

Response to Resistance	Related Policies: Duty to Intervene Ethics, Use of Conducted Electrical Weapons
<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 only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes: Sec. 1. 20 V.S.A. § 2367	
CALEA Standard: 1.3.1, 1.3.2, 1.3.5, 1.3.6., 1.3.7, 1.3.8., 1.3.9, 1.3.10, 26.1.1	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate response to resistance.
- II. **Policy:** 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 response to resistance events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All responses to resistance must be objectively reasonable. The agency and all officers recognize that the sanctity of human life serves as the guiding principle in use of force decisions.
- III. **Definitions:**
 - A. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death.
 - B. **Non-Deadly Force:** All uses of force other than those that is likely to cause serious bodily harm or death.
 - C. **Imminent:** Has a broader meaning than immediate or instantaneous, the concept of imminent should be understood to be elastic, involving an ongoing period of time depending on the circumstances rather than a moment in time under the definition of immediate.
 - D. **Immediate:** means, That the officer is faced with an instantaneous, or presently occurring threat of serious bodily harm or death.
 - E. **Chokehold:** means applying any direct pressure to the throat, windpipe, or airway of another with the intent to reduce or prevent the intake of air. "Chokehold" does not include any holding involving contact with the neck that is not intended to reduce the intake of air.

- F. **Neck Restraint:** A method of rendering a person unconscious by restricting the flow of blood to the brain by compressing the sides of the neck where the carotid arteries are located.
- G. **Intervene:** To come between, whether verbally or physically, so as to prevent or alter a result or course of events.
- H. **De-escalation.** Force can often be avoided through the use of de-escalation techniques and other non-dynamic law-enforcement tools such as police presence, containment, and communication. When feasible, officers will use de-escalation and other techniques to reduce the immediacy of threats to peoples' safety and stabilize incidents. Whenever possible, officers will seek to slow things down. Not every situation or subject can be deescalated. Conversely, officer behavior can escalate a situation. Officers should not intentionally escalate situations unnecessarily.
- I. **Duty of care:** Officers have an affirmative duty to care for persons in their custody. Officers and supervisors are responsible for providing or obtaining appropriate medical attention to any person in their custody who is injured or complains of injury. This pertains whether injuries preceded custody, occurred during apprehension, or were sustained during custody. Additionally, officers have an affirmative duty to provide or obtain medical attention for members of the public who are injured as a result of police involved actions.
- J. **Positional asphyxia.** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- K. **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 using the force is presented with.
- L. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person, believes that the prescribed facts exist.
- M. **Serious Bodily Harm/Injury:** Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
- N. **Active resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.
- O. **Passive resistance:** A subject who takes no affirmative action to defeat the member's ability to make an arrest but who does not respond to verbal commands and presents a refusal to move by sitting down or acting as dead weight.
- P. **Active Aggression:** Behavior that creates an imminent risk of physical injury to an officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury.
 - a. Examples include but are not limited to an attack from a subject on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks, shoves, or punches.

- b. Examples may also include words or behavior such as pre-assault cues that clearly indicate that such an attack or actions are imminent.

Q. Excessive Force: is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. Excessive force will not be tolerated.

IV. Procedure:

A. In determining the appropriate level of response to a subject's resistance an officer should consider:

- a. How serious is the offense the officer suspected at the time the particular force used?
- b. What was the physical threat to the officer or others?
- c. Was the subject actively resisting or attempting to evade arrest by flight?

B. Force Options: Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. 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.

- a. **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.
- b. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
- c. **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.
- d. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporary incapacitate the subject.
- a. **Conducted Electrical Weapons:** A less-lethal law enforcement device that delivers an electrical pulse to the body of a subject in either a "drive stun" or "probe" mode. When used in "probe mode" the device discharges two probes that remain connected to the CEW via wire and which upon impact deliver an electrical pulse designed to temporarily incapacitate that subject. When used in "drive stun" mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in "probe" mode. CEWs include "Electronic control devices" which are defined at 20 V.S.A. § 2367(a)(1) as "device[s] primarily designed to disrupt an individual's central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses." (**See Department's Use of Conducted Electronic Weapons Policy.**)
- e. **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.
- f. **Impact Weapons:** Batons, ASP/Expandable Batons may be utilized in cases where 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.

- g. 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.
- h. Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death

C. Deadly Force: The use of deadly force is objectively reasonable when:

- a.** The officer is faced with an immediate threat of serious bodily harm or death to him/herself, or some other person who is present, or;
- b.** 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.
- c.** Officers should warn the subject prior to using deadly force where feasible.

D. 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.

E. Discharge of Firearms Restrictions:

- a.** Warning shots are prohibited.
- b.** Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
- c.** When a moving vehicle is involved, use of deadly force by discharging a firearm is dangerous, can be ineffective, and should not occur when there is an unreasonable risk to the safety of persons other than the subject. Whenever possible, officers should avoid stepping in front of a moving vehicle or placing themselves in a position where use of deadly force is the only alternative.
- d.** Even when deadly force is justified, firearms shall not be discharged at a vehicle unless:
 - a.** The officer has a reasonable belief that an occupant of the vehicle poses an immediate threat of death or serious physical injury to the officer or another person, or
 - b.** The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an immediate threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
 - c.** Officers shall consider the potential threat to innocent third parties under such circumstances.

