

## **246.01 Response to Resistance or Aggression Procedure, Duty to Intervene, Responding to Persons in Crisis, and De-Escalation**

- I. USE OF FORCE TO DETAIN, ARREST, OR SEARCH
- II. DUTY TO INTERVENE
- III. RESPONDING TO PERSONS IN CRISIS
- IV. DE-ESCALATION

### **I. USE OF FORCE TO DETAIN, ARREST, OR SEARCH**

A. Minnesota Statutes section 609.06 authorizes peace officers to use reasonable force for the following reasons:

- 1. To protect themselves;
- 2. To protect others;
- 3. To make a lawful arrest;
- 4. To execute a legal process;
- 5. To enforce an order of the court; or
- 6. To execute any other duty imposed upon a public officer by law.

B. Before using force, officers will, when possible, announce their presence, provide lawful orders, and give individuals an opportunity to respond whenever safe and reasonable under the circumstances.

### **II. DUTY TO INTERCEDE AND REPORT**

#### **General Order**

Officers have a duty to intervene to prevent any use of excessive force. Any officer present and observing another officer using force that is clearly unreasonable under the circumstances must when in a position to do so safely, intervene to prevent the use of excessive force. Officers must promptly report any excessive or unreasonable force to a supervisor.

#### **State Law**

As described in Minnesota Statutes section 626.8452, officers have a duty to intercede and report under state law:

#### **A. Duty to Intercede**

Regardless of tenure or rank, an officer must intercede when:

- 1) present and observing another officer using force in violation of section 609.066, subdivision 2, or otherwise beyond that which is objectively reasonable under the circumstances; and
- 2) physically or verbally able to do so

#### **B. Duty to Report**

An officer who observes another officer use force that exceeds the degree of force permitted by law has the duty to report the incident in writing within 24 hours to the chief law enforcement officer of the agency that employs the reporting officer.

Supervisors must respond and document the incident according to General Order 246.03.

### **III. RESPONDING TO PERSONS IN CRISIS**

There are many reasons a person may be unresponsive, uncooperative, or resisting arrest. A person may be uncooperative due to a medical condition, mental, physical, or hearing impairment, language barrier, or emotional crisis, and have no criminal intent. This may not make the individual any less dangerous, but it may require a change in tactics that will be more effective while maintaining officer safety if these circumstances are known to the officer.

All seizures, including seizures for the purpose of taking individuals into custody for treatment, must be reasonable under the Fourth Amendment. Reasonableness is determined on a case-by-case basis. When there is no suspicion of criminal activity, any use of force must be based on the belief that the action is reasonable to protect officers, the subject or others from the threat of imminent physical harm. *Frederick v. Mottsinger*, 873 F.3d 641, 647 (8th Cir. 2017).

In situations where a person has threatened or committed self-harm only and poses a risk only to themselves, officers are not authorized to use deadly force. However, these situations may rapidly evolve, so officers must continually evaluate the risks and take appropriate actions to maintain safety for the public and themselves. An officer's use of deadly force must meet the parameters set forth by Minnesota Statutes section 609.066 and all of the elements of deadly force must be known or reasonably believed.

In determining the reasonableness of a response to an individual in crisis, officers may consider the following:

1. Whether the individual poses an imminent threat of harm to themselves or others,
2. Whether some degree of force is reasonably necessary to address the threat, and
3. Whether the force option used is reasonable under the circumstances.

Furthermore, responses to individuals in crisis must also comply with the requirements of General Order 403.00.

#### **IV. DE-ESCALATION**

Officers should attempt to de-escalate encounters before using force to respond to resistance or aggression, when safe to do so. At times an officer must exercise control of a violent or resisting person to make an arrest, or to protect the officer, other officers, or members of the community from the risk of imminent harm. Not every potential violent confrontation can be de-escalated, but officers have the ability to impact the direction and the outcome of many situations they handle based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, communicate, and coordinate a response. Officers should use advisements, warnings, verbal de-escalation, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options. Officers are expected to perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

De-escalation techniques could include the following:

**Planning.** Attempting to arrive at the scene with a coordinated approach based upon known or reasonably believed information and any pre-existing knowledge of the involved parties. The dynamic nature of most incidents will require tactical plans to be flexible and officers need to adapt plans as additional information or factors become known to officers.

**Assessment.** Assessing the situation as circumstances change and new information is received. If a subject is failing to comply with orders, officers should attempt to determine whether their lack of compliance is a deliberate attempt to resist or escape, or an inability to comprehend the situation due to environmental, physical, cognitive, or other conditions. If the subject is unable to comprehend the situation, other tactical options may be considered to resolve the situation safely.

**Time.** Time allows officers the opportunity to communicate with the subject, refine tactical plans and, if necessary, call for additional resources. If a subject is contained and does not pose an imminent threat to officers, the public or themselves, time can provide an opportunity for the subject to reconsider their actions and decisions.

**Redeployment and/or Containment.** In some circumstances, redeployment and/or containment can give officers the added benefit of time and distance while continuing to maintain safety. The

addition of time and distance may give officers an opportunity to reassess, communicate, request additional resources, or deploy other tactics to reduce the likelihood of injury to both the public and officers while also mitigating any potential ongoing threats. Redeployment, however, should not enable a subject to gain a tactical advantage, arm themselves, or flee and pose a greater danger to the public or officers.

**Other Resources.** In the case of a tense or potentially dangerous encounter, requesting additional resources from patrol resources, the Crisis Negotiation Team, or the Special Weapons and Tactics (SWAT) Team may provide officers with specialized expertise, personnel, and tools to help respond to an incident.

**Lines of Communication.** Maintaining open lines of communication between officers and communicating effectively with a subject can help officers respond to a tense or potentially dangerous encounter. Communication between officers can improve decision-making under tense circumstances and increase the effectiveness of coordinated actions. In addition, when a subject observes that officers are prepared, well organized, professional, and working as a team, they may be deterred from attempting to flee, fight, or actively resist.

Because every situation is fluid and unique, ongoing communication and coordination between officers is important to respond effectively in a tense and/or uncertain encounter. Communicating with a subject may slow down the incident, creating time to plan. All or some of the following tactics may be used in the same incident as time or circumstances allow:

- Verbal warnings
- Persuasion
- Defusing
- Empathy
- Redirecting
- Advisements
- Building rapport
- Asking open-ended questions
- Giving clear and direct orders

### **Role of Supervisors**

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potentially violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that officers under their supervision conform to these General Orders. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

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