



Policy & Procedure Chapter 46

Response to Resistance Policy

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Accreditation Standards: 1.3, 1.8 1.11

46.0 Purpose

The purpose of this policy is to direct deputies in the appropriate use of force in response to resistance.

46.1 Policy

A. The policy of the Boone County Sheriff's Department is to protect and serve all citizens while at the same time respecting the rights of suspects, and balancing the need for the safety of the deputies.

B. The policy of the Boone County Sheriff's Department is that a deputy will use only objectively reasonable force to bring an incident or event under control. Reasonable force is only the force necessary to accomplish lawful objectives, including:

1. Self-defense;
2. Defense of another;
3. To overcome resistance to a lawful arrest;
4. To control an incident or event.

C. All uses of force must be objectively reasonable. This requires careful attention to the totality of the facts and circumstances of each particular case. Factors to be considered include, but are not limited to:

1. The severity of the crime at issue;

2. Whether the suspect poses an immediate threat to the safety of the deputies or others;
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

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

D. Deputies may sometimes be required to take custody of, or otherwise control, an individual who is a danger to him/herself due to a medical or mental health emergency. In these situations a deputy may be required to use objectively reasonable force. In determining whether the force used is appropriate and proper under the department's trained response to resistance options, the deputy should consider the following three (3) factors:

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 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)?

Estate of Corey Hill v. Miracle, No. 16-1818 (6th Cir. April 4, 2017)

E. This policy shall apply to all deputies while on-duty or when off-duty.

46.2

Definitions

A. "Active Resistance/Aggression" means a subject taking affirmative action(s) to defeat a deputy's ability to take him/her into custody, including, but not limited to, physically struggling, threatening or other behavior when coupled with other acts of defiance.

B. "Canine" means the use of a department canine to bite and/or hold a subject in response to that subject's active resistance/aggression, including controlling the subject during a physical apprehension involving active resistance/aggression, or to prevent an escape.

C. “Chemical Irritant” means a substance whose properties are used to overcome a subject’s resistance or aggression in order to temporarily incapacitate the subject.

D. “Command Presence” means the visual appearance of a deputy where a reasonable person recognizes, or should recognize the deputy’s authority of law, due to the deputy’s uniform, identification or other indications.

E. “Deadly Physical Force” means force which is used with the purpose of causing death or serious physical injury or which the actor knows to create a substantial risk of causing death or serious physical injury. **Note:** Federal Courts have defined deadly force as any force which creates a substantial likelihood of death or serious bodily harm.

F. “De-escalation” means the strategic slowing down of an incident through the use of non-physical techniques in a manner that allows deputies more time, distance, space and tactical flexibility during dynamic situations.

G. “Conducted Electrical Weapon” means a weapon capable of temporarily immobilizing a subject by the discharge of electrical current.

H. “Electronic Tools” means any electronic equipment used to control a subject, including but not limited to, a conducted electrical weapon or a stun cuff.

I. “Exigent Circumstances” means a situation where the circumstances known at the time, would a cause a reasonable deputy to believe that immediate action is necessary in response to an emergency, including but not limited to, potential loss of life or physical injury, the destruction of evidence, or hot pursuit.

J. “Firearm” means any weapon which will expel a projectile by the action of an explosion.

K. “Firearms Discharge” means any discharge of a firearm other than range training or qualification, whether intentional or unintentional, whether a subject is struck by the discharge or not, and includes euthanizing an animal.

L. “Hard Hand Control” means the use of punches, kicks or other physical strikes, including with the knees, feet or elbows, where the

possibility exists of creating mental stunning and/or motor dysfunction.

M. “Imminent” means impending or about to occur.

N. “Impact Weapon/Strike” means any tool, object or body part, including but not limited to an expandable baton or launched impact munitions, where the possibility exists of creating mental stunning and/or motor dysfunction to a subject.