F. Chokeholds & Neck Restraints: An officer shall not use a chokehold or neck restraint in the performance of his or her duties, **unless deadly force is justified.**

- a. In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers shall not use a chokehold, neck restraint, or any lesser contact with the throat or neck area of another in order to prevent the destruction of evidence by ingestion.
- b. Officers shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted for the purpose of seizing evidence.
- c. **Render Medical Aid:** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- d. As soon as the subject stops resisting and is handcuffed and/or under control, monitor the person's vital signs closely. Take the following steps:
 - Roll the person onto his or her side, or into a sitting position
 - Monitor breathing
 - Check the pulse at the wrist
 - Check the person's facial skin color (a gray or blue tint is a sign of severe medical distress)
 - Determine if the person is functionally conscious (e.g., the person can exhibit voluntary movement, has the ability to converse, is aware of place/date/time)
 - If the person has difficulty breathing, is not at a functional level of consciousness, exhibits symptoms of medical distress, or if you have any doubt regarding the person's medical condition, request an emergency medic response and administer appropriate first aid.
 - If the person is being lodged at a correctional facility or taken to a medical facility, advise them if the person was rendered unconscious or subjected to a chokehold during restraint.

G. Less-Lethal Weapons/Tactics: Prior to deployment of any less-lethal weapon, officers must be trained and certified in the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental use of force training and policy.

a. Chemical Spray:

- a. Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant. Active resistance/active aggression shall be required.
- b. Chemical Spray shall never be used as a punitive measure.
- c. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the pressurized stream. Officers should never spray directly into a subject's eyes from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter) unless deadly force would be justified.

- d. Officers shall consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
 - e. Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
 - f. Once control is gained, officers should immediately provide for the decontamination of the subject.
 - g. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.
- b. Impact Weapons: Batons, ASP/Expandable Baton**
- a. Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
 - b. 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.
 - c. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.
 - d. Impact tools as non-impact weapons: Officer may use impact tools for non-impact strike techniques such as come-alongs and restraint holds in accordance with agency training.
- c. Immediate measure of defense** - Where necessary an officer may take action or use any implement to defend the officer's life or safety, or the life or safety of another, with implements or devices not normally intended to be weapons or issued as public safety equipment.

V. Duty to Intervene:

- A. Use of Force:** in accordance with the agency's **Duty to Intervene** policy Officers of this agency have an affirmative duty to intervene if they witness a use force that is clearly unreasonable. Any officer present and observing another officer using force that is clearly beyond that which is reasonable under the circumstances shall, when in a position to safely do so, intervene to prevent the use of unreasonable force. An officer who observes another employee use of force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

VI. Reporting Response to Active Resistance:

- A. Purpose:** It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting response to active resistance. The department will develop a Response to Active Resistance (RAR) form to capture all required information described in this policy.
- B. Policy:** 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. This policy mandates that members of the Department accurately,

completely and timely report subject control of active resistance and a supervisor conducts a prompt investigation and reports this investigation findings.

VII. Definitions:

A. Reportable response to active resistance: Verbal commands, soft-empty hand control, and handcuffing do not require a separate reporting form. The following are reportable force options when used by an officer to compel compliance from a subject in conformance with the officer's official duties, whether on or off duty or while employed in an off duty paid detail, include:

- a. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporary incapacitate the subject.
- b. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject. (See Department Use of Conducted Electrical Weapons)
- c. **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.
- d. **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.
- e. **Impact Weapons:** Batons, ASP/Expandable baton may also be used for non-impact techniques such as come-alongs and restraints as trained by this agency.
- f. **Pointing of Firearms:** Any time an officer points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed. This does not include drawing a firearm and maintaining at the low-ready position.
- g. **Firearms discharges:** Any discharge of a firearm other than at the range or during qualification whether unintentional, for animal dispatch, or whether a subject is hit or not will be reported in a separate manner consistent with these policies.
- h. **Canine use:** Use of a police canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.
- i. **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

B. Procedures:

- a. Officers who become involved in an incident that required any reportable force option are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the use of force utilized in the official police report prepared for the incident involved.
- b. A Report of Response Active Resistance (RAR) form shall be prepared by a supervisor whenever an officer of this agency utilizes reportable force, as described in the definition of this policy, in the performance of their duties.

- c. The RAR form will be completed in detail including a narrative account of the following:
 - a. The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
 - b. The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
 - c. Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.
- C. Supervisory Responsibilities:** Once notified of an incident in which an officer has utilized force, the supervisor, to the extent that one is available, will immediately respond to the scene to investigate the incident. If the involved officer's supervisor is not available to respond, another supervisor will be dispatched to complete the RAR. The supervisor will accomplish the following investigative steps in conducting the investigation:
 - a. Interview the involved subject if they are cooperative, to determine their account of the incident. If they expressly indicate they have a complaint the supervisor shall complete a Public Service Report. If they have any type of injury, Internal Affairs or the designated departmental IA person will be notified. Additionally, should the supervisor determine that unreasonable force was utilized, the Internal Affairs designated investigator will be notified and assume control of the response to resistance investigation.
 - b. If a crime scene exists, or police equipment exists, which may contain forensic evidence, the supervisor shall ensure that the scene and evidence is processed, photographed and preserved.
 - c. Take photographs of the involved officer(s) and subject(s) depicting any potential injuries or documenting the lack of any injuries to the parties involved.
 - d. Interview, preferably recorded, all witnesses to the incident and document their description of the event.
 - e. Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
 - f. The supervisor shall review any video recording of the incident, if available, prior to the completion of the RAR and the approval of the officer's reports
 - g. The supervisor investigating the use of reportable force shall be responsible for the review and approval of the officer's reports of the incident, when practicable.
 - h. The supervisor will complete the RAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.