



**DELHI VILLAGE POLICE DEPARTMENT
POLICIES AND PROCEDURES MANUAL**

SUBJECT: Use of Force & Use of Deadly Physical Force		
REFERENCES: NYS Penal Law Article 35, Penal Law 121.13a, Civil Rights Law Article 3 Section 28, Governor's Executive Order No. 147, Executive Law 837-t & 837-v		
POLICY: 3050 Use of Force	DISTRIBUTION: All Personnel	AMENDS: (2018) 3050 Use of Force
PREPARED BY: M. Mills	DATE OF ISSUE: 08/17/2020	EFFECTIVE DATE: 08/17/2020

I. POLICY

- A. The ability to use force against the public is the primary factor distinguishing the police from the remainder of society. As a result of the responsibility, the use of force by police comes under close scrutiny by the department, the public, and the courts. The responsibility that comes with this ability also requires all officers to understand that they must err on the side of minimal force utilization while still protecting themselves and the public-at-large. To clarify and define appropriate uses of force, officers will follow a **Confrontational Continuum (fig. 1) as a guide.**
- B. This Continuum provides the law enforcement administrator, the public, and the courts with a realistic means of evaluating the use of force. The Continuum provides the officer with reasonable guidance in determining the level of force that is needed as well as a means of documenting the use of force.
- C. The physical process of arrest occurs after control has been achieved. **FORCE MUST CEASE WHEN CONTROL HAS BEEN AFFECTED.** The use of force or the excessive use of force on an individual, who is already under control, exceeding the bounds of all prevailing standards of police conduct, is punishable both criminally and through internal discipline.
- D. At a scene of a police incident, many officers may be present and some members may not be directly involved in taking police action. However, that does not relieve any officer present of the obligation to ensure law requirements and departmental regulations are complied with. Officers are required to maintain control and intervene if the use of force against a subject clearly becomes excessive either by themselves or another officer - regardless of officer rank or seniority. Failure to do so will result in both criminal and civil liability.

EXCESSIVE FORCE WILL NOT BE TOLERATED.



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- E. The value of human life is treasured in our society. The apprehension of criminals and the protection of property must always remain subservient to the protection of a human life. A suspect does not lose their right to human dignity and human rights merely because of the possibility they have committed a crime.

- F. A prudent officer, in making an arrest, should always consider the enormity of the crime and the character of resistance, and use only such force that is necessary to overcome any resistance and make the arrest. Every situation is different and must be assessed based on the objective circumstances. Officers must avoid operating on habit, bias, and subjective reasoning to determine the appropriate use of force. Use of force is not appropriate in all circumstances. Before any use of force, officers are required to utilize de-escalation techniques to defuse the situation before use of force is necessary. Officers who fail to utilize appropriate de-escalation techniques prior to the use of force may be disciplined for said failure.

- G. Any misuse of departmental issued equipment (firearm, handcuffs, OC spray, CED, and flashlight) will not be tolerated by the Department and may result in disciplinary penalties.

II DEFINITIONS

- A. **Confrontational Continuum (fig. 1)** - A model for evaluating the appropriate response of the officer to an escalating series of actions on the part of a subject. Although this continuum can be utilized as a model for the use of force, it may not cover all objective circumstances of a given situation. As such, it should be viewed as guidance instead of dispositive.

- B. **Dialogue** - The control of a subject through two-way communication, directing a subject to take action through one-way communication, calming the individual down by debriefing and documenting the actions involved in the confrontation.

- C. **Subject** - The name given to the individual who the officer attempts to control.

- D. **Oleoresin Capsicum (OC Spray)** - OC Spray is an organically based, less than lethal aerosol device designed to



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incapacitate any attacker instantly with no after effects by means of pain compliance.

