



515 Response to Resistance

Virginia Beach Police Department General Order

Chapter 500 – Response to Resistance

CALEA Standards: 1.2.10, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 4.2.1, 4.2.2, 4.2.3, 4.2.5, 4.3.3, 4.4.4

Purpose:

The purpose of this policy is to establish the circumstances under which a Virginia Beach Police Department officer may use force and to outline an officer's duties before, during, and after using force. **The Virginia Beach Police Department values the sanctity of life.** Therefore, officers shall use the amount of force that an objectively reasonable officer would use, considering the circumstances, to bring an incident or person under control, while protecting the lives of citizens and officers.

Definitions:

Apprehension: the arrest, capture, or taking of a person into custody.

Arrest: the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; the apprehension of someone for the purpose of securing the administration of the law, especially of bringing that person before a court. An arrest must include restraint of the person. The restraint may be imposed by force or may result from the subject submitting to custody.

Canine Apprehension: a situation in which facts indicate that a canine played a clear role in the capture of a person. The mere presence of a canine at the scene of an arrest shall not count as a canine apprehension.

Canine Deployment: any situation in which a canine is brought to the scene and used to locate or apprehend a suspect, whether a suspect is located or apprehended. The mere presence of a canine at the scene of an incident shall not count as a canine deployment.

Compliant: the subject is cooperative and obedient in response to lawful requests or directions from law enforcement personnel.

Deadly Force: any force likely or intended to cause serious bodily injury or death.

Deadly Weapon: any object, other than a body part or stationary object, that in the manner of its actual, attempted, or threatened use is likely to cause serious bodily injury or death.

De-escalation: actions taken by officers designed to mitigate the need to use force to resolve a situation, often using distance, cover and time.

Taser Energy Weapon (TEW): A weapon designed primarily to introduce electrical impulses into a subject, which will cause involuntary muscle contractions and override the subject's voluntary motor responses.

Excessive Force: Force that is objectively unreasonable given the totality of the circumstances, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Immediate Threat: a threat of danger that requires the officer to react instantaneously.

Imminent Threat: a threat of danger that an officer can identify and formulate a response to; this may include creating space, finding cover, and requesting additional resources.

Impact Weapon: any solid or semi-solid object used by an officer to gain control of a subject. Absent exigent circumstances, officers shall not use non-traditional weapons/hard objects, such as firearms or radios, as impact weapons.

In-Custody Death: an incident in which an individual died while in, or as an apparent result of being in, the perceived or actual physical control or restraint of an officer.

Kinetic Impact Munitions: impact rounds and baton rounds, such as rubber batons, bean bag rounds, foam baton rounds, and plastic, wax, or rubber-coated projectiles.

Less Lethal Force: force which (when used properly) is neither likely to nor intended to cause death or serious injury.

Less Lethal Weapon: An apprehension tool that, when used as designed and intended, is unlikely to cause death or serious injury.

Neck Restraint: The use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting the person's blood flow or breathing, including chokeholds, carotid restraints, and lateral vascular neck restraints. The use of a neck restraint by a law-enforcement officer is prohibited unless the use of a neck restraint is immediately necessary to protect the law-enforcement officer or another person from death or serious bodily injury. Code of Virginia § 19.2-83.3 and § 19.2-83.4.

Officer Duty to Intervene: Code of Virginia § 19.2-83.6.

An officer who witnesses another officer engaging or attempting to engage in the use of excessive force against an individual shall intervene, when:

- A. Such intervention is feasible.
- B. To end the use of excessive force or attempted excessive force or to.
- C. Prevent the further use of excessive force.
- D. Officers shall render aid as circumstances reasonably permit to any individual injured as a result of the use of excessive force.

An officer who intervenes or witnesses another officer engaging in or attempting to engage in the use of excessive force against an individual shall report such intervention or use of excessive force immediately to a supervisor.

Public Safety Associate: any employee of the Sheriff's Office, Fire Department, Emergency Medical Services, or any other local, state, or federal employee engaged in emergency or law enforcement services.

Reasonable, Necessary, and Proportional: the amount of force an ordinary, prudent, and intelligent officer with the same knowledge of the situation as the involved officer would deem reasonable. This is determined by the severity of the circumstances, immediate threat to officers, others, and property, and actively resisted or evaded

arrest. Related factors to be considered are suspects' actions, officers' perception, comparative size, avenues of escape, weapons involved, mental state, and number of assailants.

