial Risk of Death or Serious Bodily Injury.

Deadly force shall only be used as an absolute last resort and in strict compliance with this Policy. Other actions by law enforcement that create a substantial risk of death or serious bodily injury must be avoided or employed only under the strictest of conditions.

5 Duty to Intervene and Report.

Every officer, regardless of rank, title, seniority, or status, has an affirmative duty to take steps to prevent any use of force that is illegal, excessive, or otherwise inconsistent with such policies, regulations, and laws, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. Every officer has a duty to immediately report any improper use of force.

6 Duty to Render Medical Assistance.

After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer’s training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers also have a duty to monitor individuals for potential medical intervention after any officer uses force.

7 Duty to Report and Review Uses of Force.

Every use of force must be reported and receive a meaningful command level review as set forth in a written department policy that includes review by the law enforcement executive. The law enforcement executive shall also conduct an annual review and analysis of the overall use of force by the department.

Definitions

Active Assailant. A person who is using or imminently threatening the use of force, with or without a weapon, in an aggressive manner that poses a substantial risk of causing bodily injury to an officer or another person. A threatening assailant becomes an active assailant when the threat becomes imminent.

Active Resistor. A person who is uncooperative, fails to comply with directions from an officer, and instead actively attempts to avoid physical control. This type of resistance includes, but is not limited to, evasive movement of the arm, flailing arms, tensing arms beneath the body to avoid handcuffing, and flight.

Bodily Injury. Physical pain or temporary disfigurement, or any impairment of physical condition. Bodily harm and bodily injury have the same definition for the purposes of this Policy. See N.J.S.A. 2C:11-1(a); N.J.S.A. 2C:3-11(e).

Civil Disturbance. An assembly of persons engaged in or creating an immediate threat of collective violence, destruction of property, looting, or other criminal acts. Such a gathering may also be referred to as a riot.

Chokehold. A technique that involves applying direct pressure to a person's trachea (windpipe) or airway (front of the neck) with the effect of reducing the intake of air. This includes a carotid restraint or any lateral neck restraint, where direct pressure is applied to the carotid artery restricting the flow of blood to the brain causing temporary loss of consciousness.

Conducted Energy Device (CED). A CED means any device approved by the Attorney General that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person.

Constructive Authority. Constructive authority is not considered a use of force because it does not involve physical contact with the subject. Rather, constructive authority involves the use of the officer's authority to exert control over a subject. Examples include verbal commands, gestures, warnings, and unholstering a weapon. Pointing a firearm at a subject is an example of constructive authority to be used only in appropriate circumstances outlined in Section 3.4 of this Policy.

Cooperative Person. A person who responds to and complies with an officer's directions.

Critical Decision-Making Model. The Critical Decision-Making Model is an organized way of making decisions about how an officer will act in any situation, including those that may involve potential uses of force.

De-escalation. De-escalation refers to the action of communicating verbally or non-verbally in an attempt to reduce, stabilize, or eliminate the immediacy of a threat. De-escalation may also be

used to create the time needed to position additional resources to resolve the situation with the least amount of force necessary.

Deadly Force. Force that an officer uses with the purpose of causing, or that a reasonable officer knows creates a substantial risk of causing death or serious bodily injury. Discharging a firearm, constitutes deadly force, unless the discharge occurred during the course of a law enforcement training exercise, routine target practice at a firing range, a lawful animal hunt, or the humane killing of an injured animal. A threat to cause death or serious bodily injury by the display of a weapon or otherwise, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

Enhanced Mechanical Force. An intermediate force option between mechanical force and deadly force, generally requiring a greater level of justification than that pertaining to physical or mechanical force, but a lower level of justification than that required for the use of deadly force. Unlike deadly force, enhanced mechanical force does not require an imminent threat of death or serious bodily injury. Examples include conducted energy devices and less-lethal devices and ammunition.

Feasible. Reasonably capable of being accomplished or carried out, given the totality of the circumstances, in a manner that maintains the safety of the public and officers.

Imminent Danger. Threatened actions or outcomes that are immediately likely to occur during an encounter absent action by the officer. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the officer, but is carrying a weapon and running for cover to gain a tactical advantage.

Law Enforcement Executive. A law enforcement agency's highest-ranking sworn law enforcement officer, typically the chief of police. In situations where the highest-ranking officer is recused from a matter, then "law enforcement executive" refers to the next highest-ranking officer without a conflict.

Law Enforcement Officer. Any person who is employed as a sworn member of any state, county, or municipal law enforcement agency, department, or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State. The term law enforcement officer shall include sworn members of the New Jersey State Police, the Division of Criminal Justice and the Juvenile Justice Commission. It shall include State Correctional Police Officers pursuant to N.J.S.A. 2A:154-4, County Correctional Police Officers pursuant to N.J.S.A. 2A:154-3, Special Law Enforcement Officers of all classes pursuant to N.J.S.A. 40A:14-146.8 et seq., Humane Law Enforcement Officers appointed pursuant to N.J.S.A. 4:22-14.1 or 4:22-14.4, Auxiliary Police Officers appointed pursuant to N.J.S.A. App.A:9-45(c), and Constables appointed pursuant to N.J.S.A. 40A:9-120.

Mechanical Force. Mechanical force involves the use of a device or substance, other than a firearm, to overcome a subject's resistance to the exertion of the officer's authority. Examples include use of an asp, baton, or other object, oleoresin capsicum (OC) spray or the physical apprehension by canines.

Passive Resistor. A person who is non-compliant in that they fail to comply in a non-movement way with verbal or other direction from an officer.