O. “Less-Lethal Weapon” means any weapon not likely to create a substantial likelihood of serious physical injury or death.

P. “Non-Deadly Force” means all uses of force other than those that create a substantial likelihood of death, serious physical injury or serious bodily harm.

Q. “Objectively Reasonable” means the determination that the necessity for using force and the level of force used is based upon the deputy’s reasonable evaluation of the situation in light of the totality of the circumstances known to the deputy at the time the force is used, and upon what a reasonably prudent and well-trained deputy would use under the same or similar situations.

R. “Passive Resistance” means the non-violent opposition to a deputy’s authority, including but not limited to, failing to respond to a deputy’s commands, refusing to move, or issuing verbal offense, under circumstances where no physical threat to the deputy is offered.

S. “Physical Force” means force used upon or directed toward the body of another person and includes confinement. This includes but is not limited to hard hand control, chemical irritant, conducted electrical weapon, impact weapon, canine or deadly physical force.

T. “Physical Injury” means substantial physical pain or any impairment of physical condition.

U. “Reasonable Belief” means the facts and circumstances as the deputy believes, that would cause an ordinary, prudent deputy to think or act in a similar manner under similar circumstances.

V. “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 any bodily organ.

W. "Show of Force" means a situation where a deputy's intention is to demonstrate his/her official authority in order to gain a subject's compliance, by intentionally pointing, aiming, or displaying a firearm, conducted electrical weapon, impact weapon, or chemical irritant directly at that subject(s). A show of force occurs notwithstanding the fact that physical force or deadly physical force is ultimately deployed. This does not include instances of training. Any show of force by a deputy must be objectively reasonable.

X. "Soft/Empty Hand Control" means the deputy's use of the hands on a subject to direct that subject's movements, including control techniques that have a low potential for injury to the subject.

Y. "Verbal Command" means the verbal and non-verbal communications used by a deputy to direct the subject as to the deputy's expectations, including de-escalation. Techniques include, but are not limited to, warnings, advisements, verbal persuasion and tactical repositioning.

46.3

Procedure

A. The action(s) of the aggressor/subject will determine the level of force that that a deputy will apply to protect himself, protect another, effect a lawful arrest or control an incident or event. The level of force used by deputies will escalate or de-escalate proportionately to the resistance or cooperation of the aggressor/subject. The use of physical force should be discontinued when the subject's active resistance/aggression ceases or when the incident is under control.

B. Force Deployment:

De-escalation techniques shall be used before resorting to physical force where practicable.

1. **Command Presence:** The presence of a uniformed deputy may be a factor in assessing the need for force in a particular situation. Deputies should clearly identify themselves when practicable.

2. **Verbal Commands:** Verbal and non-verbal commands, including warnings, advice or hand gestures, may be a factor in assessing the need for force. Clear, concise and consistent commands should be given when practicable.

3. **Soft/Empty Hand Control:** Unarmed tactics and control techniques may be used to direct and control a subject's movement(s) or under circumstances that would indicate passive resistance.

4. **Hard Hand Control:** The use of the hands, feet, knees, elbows or other body parts may be used to create mental stunning and/or motor dysfunction in response to the subject's active resistance/ aggression.

5. **Chemical Irritants:** The department issued hand held spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant.

a. The spray shall be used when the subject exhibits active resistance/aggression and never used as a punitive measure.

b. A deputy should avoid spraying from a pressurized can directly into a subject's eyes from a distance closer than instructed in training, due to the potential for an impact injury to the eye. Unless deadly physical force is justified, the deputy should discharge the spray at a distance as trained.

c. The duration of the application of the spray should be limited to the time necessary to effectively control the subject.

d. Deputies should consider alternatives to spray when in crowded or enclosed areas, or inside of a building with a closed-ventilation system.

e. Once control is gained, the deputy should immediately provide for decontamination as trained.

f. If the subject shows any signs of physical distress or does not recover in a reasonable period of time, the deputy shall immediately request Emergency Medical Services (EMS) response and render first-aid as trained.

g. Any other use of a chemical irritant by a deputy performing as assigned to a specialized unit of the department shall be objectively reasonable and in accordance with training.

