

SUBJECT: RESPONSE TO RESISTANCE AGGRESSION		GENERAL ORDER: 106
EFFECTIVE DATE: January 1, 2016		Page 1 of 17
REVISIONS DATE: July 1, 2017	Edward Preston , Chief of Police	
CROSS REFERENCE: Title 12; 49 CFR § 1544.219;		
REPLACES: G. O. 4.1, 4.2		

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106.01 Purpose: The purpose of this policy is to establish basic guidelines regarding the response to resistance and aggression, carrying and use of firearms and the application of deadly force by members of the Morgantown Police Department.

Performance of the Law Enforcement function raises the possibility that at some given point in time, and under circumstances of necessity, police officers may be called upon to use force in the performance of their duties. The intent of this order is to provide guidelines governing the use of force by sworn members of the department, and to prohibit the imprudent use of such force so that loss of life or serious bodily harm may be held to a minimum or eliminated.

106.02 Policy: This Policy, as with all department policies, is for departmental use only and does not apply in criminal or civil proceedings. The department policy should never be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this departmental directive will only form the basis for departmental

administrative sanctions. Violations of the law will form the basis for civil and criminal sanctions in a recognized judicial setting.

106.02.01 Officers of the Morgantown Police Department will only use the force necessary and reasonable under the circumstances to affect their legal duty. The use of necessary force is permitted only after all other reasonable means of effecting compliance have failed. No police officer will use unreasonable or excessive force toward any person. Documentation of the use of force is required.

106.02.02 The response to resistance and aggression by employees of the department will, whenever possible, be progressive in nature. This force may be in the form of advice, warnings, persuasion, verbal encounters, physical contact, use of less lethal weapons or the use of deadly force.

106.03 Definitions: The following definitions of terms will apply throughout this general order.

Deadly Force: Deadly force is that force that is intended to or likely to inflict serious physical bodily injury or death.

Department Approved: Shall mean either approval as per written order or regulation and/or approval by the Chief of Police or his designee. Those weapon(s), ammunition and/or leather goods and holsters specifically defined and approved by the Chief of Police. Such approved weapons, ammunition and other pertinent items will be approved in writing. Only such weapons or items as specifically approved by be carried or used by any police officer either on or off duty.

Excessive Force: Excessive force is any force that is unreasonable or unnecessary under the circumstances. Excessive force is never called for or appropriate and will not be tolerated.

Force: conduct on the part of a police employee that is designed to assist the employee in controlling a situation or the actions or behavior of a person or persons.

Less Lethal Force: Less lethal force is force that is not reasonably likely to inflict serious physical bodily injury or death.

Reasonable Belief: When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

Serious Physical Bodily Injury: Serious physical bodily injury that creates a substantial risk of death, permanent disfigurement, or long-term loss or impairment of the function of any bodily member or organ.

Cold Shoot: A qualification round of fire that takes place without any previous shooting conducted at the direction of a departmental firearms instructor for that day.

Intensive Firearms Training: Specialized training for designated personnel designed to increase their firearms proficiency to meet department qualification requirements.

Remedial Firearms Training: Individualized training for personnel who have failed to meet department standards of 80% or higher after completing Intensive Firearms Training.

Justified: In compliance with all applicable department policies.

Not Justified: Not in compliance with all applicable department policies.

Unintentional: Not done purposely; happening without intent.

106.04

Wheel Model is defined as a tool intended to augment written policy. When looking at the wheel the officer places himself/herself in the center of the wheel at the point marked “Situation”. The officer then identifies the type of resistance/aggression confronting him/her and then selects an appropriate response to deal with the resistance/aggression.

Definitions:

Situation – is defined as the combination of circumstances faced by an officer at a given moment.

Compliant – is defined as anything that brings an officer to a particular location; i.e., a 911 call, general patrol duties, a supervisor’s direction.

Verbal Resistance – is defined as a subject being argumentative with an officer.

Passive Resistance – is defined as resistance to authority or law by nonviolent methods or refusal to comply; i.e., not following an officer’s lawful orders.

Active Resistance – is defined as an action on the part of a subject that displays a failure to comply with an officer’s lawful order or attempt to intervene in a situation necessitating police involvements; i.e., walking away when ordered to stop, fighting with another subject and not stopping on command.

Ominous Resistance – is defined as resistance that is assaultive, attacking, threatening or menacing and is capable of causing injury or serious physical harm.

Lethal Resistance - is defined as any resistance which may cause death or serious physical harm to anyone.

Officer presence – is defined as being at a location in uniform, an officer’s body language or demeanor, or an identification of authority.