Reportable Use of Force: any force above hand control or escort techniques (come-along holds) applied for the purposes of handcuffing; or escort techniques that are not used as pressure-point compliance techniques, do not result in injury or complaint of injury, and are not used to overcome resistance.

Resistance to Apprehension/Arrest: There are three types of resistance:

- A. **Passive Resistance** – Resistant behavior that is unresponsive to an officer's verbal communication or direction (e.g., ignoring, or disregarding police attempts at verbal communication or control, going limp, or failing to physically respond or move) or verbal resistance (e.g., verbally rejecting police verbal communication or direction, telling the officer that they will not comply with police direction, telling the officer to leave them alone or to not bother them). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance. Actions such as verbal statements, bracing, or tensing alone do not constitute active resistance.
- B. **Active Resistance** – Not compliant, enhances this act of non-compliance with physical or mechanical means. The suspect does not direct any action towards the officer. Examples of active resistance include attempting to leave the scene, fleeing, hiding from detection, pulling away from the officer's grasp, or resisting by bracing or tensing.
- C. **Assaultive Resistance** – a subject's attack or attempt to attack an officer. Examples of assaultive resistance include striking or attempting to strike an officer with hands, fists, legs, or an instrument such as a knife, stick, or even a firearm. These include actions by a subject that create an objectively reasonable and articulable perception that the officer or another person is subject to imminent death or serious physical injury because of the circumstances and/or nature of an attack. Assaultive resistance represents the least encountered but most serious threat to the safety of law enforcement personnel or another person. **Neither passive resistance nor active resistance constitutes assaultive resistance.**

Serious Physical Injury: physical injury that creates a substantial risk of death, causes death or serious and protracted disfigurement, or impairs the function of any bodily organ or limb.

Serious Use of Force: all responses to resistance that involve:

- A. Lethal force.
- B. That results in serious physical injury resulting in admittance to a hospital.
- C. Neck restraints.
- D. Canine bites.
- E. Baton strike.
- F. Any punch, kick, TEW (Taser) application, or similar use of force against a handcuffed subject

Use of Force: physical effort going beyond unresisted handcuffing to compel compliance by an unwilling subject.

Policy:

Core Principles: (CALEA 4.1.1)

- A. The Sanctity of Life, Value of All People, and Serving the Community**
Law enforcement officers shall make every effort to preserve and protect human life and the safety of all people. Officers shall always respect and uphold the dignity of every person in a non-discriminatory manner.
- B. Adherence to the Critical Decision-Making Model (CDM)**
The Critical Decision-Making Model (CDM) is a tool designed to help officers develop critical thinking skills that help them identify the best strategies and tactics to resolve a situation safely, including incidents that might involve the use of force or might be resolved without force. Using the CDM, officers shall continuously assess each situation and modify their response as circumstances evolve.
- C. Force as a Last Resort and Duty to De-Escalate**
Force shall be used when necessary to accomplish lawful objectives that cannot reasonably be achieved through verbal commands, critical decision-making, tactical deployment, or de-escalation techniques. Force shall never be used as a retaliatory or punitive measure. Officers shall use de-escalation techniques and tactics to reduce a threat or gain compliance with lawful commands without the use of force when feasible and reasonable.
- D. Duty to Use Only Objectively Reasonable, Necessary, and Proportional Force**
Officers shall use the amount of force that is objectively reasonable, necessary, and proportional to safely achieve a legitimate law enforcement objective.
- E. Duty to Use Deadly Force Only as an Absolute Last Resort and Duty to Avoid Actions That Create a Substantial Risk of Death or Serious Bodily Injury**
Deadly force shall be used as a last resort and in compliance with The Code of Virginia and this general order. Other actions by officers that create a substantial risk of death or serious bodily injury must be avoided or employed only under the strictest of conditions.
- F. Duty to Intervene and Report (CALEA 1.2.10)**
Every employee has an affirmative duty to take steps to prevent another employee from any use of force that is illegal, excessive, or otherwise inappropriate or inconsistent with our department policy and law. If another employee is using excessive force, you have an affirmative duty to immediately intervene, within the scope of your authority and training, to stop the employee from using such force. The duty to intervene includes Public Safety Associates engaged in any unreasonable use of force or are in violation of any local, state, or federal law. Every employee has a duty to report to a supervisor immediately any improper use of force by any member of the Virginia Beach Police Department or any Public Safety Associate.