- E. **Conductive Energy Device (CED) - Taser Model X2** - A less-lethal device that uses propelled wires or uses direct contact to conduct energy to affect the sensory and motor functions of the nervous system.
- F. **Impact Weapon - ASP Tactical Baton** - A less-lethal impact weapon which is an expandable friction lock baton. Also, straight Baton (made of wood or composite material and Bean-bag Ammunition are considered impact weapons
- G. **Force** - Any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of a firearm or pointing a firearm at or in the direction of a human being, use of chemical spray, use of impact weapons, use of electronic control weapons (ECW), chokeholds or hard hands, taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is **objectively reasonable** under the circumstances to effect an arrest, or protect the officer or other person.
- H. **Deadly Physical Force** - That amount of force that does - **or is likely to** - cause death or serious bodily injury.
- I. **Firearm** - Any pistol, rifle, shotgun or other weapon capable of discharging a projectile that is readily capable of causing serious physical injury or death.
- J. **De-escalation** - A decrease in the severity of force used in an incident in direct response to a decrease in the level of resistance. This may also mean the utilization of non-force related measures to calm a subject in an attempt to avoid the need to utilize force.
- K. **Actively Resisting** - When a subject makes physically evasive movements to interfere with an officer's attempt to control that subject; including bracing, tensing, pulling away, actual or attempted flight, or pushing.
- L. **Authorized Weapons** - Weapons that meet Department specifications and officers are permitted to carry; and for which officers successfully complete proficiency and safety training.



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- M. **Exigent Circumstances** - Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.
- N. **Excessive Force** - The utilization of force that exceeds the objectively required force to remedy the given circumstances. This may include standards appropriate in the policing community, requirements of local or state laws, or any other societal measure that delineates when, and to what extent, force is required.