Peaceful Demonstration. A nonviolent assembly of persons organized primarily to engage in free speech activity. These may be scheduled events that allow for law enforcement planning or spontaneous. They include, but are not limited to, marches, protests, and other assemblies intended to attract attention.

Physical Contact. Physical contact involves routine or procedural contact with a subject necessary to effectively accomplish a legitimate law enforcement objective. Examples include guiding a subject into a police vehicle, holding the subject's arm while transporting, routinely handcuffing a subject, and maneuvering or securing a subject for a frisk. Physical contact alone does not constitute force.

Physical Force. Physical force involves contact with a subject beyond that which is generally used to effect an arrest or other law enforcement objective. Physical force is employed when necessary to overcome a subject's physical resistance to the exertion of the officer's authority, or to protect persons or property. Examples include taking a resisting subject to the ground, using wrist or arm locks, striking the subject with the hands or feet, or other similar methods of hand-to-hand confrontation, such as certain pain compliance techniques.

Positional Asphyxiation. Positional asphyxiation is insufficient intake of oxygen as a result of body position that interferes with the subject's ability to breathe. It can occur during the process of subduing and restraining a person by placing the person in a posture that prevents or impedes the mechanism of normal breathing. If the person cannot escape from the position, death may occur very rapidly. Restraint in the prone position presents a significant risk of asphyxia, particularly when a person is handcuffed and left in a face-down position. As soon as handcuffed and restrained, a person should be raised immediately to a seated or standing position that does not impede the mechanism of normal breathing.

Proportional Force. The minimum amount of force, of both type (e.g., physical, mechanical, enhanced mechanical, or deadly) and intensity, that is necessary to control a situation and achieve a legitimate law enforcement objective. The law permits officers to overcome unlawful force or resistance; thus, the term proportional force is not intended to mean a type and intensity of force that is exactly equal to the type and intensity of force being used by the subject. The term proportional force is intended to highlight that the level of force a law enforcement officer utilizes shall be no more than is necessary to overcome the unlawful force or resistance being confronted by the officer.

Reasonable Belief. A reasonable belief is an objective assessment based upon an evaluation of how a reasonable officer with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the officer at the scene.

Serious Bodily Injury. Serious bodily injury means bodily injury 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. Serious bodily injury and serious bodily harm have the same definition the purposes of this Policy. See N.J.S.A. 2C:11-1(b); N.J.S.A. 2C:3-11(d).

Strategic Redeployment. Repositioning by an officer to increase space and time to react to a subject. It includes gaining time to de-escalate by withdrawing from the immediate vicinity of the subject if doing so will not create a threat to the safety of the public or the officer in doing so.

Tactical Communication. Verbal communication techniques that are designed to avoid or minimize the use of force. Such techniques include giving clear, simple instructions or directions, using active listening techniques to engage the suspect, and explaining the consequences of failure to comply with directions or instructions, including that force may be used.

Tactical Positioning. Making advantageous uses of position, distance, and cover to reduce the risk of injury to an officer and avoid or reduce the need to use force.

Threatening Assailant. A person who is threatening the use of force against an officer or another person, with or without a weapon, in an aggressive manner that may cause bodily injury. Examples may include a person armed with a weapon who fails to disarm, and an unarmed person who advances on an officer or any other person in a threatening manner thereby reducing the officer's time to react, putting the officer in reasonable fear of a physical attack.

Time as a Tactic. A method to avoid forcing an immediate resolution to a situation if it can be safely done, including establishing a zone of safety around a person that creates an opportunity for an assessment and action, when feasible, thereby decreasing the need to resort to force.

Core Principle One

The Sanctity of Human Life and Serving the Community. In serving the community, officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall also respect and uphold the dignity of all persons at all times in a non-discriminatory manner.

- 1.1** A respectful and cooperative relationship with the community is essential for effective law enforcement. That relationship can be undermined when force is used unnecessarily or unequally.
- 1.2** Every officer shall respect the sanctity of human life and the dignity of every person, and act to preserve every life, whenever possible, and avoid unnecessary injury to members of the public or themselves.
- 1.3** In carrying out their duties as guardians of public safety, officers shall at all times treat every person equally without regard to the individual's actual or perceived race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability, nationality, familial status, or any other protected characteristic under N.J.S.A. 10:5-1 et seq.

Core Principle Two

Force as a Last Resort and Duty to De-Escalate. Force shall only be used as a last resort when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision making, tactical deployment or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure.

- 2.1 Authority to use force.** Officers are granted the unique authority to use force for lawful purposes, including, but not limited to, the following:
- (a) effectuating a lawful arrest or detention;
 - (b) carrying out a lawful search;
 - (c) overcoming resistance directed at the officer or others;
 - (d) preventing physical harm to the officer or to another person (including intervening in a suicide or other attempt of self-inflicted injury);
 - (e) protecting the officer or a third party from unlawful force; or
 - (f) preventing property damage or loss.
- 2.2 Prohibitions on certain force.** Officers may not use or threaten to use force for any following reasons:
- (a) to punish a person or to retaliate against them for past conduct;
 - (b) as a lesson to prevent a person from resisting or fleeing in the future; or
 - (c) to resolve a situation more quickly, unless delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives.
- 2.3 Force as a last resort.** Officers shall exhaust all other reasonable means to gain compliance before resorting to force, if feasible. Thus, if a safe alternative would achieve law enforcement's objective, force shall not be used. Officers shall, therefore, use verbal commands, critical decision making, tactical deployment and de-escalation techniques to gain voluntary compliance, when feasible. Importantly, officers shall never engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes necessary.
- 2.4 Critical decision making.** Critical decision-making and tactical deployment techniques include tactical communication and tactical positioning, such as strategic redeployment and time as a tactic. Critical decision-making and tactics require officers to do the following:
- (a) begin critical assessment and planning prior to arriving at the scene;

- (b) collect available information;
- (c) assess situations, threats, and risks;
- (d) identify options for conflict resolution;
- (e) determine the best course of action; and
- (f) act, review, and re-assess the situation as it evolves.