G. Duty to Render Medical Assistance

After any use of force, and when the environment is safe, officers shall promptly render medical assistance to any person who is injured, or who complains of injury, consistent with the officer's training and shall promptly request emergency medical assistance for the injured person. Officers also have a duty to monitor individuals for potential need for medical intervention after any officer use force to overcome resistive actions.

H. Duty to Report and Review of Uses of Force

Every use of force must be reported and receive a thorough command-level review that includes review by the Chief or designee. Internal Affairs Unit (IAU) shall conduct an annual review and analysis of uses of force by all officers.

Determination of Reasonableness of Force (CALEA 4.1.1)

Use of Force factors:

When determining the appropriate level of response to resistance, officers shall consider the following factors:

- A. The severity of the crime at issue
- B. The totality of the circumstances
- C. The availability of other resources
- D. The potential for injury to citizens, officers, or subjects
- E. Environmental factors and other exigent circumstances

Officer factors:

- A. The training and experience of the officer
- B. Officer versus subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers versus subjects, etc.)
- C. The amount of time and information available to make a decision.

Subject factors:

- A. Immediate threat posed by the subject to officers or the community.
- B. Level of threat, resistance, risk of escape, and conduct of the subject.
- C. Refusal by the subject to comply with lawful orders or willingness to de-escalate.
- D. Subject's behavior due to suspected mental health crisis and/or drugs.

Use of Force process:

- A. Officers shall allow individuals time and opportunity to comply with verbal commands before using force, *where feasible* without compromising safety, evidence, or the escape of a suspect.
- B. Only objectively reasonable force should be used, consistent with policy and training.

- C. The department will review the reasonableness, appropriateness, and necessity of the force used based on the circumstances known to the officer at the time.
- D. Force should never exceed what is necessary to achieve lawful objectives or conduct public safety activities.

Use of Deadly Force: Code of Virginia § 19.2-83.5 (CALEA 4.1.2)

Officers shall not use deadly force against a person unless:

- A. An officer reasonably believes it is immediately necessary to protect themselves or others from the threat of serious bodily injury or death.
- B. If feasible, a warning should be given before using deadly force.
- C. The reasonableness of the officer's belief and actions will be assessed from a reasonable officer's perspective on the scene, considering the totality of the circumstances.
- D. Other options have been exhausted or do not reasonably lend themselves to the circumstances.

When determining if an officer's use of deadly force is appropriate, the following factors will be considered:

- A. The reasonableness of the officer's belief and actions from the perspective of a reasonable law-enforcement officer on the scene at the time of the incident; and
- B. The totality of the circumstances, including:
 1. The amount of time available to the officer to make a decision.
 2. Whether the subject of the use of deadly force:
 - a. possessed or appeared to possess a deadly weapon and
 - b. refused to comply with the law enforcement officer's lawful order to surrender an object believed to be a deadly weapon prior to the law enforcement officer using deadly force.
 3. Whether the officer engaged in de-escalation attempts prior to the use of deadly force, including taking cover, waiting for backup, trying to calm the subject prior to the use of force, or using non-deadly force prior to the use of deadly force.
 4. Whether any conduct by the officer prior to the use of deadly force intentionally increased the risk of a confrontation resulting in deadly force being used; and
 5. The seriousness of the suspected crime.
 6. The seriousness of the suspected crime alone does not justify the use of deadly force to prevent the escape of an unarmed felon or suspected felon.

Deadly force is not authorized against a subject who only poses a threat to themselves.

De-escalation

Officers shall use de-escalation techniques in tense encounters unless it is unreasonable to do so. These techniques include slowing down the pace and intensity of the situation, using time, creating distance between the officer and the subject, using available cover and verbal persuasion, and when necessary, requesting additional resources and assets, including specially trained officers, behavioral health care providers, or negotiators, to reduce the need for force or the level of force needed.

Examples include talking to a person using language and a tone of voice that is not aggressive or confrontational, creating space or placing barriers between the officer and the person, waiting the person out when circumstances permit, permitting the person to move about when safe, giving the person an opportunity to make statements or ask questions, slowing down the pace of an incident, tactically re-positioning, and requesting additional resources. The guiding principles for de-escalation are *patience, flexibility, and the desire to resolve each situation peacefully*.

Perhaps the most powerful “weapon” an officer has is the ability to talk and reason with another person. In addition, officers may need to remove other individuals from the area to help defuse the crisis.

