

Newark Police Division Draft Use of Force Policy

What You Need to Know

Background

How a police department uses force is one of the most important components of effective policing. The Consent Decree entered into by the Department of Justice, the City of Newark and the NPD provides for, among other things, the development of a comprehensive use of force policy to address these issues. Paragraphs 66-70 of the Consent Decree outline the requirements of this use of force policy.¹

Draft Use of Force Policy Summary

The current draft use of force policy contains the following thirteen sections: (1) purpose; (2) policy; (3) definition of terms; (4) use of force standards; (5) use of force; (6) use of deadly force; (7) use of force levels of control; (8) de-escalation techniques; (9) emotionally disturbed persons;² (10) duty to provide medical aid; (11) use of force reporting; (12) training; and (13) effects of this order.

This fact sheet will summarize some of the draft policy's key areas. Pages three to six of the policy contain definitions of important terms used throughout the policy, including active resistance, constructive authority, de-escalation, and deadly force.

WHAT IS THE PURPOSE OF THIS POLICY?

The policy seeks to “establish Newark Police Division policy and procedures that are designed to guide Police Division members in the use of force, and to further ensure that Police Division members treat all persons with dignity and respect as they execute the duties they have been entrusted to perform.”³

WHAT ARE THE STANDARDS AND GENERAL REQUIREMENTS FOR USE OF FORCE?

These sections of the policy detail the legal standards applied to use of force, the requirements for when force can and cannot be used, and the duty to intervene.

Under the U.S. Supreme Court case *Graham v. Connor*, an officer's use of force is subject to an “objective reasonableness” standard. The reasonableness of an officer's use of force is judged from the perspective of a reasonable officer at the scene.

In certain circumstances, officers may lawfully use force, including against a person who is actively resisting arrest and to prevent the commission of a crime involving the threat of bodily harm, property damage, or suicide. However, force is prohibited in other scenarios, such as to effect compliance with a command that the officer knows is unlawful, or in retaliation.

¹ In addition to the use of force policy, the NPD is also in the process of creating two other related policies addressing the following topics: (1) Firearms and Other Weapons; and (2) Use of Force Reporting, Investigation, and Review.

² The policies and procedures for NPD members responding to or encountering a subject suffering from mental illness are outlined in NPD General Order #08-05.

³ See NPD General Order 17-X (“Use of Force Policy”) at I.

NPD officers who witness force being used unreasonably or unlawfully have a duty to intervene, to safeguard the person upon whom the force was used, to notify a non-involved supervisor, and to report and document the incident.⁴

WHAT IS THE USE OF DEADLY FORCE?

Deadly force is defined as any force that is likely to cause death or serious bodily harm. Officers may use deadly force when they reasonably believe it is immediately necessary to protect themselves or another from imminent danger of death or serious bodily harm, as well as in other limited circumstances, such as to destroy an injured animal.

Discharge of a firearm is considered deadly force and should only be used in limited circumstances. Officers must not unholster, exhibit, or point a firearm unless, for example, “the circumstances create an objectively reasonable belief that the unholstering and exhibiting of a firearm or pointing of a firearm will help establish control over a subject during an encounter that may escalate to create a risk of death or serious bodily harm to the [officer] or another person.”⁵

WHAT ARE NPD’S LEVELS OF CONTROL FOR USE OF FORCE?

The NPD policy stresses that officers should use the minimum level of force necessary and that the amount of force used should be proportional to the subject’s threat or resistance. Officers should allow subjects to submit to arrest, when feasible, before using force, and should exhaust all other reasonable means before using force.

The NPD has three categories for force based on the seriousness of injury that may result:

- (1) low-level force, which is not likely to and does not result in bodily harm or complaint of bodily harm;
- (2) intermediate force, which is likely to or does result in bodily harm or complaint of bodily harm; and
- (3) serious force, which includes any strike, blow or kick against a handcuffed or restrained subject, any head, neck or throat strike with a hard object, or any use of force that results or is likely to result in loss of consciousness.⁶

WHAT ARE DE-ESCALATION TECHNIQUES?

De-escalation techniques are acts that officers can employ to reduce the likelihood that force will be used. Such tactics include gathering information, assembling resources, slowing the momentum of incidents and relying on area containment. Officers should take into account if there are any special considerations, such as a language barrier or a behavioral crisis, when considering a person’s failure to comply.⁷

⁴ See Use of Force Policy at IV,V.

⁵ See Use of Force Policy at VI.

⁶ See Use of Force Policy at VII.

⁷ See Use of Force Policy at VIII.

WHAT IS THE NPD'S DUTY TO PROVIDE MEDICAL AID?

Officers must ensure that people who have been injured or who are complaining of pain as the result of the use of force receive immediate medical aid, by requesting Emergency Medical Services to respond to the scene, and if trained to do so, providing aid themselves.⁸

WHAT IS THE REPORTING PROCEDURE FOR USE OF FORCE?

Officers must make a report and notify a supervisor every time they use physical force, mechanical force, enhanced mechanical force, or deadly force. Notably, officers are now required to make a report and notify a supervisor every time they use constructive authority⁹ whenever a firearm is:

- unholstered in the presence of a member of the public;
- exhibited in the presence of a member of the public; or
- pointed at a subject.

Officers are now required to file a use of force report when they witness another officer use force.¹⁰ These new requirements were added to increase transparency and accountability.

WHAT ARE THE TRAINING REQUIREMENTS FOR USE OF FORCE?

Officers are required to undertake certain training and requirements, including in-service training, training on the proper use of firearms, weapons certifications, and emergency first aid training.¹¹

⁸ See Use of Force Policy at X.

⁹ Constructive authority is when the officer uses his or her authority to exert control over a subject that does not involve actual physical contact.

¹⁰ See Use of Force Policy at XI. Further information about the requirements for supervisory response and investigation will be included in the forthcoming Use of Force Reporting, Investigation, and Review policy.

¹¹ See Use of Force Policy at XII.