2.5 De-escalation. De-escalation is the action of communicating verbally or non-verbally in an attempt to reduce, stabilize, or eliminate the immediacy of a threat. De-escalation may also be used to create the time needed to allow the situation to resolve itself or to position additional resources to resolve the situation with the least amount of force necessary. Officers should employ de-escalation techniques when feasible, which include, but are not limited to, the following:

- (a) communication techniques to calm an agitated subject (e.g., regulating tone and pitch, such as speaking slowly in a calm voice);
- (b) techniques to promote rational decision making, such as ensuring that only one officer addresses the person and the other officers remain detached as safety permits as to not escalate the situation; and splitting up individuals at the scene who may be arguing;
- (c) active listening techniques, such as sharing the officer's name, asking the subject their name, and exhibiting a genuine willingness to listen;
- (d) slowing down the pace of the incident by taking deep breaths, slowing speech, and/or applying strategic or critical thinking;
- (e) using calming gestures and facial expressions (e.g., arms extended with palms out and avoid angry expressions);
- (f) practicing procedural-justice techniques, such as explaining the officer's actions and responding to questions;
- (g) verbal persuasion and advisements (e.g., explaining, without threats, how the person would benefit from cooperation, and the subject's rights or what the officer wants the subject to do); and
- (h) avoiding the unnecessary display of weapons, including firearms, Conducted Energy Devices (CEDs), batons, or OC Spray.

2.6 Warning and opportunity to comply. Officers should generally not use force immediately when encountering noncompliance with verbal directions. Instead, whenever feasible, before using force, officers shall:

- (a) provide clear instructions and warnings;
- (b) attempt to determine whether the person has a special need, mental condition, physical limitation, developmental disability, or language barrier (See Section 2.7);
- (c) state the consequences of refusing to comply with a mandatory directive, including that force will be used unless the person complies; and
- (d) give the suspect a reasonable opportunity to comply.

2.7 Dealing with persons in a behavioral or mental health crisis or other factors affecting compliance. Officers should consider an individual’s mental, physical, developmental, intellectual disability, or other conditions, such as age of the suspect, that affect the person’s ability to communicate or comply. This includes, when feasible, considering the following factors related to the individual:

- (a) behavioral or mental health crisis;
- (b) drug interaction;
- (c) medical condition;
- (d) mental impairment;
- (e) physical limitation;
- (f) developmental disability, including autism spectrum disorder;
- (g) cognitive impairment or intellectual disability;
- (h) hearing loss or impairment;
- (i) communication disorder, including speech impairment;
- (j) language barrier;
- (k) visual impairment;
- (l) age; or
- (m) other factors beyond the individual’s control.

2.8 Whenever an officer determines that one of the above listed factors exists and is influencing the person’s failure to comply with an officer’s command, when feasible, the officer shall consider whether specific techniques or resources would help resolve the situation without the need to utilize force. Techniques for responding include, but are not limited to, the following:

- (a) obtaining information about the person from available sources including family members, caregivers or others who know the individual;
- (b) decreasing exposure to the potential threat by moving to a safer position. This may involve creating distance, seeking cover, tactical repositioning, concealment, and/or placing barriers between an uncooperative person and the officer;
- (c) slowing down the pace of the incident by the officer slowing their speech, taking deep breaths, and/or applying strategic and critical thinking;
- (d) keeping the non-compliant person confined to a limited area and calling for a supervisor, back-up officers, and specially-trained resources to assist in resolving the incident. These specially-trained resources may include Crisis Intervention Team-trained officers, behavioral or mental health care providers, negotiators, qualified bi-lingual officers, or officers equipped with less-lethal devices;
- (e) using time as a de-escalation strategy, thereby creating an opportunity to calm the non-compliant person;
- (f) using simplified speech and shorter verbal directions or instructions;
- (g) eliminating or reducing sensory distractions (bright flashing lights, sirens, or other loud noises); and

(h) any reasonable strategy that lessens the emotional anger, frustration, combativeness of a subject or others who may be present may be appropriate.

2.9 Importantly, officers should not default to attempting to resolve the incident immediately if slowing down the pace is viable and can be accomplished without creating an immediate threat to the public or placing officers in unreasonable danger.

Core Principle Three

Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force.

Officers shall use the least amount of force that is objectively reasonable, necessary, and proportional to safely achieve the legitimate law enforcement objective under the circumstances.

3.1 Limitations on use of force. In situations where officers are justified in using force, officers shall use only that degree of force that is reasonable, necessary, and proportional considering the totality of the circumstances, including the subject's mental and physical condition, the nature of the offense, and most importantly the level of resistance or threat known to the officer at the time.

