

<b>Response to Resistance</b>	Related Policies:
<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: <b>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</b>	
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.
- 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. **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.
  - 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. Active Aggression:** Behavior that creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.
- J. Conducted Electrical Weapon ("CEW"):** 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."
- K. Special populations:** Members of special populations include subjects an officer has reason to believe are:
  - a. Cognitively impaired such that they are unable to comply with an officer's instructions.
  - b. Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.
  - c. Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.
  - d. Under 18 years of age.
  - e. Pregnant.
  - f. Over 65 years of age.
  - g. Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder.

#### 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.
  - e. **PepperBall:** PepperBall projectiles are plastic spheres that are filled with Oleoresin Capsicum (OC) powder. A high-pressure air launcher delivers the projectiles with enough force to burst the projectiles on impact, releasing the OC powder.
  - f. **CEWs:** Are less-lethal, but not necessarily nonlethal, alternatives to lethal force. Officers may deploy a CEW against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer's judgment, is likely to result in injuries to others or themselves, or, if without further action or intervention by the officer, injuries to the subject or others are likely to occur. **Neither an officer, a subject, or a third party has actually to suffer an injury before an officer is permitted to use an electronic control device, and officers are not required to use alternatives that increase the danger to the public or themselves.**
  - g. **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.
  - h. **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.
  - i. **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.
  - j. **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 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:
    - i. 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
    - ii. 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.
    - iii. Officers shall consider the potential threat to innocent third parties under such circumstances.
- F. 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:**
- i. 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.
  - ii. Chemical Spray shall never be used as a punitive measure.
  - iii. 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.

- iv. 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.
  - v. 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.
  - vi. Once control is gained, officers should immediately provide for the decontamination of the subject.
  - vii. 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. PepperBall:**
- i. Background:
    - (a) PepperBall Projectiles subdue suspects with a combination of kinetic impact and OC powder. The sting of the impact of the PepperBall Projectiles causes a psychological impression of being shot, which is combined with the strong irritation of the OC powder to the suspect's nose and lungs. When inhaled, the OC powder within the PepperBall Projectiles leads to coughing, shortness of breath, and in some instances vomiting. Some individuals experience eye irritation as well.
    - (b) Response to inhaling the OC powder in PepperBall Projectile varies among individuals. In most cases the symptoms last between five and 10 minutes. The PepperBall launching system can deliver the projectiles with enough kinetic energy to produce temporary abrasions, bruises, and/or welts.
  - ii. Deployment Guidelines:
    - (a) Although classified as a Non-lethal device, the potential exists for the projectiles to inflict injury when they strike the face, eyes, neck, and groin. Therefore, personnel deploying the PepperBall System should be trained to avoid intentionally striking those body areas unless a life-threatening situation exists.
    - (b) The use of the PepperBall System falls within OC and physical force option of the department's response to resistance guidelines.
    - (c) Only officers who have been trained and certified by the Department PepperBall Instructor are authorized to use the PepperBall System unless exigent circumstances exist. Officers will be recertified annually.
    - (d) Once trained the officers may carry the launcher system in the cruiser. The system should be function checked prior to every shift.
    - (e) Officers encountering a situation that may require the use of the PepperBall System, when feasible, shall immediately notify the on-duty supervisor.

Officers are authorized to use the system without supervisor approval if justified according to this policy.

**iii. Reporting:**

- (a)** The use of the PepperBall System, where the suspect has been hit or a saturation effect is used, is considered a reportable use of force, therefore, a Report of Response Active Resistance needs to be completed, along with the Supervisor's review.

