



<b>Response to Resistance</b>	Related Policies: Electronic Control Devices; Reporting Response to Resistance.
<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 <b>Arkansas Statutes: A.C.A. § 5-2-610</b>	
CALEA Standard: <b>1.3.1; 1.3.2; 1.3.3; 1.3.4; 1.3.5; 1.3.6.; 1.3.7; 1.3.10;</b>	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate use and reporting of force.
- II. **Policy:** In an effort to protect and serve all citizens and visitors within this jurisdiction, respect the rights of suspects, and maximize officer safety in response to resistance events, it is the policy of this department that officers will only use reasonable force to bring an incident or event under control. All response to resistance events directed towards active resistance shall be reported and reviewed as outlined in this policy. All uses of force must be objectively reasonable. The department 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 are substantially 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. **Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances with which the officer using the force is presented.
  - F. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person, believes that the prescribed facts exist.
  - G. **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.

- H. **Active Resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.
- I. **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.
- J. **Electronic Control Device:** Electronic Control Devices, TASER™, or stun guns (electronic control weapons) that disrupt the central nervous system of the body.

#### IV. Response to resistance Procedure:

- A. In determining the appropriate level of force officers should apply the levels of force under the department's trained response to resistance options, along with the following three factor test:
  - i. How serious was the offense the officer suspected at the time the particular force was used?
  - ii. What was the physical threat to the officer or others?
  - iii. Was the subject actively resisting or attempting to evade arrest by flight?
- B. **Arkansas statutory law provides:**
  - i. A law enforcement officer is justified in using non-deadly physical force or threatening to use deadly physical force upon another person if the law enforcement officer reasonably believes the use of non-deadly physical force or the threat of use of deadly physical force is necessary to:
    - a. Effect an arrest or to prevent the escape from custody of an arrested person unless the law enforcement officer knows that the arrest is unlawful; or
    - b. Defend himself or herself or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.
- C. **Deadly Force:** The use of deadly force is objectively reasonable when:
  - i. 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;
  - ii. 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.
  - iii. Officers should warn the subject prior to using deadly force where feasible.
  - iv. Under Arkansas Law: A law enforcement officer is justified in using deadly physical force upon another person if the law enforcement officer reasonably believes that the use of deadly physical force is necessary to:

- a. Effect an arrest or to prevent the escape from custody of an arrested person whom the law enforcement officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or
  - b. Defend himself, herself, or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of deadly physical force.
- 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/or provide for emergency medical response when needed and it is reasonable to do so.
- E. **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. In any given circumstance, there will be a range of options that may be reasonable. At no time should these options be considered a ladder that must be attempted one progressive step at a time. 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.
  - i. **Command Presence:** Visual appearance of the officer where it is obvious to the subject, due to the officer's uniform or identification, that the officer has the authority of law.
  - ii. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
  - iii. **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.
  - iv. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to incapacitate the subject temporarily.
  - v. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to incapacitate the subject temporarily.
  - vi. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks, and elbow strikes that have the possibility of creating a stunned mental state and/or motor dysfunction.
  - vii. **Impact Weapons:** Batons, ASP/Expandable Batons, other impact weapons as allowed by departmental policy, or weapons of opportunity as may be dictated by the circumstances facing officers may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples may include when other options have been utilized and failed or when based on the officer's belief at the time, the other options would not be successful in concluding the event.

**viii. 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 should be made when reasonable to do so.

**ix. Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

**F. Firearms Restrictions:**

- i. Warning Shots are prohibited
- ii. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
- iii. Discharging a firearm at an occupied vehicle is prohibited unless deadly force is justified.
- iv. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.

**G. Less Than Lethal Weapons/Tactics:** Prior to deployment of any less than lethal weapon, officers must be trained and certified where applicable in the proper use of the weapon. All deployments must be consistent with departmental response to resistance training and policy.

**i. Chemical Spray:**

- a. Chemical Spray shall not be deployed as a compliance technique for persons passively or verbally non-compliant.
- b. Chemical Spray shall never be used as a punitive measure.
- c. Officers should never spray from pressurized can directly into a subject's eyes at a close distance, due to the potential for eye injury from the pressurized stream. Officers should never spray directly into a subject's eyes from closer than three (3) feet or the distance recommended by the manufacturer of the spray (whichever is shorter), unless deadly force would be justified.
- d. Officers should 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 should 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 when reasonable and practical to do so.
- 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.

**ii. Impact Weapons: Batons, ASP/Expandable Batons**

- 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 may include when other options have been utilized and failed or when based on the officer's belief at the time, the other options would not be successful in concluding the event.
- c. Officers shall not intentionally strike a person with an impact weapon where it would create a substantial likelihood of causing serious bodily harm or death, unless the use of deadly force would be justified.