3.2 Considerations when using force. The decision to use force and the appropriate amount of force requires careful attention to the facts and circumstances of each incident. The officer must, as time permits and is feasible, consider the following non-exhaustive list of factors when determining whether and how much force to apply:

- (a) immediacy and severity of the threat to officers or the public;
- (b) the conduct of the individual being confronted, as reasonably perceived by the officer at the time;
- (c) characteristics of the officer and subject (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects);
- (d) the effects of drugs or alcohol;
- (e) the individual's mental state or capacity;
- (f) the proximity of weapons or dangerous improvised devices;
- (g) the degree to which the subject has been effectively restrained and their ability to resist despite being restrained;
- (h) the availability of other options and possible effectiveness;
- (i) the seriousness of the suspected offense or reason for contact with the individual. For example, in dealing with minor offenses, such as motor vehicle or and local ordinance violations practicing procedural-justice techniques, such as explaining the officer's actions and responding to questions before resorting to force, is particularly important;
- (j) the officer's training and experience; and
- (k) the potential for injury to officers, suspects, and the public.

3.2.1 It is important to note that law enforcement encounters are never static and rapidly evolve. Thus, officers must continuously assess the effectiveness, proportionality, and necessity of their actions, including their tactical positioning, in order to decrease the likelihood of force being needed for self-protection. Officers may increase the time

available to evaluate the threat by positioning an object between themselves and the subject, being aware of their surroundings, and waiting for backup, when it is available.

3.3 Level of Resistance. The level of resistance that an officer encounters is a key factor in determining the appropriate amount of force that may be used in response. Although it is not possible to determine in advance what the appropriate level of force is for every encounter, one factor that is consistent is the amount of resistance the officer is facing at the time. The less resistance an officer faces, the less force the officer should use. Consistent with training, the following general rules apply in determining the appropriate level of force:

- (a) *Cooperative Person.* When dealing with a cooperative person, officers may rely on police presence and/or verbal control techniques, but should not use force.
- (b) *Passive Resistor.* When dealing with a passive resistor, officers may rely on police presence, verbal control techniques, holding techniques, lifting/carrying, wrist locks and other manual pain compliance techniques. Greater force, such as strikes, punches, CEDs, or less lethal devices shall not be used.
- (c) *Active Resistor.* When dealing with an active resistor, in addition to the options available for passive resistors, officers may use physical strikes with hands or feet, OC spray, batons or asps applied with non-impact pressure, and taking the person to the ground. As more fully detailed in Section 4.2, intentional strikes to the head or face, which are only allowed in an act of self-defense, are not permitted when dealing with an active resistor. Police canines shall not be utilized against an active resistor.
- (d) *Threatening Assailant.* In general, when dealing with a threatening assailant, officers may use all types of force options other than deadly force. This includes striking with batons or asps, less lethal ammunition, and CEDs. Although a range of force options is generally available, the officer shall only use force that is proportional to the threat faced. Any strikes to the head or neck with a baton or asp are considered deadly force and can only be used when deadly force is allowed.
- (e) *Active Assailant.* In general, when dealing with an active assailant, officers have all force options available, though deadly force shall only be used as a last resort in accordance with Core Principle Five of this Policy.

3.3.1 An individual's status evolves from a resistor to an assailant when they use force, threaten to use force, or otherwise act in an aggressive manner that increases the likelihood that they may cause physical injury to an officer or to another person. However, flight from an officer does not, on its own, qualify a person as an assailant. When dealing with an individual who poses a threat to the officer, the individual could be considered either a threatening assailant or an active assailant. To determine the individual's status for appropriate officer response, the officer must assess whether the threat poses an

imminent danger. If the threat is imminent, then that individual is considered an active assailant and all use of force options are available with deadly force being an absolute last resort in accordance with Core Principle Five of this Policy.

3.3.2 Officers face a dynamic environment in which interactions with individuals can escalate very quickly from one level of resistance to another. For example, a passive resistor may become an active assailant in an instant. In responding to the level of resistance, the officer may use the level of force that corresponds to the level of resistance the officer is facing, and need not use lesser levels of force that will not address the threat that the officer faces at the time. If the individual's resistance diminishes, the officer shall immediately reduce the level of force used against the individual. If the individual stops resisting entirely, the officer must immediately cease using force.

3.4 **Displaying of Firearms.** Special requirements must be met before an officer may display a firearm. Unholstering or pointing a firearm are tactics that should be used with great caution. The presence of an officer's firearm, under the right circumstances, can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to force. At the same time, however, unnecessarily or prematurely drawing a firearm could limit an officer's options in controlling a situation, could create greater anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm.

(a) *Pointing a firearm.* Consistent with training, officers may point a firearm at a person only when circumstances create a reasonable belief that it may be necessary for the officer to use deadly force. When the officer no longer reasonably believes that deadly force may be necessary, the officer shall, as soon as practicable, secure or holster the firearm.

(b) *Reporting the pointing of a firearm.* Pointing a firearm, though not a use of force, constitutes a seizure that must be reported as a Show of Force on the Attorney General's Use of Force Reporting Portal.

3.5 **Defensive Tactics & Pain Compliance Techniques.** Pain compliance techniques may be effective in controlling a passive or active resistor. Officers may only apply pain compliance techniques for which the officer has received department approved training and only when the officer reasonably believes that the use of such a technique is necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstances including, but not limited to, the following:

- (a) the potential for injury to the officer(s) or others if the technique is not used;
- (b) the potential risk of serious injury to the individual being controlled;
- (c) whether the pain compliance technique is effective in achieving an appropriate level of control or a different technique should be employed;
- (d) the nature of the offense involved;

- (e) the level of resistance of the individuals(s) involved;
- (f) whether immediate resolution is necessary;
- (g) the application of any pain compliance technique shall be immediately discontinued once the officer determines that compliance has been achieved or other more appropriate alternatives can reasonably be utilized; and
- (h) officers shall only use striking techniques directed at a subject's face as a means of self-defense, or in the defense of others. Striking at a subject's face using fists, elbows, knees, and feet, shall not be used as a means of pain compliance.