Officers should not impair their safety or the safety of others through poor tactical decisions, including but not limited to immediately approaching a person without proper evaluation of the situation, failing to leave sufficient space between the officer and the person, closing the reactionary gap, ignoring cover, or escalating a situation. Officers should always consider whether they are operating from a safe place and at a safe distance from the subject.

De-escalation can also include using less-lethal weapons in lieu of deadly force.

If an officer has no alternative to using force, **they shall use the amount of force that is reasonable, necessary, and proportional to respond** to the threat or resistance and shall immediately reduce the level of force as the threat or resistance lessens or stops.

Restrictions on the Use of Force

Deadly force shall not be used to subdue people whose actions are a threat only to property or themselves.

The following actions are prohibited unless the use of deadly force is justified, and no reasonable alternative exists:

- A. Discharge of a firearm at a person.
- B. Intentional strikes of a person’s head against a hard, fixed object, including but not limited to a roadway, concrete floor, wall, or iron bars.
- C. Kneeling or kicking a person’s head, or neck, including “knee drops” onto a prone or supine person.

Firing Weapons at a Moving Vehicle Code of Virginia § 19.2-83.4

Firing a weapon at a moving vehicle is prohibited except when the officer reasonably believes that deadly physical force is being used by an occupant of the vehicle, against an officer or another person present, **by means other than the moving vehicle**.

Warning Shots (CALEA 4.1.3)

Firing of warning shots is strictly prohibited due to the inherent danger of harm.

Restrained Individuals

- A. Officers shall not use force against people who are handcuffed or otherwise restrained, except in exceptional circumstances where the totality of circumstances makes it reasonable and necessary to prevent injury or escape. The officer must be able to articulate the need for force afterward and how it was supported by Departmental policy and/or training.
- B. Officers are cautioned that even when exceptional circumstances exist to justify force against a handcuffed or otherwise restrained person, a level of force that may be considered proportional when used on an unrestrained person may not be proportional when used on a restrained person.
- C. **After a suspect is restrained, officers shall not leave or place the subject face down, as this could cause positional asphyxia. Restrained people should be seated or placed on their side.**

Use of Neck Restraints and Chokeholds Code of Virginia § 19.2-83.4 (CALEA 4.1.7)

The use of Neck Restraints and Chokeholds are not authorized unless immediately necessary to protect the officer or another person from death or serious bodily injury. This includes any tactic that involves pressure to the throat or windpipe, which may prevent or hinder breathing or reduce the intake of air.

Less Lethal Force (CALEA 4.1.4)

Consistent with the Department's philosophy of using reasonable force, the Department authorizes and/or issues a variety of less lethal/non-lethal weapons for use in situations where a firearm would not be reasonable. Weapons authorized for use and categorized as less lethal/non-lethal are delineated in General Order 5.02, *Weapons*.

Any sworn officer using a less lethal weapon, must have the proper training and be authorized by the Department.

Less Lethal weapons include:

OC Sabre/Def-Tee MK-9 Chemical Irritant | High Volume Chemical Munitions Launcher (ISPRA)

Chemical irritants are hand-held canisters containing a temporary disabling aerosol composed partly of oleoresin capsicum (OC) that can cause a burning sensation, involuntary eye closure, visual impairment, and reddening of the skin surface.

Chemical irritants are a less lethal alternative for controlling, subduing, or apprehending a suspect actively resisting or one who is using mechanical means to thwart an officer's attempts to control or detain him/her. Mechanical means is defined as holding onto a stationary object or person or placing a barrier between an officer and themselves.

OC Sabre/Def-Tee MK-9

- A. OC should be deployed from 3' to 6' away from the subject. No closer than 3' is recommended.
- B. Target Areas: Eyes, nose, and mouth.
- C. Recommended spray method is ear-to-ear over the eyes. A verbal warning should be given before deploying OC when possible.
- D. Deployed in 1, 1 second burst from a 45-degree angle.

High Volume Chemical Munitions Launcher (ISPRA)

- A. Effective Range: 15 to 20 yards (40 to 60 ft) in still air. Dispersion pattern: 1 yard (3 feet) in width for every 3 yards (9 feet) in distance.
- B. Shots: Average repeat capability of 13 to 15 one-second bursts per fully charged unit.
- C. Firing: Unit is fired from the hip or from an underarm position in which the operator can brace themselves, remove the safety pin, 1-second burst.
- D. Indoor/Outdoor use.