Tactical Communication – is defined as an officer giving directives, direct lawful orders, questioning or persuasion.

Empty Hand Techniques – is defined as physical contact which includes nonviolent touching.

O.C. Spray – is defined as Morgantown Police Department issued oleoresin capsicum pepper spray.

Electro-Muscular Disruption Device – is defined as Morgantown Police Department issued Electric device that uses electricity to disrupt the voluntary control of a subject’s muscles; i.e., x26 Taser.

Hard Impact Techniques – is defined as serious physical contact where the officer may use focused blows, K-9 units or impact weapons to gain control of a violent situation.

Lethal – is defined as any force which may cause death or serious physical harm to anyone.

Tactical Retreat or Withdrawal – is defined as an officer leaving the area or disengaging from the situation to wait for backup, to reassess the situation, or to get direction from supervisors or other officers.

106.05 Using the Wheel Model: When using the wheel model the officer places him/her self in the center of the wheel at the point labeled “situation”. The second circle from the center contains the type of resistance/aggression the officer may face. The third circle from the center shows the type of force the officer may utilize in response to the type of resistance/aggression the officer is encountering. The fourth circle, which is the outer circle, is the tactical retreat or withdrawal which may be used at any time during any situation

When an officer finds him/her self in a situation involving a COMPLAINT, the officer may respond by utilizing : 1. Tactical retreat or withdrawal, officer presence, body language, demeanor , identification of authority or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical.

106.05.02 When an officer finds him /her self in a situation involving verbal resistance the officer may respond by utilizing an of the above listed responses and/or: Persuasion, Questioning, Directives, Direct Lawful orders or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical.

106.05.03 When an officer finds him/her self in a situation involving Passive Resistance the officer may respond by utilizing any of the above listed responses and/or: nonviolent touching, directional contact, pressure points, escort holds, restraints, joint come-along or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical.

106.05.04 When an officer finds him/her self in a situation involving active resistance the officer may respond by utilizing any of the above listed response an/or: O.C. Spray, EMD, or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical.

106.05.05 When an officer finds him/her self in a situation involving ominous resistance the officer may respond by utilizing any of the above listed response and/or: focused blows, impact weapons, K-9 Units, or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical.

106.05.06 When an officer finds him/her self in a situation involving Lethal resistance the officer may respond by utilizing any of the above listed response and/or: firearm or anything that may cause death or serious physical harm, or any other reasonable force necessary to gain control of the situation provided authorized techniques are not available or practical

106.05.07 When an officer is confronted with resistance or aggression he/she may respond by utilizing any option on the wheel continuum at the level the officer is confronted with, or below that level if he/she feels it would be appropriate under the totality of the circumstances facing the officer

106.06 Allowable Use of Force: The objective of any response to resistance aggression is to overcome a subject’s resistance to an officer’s lawful purpose. During all applications of force, Morgantown Police Officers will:

1. Employ the response reasonably necessary to accomplish a legal purpose

2. Resort to more severe methods of response only to overcome either increasing resistance or an increasingly dangerous threat to the officer and/or the public.
3. Employ approved techniques and use authorized weapons in accordance with department training.
4. Use every means possible to end any resistance to aggression in as timely a manner as possible under the circumstances and conditions.
5. May also use other reasonable force necessary to gain control of a situation provide authorized techniques are not available or practical.

106.06.01

Verbal Response to Resistance/Aggression – in dealing with people, each employee must attempt to inspire and approval of the public. Employees will be courteous and civil in their relationships with the public.

Verbal force may be in the form of warnings, advice, or persuasion. Volume and tone control may in and of itself be progressive in nature depending upon circumstances. By using reasonable and necessary verbal force, employees may not have to resort to the use of other forms of force.

106.06.02

Physical Response to Resistance/Aggression – Physical force involves actual physical bodily contact with and forcibly subduing that individual until resistance is overcome. Physical force excludes the use of weapons or objects which could be used as weapons such as the flashlight, etc. Hard handed force will only be used as a last resort after the approved intermediate weapon has failed to subdue the aggressor or if the intermediate weapon would not have been practical due to the sudden or unusual circumstances.

In no instance will employees use physical force in excess of that which is reasonable and necessary to lawfully and properly neutralize an illegal assault or overcome resistance or aggression by a person being taken into custody.

A response to Resistance/Aggression Report will be completed every time a significant level of physical force is used.