**c. CEW Use and Deployment Procedures**

- i.** A CEW as a force option is the same level of force as chemical spray.
- ii.** Only officers who complete training on the use of CEWs containing the minimum elements set forth in Section 4 of this policy, as approved by the Vermont Criminal Justice Training Council, shall be authorized to carry CEWs.
- iii.** Prior to the start of each shift, an officer authorized to carry a CEW shall conduct a spark test of the CEW to ensure that it is properly functioning. Only properly functioning CEWs shall be carried for use. CEWs that are not properly functioning shall be taken out of service and sent for repair.
- iv.** When it is safe to do so, law enforcement should display and provide a warning prior to deploying a CEW.
- v.** Officers may only deploy CEWs in the following circumstances:
- (a)** In response to either:
- (i)** A subject exhibiting active aggression.
- (ii)** A subject actively resisting in a manner that, in the officer's judgment, is likely to result in injury to the subject, the officer, or third persons.
- (b)** If, without further action or intervention by the officer, injuries to the subject, the officer, or others will likely occur.
- (c)** To deter vicious or aggressive animals that threaten the safety of the officer or others.
- vi.** Neither an officer, a subject, nor a third party has to actually suffer an injury before use of a CEW may be justified.
- vii.** An officer should attempt to avoid deployment to a suspect's head, neck, chest, genitals, female breast, and stomach of a pregnant woman.
- viii.** When targeting a subject from the front, the preferred target area is a horizontal line approximately 2 inches lower than the sternum and below. An ideal probe deployment from the front will "split the hemispheres" having one probe strike a subject above the belt line and the other probe striking the subject in the thigh or leg thereby activating the hip flexor.
- ix.** When targeting a subject from the back, the preferred target area is below a horizontal line drawn even with the shoulders across the neck and below.
- x.** Officers should use the minimum number of cycles necessary to take a suspect into custody or mitigate their assaultive behavior. 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.

- xi.** CEWs shall not be used in a punitive or coercive manner and shall not be used to awaken, escort, or gain compliance from passively resistant subjects. The act of fleeing or destroying evidence, in and of itself, does not justify the use of a CEW.
- xii.** When it is safe to do so, officers should attempt to deescalate situations. However, officers are not required to use alternatives to a CEW that increases the danger to the officer, another person or the public.
- xiii.** Officers should avoid deploying more than one CEW on a single subject at the same time unless circumstances exist such as an ineffective probe spread on the first CEW or the first CEW fails to achieve immobilization of the subject and a second deployment is independently justified. Before deploying a second CEW, officers should consider the feasibility and safety of attempting to control the subject with a lesser type of force.
- xiv.** Officers having reason to believe they are dealing with a member of a special population or are dealing with special circumstances shall give special consideration to deploying an CEW. Officers having reason to believe they are dealing with an individual with a psychiatric disability shall consider consulting with the area designated mental health agency.
- xv.** Post Deployment Procedure:
  - (a)** Following CEW use, officers should only use restraint techniques designed to minimize the risk of impairing a suspect's respiration. Once restrained, the subject should be moved into a recovery position that facilitates breathing.
  - (b)** As soon as practicable after CEW deployment, the CEW probes shall be removed from the subject. The probes shall be treated as a biohazard. In the following cases, officers should wait for EMS to remove the probes:
    - (i)** The probes embedded in a sensitive area such as the face, neck, throat, groin, female breast, or stomach of a pregnant woman.
    - (ii)** The officer encounters problems when attempting to remove the probe.
  - (c)** Medical attention shall be offered to all individuals subjected to a CEW deployment.
  - (d)** Emergency medical services shall be contacted if a subject:
    - (i)** Suffers an obvious injury.
    - (ii)** Does not appear to recover properly and promptly after deployment.
    - (iii)** Is a member of a special population.
    - (iv)** Has been subjected to three or more CEW deployments or a continuous deployment exceeding 15 seconds.
    - (v)** Has been subjected to a deployment to his or her chest.

