



CHAPTER 1: LAW ENFORCEMENT ROLE AND AUTHORITY	POLICY # 1.5 RESPONSE TO RESISTANCE
<p><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></p>	
Date Implemented: 01/15/2021	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 response to resistance decisions.

III. Definitions:

A. Deadly Physical Force: The Federal Courts have defined deadly force as any force which creates a substantial likelihood of death or serious bodily harm. The Kentucky Legislature has further defined deadly force in K.R.S. 503.010: "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.

B. 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.

C. Immediate means: That the officer is faced with an instantaneous, or presently occurring threat of serious bodily harm or death.

D. 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.

- E. 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.
- F. Intervene:** To come between, whether verbally or physically, to change the course of events that clearly violate the law or agency policy.
- G. De-escalation.** Reduce the intensity of a conflict or potentially violent situation
- H. 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.
- I. Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person believes that the prescribed facts exist.
- J. Serious Physical Injury:** "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ"
- K. Physical Injury:** Substantial physical pain or any impairment of a physical condition.
- L. Electronic Control Device:** Electronic Control Devices, TASER, ™ or stun-guns (electronic control weapons) that disrupt the central nervous system of the body.
- M. Active resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.
- N. Active Aggression:** verbal or physical behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of serious physical injury or death.
- O. Excessive Force:** is force that is not objectively reasonable from the perspective of a reasonable officer in similar circumstances. Excessive force will not be tolerated.
- P. Physical force:** force used upon or directed toward the body of another including confinement.
- Q. Chemical spray:** any chemical agent deployed to overcome subject resistance.
- R. Impact tools/strikes:** any tools, object, or body part to strike a subject
- S. Electronic tools:** any electronic equipment on a subject being controlled

IV. Procedure:

- A. In determining the appropriate level of force officers should apply the levels of force under the department's trained force options along with the following three factor test:
 - 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. Officers may sometimes be required to take custody or otherwise control an individual who is a danger to themselves or others due to a medical or mental health emergency. In these cases, an officer may be required to use objectively reasonable force. In determining whether force is appropriate and the proper under the department's trained response to resistance options, the officer should consider the following three factor test:

- 1)** Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
- 2)** Was some degree of force reasonably necessary to ameliorate or reduce the immediate threat?
- 3)** Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

C. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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. Use of a canine will be reported on a special form to capture any form of use regardless of whether contact is made.

- i. **Deadly Force:** The Federal Courts have defined deadly force as any force when employed may bring about serious bodily injury or death. The Kentucky Legislature has further defined deadly force in K.R.S. 503.010: "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.
- D. **Deadly Force:** The use of deadly force is objectively reasonable when the officer is faced with an immediate threat of serious physical injury or death to him/herself, or some other person who is present, or;
- E. Kentucky statutory law provides:
 - a. The use of physical force by an officer upon another person is justifiable when the officer, acting under official authority, is making, or assisting in making an arrest, and he:
 - 1) Believes that such force is necessary to affect the arrest.
 - 2) Makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and
 - 3) Believes the arrest to be lawful.
 - b. The use of deadly physical force by a defendant upon another person is justifiable only when:
 - 1) The officer, in effecting the arrest, is authorized to act as a peace officer; and
 - 2) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and
 - 3) The officer believes that the person to be arrested is likely to endanger human life unless apprehended without delay.
- F. In all deadly force events, officers should warn the subject prior to using deadly force where feasible.
- G. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. If any person is injured and requires medical attention, officers of this agency shall request medical assistance and may render aid in accordance with their training.
- H. 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 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:
 - 1) The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person, or
 - 2) The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an imminent threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.

I. 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**.

- 1) Officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. 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 or preventing the destruction of evidence by ingestion.

J. Post-Restraint:

- 1) Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- 2) As soon as practicable after the subject stops resisting, monitor the subject's condition. If the subject has difficulty breathing, exhibits other obvious signs of medical distress identifiable by any layperson, or requests medical assistance, officers of this agency shall request medical assistance and may render aid in accordance with their training.
- 3) If the subject is being lodged in a correctional facility or taken to a medical facility, advise the intake personnel that the subject was rendered unconscious or subjected to a chokehold (deadly force) during restraint.

K. Less-Lethal Weapons/Tactics: Prior to deployment of any less-lethal weapon, officers must be trained and certified through this agency or the manufacturer in a recognized training program covering the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental response to resistance training and policy.

a. Chemical Spray:

- 1) 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.
- 2) Chemical Spray shall never be used as a punitive measure.
- 3) 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.

- 4) 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.
- 5) 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.
- 6) Once control is gained, officers should as soon as practicable provide for the decontamination of the subject.
- 7) 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. Electronic Control Devices

- 1) An electronic control device as a force option is the same level of force as chemical spray.
- 2) Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
- 3) Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance or active aggression shall be required.
 - (a) Flight from an officer, standing alone, is not a justification for the use of an electronic control device. Officers should consider the nature of the offense suspected the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately. Additionally, officers should consider the type of area, i.e., asphalt, railroad tracks, grass etc.
 - (b) Officers must be trained concerning ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying an Electronic Control Device in the presence of open natural gas during suicidal person call)
 - (c) Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other symptoms such as cocaine intoxication. Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.
 - (d) The agency recognizes however, particularly where back-up officers are unavailable, that multiple applications may be necessary to gain or maintain control of a combative individual.
 - (e) No more than one officer should deploy an electronic control device against a single individual at the same time.
 - (f) A contributing factor to serious injury or death is the level of a subject's

exhaustion. Studies recommend that when an officer believes that control of a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.