106.06.03

Intermediate Force – involves the use of less lethal weapons against a person and forcibly subduing that individual with the assistance of these weapons until resistance or aggression is overcome. The intermediate force weapons designated for the Morgantown Police Department are Department issued and approved O.C. Spray, EMD and Collapsible Batons

Any other less lethal object that an employee uses to assist in subduing an individual will for the purpose of this policy be considered intermediate force (i.e. portable radio, rock, stick). These less lethal objects will be used only after the designated weapon has failed to subdue the aggressor or the circumstances and conditions dictate that these were the only viable alternatives for the officer.

The use of intermediate force will be restricted to quelling physical confrontations where lesser verbal or soft physical force would be or have been ineffective or inappropriate. In every case, a response to Resistance/Aggression Report will be completed when intermediate force is used.

106.06.05

Use of Deadly Force: In deciding whether to use deadly force, the value of human life should outweigh all other considerations.

Police Officers are authorized to use **deadly force** only as a last resort after all reasonably available lesser efforts have failed or when there is reasonable belief that such force is necessary to:

- A. To defend themselves or a third person from what they reasonably believe to be the use of or imminent use of deadly force; or
- B. To affect the arrest or to prevent the escape from custody of a person who they reasonably believe is attempting to escape by means of a deadly weapon or who by his conduct or other means indicates that he presents an imminent threat of death or serious physical bodily injury to others unless apprehended without delay.

106.06.06 **Restrictions on the Use of Deadly Force:** The use of a firearm or other means of deadly force shall not be permitted in the following circumstances:

- A. To fire warning shots; **or**
- B. When it appears likely that an innocent person may be injured; **or**
- C. To apprehend suspects who have committed non-violent criminal acts; **or**
- D. To apprehend suspects who have committed a violent felony unless there is an imminent threat of death or serious physical bodily injury to the officer or another person if the suspect is not immediately apprehended.
- E. To fire at moving vehicles or from moving vehicles **except** as a necessary measure of self-defense or defense of another when **the officer reasonably believes that the suspect is using deadly force.**
- F. While under the influence of alcohol or drugs. Officers shall not use or carry any firearm or dangerous weapon while under the influence of alcohol or other drug.

106.07 **Use of Firearms:** The discharging of a firearm in the direction of any person or any occupied vehicle shall be considered as **deadly force** and shall comply with the provisions of section [106.05](#) and [106.06](#). The carrying, display, use, and maintenance of firearms shall be strictly monitored by the department and governed by the provisions of this order.

106.08 **Discharge of Firearm:** The discharge of a firearm by an officer in the direction of any person shall be for the purpose of stopping the targeted person. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at center mass of the target available.

106.08.01 Any discharge of a firearm, for other than training or recreational purposes will be documented.

- 106.08.02** The killing of an animal is justified:
1. To prevent imminent death or serious injury to the police officer or other people.
 2. When the animal is so sick or badly injured that humanity requires its relief from further suffering and an Animal Control Officer is not immediately available, and with the approval of a supervisor.
- 106.08.03** Officers shall complete a case report in accordance with GO 126 – Record Management System.
- 106.08.04** Supervisors are to respond to the scene of all animal shootings and make a determination as to whether the shooting requires further investigation. Ex: injuries, where shooting occurred, etc..
- 106.09** **Surrendering of Firearms:** Officers of this department shall not surrender their department issued firearms to another person unless ordered to do so by supervisory personnel, except in the following instances:
- A. For the purpose of inspection by a certified Firearms Instructor.
 - B. An officer who is injured or ill and requires medical treatment may temporarily surrender his/her department issued firearm to another law enforcement officer for the purpose of weapon security. However, the weapon will be secured as soon as possible with the senior commander on scene who will contact a firearms instructor so that the firearm can be placed in the armory.
 - C. Supervisory personnel shall immediately take into their possession, for the purposes of weapons security and safety, all of the department issued firearms and any other weapons of any officer who is found to be physically or mentally incapable of securing his/her firearms. However, the weapon will be secured as soon as possible with the senior commander on scene who will contact a firearms instructor so that the firearm can be placed in the armory.
 - D. Supervisory personnel shall immediately take into their possession, for the purposes of weapons security and safety, any and all of the department issued weapons of any officer who has been suspended from duty as a result of a sustained internal affair investigation. If a supervisor takes possession of a firearm from an officer they are to contact a firearms instructor so that the firearm can be placed in the armory.
 - F. Any officer involved in a shooting must surrender the weapon(s) used in the shooting for investigative purposes to the investigator on scene or his/her designee. However, the weapon will be replaced as deemed necessary by the Chief of Police or his designee.
 - G. The Chief of Police or his designee may take into his possession all department issued weapons of any officer who is the subject of a criminal investigation conducted by this agency and/or any other agency. If a supervisor takes possession of a firearm from an officer they are to immediately contact a firearms instructor so that the firearm can be placed in the armory.
 - H. The Chief of Police or his designee shall immediately take into his possession, for the purposes of weapons security and safety, all of the department issued firearms of any officer who is prohibited from possessing a firearm by court order and/or state or federal law including a domestic violence court order. If a supervisor takes possession of a

firearm from an officer they are to immediately contact a firearms instructor so that the firearm can be placed in the armory.

