



Sioux Falls Police Department

Partnering with the community to serve, protect, and promote quality of life!

Policy: Response to Resistance, General Guidelines / Options	Related Policies:	Section #: 600 Response to Resistance
		Policy #: 601
		Effective: 1/2021
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<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can be used as basis of a complaint by this department for nonjudicial administrative action in accordance with the laws governing employee discipline.</i>		
Policy Owner: ASD		
Reference: SDCL 22-18-2; 22-18-3; 22-18-4; 23A-3-5; 18 U.S.C. § 1365 (h) (3)		
Sensitivity Level: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Law Enforcement Eyes Only		

1. Purpose:

- 1.1. The purpose of this policy is to direct officers of the Sioux Falls Police Department in the appropriate response to resistance.

2. Policy:

- 2.1. The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in use of force events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. All responses to resistance must be objectively reasonable.

3. Definitions:

- 3.1. **Deadly Force** – Any force that is likely to cause serious bodily harm or death.
- 3.2. **Imminent** – Impending or about to occur.
- 3.3. **Non-Deadly Force** – All uses of force other than those that is likely to cause serious bodily harm or death.

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- 3.4. **Objectively Reasonable** – The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer responding to the resistance is presented.
 - 3.5. **Reasonable Belief** – Reasonable belief means that the person concerned, acting as a reasonable person believes that the prescribed facts exist.
 - 3.6. **Serious Bodily Harm: (18 U.S.C. § 1365 (h) (3))** – The term "serious bodily injury" means bodily injury which involves
 - 3.6.1. a substantial risk of death;
 - 3.6.2. extreme physical pain;
 - 3.6.3. protracted and obvious disfigurement; or
 - 3.6.4. protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
 - 3.7. **Choke Hold** – A physical maneuver or technique that restricts an individual's ability to breathe for the purpose of incapacitation.
4. Procedure:
- 4.1. When the response to resistance is necessary in the course of their duties as law enforcement officers, all officers of this department shall strive to use the techniques obtained by approved departmental training. However, while techniques obtained by approved departmental training are preferred, circumstances may justify an officer's use of other techniques. While using departmentally approved training techniques or other technique, all officers' reactions to the subject's actions shall be appropriate and only that reasonably necessary based on the totality of the situation. Every situation is a continuous engagement and officers need to continually evaluate the propensity for injury and have the ability to disengage or escalate at any time.
 - 4.2. In determining the appropriate response to resistance, officers should apply the levels of force under the department's trained response to resistance options along with the following three factor test (Graham v. Connor):
 - 4.2.1. How serious is the offense the officer suspected at the time the particular force used?
 - 4.2.2. What was the physical threat to the officer or others?
 - 4.2.3. Was the subject actively resisting or attempting to evade arrest by flight?
 - 4.3. The legal level for the use of force is set by three factors:
 - 4.3.1. Federal Law
 - 4.3.2. State Law

4.3.3. Departmental Policy and Procedure

4.4. **South Dakota statutory law provides:**

- 4.4.1. To use, attempt, or offer to use force or violence upon or toward the person of another is not unlawful when necessarily committed by a public officer in the performance of any legal duty or by any other person assisting him or acting by his direction.
- 4.4.2. Under the South Dakota statutory authority, the force used by a police officer is unlawful when it becomes greater than necessary to carry out his duties.
- 4.4.3. An arrest is made by an actual or attempted restraint of the person arrested or by his submission to the custody of the person making the arrest. No person shall subject an arrested person to more physical restraint than is reasonably necessary to affect the arrest. Any person making an arrest may take from the arrested person all dangerous weapons and property as defined by state law, which the arrested person may have about his person.
- 4.4.4. To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by any person in arresting someone who has committed any felony or in delivering that person to a public officer competent to receive him or her in custody.

4.5. **Force Options:**

- 4.5.1. Officers have several force options in response to resistance that will be dictated by the actions of the suspect upon the appearance of the police officer. An officer's actions need not follow any sequential order when responding to the resistance being offered. The level of response used by the officer may be equal to or greater than the level of resistance being offered by the subject. Officers may be limited in their options due to the circumstances and actions of the subject. This response should be objectively reasonable in light of the circumstances. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.