6. Conducted Electrical Weapon: Conducted electrical weapon deployment shall not be considered for the passively resistant subject. Active resistance/aggression shall be required.

a. Flight from a deputy, with no accompanying active resistance/aggression, is not a justification for the use of a conducted electrical weapon. The deputy should also consider the nature of the suspected criminal offense, along with the risk of danger to the deputy or other person(s) if not immediately apprehended.

b. In circumstances where the subject is actively resisting the deputy's attempt to take him into custody but is not threatening the deputy with assault, deployment in the drive-stun mode should be considered, particularly in circumstances where tactical distance is not an issue.

c. Deputies should consider alternative tactics where the deputy has prior information or reasonably suspects that the subject suffers from a disability, medical condition or other physical vulnerability or factor which would increase the danger to that subject by the use of a conducted electrical weapon. These circumstances include, but are not limited to:

- 1) the very young or the elderly;
- 2) medical conditions such as heart disease;
- 3) mental health conditions;
- 4) subjects obviously experiencing severe drug or alcohol intoxication;
- 5) obviously pregnant women;
- 6) subjects who are obviously small in stature or frail;
- 7) subjects experiencing a significant level of exhaustion;

However, the use of a conducted electrical weapon may be justified under the above circumstances when deadly physical force would have otherwise been justified or in circumstances where the deputy determines that notwithstanding the disability, the CEW is the safest alternative.

d. Deputies should consider the location and environment of the subject prior to deployment of a conducted electrical weapon. These considerations include, but are not limited to:

1) elevated areas such as stairwells, roofs, bridges, or trees where secondary impact may cause serious physical injury;

2) the presence of combustible materials in the area or on the subject such as gasoline, natural gas, or chemical irritant sprays, where ignition and fire or explosion could result;

3) the deployment shall be **prohibited** to a subject who is in physical control of a motor vehicle unless deadly physical force would be justified based on an existing imminent threat of death or serious physical injury;

4) deputies should be aware that a subject's heavy or loose clothing may impact the effectiveness of a conducted electrical weapon.

e. Multiple deployments of a conducted electrical weapon to a subject should be minimized where practicable. No more than one deputy should deploy a conducted electrical weapon to a single subject at the same time.

However, the department does recognize that multiple deployments may be necessary to gain or maintain control of an actively resistant/aggressive subject, particularly where back-up law enforcement officers are not on the scene. The deployment(s) must still be objectively reasonable.

f. Deputies shall warn other deputies and the subject prior to any deployment when practicable. However,

deputies should be aware that under certain circumstances, a warning may not be possible or may enhance the danger to the deputy by an assaultive subject by giving that subject time to evade the deployment.

g. The preferred targeting for deployment of a conducted electrical weapon is the center mass of the subject's back. However, where back targeting is not possible, frontal targeting should be lower center mass, avoiding the chest area where practicable. Deputies shall make all reasonable efforts to avoid deploying the weapon to a subject's head, neck, eyes, chest or genitals.

h. The activation of a conducted electrical weapon shall be performed as trained.

i. Once compliance is gained and the deputy can safely do so, the deputy, or another deputy, shall request Emergency Medical Services (EMS) response and render first aid as trained. EMS request is not required where the subject was obviously not affected by the deployment, including instances such as heavy or loose clothing inhibiting probe contact.

- 1) Deputies should monitor the subject for any signs of unusual physical distress.

- 2) The probes may be removed by the deputy in accordance with training. However, where the probes have penetrated the head, neck, eyes, genitals, female breasts or other area of the body where they cannot be removed safely, medical personnel will be utilized for removal.