3.6 Positional asphyxiation. Officers must recognize the heightened risk of positional asphyxiation and compression asphyxiation during restraint and be alert to any actions that must be immediately taken to avoid or minimize the risk of asphyxiation. Positional asphyxia can occur when a person is restrained, handcuffed or left unattended in any position that impedes their ability to breathe normally, particularly in a prone position. If the person cannot escape from the position, death may occur very rapidly. Thus, in the course of using force officers shall be alert to the following heightened risk factors for positional asphyxiation:

- (a) alcohol or drug intoxication;
- (b) possible mental health episode or incident;
- (c) a substantially overweight individual;
- (d) possible suffering of respiratory muscle fatigue (exhaustion);
- (e) possible airway obstruction; and
- (f) unconsciousness.

3.6.1 Officers shall take the following actions to reduce the risk of positional asphyxiation:

- (a) As soon as handcuffed and restrained, a person should be immediately rolled to the side and taken to an upright position that does not impede the mechanism of normal breathing. This requirement is especially important when the subject is handcuffed face down in the prone position;
- (b) Care should be taken not to put sustained pressure on the neck or back, as breathing can be restricted even if the person is placed in the recovery position. This includes sitting, kneeling, or standing on a person's chest, back, or neck for a prolonged period of time;
- (c) Officers shall continuously monitor the person's condition while being restrained, as death can occur suddenly and develop beyond the point of viable resuscitation within seconds;
- (d) Whenever possible during team restraint, a "Safety Officer," with the responsibility to monitor the health and welfare of the person during restraint, should be designated;
- (e) The arrested person must not be transported in the prone position; and
- (f) The arrested person should be monitored prior to, during, and at the conclusion of the transport.

3.6.2 Officers shall continually monitor the condition of the subject(s) in their custody for the following warning signs of positional asphyxiation:

- (a) verbal complaints of being unable to breathe properly, although be aware that a person suffering breathing difficulties may not be able to complain about their crisis;
- (b) visual signs that the subject is struggling or exhibiting increased effort to breathe;
- (c) gurgling/gasping sounds with foam or mucus coming from the nose or mouth;
- (d) display of a heightened level of aggression during restraint, which may be a physiological response to fighting for air, such that any increased resistance during restraint of a person should be regarded with caution;
- (e) sudden behavioral changes, such as going from being violent and noisy to passive, quiet, and tranquil, or alternatively, suddenly becoming more aggressive;
- (f) blue discoloration of facial skin (cyanosis);
- (g) swelling, redness or blood spots to the face or neck; and
- (h) any loss or a reduced level of consciousness.

3.7 Conducted energy devices and less-lethal devices. Conducted Energy Devices (CEDs) and other authorized less-lethal devices and ammunition are forms of Enhanced Mechanical Force which may be utilized against a Threatening Assailant or an Active Assailant, but only within the parameters outlined in this Policy and in Addendum A of this Policy. CEDs and other authorized less-lethal devices and ammunition shall not be utilized against a passive resistor or an active resistor. Officers shall always strive to use only that degree of force that is objectively reasonable, necessary and proportional considering the totality of the circumstances.

3.7.1 An officer authorized to use a CED or a less-lethal device pursuant to this Policy may fire, discharge, or utilize drive stun mode of the device during an actual operation, consistent with Addendum A, only against:

- (a) an active assailant;
- (b) a threatening assailant who will not voluntarily submit to custody after having been given a reasonable opportunity to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force;
- (c) a person who is attempting to cause death or serious bodily injury to themselves; or
- (d) a fleeing suspect, if clear and convincing evidence exists to believe the suspect has committed a crime in which the suspect caused or attempted to cause death or serious bodily injury.

3.7.2 Officers shall reevaluate the situation and reassess the need to use force before any second or subsequent firing or discharge or utilization of drive stun mode of the device against the same person. Any second or subsequent firing or discharge or utilization of drive stun mode of the device must be necessary and justified by the circumstances at that moment.

- 3.7.3 CEDs shall not be utilized in the following manner:
- (a) against a person in drive stun mode more than twice unless deadly force would be authorized and permitted pursuant to this Policy;
 - (b) against a handcuffed subject unless deadly force would be authorized and permitted pursuant to this Policy;
 - (c) against the operator of a moving vehicle unless deadly force would be authorized and permitted pursuant to this Policy;
 - (d) to prevent a subject from damaging property; or
 - (e) against a person simultaneously with two or more CEDs.
- 3.7.4 CEDs must be capable of making a digital recording of the encounter each time the device is utilized, unless the officer carrying the CED is equipped with a body worn camera (BWC) as defined in Attorney General Directive 2015-1. The officer shall activate the BWC prior to utilization of the CED, unless exigent circumstances make it unsafe or not feasible for the officer to do so.
- 3.7.5 CED spark displays shall be considered constructive authority, but must be reported as a Show of Force in the Attorney General’s Use of Force Reporting Portal.
- 3.7.6 Police administrators and officers authorized to utilize CEDs and other authorized less-lethal devices and ammunition are also required to adhere to the instructions contained in Addendum A to this Policy.
- 3.8 Use of force for crowd management.** The following restrictions and limitations on the use of force should be observed during peaceful demonstrations and civil disturbances. The generally applicable rules in this Policy apply to both peaceful demonstrations and civil disturbances and in all cases, weapons or other devices should be carried and deployed only by trained and authorized officers and deployed consistent with this Policy.
- 3.8.1 Prior to using force against people in a crowd, officers shall:
- (a) provide clear instructions and warnings in a manner that can be heard by persons in the crowd, such as through a bullhorn or speaker system when available;
 - (b) state the consequences of refusing to comply with a mandatory directive, including that arrests will occur and force may be used unless persons comply; and
 - (c) give a reasonable opportunity to comply.
- 3.8.2 Force shall not be used against crowds engaged in peaceful demonstrations. The visible presence or deployment of canines for crowd control purposes is prohibited in peaceful demonstrations. Canines may be used for explosive detection or similar security sweeps at such gatherings.