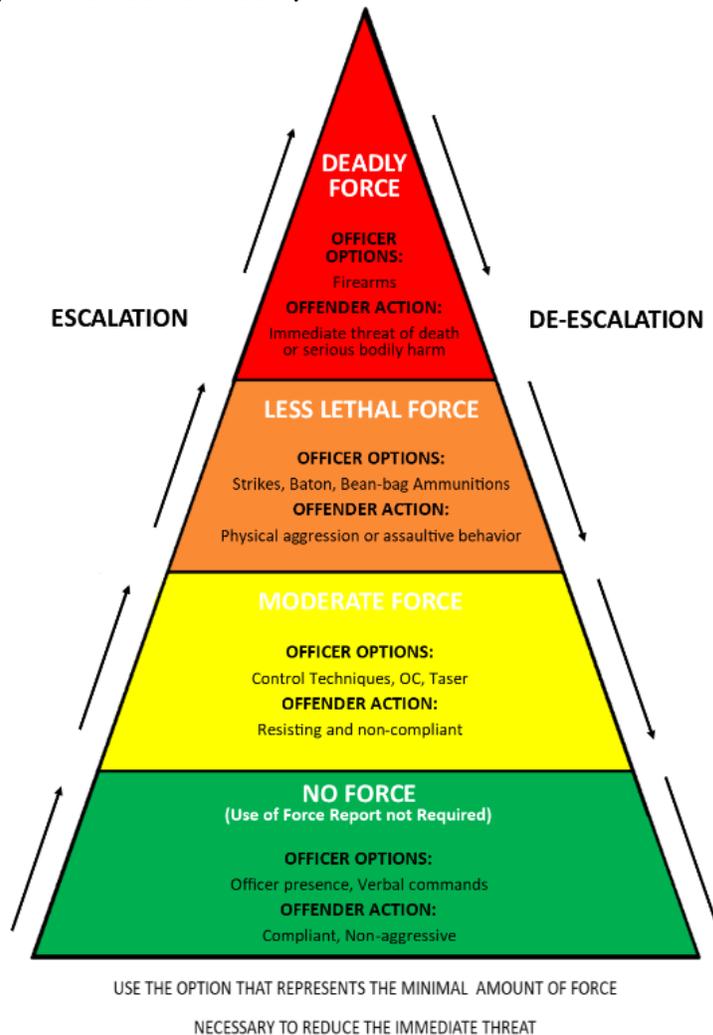
III PROCEDURES

- A. Officers shall attempt to gain compliance by using advisements, warnings, verbal persuasion, and verbal instructions when possible before resorting to force. In most circumstances, verbal persuasion can deescalate and defuse a subject.
- B. If a subject does not comply with an officer it is the goal of a law enforcement officer in a confrontation to gain control of the subject. It is imperative the officer successfully gain complete control during a confrontation. If a confrontation results in a failure to control a subject, the officer and the general public are put at risk.
- C. Officers must maintain control. Each technique employed in a confrontational situation must be evaluated in the terms of its likelihood to gain control compared to its likelihood to cause injury. Those techniques that offer a high degree of control and a limited potential for injury are preferred options. Control does not necessarily mean using physical force to obtain control where physical force may not be necessary given the circumstances.
- D. A misconception of those who do not understand the concept of the Confrontational Continuum is the assumption that officers must exhaust every lower option before moving to a higher-level response. Such thinking is both naïve and dangerous. The purpose of the Confrontational Continuum (fig.1), illustrated on the next page, is to give officers a guide to the selection of reasonable force options. (There is no requirement to attempt implementation of each lower level alternative).



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Fig. 1 (Force Continuum)



- 1) **No Force or Presence and Dialogue** is the best defensive tactic. It is the most fundamental use of force which can be employed. Merely just by showing a presence, it is considered the lowest level of force but one of the most important. The officer's appearance, demeanor, and body language could dictate if no more force is needed or more force is needed. Dialogue as a means of persuading an individual to comply is the foundation on which all additional force is built. "Talking" to a subject into compliance avoids the inherent dangers of a physical confrontation in which the officer or subject may be injured. The levels of force within this stage progress from a simple request to a direct compliance command. Refer to the green area of figure 1.



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- 2) **Moderate / Limited Force:** However, if dialogue is not effective, the next means of gaining control is the use of an **escort technique or physical control hold** (such as grasping a subject's arm or person and removing them from an area). This is a low-level compliance procedure, non-threatening and non-violent. The purpose of escort compliance is to remove a subject from an area who may present a threat to the officer or the public. From a physical standpoint, escort is perhaps the most commonly employed use of force technique by law enforcement personnel. When an escort technique fails or would be unsafe or inappropriate to use, the next force option is a **pain compliance and incapacitation technique**. Pain compliance involves the manipulation of a joint or use of a pressure point to cause pain. Compliance results from an effort on the part of the individual to relieve the discomfort. Pain compliance could be used in circumstances under which it would be too dangerous to initially attempt to escort the individual. In those circumstances in which escort is inappropriate or ineffective and yet a higher use of force is not justified, pain compliance is an entirely appropriate and often extremely effective procedure. The use of Oleoresin Capsicum (OC Spray) and CED (Taser X2) are classified as a pain compliance and incapacitation options. Refer to the blue area of Figure 1. As a reminder, "choke holds" or similar restraints that lead to serious injury or death of a subject due to the restriction of oxygen or blood can carry with it, criminal punishment. As such, they are to be avoided. *(Note: When dealing with mentally-ill persons or those under the influence of drugs, officers will remember: these individuals can have extremely high tolerance to pain and may not respond to as anticipated. Nevertheless, if an officer(s) is unable to control a suspect after (3) 5 second deployments or (1) 15 second single deployment; the officer should strongly consider using a different force alternative if practical to gain control of a physically resistive subject. Any more deployments and/or greater than 15 seconds total may impair breathing and/or more likely to cause death or serious physical injury.)*
- 3) **Less Lethal Force: Mechanical Control** (a punch, kick, knee, elbow, throw, stun or other takedown technique) is the next option available if pain compliance is ineffective or would be inappropriate. The mechanical control has a higher probability of gaining compliance but also has a higher potential for injury to the subject. As a result, mechanical control is employed only in those circumstances in which the proceeding levels of force would prove to be inappropriate as a result of the