Expandable Baton/Civil Disturbance Baton

- A. Batons are defense impact tools that offer less lethal methods for self-defense or defense of another. Impact tools are less lethal alternatives for controlling, subduing, or apprehending a suspect who is acting or is about to act in an assaultive manner.
- B. Only the Expandable Baton is authorized for normal duty. Officers may only carry the Civil Disturbance Baton when engaged in civil disturbance response as approved by a supervisor.
- C. The PR24 is only to be used in accordance with departmental training.

Less Lethal Kinetic Impact Munitions Systems: SAGE SL-1/SAGE ACE/SAGE SL-6

The Department has several types of Less Lethal Kinetic Impact Munition tools. These weapons may be used against subjects who are armed with weapons other than firearms, making threatening gestures, making threatening statements without overt actions, or to protect the officer or another person from bodily injury. The use of kinetic impact munitions by a law enforcement officer is prohibited unless the use of kinetic impact munitions is necessary to protect the law enforcement officer or another person from bodily injury (Code of Virginia § 19.2-83.4). All subjects who have been hit with a SAGE impact munition shall receive a medical evaluation by emergency medical responders at the scene, regardless of injury. Supervisors shall be notified and respond whenever a SAGE impact munition has been utilized against a subject.

SAGE Deployment:

- A. **A verbal warning must be given to the subject prior to discharging the SAGE launcher.**
- B. Ultimately the decision to fire the impact munition is up to the SAGE operator. Considerations include:
 - 1. The level of resistance presented by the subject (assaultive, active resistance, etc.).
 - 2. Armed with a weapon or not.
 - 3. Making threatening gestures.
 - 4. Making threatening statements without overt actions.
 - 5. Subject displays the means and intent to not follow a lawful order.
- C. The SAGE launcher shall not be considered a primary weapon when handling response to resistance incidents.
- D. Officers shall not deploy the SAGE at or from a moving vehicle.
- E. Officers will consider the minimum safe impact capabilities at ranges from no contact range of one (1) meter (three feet) to as far as 100 meters.

Target areas:

- A. Primary target areas include lower abdomen, arms (below the elbow), and legs.
- B. Officers **shall not** target upper body (chest, back, neck, etc.), lower body (groin area, coccyx, knees). These areas are only authorized if the officer is confronted with a Deadly Force situation.

Deployment considerations:

Officers must consider the following factors when evaluating the level of potential effectiveness of the SAGE kinetic impact munition.

- A. Clothing (is the subject wearing layers)
- B. Distance to the subject
- C. Mental state of the subject
- D. Influence of drugs and/or alcohol
- E. Other medical conditions (elderly, very young, pregnant, physically disabled)

Taser Energy Weapon (TEW)

The display of the Taser Energy Weapon (TEW) without deployment is considered an Other Officer Action and shall be reported as such in Axon Standards. The display of the TEW includes device drawn, laser display, and warning alert/arc.

The deployment of the TEW is a response to resistance and shall be reported as such in Axon Standards. The deployment of the TEW includes drive stun, probes deployed,

and probes reenergized. All subjects who have been exposed to an application shall receive a medical evaluation by emergency medical responders at the scene. Supervisors shall be notified and respond whenever the TEW has been deployed.

- A. Officers should deploy a TEW for one standard cycle (five seconds) and then evaluate the situation to determine if the subsequent cycles are necessary. Exposure to the TEW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent applications should be independently justifiable and warranted.
- B. TEW Display:
 1. Officers may utilize a TEW to display, provide a Warning Alert/ARC, or Laser Paint in conjunction with verbal communication to effectively de-escalate a situation.
 2. A TEW probe deployment on a subject that does not pose an immediate threat to the safety of themselves, the officer, or others is still not authorized.
- C. TEW Deployment:
 1. Officers may deploy TEW probes when the subject poses an immediate threat to the safety of themselves, the officer, or others.
 2. A warning should be given, when practical, to the subject and other officers before deploying the TEW.
 3. Targeting the back is the most preferred target area due to having larger muscle groups and a reduced risk of hitting sensitive body areas.
 4. Officers shall avoid targeting the head, eyes, throat, chest, and genitals area.
 5. TASER 10 is capable of firing 10 cartridges loaded into the TEW. Each trigger pull deploys a single cartridge, requiring the trigger to be pulled at least twice to achieve NMI (Neuromuscular Incapacitation).
 6. TASER 10 will automatically create a connection between any two connected probes. When a connection is established, an electrical output will begin.
- D. TEW probes shall not be deployed under the following circumstances:
 1. On a subject who does not pose an immediate threat to the safety of themselves, the officer, or others.
 2. Against a fleeing suspect except when the individual poses an immediate threat to officers or citizens.
 3. When the officer knows the subject has come into contact with flammable liquids or is in a flammable atmosphere.
 4. When the subject is in a position where a fall is likely to cause substantial injury or death.
 5. Punitively for the purposes of coercion, or in an unjustified manner.

