



Cheshire County Sheriff's Office

Professional Standards

Directive Title: Responding to Resistance

PSC# 1.3

Date Issued: June 15, 2020

Effective Date: June 15, 2020

Rescind/Amend/Review:

Approved: Sheriff Eliezer Rivera

A handwritten signature in black ink, appearing to read "Eliezer Rivera".

I. PURPOSE

The purpose of this policy is to provide Sheriff's Office sworn law enforcement officers with guidelines when responding to resistance with the use of less-lethal and deadly force.

II. POLICY

It is the policy of the Cheshire County Sheriff's Office to value and preserve human life. Sworn members shall use only the level of force that is objectively reasonable to effectively bring an incident under control while protecting the safety of the sworn member and others. Sworn members shall respond to resistance by using force only when no reasonably effective alternative appears to exist and shall use only the level of force that a reasonably prudent law enforcement officer would use under the same or similar circumstances.

The decision to respond to resistance by using force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the sworn member or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

Besides, "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable law enforcement officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers' action are 'objectively reasonable' in light of the facts and circumstances confronting them."¹

This policy is to be reviewed annually, and any questions or concerns should be addressed to the immediate supervisor for clarification.

¹ Graham v. Connor, 490 U.S. 386 (1989)

III. DEFINITIONS

CHOKER HOLD: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.

DEADLY FORCE: Any use of force that creates a substantial risk of causing death or serious bodily injury.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

DETAINEE, PRISONER, ARRESTEE, or ARRESTED PERSON: Any person in official custody, pursuant to NH RSA 594:2, because they have been arrested and charged with a crime, taken into official custody on a criminal or civil warrant, taken into custody under RSA 172-B, taken into protective custody under RSA 135-C, or charged with being a juvenile delinquent.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

IMMINENT DANGER: 1. An immediate, real threat to one's safety that justifies the use of force in self-defense. 2. *Criminal Law*. The danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself. (Blacks Law Dictionary, 8th Edition).

LESS-LETHAL FORCE: Any response to resistance by use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the sworn member's evaluation of the situation in light of the totality of the circumstances known to the sworn member at the time the force is used and upon what a reasonably prudent law enforcement officer would use under the same or similar situations.

SERIOUS BODILY INJURY: Injury that involves substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

MEDICAL CARE – AID: The treatment of any illness or injury by applying first-aid, or the evaluation or treatment by paramedics or medical professionals.

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. LEVELS OF RESISTANCE

- A. Sworn members must assess the situation by the totality of the circumstances.
- B. **Compliant:** A subject is compliant when they follow the sworn member's direction, commands, or orders; this category represents the majority of subjects sworn members interact with each day and is the desired level to attain by the proper use of force. Sworn members are tasked to recognize when a person is compliant.
- C. **Passive Resistance:** Subject does not follow sworn member's directions, commands, or orders; subject conceals or attempts to conceal arms and wrists to prevent arrest or detention; subject causes no physical assault on the sworn member and does not use any mechanical enhancement to prevent the sworn member from arresting or detaining them or others.
- D. **Active Resistance:** Subject offers physical resistance calling for an offensive or a defensive action; subject grabs or holds onto a stationary or semi-stationary object; subject pulls away from or grabs the sworn member(s); subject flees or attempts to flee, hides, etc., to prevent arrest or detention.
- E. **Active Aggression:** Actual or perceived attack on the sworn member or a third party; subject attempts to or successfully punches, kicks, or bites sworn member or a third party; sworn member assesses that the subject's actions would or could cause injury, but not cause serious bodily injury or death.
- F. **Lethal Aggression:** Actual or perceived attack on a sworn member or a third party; not limited to, subject attempts to or successfully punches, kicks, knees, elbows or bites sworn member or a third party; with or without a weapon that could cause serious bodily injury or death.

V. PROCEDURES

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the sworn member, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.

3. Once the scene is safe, and as soon as practical, a deputy shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. A sworn member has a duty to intervene to prevent or stop the use of excessive force by another law enforcement officer when it is safe and reasonable to do so.
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation

1. A sworn member shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the sworn member or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, a sworn member shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, a sworn member may consider the use of less-lethal force to control a non-compliant or actively resistant individual. A sworn member is authorized to use agency-approved, less-lethal force techniques and issued equipment

1. to protect the sworn member or others from immediate physical harm,
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. A deputy is authorized to respond to resistance by using deadly force when it is objectively reasonable under the totality of the

circumstances. Use of deadly force is justified when one or both of the following apply:

- a. to protect the deputy or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
- b. to prevent the escape of a fleeing subject when the deputy has cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the deputy reasonably believes that there is an imminent risk of serious bodily injury or death to the deputy or another if the subject is not immediately apprehended

2. Where feasible, the deputy shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.²

3. **Deadly Force Restrictions**

- a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
- b. Warning shots are inherently dangerous, therefore, prohibited.
- c. Firearms shall not be discharged at a moving vehicle unless:
 - (1) a person in the vehicle is threatening the sworn member or another person with deadly force by means other than the vehicle; or
 - (2) the vehicle is operated in a manner deliberately intended to strike a sworn member or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
- d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, a sworn member must have an articulable reason for this use of deadly force.
- e. Choke holds are prohibited unless deadly force is authorized.

E. Training

² Tennessee v. Garner, 471 U.S. 1 (1985)
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1. All deputies shall receive training, at least annually, on this agency's Responding to Resistance use of force policy and related legal updates.
2. In addition, training shall be provided on a regular and periodic basis and designed to:
 - a. provide techniques for the use of and reinforce the importance of de-escalation;
 - b. simulate actual shooting situations and conditions; and
 - c. enhance sworn member's discretion and judgment in using less-lethal and deadly force in accordance with this policy.
3. All Responding to Resistance use-of-force training shall be documented.

V. ACCOUNTABILITY

- A. The decision to respond to resistance by using force, the level of force used, and the escalation or de-escalation of force is the responsibility of the individual sworn member. It should be based on the sworn member's professional assessment of the circumstances.
 - B. Sworn members must be prepared to explain their actions whenever any level of force is used against an individual.
 - C. Sworn members may be held accountable for their use of force via civil action (lawsuits) and/or criminal action (state and/or federal).
 - D. Sworn members will at all times be accountable to the Sheriff's Office for their actions via administrative investigation, review, and/ or discipline.
 - E. Sworn members found to have used excessive or unreasonable force are subject to retraining, discipline, and/or termination. Appointed members, such as deputies, may have deputation withdrawn.
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