I. Failure to meet the training and qualification requirements prescribed in section [106.16](#).

106.09.01 Securing of weapons. Officers will secure their batons and lethal weapons in a secured box provided by the facility or in the trunk of their vehicle:

1. While fingerprinting and photographing a prisoner in the processing room of the Police Department.
2. Prior to entering any detention facility or any other detention facility (juvenile or adult) except in exigent circumstances.
3. Upon entering the mental patient unit at a medical facility except in exigent circumstances.
4. Officers will confirm by verifying the serial number of the weapon retrieved from the secure location is the weapon issued to them.

106.10 **Authorized Weapons and Ammunition:** A list of currently authorized/approved weapons and ammunition is available as an appendix to [General Order 106](#).

106.10.01 On-Duty Firearm: All officers of this department shall be armed with the department issued firearm while scheduled on duty and outside the police building.

106.10.02 Department issued firearms shall not be used for hunting or any other purpose not authorized by this order.

106.10.03 Officers shall be allowed to carry a second firearm on their person while on-duty in a department approved secure holster and completely concealed. This weapon must be approved by the Department in accordance with section [106.14](#) and shall be subject to all applicable sections of this order.

106.10.04 Officers carrying a second firearm will have the firearm readily available for routine inspection by a supervisor. The caliber of the second firearm shall be restricted to those calibers between .380 and .45 caliber department approved ammunition.

NOTE: **Officers are not required to carry a second firearm while on-duty. The carrying of a non-approved firearm could result in disciplinary action up to and including termination.**

106.10.05 Authorized Ammunition: All department personnel will use only the Ammunition listed in the General Order 106 Appendix for use in department issued/approved firearms. During the qualification process ballistic equivalent ammunition may be used; however this ammunition is not authorized for any other use. The Department will not provide ammunition for weapons carried off-duty or as secondary weapons while on-duty.

106.11 **Concealment of Firearm by Non-Uniformed Personnel:** Sworn personnel, who are not wearing an approved police uniform, will ensure their attire completely conceals any firearm, handcuff, magazine pouch, baton, OC spray or similar equipment when outside the immediate vicinity of a police facility except as indicated below:

A. While conducting investigations at crime or accident scenes;

- B. While making arrests and displaying firearms in accordance with department policy;
- C. During planned operations such as serving search or arrest warrants, special tactical operations as approved by supervisory personnel.

NOTE: When a weapon is worn or carried on or about the person and within open display of the public, the non-uniformed officer will ensure that a police badge is clearly visible on the front of the body or in close proximity to the firearm. Sworn officers may also wear other approved department issued accessory clothing when working in plainclothes, such as raid vest, police caps, lightweight jackets or traffic vests that clearly identify them as police officers.

106.12 Un-holstering the Firearm: Officers may un-holster their firearm as a defensive measure when the possibility of death or serious physical bodily injury exists to the officer or another person. **No definite rules can be established as to the instant when officers may un-holster their firearm; however, the following situational examples, while not all inclusive, should serve as general guidelines:**

- A. When a person to be detained or investigated suddenly exhibits or is suspected of possessing a deadly weapon; or
- B. In most cases, officers are prohibited from using **deadly force** to stop a fleeing felon; however, as a defensive measure for the officer's safety, the firearm may be un-holstered when effecting a felony arrest until the suspect(s) is no longer a threat; or
- C. When investigating suspicious circumstances which present a potential danger to the officer, such as searching a building subsequent to an alarm call, or searching an area for a suspicious person who has fled from officers; or
- D. Upon approaching a vehicle after a pursuit or apprehending its occupants after a pursuit.

106.13 Off-Duty Firearms: Officers shall have the right to carry concealed firearms during off-duty hours, in accordance with department policy; however, officers are not required to carry a firearm off-duty. Officers are permitted to carry their service weapon or authorized personal weapon as described in section [106.10.01](#) and after they have met all the required qualifications. The use of an off-duty weapon will be subject to the provisions of this order.