6. To awaken unconscious or intoxicated individuals.
7. When the subject is in a location where the subject could drown.
8. By an officer from a moving vehicle.
9. On handcuffed or restrained subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been effective.
10. Against subjects in physical control of a vehicle in motion (e.g., automobiles, trucks, motorcycles, ATVs, bicycles, scooters).
11. When assisting other law enforcement or security agencies that have exposed a subject to a chemical irritant or OC Spray.
12. When the subject is obviously pregnant, very young, mentally ill, or physically disabled, unless all other less intrusive means to control the situation have proven ineffective and impractical.

E. Officers may use TEW against aggressive animals.

PepperBall Launcher

- A. The PepperBall launcher is a less lethal tool that provides an alternative for apprehending subjects who are actively resisting arrest.
- B. Only authorized and trained sworn members may use the PepperBall Launcher System consistent with the Response to Resistance Policy and training.
- C. Use of the PepperBall, to include incidents involving SWAT, falls to the reasonableness of the incident, and supervisor approval is not required.
- D. Officers should avoid using PepperBall on persons who reasonably appear to be, or are known to be, young children, elderly, medically infirm, pregnant, or users of a cardiac pacemaker.
- E. A supervisor must respond to every PepperBall discharge to manage the post-incident after-action review. The supervisor's responsibilities at the scene will include, locating, interviewing, documenting, and collecting all relevant data to help enable a full and proper analysis.
- F. PepperBall launchers will be assigned to precincts and specialty units at the discretion of the Police Chief.
- G. The PepperBall round consists of a small, frangible sphere containing Pava powder.
- H. The PepperBall launcher is a semi-automatic less lethal weapon system that is powered by high-pressure air (HPA).
 1. Each command will be provided a Self-Contained Breathing Apparatus (SCBA) HPA and fill adapter.

2. SCBA tanks can be refilled by a Pepperball instructor at designated fire stations or Lynnhaven Dive Center on Great Neck Road.
- I. The Pepperball launcher can be shoulder mounted and has a high-capacity gravity-fed hopper.
- J. Only sworn personnel trained in the use of the Pepperball launcher are permitted to use the less lethal weapon system.
 1. The presence of a second officer to provide lethal cover is highly recommended while using the Pepperball system.
 2. If an injury requiring hospitalization occurs from the use of the Pepperball, follow the notification process for shots fired as outlined in this General Order.
- K. When targeting an individual with the Pepperball launcher, the following areas should be avoided unless deadly force is authorized:
 1. Head
 2. Neck
 3. Spine
 4. Tailbone
 5. Xiphoid Process
 6. Genitals
- L. The effect range of the Pepperball launcher is 0 to 60 feet for direct impact and up to 150 feet for area saturation. Area saturation can be accomplished by aiming Pepperball munitions at solid objects such as buildings, walls, and the ground.
- M. When utilizing the Pepperball launcher, the minimum number of munitions should be deployed, and there should be a reassessment after each deployment. Heavy clothing can hinder the effectiveness of the Pepperball munitions, and other areas of the body should be considered for targeting.
- N. Individuals struck by a Pepperball munition often “crunch” over and lower their head. It is important to anticipate this reaction.
- O. Decontamination for individuals struck exposed to the Pepperball PAVA is fresh air and clean, cool water.
- P. When utilizing the Pepperball munition for area saturation only (not impacting the subject’s body with the projectile), the subject must be actively resistant. In order to deploy the Pepperball munitions for direct impact (impacting the subject’s body), the subject must present a risk of injury to the law enforcement officer or another person (Code of Virginia § 19.2-83.4).
- Q. After the use of the Pepperball launcher and the individual is under control, onlookers should be informed that the Pepperball launcher is a less lethal alternative designed to apprehend individuals without causing serious injury.

Officers are exempt from these notification requirements during incidents involving civil unrest.