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assailant's behavior or have shown them to be ineffective as a means of control. **Officers will not use chokeholds or similar restraints. It is a class C felony (NYS Penal Law 121.13-a) for a police officer to cause serious physical injury or the death of another person by impeding the normal breathing or circulation of blood of another person by either applying pressure to the neck or throat of another person or by blocking the nose or mouth of another person.** A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce the intake of air or impedes the circulation of blood flow. When mechanical control fails or would be inappropriate, the use of an **impact weapon** is required. The expandable or straight baton is an intermediate level of force and bridges the gap between the use of hands or fists and the use of a firearm to control a subject. **All Non-issued impact weapons (slapsticks, slapjacks, blackjacks, sap gloves, etc.) are prohibited for use by officers of this agency. An impact weapon will not be used to strike the head, neck, or back of the subject. It should be noted that depending on the circumstances the use of an impact weapon may constitute the use of deadly physical force. Bean-bag ammunition fired from the department issued and labeled less lethal shotgun is also considered an impact weapon. Officers must have specifically received the training in the use of this less lethal weapon. Refer to the light red area of figure 1.**

- 4) Finally, if the intermediate force of an impact weapon proves to be inappropriate or is ineffective, the firearm may be required to stop the subject only when deadly physical force is justifiable.

- E.** Force shall be de-escalated immediately as resistance decreases. Simply because the use of physical force may have been justified previously during an interaction with a subject does not mean force will be justified after resistance decreases. Where a subject is no longer resisting, force may no longer be needed.
- F.** When feasible based on the circumstances, officers will use disengagements; area containment; surveillance; waiting on a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and thereby increase officer, suspect and civilian safety.



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- G.** Officers shall allow individuals time to submit to arrest before force is used, wherever possible.
- H.** In evaluating techniques, a final consideration must be made to ensure officer safety. This involves the officer's ability to instantly disengage or escalate in response to a confrontation. Techniques that tie an officer to a subject must be rejected. Techniques that do not allow the ability to escalate the force option in response to a subject's threat are unacceptable.
- I. The Totality of the Situation** is comprised of all actions and relational factors between parties and conditions, surrounding the street confrontation. These include but are not limited to the Officer/Subject Factors and Special Circumstances listed below. Each relevant condition relates to the confrontation in determining the officer's course of action.

Officer/Subject Factors

- a. Age
- b. Gender
- c. Skill level
- d. Multiple officers
- e. Fitness
- f. Size of the officer or subject
- g. Multiple subjects

***Note:** It is reasonable that a discrepancy in the age, gender, physical size, fitness, or skill level of individuals involved in the confrontation may mandate that an officer use more or less force to control the situation. In a similar manner, it would be reasonable for a single officer to use more force in controlling a situation when confronted by multiple subjects. In addition to Officer/ Subject factors, a confrontation may include Special Circumstances, which would allow an officer to increase the use of force.*

Special Circumstances

- a. Close proximity to a firearm or weapon
- b. Special knowledge
- c. Injury or exhaustion
- d. Disability
- e. Imminent danger

***Note:** A subject in close proximity to a firearm or other weapon creates an increased danger to the officer, which must be dealt with immediately. An officer may have special knowledge of a subject's skills requiring the use of increased force. A member who is injured, exhausted, on the ground, disabled or is in imminent danger would be justified in escalating through the use of Force Options.*

- J.** The reasonableness of an officer's decision to use force or deadly physical force under this policy must be viewed and scrutinized from only the perspective of the officer on the scene, who may often be forced to make a split-second decision



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in circumstances that are very tense, uncertain, and rapidly evolving and such decisions are not made with the advantage of 20/20 hindsight. The officer's subjective viewpoint must, however, be objectively reasonable.