## V. Reporting Response to Resistance

- A. Whether on or off duty, Officers will report responses to resistance, via approved departmental response to resistance form, when one of the following force options are utilized in response to active resistance.
  - i. Chemical Spray
  - ii. Electronic Control Devices
  - iii. Hard Hand Control
  - iv. Impact Weapons
  - v. Pointing of Firearms: Any time a member points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed is a reportable event under this policy. This does not include drawing a firearm and maintaining at the low-ready position.
  - vi. Firearms discharges: Any intentional or unintentional discharge of a firearm, not inclusive of training scenarios or approved humane life terminations of injured animals.
  - vii. Canine use: Use of a Department canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.
  - viii. Deadly Force
  - ix. Any incident, arrest, or circumstance, which in the officer or supervisor's opinion involved a physical confrontation necessitating documentation of circumstances.
- B. Officers involved in an incident where a reportable response to resistance did not involve death or serious bodily injury, the Officer will:
  - i. Notify their supervisor as soon as practical.
  - ii. Document the response to resistance via Police Report
  - iii. Complete the approved departmental response to resistance form and forward to their immediate supervisor prior to ending their tour of duty. The form will be completed in detail including a narrative account describing the following:
    - a. Actions of the subject that necessitated a response
    - b. Force utilized in overcoming the resistant subject
    - c. Injuries or complaints thereof sustained by the subject and/or Officer

- d. Medical treatment received.
- C. Officers involved in an incident where a reportable response to resistance involved death, serious bodily injury, or the discharge of a firearm will notify the on duty and/or designated supervisor immediately.
- D. In the event of a reportable response to resistance involving death or serious bodily injury, the department will ensure that:
  - i. Criminal Investigation: A Detective/Investigator will respond to the scene, conduct investigation, and complete the initial police report. In the event a department has no available personnel for this purpose or a department believes it is in their best interest to request an outside department conduct the investigation, they may utilize an outside department (such as Arkansas State Police) for this purpose.
  - ii. Officers are reminded that a criminal investigation will be conducted and that criminal liability may attach to their actions. In order to ensure Officers 5<sup>th</sup> amendment protections are not violated the following procedure is established:
    - a. Officers will be removed from the scene as soon as practical.
    - b. Officers will be allowed time to reflect about their actions and speak with an attorney if they desire prior to any criminal questioning.
    - c. Officers are not required to submit to a criminal investigative interview and are subject to 5<sup>th</sup> Amendment protections if they so choose.
  - iii. Internal Investigation: Officers should understand that an Internal Affairs Investigation might begin at any time as determined by the Chief of Police or his/her designee. Internal Affairs Investigations will be separate and distinct from the criminal investigation. Prior to Internal Affairs interview, Garrity warnings will be issued and signed by the Officer(s) investigated. Involved Officers are required to provide truthful information to internal affairs investigators, are not afforded protection under the 5<sup>th</sup> Amendment to the United States Constitution, and therefore may not refuse to provide complete and truthful information. Internal Affairs Investigations will follow procedures established under separate policy.
- E. **Supervisory Responsibilities:**
  - i. If available, an on duty supervisor will respond to the scene of all incidents involving a reportable response to resistance.
  - ii. Irrespective of duty status, supervisory and investigative staff, delineated under separate policy or directive, will respond to all response to resistance events involving death or serious bodily injury (or the likelihood thereof).
  - iii. The ranking supervisor at the scene of an incident involving a reportable response to resistance will ensure that adequate investigation is conducted, forensic evidence is preserved, video evidence is obtained, case investigation is sufficiently reported, and that response to resistance forms are completed. In those cases where a supervisor is not present, the Reporting Officer will ensure that adequate investigation and all required reports are completed.
  - iv. For all response to resistance events not involving death or serious bodily injury, the Officer's immediate supervisor or the Supervisor responding to the

scene will review the response to resistance form and preliminary investigative information to determine policy compliance. The Supervisor will meet with the involved officer(s) to discuss the event, review policy, and clarify any matters of concern. The supervisor will forward the response to resistance form via the chain of command to the Chief of Police or their designee. Anytime during the supervisor's review he or she believes that a serious policy infraction or criminal act occurred, the supervisor will immediately cease investigation and forward all information to the Office of the Chief of Police or their designee. The designee responsible for the investigation will conduct logical investigation per departmental policy.

- v. All response to resistance events involving death or serious bodily injury will be reviewed for legal and policy compliance by the Chief of Police or their designee.