- (vi) Exhibits signs of extreme uncontrolled agitation or hyperactivity prior to the CEW exposure or the subject was involved in a lengthy struggle or fight prior to the CEW exposure.
  - (e) If a subject refuses additional medical attention, that refusal should be documented.
  - (f) When an officer has reason to believe (s)he is responding to a situation that may necessitate emergency medical services, (s)he shall make reasonable efforts to summon such services in advance.
  - (g) With the exception of the required spark test and accidental discharges that do not connect with any living being, each time a CEW is deployed and/or displayed it shall be documented in a Northfield Response to Resistance Report within 24 hours of the deployment unless otherwise authorized by a supervisor. Officer's will also complete a Vermont Criminal Justice Training Council Conducted Electrical Weapon Reporting Form and forward to their supervisor as well as the Department Taser Instructor.
  - (h) When possible, photographs of the CEW probe entry sites.
  - (i) The department shall also collect the download data, cartridges, probes, and wires from the CEW that was deployed and shall maintain them pursuant to its evidence policies. The download shall occur as soon as reasonably practical after the CEW is deployed.
  - (j) When possible, in instances in which more than one CEW has been deployed, a sampling of the AFID tags should also be collected and maintained pursuant to the department's evidence policies.
  - (k) Accidental discharges that do not connect with any living thing shall be documented in a departmental memorandum explaining in detail how the discharge occurred within 48 hours of the alleged accidental discharge unless otherwise authorized by a supervisor.
  - (l) All Response to Resistance reports and departmental memorandum required under this policy shall be reviewed by the officer's supervisor. The department shall conduct a use of force review in the following situations:
    - (i) The department receives a complaint of excessive use of force.
    - (ii) The supervisor recommends conducting a use of force review.
    - (iii) The encounter resulted in death or serious bodily injury.
    - (iv) The individual exposed to the CEW is a member of a special population.
    - (v) An individual was exposed to three or more CEW cycles or a cycle that lasted longer than 15 seconds.
  - (m) Upon request, a suspect subjected to a CEW deployment, or his/her next of kin, shall be kept informed of the procedural status and final result of the review.
- xvi. Training Requirements:**
- (a) Training for officers authorized to carry CEWs shall be conducted annually.



- (b) Training shall not be restricted solely to training conducted by the manufacturer of the CEW. However, training shall include the recommendation by manufacturers for the reduction of risk of injury to subjects, including situations where a subject's physical susceptibilities are known.
- (c) Training shall emphasize that CEWs may be less-lethal, but are not non or less-than lethal.
- (d) Training shall also incorporate, at a minimum:
  - (i) Instruction on the use of force continuum.
  - (ii) Techniques to avoid or deescalate confrontations.
  - (iii) The underlying technology and operation of CEWs.
  - (iv) The physiological effects upon an individual against whom such a CEW is deployed.
  - (v) The proper use of the weapon, including both the proper mechanical use of the weapon and the circumstances under which it is appropriate to use the weapon.
  - (vi) Scenario-based training.
  - (vii) Proper removal of CEW probes.
  - (viii) The potential medical needs of a subject who has been subjected to a CEW deployment.
  - (ix) The post-deployment reporting requirements.
  - (x) Instruction on interacting with individuals experiencing a mental health crisis, emotional crisis or other type of crisis, as recommended by the Vermont Criminal Justice Training Council.

**d. Impact Weapons: Batons, ASP/Expandable Baton**

- i. 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.
- ii. 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.
- iii. Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.
- iv. 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.

**e. 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. 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.

## VI. 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. **CEWs:** Where subject exhibits some level of active resistance/active aggression an officer may use a CEW to temporarily incapacitate the subject. (See additional documentation-CEW section)
  - 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 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:
    - i. The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
    - ii. The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
    - iii. 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 **resulting in death or serious bodily injury**, the supervisor, to the extent that one is available, will immediately respond to the scene to investigate the incident. The supervisor will accomplish the following investigative steps in conducting the investigation:
- a. **The supervisor, or responsible officer, will notify the Chief of Police with a full account of the events of the use of force.**
  - b. Interview the involved subject if they are cooperative, to determine their account of the incident. Additionally, should the supervisor determine that unreasonable force was utilized, the **Chief of Police** will be notified and assume control of the response to resistance investigation.
  - c. 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.
  - d. 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.
  - e. Interview, preferably recorded, all witnesses to the incident and document their description of the event.
  - f. Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
  - g. 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
  - h. 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.