K. Upon gaining control of a subject following a use of force encounter, the officer shall utilize temporary restraints to maintain control of the subject.

L. Use of Deadly Physical Force

1. An officer is justified in using deadly physical force only when he or she reasonably believes such force is necessary to:

- a. Defend the officer, or a third person, from the imminent threat of death or serious bodily injury.
- b. Effect an arrest or prevent the escape from custody of a person whom they reasonably believe has committed or attempted to commit a felony involving the infliction or threatened infliction of serious physical injury; AND the officer reasonably believes this person still poses a significant threat of death or serious physical injury to the officer or other persons. Where feasible, the officer should give warning of the intent to use deadly physical force.

See, Tennessee v. Garner, 471 U.S.1, 85 (1985): The United States Supreme Court ruled that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed, non-violent suspect (the case involved a burglary suspect). The Supreme Court further stated that deadly force may be used against an offender who has attempted or committed an offense involving the infliction or threatened infliction of great bodily harm. Deadly force may not be used against an unarmed, non-violent, property crime offender. The United States Supreme Court decision went on to state that when an officer is justified in the use of deadly force he will, if feasible, first give a verbal warning. (Example: "Police Officer, Halt").

2. Deadly Force Restrictions

- a. Warning Shots Prohibited - Officers are prohibited from discharging their firearms as a means of warning or frightening a person.
- b. Shooting at or from Moving Vehicles - Officers are prohibited from discharging their firearms at or from



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a moving vehicle, motorcycle, or bicycle (collectively, "moving vehicle") unless officers reasonably believe deadly force is necessary to defend the officer or a third person from the use, or imminent use, of deadly force. For purposes of this policy, officers will not discharge their firearms at moving vehicles except under extreme circumstances. Such discharges will be rigorously scrutinized. Officers shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them. When confronted with an oncoming, moving vehicle, officers must attempt to move out of its path, when possible and should generally avoid placing themselves in situations where the use of deadly force is more likely.

- c. Risk to Innocent Bystanders - When officers are about to discharge their firearms, they should be aware of their field of fire, including the backdrop, so as to avoid creating an unnecessary, substantial risk of harm to innocent persons. Officers are prohibited from discharging their firearms when, based on the totality of the circumstances, discharging a firearm would constitute a greater risk to innocent human life than the subject's actions. (*i.e. discharging a firearm into a crowd, or shooting into a building or through a wall, where the subject is not clearly identified and it is unknown if there are other occupants present.*)
- d. Pointing Weapons - Officers are prohibited from drawing and pointing their firearms at or in the direction of a person, absent an objectively reasonable determination that the situation may escalate to the point where deadly force would be authorized under this policy. It is the rule of this Department that drawing a firearm and pointing it at a target is considered a use of force and must be documented as such.
- e. Use of Firearm to Destroy Animals - Officers may use deadly physical force against an animal that represents a threat to the officer or to public safety. Deadly force may also be used against an animal as a humanitarian measure, where an animal is seriously injured and humanness demands its immediate removal from further suffering.
- f. Use of Department Weapons for Training and Other Purposes - Officers may discharge their firearms for the purpose of practice, firearms training, when on



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the police range or other established shooting ranges, or when authorized by the Chief of Police to participate in law enforcement competition events.

- g. Use of Department-Owned Firearms While Under the Influence of Alcohol and/or Drugs - Officers shall not carry or use any Department-owned firearms or weapons while impaired by alcohol, drugs, or any other medical condition that might interfere with their judgment or proficiency.
- h. Security, Storage, and Safe Handling of Firearms - Officers shall be trained in accordance with Department guidelines and shall obey all safety rules when handling any firearm or any other weapon. No person other than Delhi Police Department Officers shall be permitted access to any Department-owned firearm, with the exception of: police officers from other jurisdictions in the official performance of their duty; for training, repair or maintenance as approved by the Department; or other circumstances with the express permission of the Chief of Police. Officers will secure and store firearms, both on and off duty, in such a way as to ensure that no unauthorized person will have access to or gain control over the firearm. All Department firearms kept at home must be secured in a safe place inaccessible to family members, especially children. Whenever an officer is in the Department and removes his/her handgun or other weapon, the item must not be left in the open and must be secured so that it is not readily accessible to civilians, suspects, victims, or witnesses