- (g) In cases where subject is actively resisting an officer's attempt to take them into custody but not threatening the officer with an assault-it is recommended that the Electronic Control Device be used in the "push [drive] stun mode."
- (h) The preferred targeting is the center mass of the subject's back; however, it is recognized that it is not always possible to get behind the subject.
- (i) Where back-targeting is not possible, frontal targeting should be lower center mass, intentional deployments to the chest shall be avoided where possible.
- (j) Officers who are aware that a female subject is pregnant shall not use the Electronic Control Device unless deadly force would be justified due to the danger created by the secondary impact or the possibility of muscle contractions leading to premature birth.
- (k) Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes, or genitals.
- (l) Officers are prohibited from using the device as punitive measure.
- (m) Electronic Control Devices shall not be used against person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- (n) A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable, model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment. See: Draper v. Reynolds, 369 F.3d 1270 (11th Cir. 2004).
- (o) Officers shall make all efforts to warn other officers that a deployment is about to occur.
- (p) The device shall never be used on a handcuffed person to force compliance unless the subject is actively resistant, and control cannot be otherwise accomplished.
- (q) Officers should consider the location and environment of the subject. i.e., Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device-they fall down the stairs causing a collateral injury. Officers shall avoid using Electronic Control Device in cases where the subject is elevated i.e., roof, fire escape, tree, bridge, stairwell, etc. etc. such that the secondary impact may cause serious injury.
- (r) Officers should be aware that a subject's heavy clothing may impact the

effectiveness of the electronic control device.

- (s) Officers should consider whether the subject has been exposed to combustible elements that may be on their person such as gasoline. The use of an Electronic Control Device on such persons may cause an ignition and fire.
- (t) Officers should consider the particular subject and any vulnerabilities they may have such as: a person who is small in stature or very frail will be more dramatically impacted; some agencies have been criticized as well as sued for use on pregnant women, the very young and the elderly.
- (u) Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger to that person by using the Electronic Restraint Device. i.e., A person at the scene tells an officer that the subject has a heart condition.
- (v) Deployed probes that have been removed from a suspect should be treated as a biohazard.
- (w) Where EMS is available, their services may be utilized for the removal of darts that have penetrated the skin as long as such removal can be accomplished without causing further injury or pain to the subject.
- (x) All persons who have been the subject of an Electronic Control Device deployment shall be monitored for a period of time with a focus on symptoms of physical distress. Any person who appears to be having any form of physical distress following the deployment of an ECD, shall be transported to a medical facility for a medical examination. It should be noted that studies indicate that persons who suffer from excited delirium may not be immediately impacted and the onset of difficulty may occur a period of time after the police control event.
- (y) Mandatory Medical Clearance at Hospital:
 - (i) Persons struck in a sensitive area-eyes, head, genitals, female breasts.
 - (ii) Where the probes have penetrated the skin and Officers/EMS cannot safely remove darts in accord with this policy.
 - (iii) Persons who do not appear to have fully recovered after a short period of time (Model Policies use a ten-minute time limit however officers who observe unusual physical distress should immediately call for medical assistance and should not wait the ten-minute recovery period recommended by some of the model policies)
 - (iv) Persons who fall into one of the vulnerable classes such as juveniles, pregnant women, persons who are small in stature, persons who officers become aware have a pre-existing medical condition that increases danger and the elderly.
 - (v) Subject who requests medical assistance.
- (z) Documentation:
 - (i) All deployments of an Electronic Control Device shall be

documented including those cases where a subject complies once threatened with such a device. By documenting the non-discharge uses, an agency establishes officer judgment and control as well as the deterrent effect of this tool.

- (ii) Photographs of the affected area shall be taken following the removal of darts from the subject to document any injury. Where the push-stun method has been used, photographs are extremely important due to the increased potential for this method to cause scarring.
- (iii) Supervisory personnel shall be notified and review all Electronic Control Device deployment for consistency with policy and training.
- (iv) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.
- (v) Officers are required to complete a “response to active resistance form” which shall be reviewed by a supervisor following the ECD use.
- (vi) All deployments shall be reviewed by the agency as well as training personnel.
- (vii) Where there is any indication of lasting injury, claim or complaint internal data from device shall be maintained.
- (viii) All ECD units will be audited monthly to ensure that all deployment/activations have been reported as required.

c. Impact Weapons: Batons, ASP/Expandable Baton

- 1) 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.
- 2) 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.
- 3) Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.

V. Duty to Intervene:

In accordance with the agency's Duty to Intervene policy, officers of this agency have an affirmative duty to intervene if they witness a response to resistance 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's response to resistance that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

VI. Reporting Control to Active Resistance:

A. Purpose (Reporting): It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting control to active resistance. The department

will develop a Report to Control Active Resistance (RCAR) form to capture all required information described in this policy.

- B. Policy (Reporting):** 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. 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.

C. Procedures (Reporting):

- a. Officers who become involved in an incident that requires reportable force are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the response to resistance utilized in the official police report prepared for the incident involved. In cases where no supervisor is working the officer will also be responsible for completing the RCAR report identified below prior to the end of their shift.
- b. A Report to Control Active Resistance (RCAR) 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 RCAR form will be completed in detail including a narrative account of the following:
 - 1) The actions of the subject that necessitated that force as a response to overcome the active resistance of the subject.
 - 2) The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
 - 3) Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.

- D. Supervisory Responsibilities:** Once notified of an incident in which an officer has utilized force, the supervisor 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 RCAR. 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 and if they have a complaint. If they do 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 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 audio-recorded/audio-visual 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 RCAR 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 RCAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.
- i. **Exceptions: The following do not require the completion of a RCAR unless otherwise required by the above policy:**
 - 1) Handcuffing or escorting a compliant, cooperative subject.
 - 2) Physical removal of peaceful demonstrators who do not resist.