106.13.01 Off-Duty Firearms Restrictions: No officer shall carry a firearm off-duty while patronizing an establishment where alcoholic beverages are the primary item of sale. No off-duty officer shall be permitted to possess or carry a weapon while the officer is consuming or under the influence of any intoxicating or mind-altering substance.

Officers shall carry off-duty firearms fully concealed. Under no circumstances will members of the department wear, carry or display their off-duty firearm in an obvious or flagrant manner, or in any fashion that would denote them as law enforcement officers or invite unfavorable comment from the public.

Officers electing to carry a personal firearm off-duty must meet all the qualifications as outlined in section [106.14](#) and must have prior written approval from the Chief of Police.

Officers shall carry only ammunition approved by the Chief of Police in both their on-duty and off-duty firearms.

Officers must carry and have on their person both their police identification and badge any time that they are off duty and carrying a firearm.

106.14 Approval Procedures: An officer desiring authorization to carry a personal firearm either as a secondary or an off-duty weapon must:

- A. Complete and submit an Authorization To Carry Personal Firearm Form (MPD #17) via Chain of Command to the Office of the Chief requesting the use of a personal firearm.
- B. Have the firearm inspected by the department armorer for serviceability and safety, and or provide annual certification to the department that the firearm has been inspected and approved by a qualified armorer.
- C. Pass an approved department firearm qualification course annually. The qualification shoot should be scheduled through the Firearms Training Unit.

106.15 Use of Shotgun/Specialty Weapon: Officers should not carry, or use a department shotgun or specialty weapon who has not demonstrated proficiency in its use at scheduled firearms training sessions. The use or display of a shotgun or specialty weapon shall comply with all provisions of this order relating to firearms.

- A. Only department issued ammunition shall be carried in the duty weapons.
- B. All shotguns will be carried in cruiser safe position (chamber empty, safety on).
- C. Carbines/general purpose rifles may be carried in place of the shotgun if approved by the Chief of Police and Certified Firearms Instructor.
- D. At the discretion of the Chief of Police and Certified Firearms Instructor, police officers may be issued other tactical weapons.
- E. All long guns will be secured in a mobile shotgun/rifle locking device mounted in the officer's vehicle or secured in an approved lockable container.

106.16 Firearms Training and Qualifications: All sworn personnel shall receive a copy of and instruction in this general order prior to being authorized to carry a firearm. Officers shall qualify prior to carrying any firearm

106.16.01 Annual Qualification: All sworn shall qualify at scheduled firearms training sessions semi-annually with their firearms authorized in accordance with section [106.10](#) and [106.15](#)

106.16.02 Failure to Qualify: Officers must achieve a passing score in accordance with department testing procedures and qualification requirements prescribed in section [106.16](#). Failure to achieve a passing score will result in revocation of authorization to carry that particular firearm(s).

106.17

Care and Maintenance of Firearms: All officers must take reasonable and adequate care of issued/approved firearms and weapons. Firearms and weapons will be maintained in a clean and working condition.

All weapons, prior to issuance, will be reviewed, inspected and receive approval for use by a department armorer.

- A. An annual inspection of **all** carried firearms shall be conducted by a department firearms instructor/armorer.
- B. Malfunctions will be reported to a supervisor immediately. A malfunctioning weapon will be removed from service immediately and a temporary replacement will be issued.
- C. The modification, alteration, or repair of departmental issued/approved firearms shall be the responsibility of the department armorer and shall be performed only by the armorer or at his direction.
- D. Lost, damaged, destroyed or stolen firearms will be documented immediately in a memorandum to the officer's supervisor, via Chain of Command. Stolen firearms will also be documented with a police report from the agency of jurisdiction where the firearm was stolen and a copy of the report will be attached with the memorandum. If the officer is responsible for the loss, damage, destruction or theft of the firearm, the officer may be subject to financial liability and/or disciplinary action.

106.17.01

Guidelines for Safe and Proper Storage of Department Issued Firearms: Officers shall have the ultimate responsibility of ensuring safe and proper storage of department issued firearms.

- 1. Officers will maintain control of all issued firearms at all times.
- 2. Firearms will NOT be left in a department vehicle when the vehicle is left in the care of non-departmental personnel.
- 3. Officers will remove the firearm(s) from department vehicles and store same in the department's armory or at their residence in a secured manner.
- 4. To prevent unnecessary injury or death caused by unsafe storage of firearms, officers should store their department issued firearm(s) unloaded, with the department issued cable type slide locking system properly affixed OR in a secured gun safe, cabinet, or gun rack.
- 5. Even though this section applies specifically to department issued firearms, we strongly urge our employees to store ALL of their firearms in a safe and proper manner.