IV Medical Procedures

- A.** Whenever an officer has used force towards an individual, the officer shall immediately evaluate the need for medical attention or treatment and shall administer appropriate aid within the training and ability of the officer and seek a higher level of aid as necessary to provide for the health and welfare of the such person.
- B.** Upon the request of the subject involved in the incident, medical and mental health attention or treatment reasonable to the situation shall be provided.



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C. A person who is in the custody of the Delhi PD and is being medically treated must remain in the control of the officer. This includes the that subject may be placed and remain in temporary restraints during treatment. Although control must be retained, reasonable requests for medical attention shall not be ignored.

C. In the event that medical treatment is refused by an injured subject, the officer shall document and record the exact words of refusal and record information about witnesses to the refusal (ideally medical personnel).

D. OC Spray Decontamination

1. Every effort will be made by the officer(s) involved to decontaminate the subject who has been sprayed as quickly as possible.
2. Subject will be monitored throughout the entire decontamination
3. Decontamination
 - a. Remove contaminated subject(s) from area.
 - b. Start communication with subject(s).
 - c. Ask the subject about any pre-existing medical conditions.
 - d. Expose to fresh air and face into the wind, fans, and air conditioners may be used.
 - e. Subject(s) should sit still and be directed to breathe and relax as much as possible.
 - f. If possible, before transportation, apply as much first aid as possible with copious amounts of water. Do not allow subject to rub their eyes.
 - g. Use of a wet paper towel followed by a dry paper towel has proven to be an effective way to remove OC spray from the skin. Repeat as much as needed.
 - h. Contact lenses should not be removed by subject(s), only EMS or hospital personnel should remove all contacts.
 - i. When a water source is available, flush eyes with large amounts of cool water. Encourage subject(s) to force open their eyes to flush out the OC spray.
 - j. If necessary and practical, have subject(s) remove any contaminated clothing.
 - k. A non-oil-based soap, shampoo, or detergent may be used to help remove the remainder of the residue from the skin, especially hands.



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1. Usually subject(s) will recover within 60 minutes, with eyes opening within 20 - 30 minutes.
- m. Any subject not showing improvement within 60 minutes should receive immediate medical treatment.

E. ECD Post Deployment

1. After the deployment of an ECD, the officer may remove the probes as directed in training (unless it is unsafe to do so, i.e. if a probe is imbedded in the neck, face, throat, groin, or woman's breast) from the subject.
2. Treat the probes as a contaminated bio-hazard (use gloves).
3. Verify that the probe is fully intact after removal. If a barb is still inside the body it must be removed by medical personnel.
4. After the probes have been removed, placed them in the cartridge from which they originated.
5. Photograph the impact sites.
6. Follow up with EMS and Medical personnel if necessary.
7. EMS will not remove any probes due to their protocol. They will treat them as impaled objects, of which only Doctors and/or Physician's Assistants will remove them.

V Documentation

A. Any officer encountering physical resistance pursuant to his duties as a Police Officer shall:

1. Notify his immediate supervisor and the Chief of Police of the incident as soon as possible. In the event an officer discharges their weapon, they must make a verbal report to their supervisor within six hours. They must then make a formal written report within 48 hours of the incident.
2. Any incident where officers are required to use force or deadly physical force a use of force report is to be completed as soon as practicable after the incident. When documenting a case of resistance, always include the following:



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- a. The type of call which first brought the officer in contact with the subject.
- b. The number of persons involved in the situation.
- c. The time of day, physical setting and type of situation.
- d. What the subject said to the officer.
- e. The subject's demeanor and attitude.
- f. What the officer said.
- g. The subject's actions and officer's reactions.
- h. The type of instrument and force used by the officer.
- i. A detailed report of the officer's injuries, including photographs when possible.
- j. A detailed report of the subject's injuries, including photographs when possible.
- k. Names, addresses and telephone numbers of neutral witnesses not involved in the confrontation.
- l. Age, Race and Ethnicity of officer(s) and subject.