- 3) The removed probes shall be treated as a bio-hazard. The probes, AFID(s) and cartridge(s) shall be packaged and maintained as evidence.

- 4) Under the following circumstances, medical clearance at a hospital is required:

(a) Deployment to sensitive areas including the head, eyes, neck, genitals and female breasts;

(b) Subjects who have been struck in the chest in the probe mode;

(c) Subjects who have been subjected to more than one probe deployment;

(d) Subjects who have not fully recovered after a short period of time, or appear to be having unusual physical distress;

(e) Where the probes have penetrated the subject's skin and cannot be safely removed by the deputy or EMS;

(f) Subjects who are included in the vulnerable classes listed above, such as the elderly, pregnant women, or a known or suspected pre-existing medical condition;

(g) Subjects for whom EMS personnel recommend medical clearance;

(h) Subjects who request treatment at a hospital.

j. The use of a conducted electrical weapon is **prohibited** for use as a punitive measure. The use of a conducted electrical weapon is **prohibited** for use on a handcuffed subject in order to force compliance, unless the subject is actively resistant/aggressive and control cannot otherwise be accomplished.

k. Deputies should be cognizant that a conducted electrical weapon is not a substitute for deadly physical force. In deadly physical force circumstances, a lethal force option should accompany the potential use of a conducted electrical weapon.

l. All deployments of a conducted electric weapon, other than the function test, shall necessitate the immediate notification of the deputy's supervisor.

1) Any deployment, other than a function test, shall be investigated and documented in accordance with the policy below.

2) Conducted electric weapons will be downloaded following a deployment and at each primary duty handgun qualification.

3) Instances where the subject complies once threatened with a conducted electric weapon will be documented as a show of force in accordance with the policy below.

m. All conducted electrical weapons will be worn on the deputy's support side.

7. Impact Weapon: The use of an impact weapon may be used where the deputy reasonably believes the use will bring the event under control.

a. Factors involving the use of an impact weapon include, but are not limited to:

1) The deputy believes other options would not be successful in bringing the event to a successful conclusion;

2) The deputy is responding to the subject's active resistance/aggression where there is an imminent risk of physical injury to the deputy or another person.

b. Deputies shall not intentionally strike a subject above the shoulders with an impact weapon unless deadly physical force would otherwise be justified.

c. Any other use of a launched impact weapon by a deputy performing as assigned to a specialized unit of the department shall be objectively reasonable and in accordance with training.

8. **Department Canine:** The use of the department canine will be in compliance with the procedures established in Policy and Procedure Chapter 55, *Canine*. All canine uses of force shall be objectively reasonable. Prior to the deployment of a department canine under circumstances involving force, a warning in the form of an announcement shall be made where practicable. When dealing with large geographical areas or buildings, warnings will be made intermittently as the canine advances to new areas.

9. **Deadly Physical Force:** The use of deadly physical force by a deputy is justifiable when the deputy believes that such force is necessary to protect him/herself, or another person present, against an immediate threat of death or serious physical injury; or in accordance with Kentucky Revised Statute 503.090:

KRS 503.090 Use of physical force in law enforcement.

- (1) The use of physical force by a deputy upon another person is justifiable when the deputy, acting under official authority, is making or assisting in making an arrest, and
 - (a) Believes that such force is necessary to effect the arrest,
 - (b) 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
 - (c) Believes the arrest to be lawful.
- (2) The use of deadly physical force by a deputy upon another person is justifiable under subsection (a) above only when:
 - (a) The deputy, in effecting the arrest, is authorized to act as a peace officer; and
 - (b) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and

(c) The deputy believes that the person to be arrested is likely to endanger human life unless apprehended without delay.