106.17.02

Lead Exposure: The EPA has determined that lead poses a serious health hazard to everyone. Unfortunately, individuals working with and around firearms often overlook the harmful effects of lead. Therefore, department personnel must take precautions to control all unnecessary exposure to this toxic element. Personnel shall use the necessary precautions to minimize exposure.

106.17.03

Precautions on the Range: Precautions can be taken both on and off the range to protect shooters, instructors, and their families from lead poisoning. Administrative controls and good hygiene are two necessary tools. In addition, all shooters and instructors should practice the following dos and don'ts of range safety.

1. Do Be Aware Face, Arms, and Hands Are Covered With Lead: Shooters and instructors should wash thoroughly with cold water and plenty of soap. Cold water is preferred because warm water enhances the absorption of lead by opening the pores of the skin. If no water is available, shooters should consider carrying a box of wet hand wipes or a bottle of cool water and a washcloth for this purpose.
2. Do Not Smoke on the Range: Smoking any type of tobacco products on the range should be prohibited to prevent acceleration of inhaled lead into the blood stream and ingestion of lead transferred from hands to the cigarette, cigar, etc.
3. Do Not Eat on the Range: Lead dust on hands and face can be ingested through contact with food. Airborne lead expelled from the weapon can also contaminate food.
4. Do Not Collect Fired Brass in Baseball Caps: Many shooters use their baseball caps to collect spent brass contaminating the cap with lead particles. When the cap is placed back on the head, the lead is deposited into the hair and absorbed into the skin. Providing boxes for the brass prevents this practice.

106.17.04 Morgantown Police Department conforms to OSHA lead standards, which became law in 1978. The police department will monitor firearms training instructors annually for lead with employees being informed of their results. Medical monitoring, such as BLL testing of employees, will be conducted and funded by the department.

106.17.05 The Quartermaster shall maintain a record of each weapon approved by the department for official use. The record will be maintained in a firearms database/spreadsheet and will contain at a minimum:

1. Type of weapon
2. Description
3. Identifying model
4. Serial numbers
5. Officer assigned/owner

106.18 **Officer Involved Use of Deadly Force:** An officer who is involved in the use of deadly force that results in the death or injury of another person, or in the discharge of his/her firearm, except as indicated in section [106.20](#), shall immediately comply with the following:

- A. Ensure that the suspect is no longer a threat to the officer or others, determine the extent of any injuries, and summon the appropriate emergency medical aid.
- B. Notify his/her supervisor of the incident and location.
- C. Remain at the scene unless doing so would further endanger the officer or unless directed otherwise by a supervisor.
- D. Protect the discharged firearm as it shall be submitted for examination.
- E. Make no comments about the incident except to the assigned supervisors, investigators, legal advisor, or the officer's personal attorney or representative. Typically a formal statement will not be taken within 48 hours of a deadly use of force due to the traumatic nature of such an event.

106.18.01 Responsibilities of the On-Scene Patrol Supervisor: The senior patrol supervisor on the scene of a use of deadly force incident, as described in section [106.18](#), shall:

1. Assume command of the scene.
2. Ensure that the suspect is no longer a threat and that appropriate emergency medical aid has been summoned. [\[1.3.5\]](#)
3. Ensure that enough patrol resources are available to secure the scene.
4. When the scene is secured, segregate the involved officer(s).
5. Make notifications in compliance with section 106.18.02.

106.18.02 Notification: Except those cases excluded from administrative investigation and review as listed in section [106.20](#), the senior patrol supervisor on the scene of every case involving the use of deadly force, as described in section [106.18](#), shall be responsible for ensuring the following personnel are notified:

1. Chief of Police
2. Assistant Chief of Police/Captain
3. Operations Lieutenant
4. Investigations Unit Supervisor

106.18.03 Responsibilities of the Investigations Division: The Investigations Division Commander or designee, upon notification of an officer involved use of deadly force, as described in section [106.18](#) of this order, shall:

1. Immediately assemble an Investigations Team (members assigned by the authority of the Chief of Police).
2. Respond to the scene and assume command of the criminal investigation.
3. Notify the Prosecuting Attorney's Office if necessary.
4. In the case of an officer involved shooting, take possession of the involved officer(s) firearm in a manner that will not endanger nor embarrass the officer, in accordance section [106.09\(F\)](#). The purpose of taking possession of the firearm is for mechanical and ballistic examination.
5. Conduct regular briefings with the Chief of Police on the progress of the investigation.