B. Liability Considerations. Avoid conclusive statements such as, "I used reasonable force to effect the arrest." Use concrete, precise descriptions of the confrontation and the force options used. Include all Officer/Subject Factors and Special Circumstances involved in the confrontation. These pieces of information will not only aid a conviction in criminal court, but will also help in defending the officer's actions should a civil suit develop as a result of the confrontation. Short, generic descriptions of a confrontation may cause a future reader of the report to mistakenly believe something is being hidden.

C. Officers assisting or acting as backup to an incident where non-lethal, physical force has been used are required to complete a report.

D. The Chief of Police will investigate or will assign an individual to investigate all incidents involving the use of force where injury or death occurs or when a subject complains that an injury has been inflicted (the investigator may be from another agency). Personnel under investigation in such incidents will be afforded their rights to legal union representation, civil service guarantees, and / or Garrity Rights.

E. Within ten (10) days of the completion of an investigation regarding the use of force, the Chief of Police will conduct a review of the case and notify the officer involved that the use of force "did" or "did not" conform to Agency Policy or Code of Conduct.



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F. Each reported use of force will be documented in the employee's personnel file, with exception of the use of weapons during approved training. The employee's personnel file will reflect the case number, date/time, type of force or weapon used, and whether the incident is considered justified use or not.

G. Where an officer's use of force causes death, the officer shall be placed on administrative leave after complying with the internal investigation requirements of the Department. Such officer shall remain on leave until it is determined by medical, mental and/or EAP professionals that the officer is fit to return to duty.



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DELHI VILLAGE POLICE DEPARTMENT
9 COURT STREET – PO BOX 328 – DELHI, NY 13753
PHONE: (607) 746-2249 FAX: (607) 746-6149

SUBJECT RESISTANCE REPORT

SJS Incident #: _____ Location of Incident: _____ Date & Time: _____

Name: _____ Sex: _____ Age: _____ Height: _____ Weight: _____

Race: _____ Ethnicity: _____

Address: _____

Describe the reason for initial contact with the subject:

Did you identify yourself as a police officer? Yes No

Were other law enforcement officers present? Yes No

If yes, list other LEO: _____

At the time of contact the subject appeared: Normal Emotional or Mentally Disturbed
 Under the influence of Alcohol Drugs Other

Was the subject an immediate threat to the officer or another person? Yes No

Explain:

Was the subject trying to flee, resist or evade arrest? Yes No

Explain:

Describe what verbal commands or warnings given and how the subject responded:

Commands/Warnings	Subject Response



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Was the subject armed or displaying characteristics of being armed? Yes No

If yes, explain:

Were there any other factors that affected the decision to use physical force? Yes Yes

If yes, explain:

Describe what physical control techniques/force alternatives were utilized and how the subject responded:

Physical Control Techniques	Subject Response

Were there any witnesses to the subject's resistance? Yes No

If yes, list witnesses (name, dob, address, phone): _____

Was the subject injured prior to resistance? Yes No

If yes, indicate injury and any witnesses to prior injury: _____

Was the subject injured during resistance? Yes No

If yes, describe injury: _____

If subject was injured was medical treatment administered?

Yes If yes, where and by whom? _____

No If no, why not? _____

If refusal, how exactly did subject refuse? _____

Reporting Officer: Age: _____ Race: _____ Ethnicity: _____

Reporting Officer: _____ Supervisor: _____

Signature: _____ Signature: _____

Date: _____ Date: _____