- 3.8.3 Force may be used against specific individuals in a crowd for lawful purposes in accordance with the other provisions of this Policy. Restrictions apply to the use of certain types of force in a crowd as follows:
- (a) OC spray:
 - (1) may be used against specific individuals who are active resisters, threatening assailants or active assailants as defined in Section 3.3 above;
 - (2) shall not be used where bystanders would be unreasonably affected; and
 - (3) shall not be used against passive resisters, or indiscriminately against groups of people.
 - (b) CEDs:
 - (1) may be used against specific individuals who are threatening assailants or active assailants as defined in Section 3.3 above;
 - (2) may be used only when the individual can be accurately targeted; and
 - (3) shall never be fired indiscriminately into crowds.
 - (c) Less-lethal ammunition:
 - (1) may be used during civil disturbances only against specific individuals who are threatening or active assailants; and
 - (2) shall not be used during a civil disturbance against groups of individuals.
- 3.8.4 Force may be used against groups of people only if authorized by the Incident Commander (IC) and only when other means of gaining compliance with lawful directives have been attempted and shown to be ineffective or are not feasible.
- 3.8.5 High-volume OC delivery systems are designed for, and may be used in, civil disturbances against groups of people engaged in unlawful acts resulting in, or creating an immediate risk of, bodily injury or significant property damage.
- 3.8.6 CS (2-chlorobenzalmalononitrile) chemical agents are primarily offensive weapons that shall be used with the utmost caution. Thus, CS:
- (a) may be deployed only by specially trained individuals who are part of a special tactical unit authorized to deploy such agents;
 - (b) may be deployed only with the specific and express approval of the IC;
 - (c) may be deployed defensively to prevent injury when lesser force options are either not available or would likely be ineffective; and
 - (d) may be deployed only after an announcement is made and when avenues of egress are available to the crowd.
- 3.8.7 Canines shall not be deployed against a crowd, except to respond to a threat of death or serious bodily injury to a member of the public or to an officer.
- 3.8.8 CN (phenacyl chloride) shall not be used in any instance.

Core Principle Four

Duty to Use Deadly Force Only as an Absolute Last Resort and Duty to Avoid Actions Which Create a Substantial Risk of Death or Serious Bodily Injury. Deadly force shall only be used as an absolute last resort and in strict compliance with this Policy. Other actions by law enforcement that create a substantial risk of death or serious bodily injury must be avoided or employed only under the strictest of conditions.

4.1 Deadly Force. Deadly force is force that an officer uses with the purpose of causing, or that a reasonable officer knows creates a substantial risk of causing, death or serious bodily injury. Discharging a firearm constitutes deadly force, unless the discharge occurred during the course of a law enforcement training exercise, routine target practice at a firing range, a lawful animal hunt, or the humane killing of an injured animals.

4.2 Types of deadly force. Deadly force includes the following potentially lethal actions:

- (a) applying a chokehold, carotid artery restraint, or similar technique that involves pressure on the neck;
- (b) sitting, kneeling, or standing on a person's chest, back, or neck for a prolonged period of time;
- (c) intentionally driving a vehicle at or in the direction of a person with the intent to strike the individual; and
- (d) using a baton or other weapon to intentionally strike an individual in the head or neck area.

4.3 Requirements to use deadly force. Strict requirements must be met before an officer may use deadly force. There are, however, occasions when deadly force is necessary to protect officers and the public. An officer may use deadly force only when the officer reasonably believes that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily injury. Officers must adhere to the following:

- (a) as discussed in Core Principle Three, when feasible, officers shall attempt to de-escalate situations, issue verbal warnings, or use non-lethal force with the goal of resolving encounters without using deadly force;
- (b) officers shall not use deadly force if a reasonably available alternative will avert or eliminate an imminent danger of death or serious bodily injury and achieve the law enforcement purpose safely;
- (c) when feasible, prior to using deadly force the officer shall identify themselves as a law enforcement officer and give a clear verbal warning to the suspect that the officer will use deadly force; and

- (d) officers shall not use deadly force when the use of deadly force creates a substantial risk of injury to innocent persons.

4.4 Force to apprehend a fleeing suspect. In addition to all of the requirements in Section 4.3, an officer may only use deadly force to apprehend a fleeing suspect in the rare case when the suspect's escape would create an imminent danger of death or serious bodily injury to the officer or a member of the public if the suspect is not immediately apprehended.

4.5 Prohibited uses of deadly force. There are specific circumstances in which the use of deadly force is prohibited. In general, officers may not discharge their weapons or use other deadly force, as outlined above, in the following manner:

- (a) to signal for help;
- (b) to issue a warning shot;
- (c) to prevent property damage or loss;
- (d) to prevent the destruction of evidence. For example, under no circumstances shall an officer use a chokehold, or any lesser contact with the neck area, in order to prevent the destruction of evidence by ingestion; or
- (e) against a person who poses a threat only to themselves and not to others.