NOTE: **The Chief of Police may, at his discretion, request that the West Virginia State Police or other Law Enforcement Agency conduct the criminal investigation of any incident involving the use of deadly force as described in this order. In such cases, the Investigations Commander shall act as the department's liaison to the Investigating Agency.**

A written report will be presented to the Chief of Police upon conclusion of the investigation conducted by the Major Case Team. The following documents will be included:

1. The original Case Report and all supplements.
2. All lab reports, ballistic reports, etc.
3. All witness statements and any transcriptions of tape recorded interviews.
4. All recordings of related E-911 telephone calls and radio transmissions.
5. All diagrams, photographs or video depicting the scene or re-enactment.

106.18.04 Responsibilities of the Internal Affairs Investigator: Internal Affairs Investigator, upon notification of an officer involved use of deadly force, as described in section [106.18](#) except those situations listed in section [106.20](#) of this order, shall immediately respond to the scene.

All officers involved in the use of deadly force incident will be segregated at the scene from other officers involved in the incident. They will be transported from the scene as soon as practical and taken to the Police Department where they will remain segregated. As soon as is practical, the officer(s) will be allowed notification to his/her immediate family.

The administrative investigation will immediately commence under the direction of the Chief of Police or his designee.

The administrative investigation of the incident shall be conducted in accordance with department policy and may work simultaneously, but independently of the criminal investigation. Upon request of the involved officer(s), the opportunity to obtain counsel or representation prior to questioning in the administrative investigation shall be provided.

106.19 **Exceptions to Documentation of Response to Resistance Aggression:**

Exceptions: Officers are not required to complete a response to Resistance/Aggression Report under the following circumstances:

1. Merely using a firm grip control that does not result in injury, or merely using force necessary to overcome passive resistance due to physical disability or intoxication that does not result in an injury (assisting an intoxicated person to a standing position).
2. Routine handcuffing of an arrested person.
3. Justified destruction of an animal or reptile.

106.19.02 Retention of Files: All Defensive Tactics Review packets will be retained with Internal Affairs Files.

106.20 **Response to Resistance Aggression Review Packet:** A supervisor who becomes aware that an officer has taken any action that resulted in (or is alleged to have resulted in) the injury or death of another person, has applied force through the use of a weapon, or has used any physical force against another person as defined in section [106.19](#), shall conduct a preliminary investigation of the incident.

106.20.01 The First Line Supervisor will:

1. Ensure that the involved officer has properly documented the incident prior to going off-duty.
2. Prepare a Defensive Tactics Review packet containing at a minimum:
 - a. Copy of the original police report,
 - b. Original response to Resistance/Aggression Report, and
 - c. Any photographs.

106.20.02 Based upon this preliminary investigation, the First Line Supervisor will determine if the actions taken by the involved officer regarding the Use of Force are:

1. “In Compliance” with departmental policy and procedures. If the First Line Supervisor determines that the actions of the involved officer are “In Compliance,” the Defensive Tactics Review packet will be forwarded up the Chain of Command to the next supervisor level. **Or**
2. “Not In Compliance,” the First Line Supervisor will attach a memorandum addressed to the Chief of Police via the Chain of Command stating their reasons for such findings; however, they will NOT make a recommendation regarding any disciplinary action to be considered. This response to Resistance/Aggression Report packet and memorandum will then be forwarded up the Chain of Command to the next supervisory level. **Or**
3. If the First Line Supervisor can not determine from the information given that the actions of the involved officer were “In Compliance” or “Not In Compliance,” The First Line Supervisor will indicate that this incident “Requires Further Review.” The First Line Supervisor will attach a memorandum addressed to the Chief of Police via the Chain of Command stating their reasons for such findings (i.e. issues regarding equipment, training, manpower, policy, conflicting statements from witnesses, etc.). This Defensive Tactics Review packet and memorandum will then be forwarded up the Chain of Command to the next supervisory level.

106.20.03 The process outlined in Section [106.20.02](#) will be repeated at each supervisory level (Sergeant, First Sergeant, and Lieutenant). Each Commander will attach a memorandum to the packet stating their findings regarding this matter for all “Not in Compliance” or “Requires Further Review” determinations to include recommended actions and the basis for their recommendation.

106.20.04 Upon review by the Lieutenant, the packet will be forwarded to the Response to Resistance Aggression Review Team, which will be convened with a minimum of 3 Specialized Instructors from a variety of defensive tactics disciplines within the department. The Review Team will make a consensus recommendation to the Chief of Police regarding the use of force. The Review Team will recommend “In Compliance” or “Not in Compliance”.