(3) The use of physical force, including deadly physical force, by a deputy upon another person is justifiable when the deputy is preventing the escape of an arrested person and when the force could justifiably have been used to effect the arrest under which the person is in custody.

a. In all deadly force incidents, the deputy should warn the subject prior to deploying the force where practicable.

b. Once the subject's active resistance/aggression has ceased and control has been gained, the deputy is no longer authorized to use any physical force.

c. Once compliance is gained and the deputy can safely do so, the deputy or another deputy, shall request Emergency Medical Services (EMS) response and render first aid as trained.

d. Firearms Restrictions:

1) Warning shots are **prohibited**;

2) Deputies should be cognizant of their field of fire. The discharge of a firearm is **prohibited** when the circumstances present a substantial, unreasonable risk to the safety of innocent third parties;

3) Deputies will not discharge their firearms at a moving vehicle except where:

a) The deputy has a reasonable belief that the occupant of the vehicle poses an imminent threat of death or serious physical injury to the deputy or another person by means other than the vehicle;
or

b) The deputy has a reasonable belief that the occupant is intentionally using the vehicle in a manner that poses an immediate threat of death or serious physical injury to the deputy or another person and there is no other means of defense.

c) Deputies should avoid intentionally placing themselves in the path of a vehicle in an attempt to stop, slow, cause a change in direction, or prevent the movement of a vehicle where deadly physical force would become the only alternative.

4) Deputies shall not discharge their firearms from a moving vehicle except under exigent circumstances where the use of deadly physical force would be justified.

10. General Provisions

a. A deputy has the duty to intervene to prevent and/or stop the use of excessive force by another deputy or law enforcement officer. This duty includes reporting any such incident to the deputy's supervisor or any other supervisor of the department.

b. Prior to the use of any physical force, the deputy should identify him/herself and warn of any imminent force where practicable.

c. In addition to specific circumstances included above, once compliance is gained and the deputy can safely do so, the deputy or another deputy, shall request Emergency Medical Services (EMS) response and render first aid as trained when a subject has visible injuries, a complaint of injury, or requests medical attention.

d. Deputies assigned to first-line, uniformed service, including but not limited to, patrol, traffic, school resources, court security and details involving similar

activities, will carry all less lethal weapons and firearms as indicated in training.

11. Show of Force

- a. When a deputy removes a firearm from his holster or vehicle rack and there is a civilian present, the deputy will notify his/her supervisor.
- b. The supervisor will determine whether the incident meets the reporting requirement for a show of force.
- c. If a deputy displays a show of force, the deputy will notify the supervisor as soon as practicable.

46.4 Reporting Response to Resistance

- A. Any deputy who uses physical force or deadly physical force, other than soft hand control or restraint with handcuffs, shall notify his/her supervisor as soon as possible. Supervisory notification includes instances where a subject is injured, has a complaint of an injury, or requests medical attention.
- B. Any deputy who discharges a firearm, other than for training or lawful recreational purposes, shall notify his/her supervisor as soon as possible.
- C. When notification and/or reporting is required, all deputies involved in, or present at, the use of force incident will provide a complete verbal accounting and written report of the incident as requested by a supervisor.
- D. The deputy may also be required to complete additional case reports or citations.
- E. Supervisory Responsibilities
 1. Once notified, the supervisor will immediately respond to the scene of the incident and secure the scene as appropriate.
 2. The supervisor will check on the deputy(s) well-being and then assess the condition of the subject upon whom the force was used for medical treatment and/or clearance.

3. The supervisor is responsible for the investigation and report of any response to resistance incident. The supervisor may have other supervisors or deputies assist where needed.
4. The investigation shall include, but not be limited to:
 - a. interviewing and obtaining statements from the deputy involved, other deputies present, the subject of the force, and other witnesses; Note, the supervisor should consider using a video/audio recording of the statement where such equipment is available .
 - b. photographing/videoing the scene, injuries, deputies and any evidence as appropriate;
 - c. collecting and securing physical evidence as appropriate;
 - d. completing the department response to resistance report including the subject's actions that necessitated the deputy's response, the facts and circumstances as the deputy perceived them, any complaint of injury and the treatment received or refusal of treatment.
5. The supervisor will approve what criminal charges, if any, are to be filed against the subject and which deputy(s) will provide transportation.
6. The supervisor will notify the patrol commander, when practicable, of the incident or in an event where unreasonable force is suspected and in accordance with Department Policy and Procedure Chapter 6, *Sheriff's Notification*.
7. If the supervisor determines that the circumstances involve a critical incident, the supervisor shall follow the procedures established in Policy and Procedure Chapter 103, *Critical Incident Investigation and Review*.
8. Upon reviewing statements, evidence and any other information provided, the supervisor shall submit the completed investigation and report to the department Response to Resistance Review Team, as established by the Sheriff.