4.6 Deadly force against individuals in a moving vehicle. Strict additional requirements must be met before an officer may use deadly force against a driver or passenger of a moving vehicle. Moving vehicles create tremendous risk to officers engaged in enforcement operations, particularly officers attempting to arrest fleeing suspects. Officers must abide by the following guidelines:

- (a) during such operations, officers shall never intentionally position themselves in the path of a moving vehicle or a vehicle that is likely to move;
- (b) officers shall make every effort to move out of the path of a vehicle in order to maintain their safety;
- (c) officers shall not grab onto moving vehicles or the drivers or occupants of moving vehicles. If a vehicle begins to move while an officer is engaged with the driver or an occupant, the officer shall, if feasible, disengage from the contact with the driver or occupant to avoid being dragged, carried, or struck by the moving vehicle; and
- (d) while any firearm discharge entails some risk, discharging a firearm at a moving vehicle entails an even greater risk to innocent persons and passengers because of the risk that the fleeing suspect may lose control of the vehicle. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, an officer shall not fire at the driver or occupant of a moving vehicle, unless no other means are available at the time to avert or eliminate the danger and one of the following circumstances exists:

- (1) when there is imminent danger of death or serious bodily injury to the officer or another person, created by a person in the vehicle using means other than the vehicle, such as when shots are being fired from the vehicle; or
- (2) when the suspect is driving their vehicle toward persons other than the officer in a manner creating an imminent threat of death or serious bodily injury, such as in a terrorist attack; or
- (3) when the officer is being dragged or carried by the vehicle, cannot disengage from the vehicle, and is in imminent danger of death or serious bodily injury.

4.7 Shooting from a moving vehicle. Strict additional requirements must be met before an officer may shoot from a moving vehicle. Every discharge of a firearm by an officer creates risk to the public and to other responding officers. Firearms discharges from moving vehicles by law enforcement officers have proven to be inaccurate and ineffective, generally creating unacceptable levels of risk. Due to these risks, law enforcement officers shall not discharge a firearm from a moving vehicle except in the following extraordinarily rare circumstance:

- (a) when the suspect is driving a vehicle toward persons other than the officer in a manner creating an imminent threat of death or serious bodily injury, such as in a terrorist attack; and
- (b) no other means are available at that time to avert or eliminate the danger.

4.8 Limitations on vehicular pursuits. Vehicular pursuits present officers with difficult decisions that involve balancing the duty to enforce the law and apprehend violators with the risks created by pursuing motor vehicles, often being operated at high speeds by irresponsible drivers in densely populated areas. The decision to pursue a motor vehicle must be objectively justifiable after giving due consideration to a number of factors. Although impossible to create a policy that addresses every potential scenario, officers and supervisors shall conduct vehicular pursuits only within the parameters outlined in Addendum B of this Policy. Due to the risks to both officers and the public, supervisors are expected to exercise an enhanced level of control over vehicular pursuits.

4.8.1 Vehicular pursuits shall only be initiated if the pursuing officer reasonably believes that:

- (a) the violator has committed, or is engaged in a conspiracy or attempt to commit, a crime of the first degree or one of the violent or serious crimes of the second degree enumerated in Addendum B; or
- (b) the violator poses an imminent threat to the safety of the public or other police officers. This determination shall be made based upon the violator's actions or operation of the vehicle prior to the initiation of the attempted motor vehicle stop. The violator's subsequent actions, including speeding or evasive driving during the pursuit itself, although often supporting the criminal charge of Eluding, N.J.S.A. 2C:29-2(b), shall not constitute an authorization to initiate or continue a pursuit.

- 4.8.2 There shall be a strong presumption against the initiation of vehicular pursuits based solely upon motor vehicle violations. Officers involved in vehicular pursuits must immediately notify both the supervisor and police communications, state the reason for the pursuit, and provide the information required by Addendum B of this Policy.
- 4.8.3 Vehicular pursuits shall be monitored by a supervisor and shall be terminated if directed to do so by a supervisor, or if the supervisor has not affirmatively authorized the continuation of the pursuit after being notified and given an opportunity to assess the situation.

Core Principle Five

Duty to Intervene and Report. Every officer, regardless of rank, title, seniority, or status, has an affirmative duty to take steps to prevent any use of force that is illegal, excessive, or otherwise inconsistent with such policies, regulations, and laws, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. Every officer has a duty to immediately report any improper use of force.

- 5.1** **Duty to intervene.** A law enforcement officer's duty to intervene is rooted in the commitment to protect public safety at all times. Interventions that prevent improper use of force will lead to fewer citizen complaints, fewer officer disciplinary matters, higher morale, and a healthier working environment. Preventing misconduct preserves the integrity of all officers and the law enforcement profession as a whole. Intervening to prevent improper use of force can assist fellow officers by preventing them from engaging in conduct that may be illegal, inappropriate, and in violation of this Policy.
- 5.2** Thus, all officers who observe another officer about to use force that is illegal, excessive, or otherwise inconsistent with this Policy must, if feasible, do whatever they can to interrupt the flow of events before the fellow officer engages in an improper use of force. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.
- 5.3** Officers shall use signaling, verbal intervention, or physical intervention, if necessary, to stop any improper use of force. It is important to note that the duty to intervene does not stop at one officer. It is the responsibility of all officers to ensure use-of-force compliance. If officers observe a situation where another officer is attempting to intervene in an improper use of force, officers shall assist in that effort.
- 5.4** **Duty to report illegal and inappropriate uses of force by other officers.** Any officer who observes or has knowledge of a use of force that is illegal, excessive, or otherwise inconsistent with this directive or department policies must (a) notify a supervisor as soon as possible and (b) submit an individual written report to a supervisor before reporting off duty on the day the officer becomes aware of the misconduct
- 5.5** Law enforcement agencies, supervisors, and officers are prohibited from retaliating in any form against an officer who intercedes in or reports illegal or inappropriate uses of force.
- 5.6** Every department shall establish a written policy which requires intervention and protects officers who intervene from retaliation or other negative consequences. The departmental policy shall be consistent with this Policy and all applicable laws. Reporting procedures must comply with *Internal Affairs Policy & Procedures*. See AG Directive 2020-7.