106.20.05 The Chief of Police will review the response to Resistance/Aggression Report packet, memorandums, and related materials. The Chief of Police at his discretion may direct that an Internal Affairs investigation be conducted. Upon completion of all investigations, the Chief of Police will make a final determination that the Use of Force was either “In Compliance” OR “Not in Compliance” with departmental policy.

106.20.06 Should the response to Resistance/Aggression Report Review process reveal issues requiring additional attention, (i.e. policy revision, adjustment of training, change of procedures) the Chief of Police shall assign the selected personnel to address all matters.

106.21 **Administrative Investigation and Review:** Every incident involving the use of deadly force; the discharge of a firearm by a member of the department while engaged in a police function other than training, and ballistic examination; or a person dies during the course of a police investigation; shall be administratively investigated and reviewed by a departmental review board composed of all members of the Command Staff. (Reference GO 211 - Internal Affairs) The review board will make an expedient and thorough administrative determination of whether the use of deadly force, the discharge of any firearm, or the officer actions were in compliance with department policy and procedure.

The investigation and review responsibility extends to the use of deadly force and the discharge of firearms by Morgantown Police Officers in other jurisdictions. In these cases, the investigation shall be conducted in cooperation with the law enforcement agency having jurisdiction. Administrative investigations shall be in addition to and separate from any criminal investigation concerning the use of deadly force or firearm discharge. Refer to section [106.02](#)

106.21.01

Investigation Procedure: The Chief of Police or designee may appoint other persons as are necessary to assist in the investigation. The administrative investigating team should be limited and will act under authority of the Chief of Police and **all** members of the Police Department shall comply with the needs of any part of the investigation.

The investigation, while necessary for the protection of the public at large, department employees, and the reputation and integrity of the Morgantown Police Department, shall be conducted in a manner consistent with approved investigative techniques but shall not interfere with any other concurrent criminal investigation.

Every firearm discharged in an officer involved shooting shall be seized for the purpose of mechanical and ballistic examination, as soon as it is safe and practical, in cooperation with persons conducting any criminal investigation.

The administrative investigating team shall prepare an administrative report for the Chief of Police in the following format:

1. Synopsis of the incident.
2. Facts and circumstances that are pertinent to the question of whether or not department policies or procedures were violated.
3. A section for the disposition of the case by the Chief of Police to reflect the use of deadly force or the discharge of a firearm was; **Justified, Not Justified, or Unintentional.**
4. A section for the disposition of the case by the Chief of Police to reflect the circumstances that lead to the death of a person during the course of a police investigation was; **Avoidable or Unavoidable**
5. Included in the disposition will be comments relative to:
 - a. Required retraining in tactics and/or law.
 - b. Implications for departmental policy revision or training.
6. A signature line for the person preparing the report.
7. Other reports as directed by the Chief of Police.

Completed records, reports, and transcripts of the administrative investigation shall be maintained by the Internal Affairs Function. Pertinent copies of the criminal investigation reports shall be included in the administrative investigation file.

Because the administrative investigation may occur prior to or concurrent with a criminal investigation of a deadly force incident, it is imperative that complete confidentiality of the administrative investigation be maintained.

106.22

Media Relations: Press releases regarding an officer involved shooting or the use of deadly force shall be approved by the Chief of Police. Every effort shall be made to notify the family of the involved officer before press notification occurs. Requests for information not included in the official press releases shall be referred to the Chief of Police.

106.23 **Relief from Duty:** Any employee whose actions or use of force in an official capacity result in death or serious physical injury, shall be removed from line-duty assignment and placed on administrative leave with pay or assigned administrative duties pending the outcome of the investigation.

The Chief of Police shall determine when the involved officer(s) will be returned to regular duty status and shall notify the officer(s) of the final outcome as soon as feasible. Where practical, the involved officer(s) shall be informed weekly of the status of the investigation.

106.24 **Psychological Evaluation:** Any officer who discharges a firearm at any person or who has been fired upon shall be required to participate in a psychological evaluation. Any other employee involved in the incident may voluntarily avail themselves of the Employee Assistance Referral Program.

A. Psychological evaluations shall be conducted by a psychiatrist or clinical psychologist selected by the Department.

B. The original psychological evaluation will be at the expense of the Department.

106.26 **Critical Incident Stress Debriefing:** The department will provide for a mandatory Critical Incident Stress Debriefing for all employees involved in major disasters, shootings or other emergency events, to include back-up officers, and supervisors. This briefing shall be conducted within the first 72 hours of the occurrence of the incident.

END

Revised: 7-1-2015