9. The Review team will review for compliance with applicable statutes, case law, policies and procedures, and training. The review team will then forward the investigation and report to the Sheriff for his review.

46.5 Reporting Show of Force

A. If a supervisor determines that a show of force has occurred, the supervisor will respond to the scene of the event and complete the show of force report.

B. The supervisor will forward the report to the patrol commander, who will then forward the report to the Response to Resistance Review Team.

C. The Review team will review for compliance with applicable statutes, case law, policies and procedures, and training. The review team will then forward the investigation and report to the Sheriff for his review.

46.6 Interactions with Animals

A. During encounters with animals, deputies are authorized to use only the level of force that is objectively reasonable to protect themselves or others from an imminent threat to their safety.

B. Deputies should be cognizant of other options that may be available before resorting to deadly physical force, including but not limited to, known information, signage, previous incidents, distractions, and verbal commands.

C. Deputies should consider the use of less lethal force where practicable.

D. Deputies may also consider the assistance of Boone County Animal Control or the Kentucky Department of Fish and Wildlife where circumstances make it practicable.

E. Deputies may use deadly physical force to euthanize an animal that

1. presents a threat to the health or safety of the general public; or

2. has an injury or physical condition which causes the animal to suffer. (KRS 258.505)

F. Deputies, where practicable, should obtain supervisory approval and attempt to contact the owner, if known, prior to the euthanasia of an animal.

G. When an animal requires euthanasia, the sidearm, rifle or shotgun shall be used.

H. Deputies will notify their supervisor of the discharge of the firearm and complete a memorandum to the supervisor regarding the circumstances and the actions taken.

I. Deputies should make arrangements with the Public Safety Communications Center regarding removal of the animal.

46.7 Post Incident Procedures

A. When force is used in response to a subject's resistance, and the incident is deemed to be a critical incident, the Department shall follow the procedures established in Policy and Procedure Chapter 103, *Critical Incident Investigation and Review*, Subsections (H) and (I).

B. Any deputy may request the services of the St. Elizabeth Healthcare, Employee Assistance Program at (859) 301-2570 or (800) 436-9300.

46.8 Training

A. All deputies shall receive a copy of this Department's Resistance to Force Policy and receive training, at least annually, on the policy and related legal topics.

B. Newly hired deputies will receive training on this policy prior to the authorization to carry a firearm.

C. All deputies will be required annually to demonstrate a proficient understanding of this policy through a department approved assessment procedure.

D. Deputies are required to pass a firearms qualification course at least two (2) times per calendar year. The nature and scope of the training will be determined by the training section and approval of the Sheriff.

E. Deputies shall carry only departmentally approved firearm(s) and ammunition, as determined by the Sheriff, for on-duty and/or off-duty purposes.

F. Deputies are permitted to carry a department issued or approved firearm and ammunition anywhere in the Commonwealth of Kentucky as permitted by statute.

G. Only properly authorized and trained deputies are permitted to possess and use department shotguns, rifles or any other specialized weapon.

H. Training with less lethal weapons will be conducted by the training section as approved by the Sheriff.

I. Training in de-escalation, simulated force conditions, and judgment will be provided by the training section as approved by the Sheriff.

J. All resistance to force training shall be documented.