Core Principle Six

Duty to Render Medical Assistance. After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any injured person consistent with the officer's training and shall promptly request emergency medical assistance for that person, if needed or requested. Officers also have a duty to monitor individuals for potential medical intervention after any officer uses force.

- 6.1** An officer's duty to render medical assistance and monitor for potential medical intervention is particularly important following any use of force. When the force involves the use of OC spray, officers shall take immediate action to address the effects of the OC spray, consistent with training.
- 6.2** The duty to render medical assistance and monitor applies to all officers on scene and continues throughout any transportation and custody of the individual.
- 6.3** Officers shall pay particular attention to persons reasonably believed to be pregnant, children, the elderly, physically frail individuals, and those experiencing a mental health or substance use crisis.

Core Principle Seven

Duty to Report and Review Uses of Force. Every use of force must be reported and receive a meaningful command level review as set forth in a written department policy that includes review by the law enforcement executive. The law enforcement executive shall also conduct an annual review and analysis of the overall use of force by the department.

- 7.1 Reporting.** Notification of fatal and serious bodily injury law enforcement incidents shall be made in accordance with AG Directive 2019-4. As soon as any local, county, or state law enforcement agency learns of a law enforcement incident as defined below, the agency shall immediately notify the County Prosecutor's Office for the county in which the incident occurred, who shall in turn immediately notify the Attorney General's Office of Public Integrity and Accountability (OPIA) Director or their designee.
- 7.2** Law enforcement incidents are defined as:
- (a) any use of force by an officer resulting in death;
 - (b) any use of force by an officer resulting in serious bodily injury;
 - (c) any use of deadly force (including the discharge of a firearm as defined in Section 4.1) by an officer, regardless of whether such force resulted in injury;
 - (d) the death of any civilian during an encounter with an officer; and
 - (e) the death of any civilian while in the custody of law enforcement.
- 7.3** When an officer uses force as defined in Section 3 of this Policy and the result is not fatal, the officer shall complete a report in the Use of Force Portal established by the Attorney General's Office. The report shall be completed by the officer within 24 hours of the use of force, and preferably before the end the shift in which the force was used. If the officer who used force is unable to complete the report within 24 hours, it should be completed as soon the officer is able to do so, or by a supervising officer within 48 hours, in accordance with a written policy to be established by the department or agency.
- 7.4 Review of use of force.** Thorough and meaningful review of use of force incidents is vital to ensuring a positive law enforcement and community relationship.
- 7.5 Review of each individual use of force.** Every use of force must undergo the following procedures for a meaningful command level review pursuant to a written policy established by the law enforcement executive:
- (a) The meaningful command level review of the incident shall be undertaken by at least two levels of supervisors. These levels may include the immediate supervisor,

internal affairs, training officers or command staff. At least one reviewer must be two levels or more above the officer who used force;

- (b) The review shall include an examination of all available sources of information about the incident, including any video of the incident, reports, officer or other witness statements, medical records and records of injuries;
- (c) The review shall include an analysis of whether force was used in a non-discriminatory fashion to ensure officers are treating every person equally without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic;
- (d) The reviewing supervisors shall make a recommendation of what action, if any, should be undertaken, including commendation of the officer, policy changes, remedial training, administrative action, disciplinary action or, if appropriate, referral for criminal prosecution;
- (e) The law enforcement executive, or a command level officer no more than one rank below the law enforcement executive for departments with more than 100 officers, shall review each use of force investigation and approve or reject the recommendations of the supervisors who conducted the review. The law enforcement executive's decision, or the decision of the designee, shall be memorialized and retained in the use-of-force investigative file; and
- (f) After the review is completed, supervisory and/or training officers should examine and analyze the use of force incident, including any body-worn or other video evidence, with the officer as a training tool. This examination should analyze the circumstances that led to the use of force as well as the force that was used, so that the officer can gain insight into which tactics and decisions were effective and whether different tactics or decisions could have been used to improve the outcome.

7.6 Annual review of overall department use of force. The law enforcement executive shall also conduct an annual review of use of force incidents in their department. The review shall include, at a minimum, the following:

- (a) analytical reports from the Attorney General's Use of Force Portal;
- (b) an audit of body worn cameras and other videos on a risk-based and randomly selected basis;
- (c) any internal affairs complaints; and
- (d) an analysis of the uses of force to ensure that force is being applied without discrimination based on race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

7.7 Based on that thorough review, the law enforcement executive shall determine whether changes in departmental structure, policy, training, or equipment are appropriate. The law enforcement executive shall then provide a written report documenting the annual review to the County Prosecutor. Each County Prosecutor's Office and each statewide law enforcement agency shall make its report to the OPIA.