4.5.2. **Response to Resistance Options**

- 4.5.2.1. **Command Presence:** Visual appearance of officer where it is obvious to the subject due to the officer's uniform or identification that the officer has the authority of law.
- 4.5.2.2. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
- 4.5.2.3. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; Techniques that have a low potential of injury to the subject.

- 4.5.2.4. **Chemical Spray:** When a subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
 - 4.5.2.5. **Electronic Control Device:** When a subject exhibits some level of active resistance/active aggression, officers may use an electronic control device to temporarily incapacitate the subject.
 - 4.5.2.6. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks, and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
 - 4.5.2.7. **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion. Long batons are intended for use in crowd control situations.
 - 4.5.2.8. **Extended Range Impact Devices (40mm):** The 40 MM less lethal launcher is a single or multi-shot launcher with a rifled barrel. It fires specially developed rounds designed and intended for use as less lethal impact munitions.
 - 4.5.2.9. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement shall be made unless the officer is faced with an imminent threat of serious bodily harm or death to the officer(s), or some other person who is present.
 - 4.5.2.10. **Deadly Force:** Force that is likely to cause serious bodily harm or death.
- 4.6. **Deadly Force:**
- 4.6.1. Because of the value of human life, any use of deadly force should reflect the best judgments the officer is capable of rendering under the totality of the situation. This would include assessing the potential danger to bystanders and occupants of vehicles.
 - 4.6.2. When possible, officers of this department shall exhaust every other reasonable means of apprehension, control, restraint, or force before resorting to the use of deadly force.
 - 4.6.3. The use of deadly force is objectively reasonable when:
 - 4.6.3.1. The officer is faced with an imminent threat of serious bodily harm or death to the officer(s), or some other person who is present, or;

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- 4.6.3.2. To prevent the escape of an individual in cases where the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death AND by the subject's escape they pose an imminent threat of serious bodily harm or death to another.
 - 4.6.3.3. Officers should warn the subject prior to using deadly force where feasible.
 - 4.6.3.4. Officers of this department are prohibited from using choke holds, except in situations where the use of deadly force is allowed by law.
- 4.7. Active Resistance
- 4.7.1. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and provide for emergency medical response where needed.
- 4.8. Use of Firearms / Response to Resistance and the Undercover Officer: The Sioux Falls Police Department recognizes that undercover operations necessitate a unique response to incidents involving the response to resistance.
- 4.8.1. While no policy can anticipate every potential circumstance, certain facts are inherent to the covert law enforcement officer.
 - 4.8.1.1. Undercover officers are not readily identifiable as a police officer. The assailant is not concerned with arrest and even if the undercover officers identifies themselves as a police officer the suspect will not believe them or will be unable to intelligently process the verbal identification.
 - 4.8.1.2. The undercover officer is not equipped with the same defensive weapons as their overt counterpart.
 - 4.8.1.3. Attacks upon an undercover officer may be sudden and very violent with no opportunity for response to resistance options.
 - 4.8.2. All Sioux Falls Police Department officers are authorized to use any reasonable response to resistance options, any reasonable alternative weapon(s) or reasonable means justified by the immediate threat presented to the officer. Use of such alternative force or alternative weapon that has not been specifically approved for use by the Department will be reviewed as any other response to resistance incident.
 - 4.8.3. **Firearms and the Undercover Officer:** The Sioux Falls Police Department recognizes that the use of the department standard firearm may not be suitable

for some undercover operations. The undercover officer is therefore authorized to carry an alternative firearm with the approval of his/her immediate supervisor and the Chief of Police. Said firearm must be authorized by the department armorer. The undercover officer must qualify with said firearm.

4.9. Reporting Response to Resistance

- 4.9.1. Police officers are given the authority to use force to overcome a subject's resistance to the officer's order to comply, effect arrest, defend against assault, and prohibit flight. It is incumbent that officers be held accountable to safeguard the rights of members of the public.
- 4.9.2. This policy mandates that members of the department accurately, completely, and in a timely manner, report responses to resistance per Section #600, Policy #602 Reporting Requirements.