PepperBall Launcher (Crowd Control)

- A. Officers will not initiate the use of force or chemical irritant against crowds or a group of individuals except when reasonable and necessary to protect the officer, the subject, or another party from a risk of death or physical harm or is necessary to effect the arrest of an actively resisting subject or to prevent the escape of that subject.
- B. Officers encountering crowds will evaluate the situation and determine if there is a current or future need requiring crowd control or crowd management. Prior to police action, the officers will summon a supervisor to the scene.
- C. If crowd control is or will be required, the supervisor will summon a commanding officer, rank of Police Captain or above, or the designated Command Duty Officer (CDO) to the scene. Once on the scene, the commanding officer will direct all police action and authorize the use of weapons, tools, or tactics needed to resolve the situation.
- D. Only a Police Captain, designated CDO or above can authorize the deployment of the PepperBall launcher during civil disturbance, absent exigent circumstances.
- E. Officers must give verbal notice prior to deploying into a crowd unless it would present a danger to the officer or others to give such a warning. Any deployment of the PepperBall during crowd control requires, specific targeting of a subject to be arrested or who represents an imminent risk of death or physical injury to the officer or others, except when using the PepperBall launcher as an area saturation tool.
- F. The officer must be reasonably sure the weapons will not strike other individuals in the crowd who pose no threat of violence.

Hand-thrown chemical canisters/ Stinger Grenade with Rubber Pellet RP/ CS& RP/OC

- A. Only sworn personnel trained in the use and deployment of chemical irritants are permitted to use the less lethal weapon system.
- B. Officers will not initiate the use of force or chemical irritant against crowds or a group of individuals except when reasonable and necessary to protect the officer, the subject, to stop aggressive actions of a crowd, or if looting and destruction has begun or is increasing.
- C. Officers encountering crowds will evaluate the situation and determine if there is a current or future need requiring crowd control or crowd management. Prior to police action, the officers will summon a supervisor to the scene.
- D. If crowd control is or will be required, the supervisor will summon a commanding officer, rank of Police Captain or above, or the designated Command Duty Officer (CDO) to the scene. Once on the scene, the commanding officer will direct all

police action and authorize the use of weapons, tools, or tactics needed to resolve the situation.

- E. Only a Police Captain, designated CDO or above can authorize the deployment of the hand-thrown chemical canisters, absent exigent circumstances.
- F. Officers must give verbal notice prior to deploying into a crowd unless it would present a danger to the officer or others to give such a warning.
- G. When utilizing the deployment of hand-thrown chemical canisters, there should be a reassessment of the situation after each deployment.
- H. This section Does Not apply to hand-thrown Smoke canisters when used as a distraction tactic.

Medical Assistance (CALEA 4.1.5)

All persons subject to the use of force shall be asked by an officer if they sustained any injuries and if they would like medical treatment. Medical assistance shall be obtained as soon as is practical for persons who have sustained injury, expressed a complaint of injury, been rendered unconscious, or that the officer has reason to believe has been injured as the result of any use of force incident.

In the event that a suspect is injured, officers have a duty and obligation to provide medical treatment while the suspect is in custody. Officers should consider the medical condition and/or resistance being used by the injured person before using restraining devices such as handcuffs. Any questioning about injuries should be captured on a Body Worn Camera (BWC) if possible, with the understanding that there will be times when it is impractical or inappropriate to do so. Regardless of the availability of a BWC, the supervisor completing the Axon report will add the response to the injury questioning into the narrative of the Axon Response to Resistance Report.

Administrative Assignments/Counseling (CALEA 4.2.3)

All department personnel directly involved in a use of force incident as part of their official capacity that results in death, or the likelihood of death may be placed in a non-operational assignment for a period of time designated by the Police Chief or designee. This assignment will not result in loss of pay or benefits. The assignment shall not be interpreted to imply or indicate that the department member acted improperly.

All department personnel directly involved in a use of force incident that results in serious injury or death shall receive counseling as soon as practical after the incident and at no cost to the officer(s). The Chief Wellness Officer (CWO) will be responsible for ensuring that such counseling is provided. Prior to returning to active duty, the officer will be screened by a mental health professional. The CWO in conjunction with Optima Health and the Employee Assistance Program (EAP) will arrange the mental health screening. Refer to the Officer Involved Shooting Field Guide for more detailed information on officer reintegration.

Training (CALEA, 4.3.3, 4.3.4)

Sworn members will receive basic training on the use of force in the Virginia Beach Police Academy as part of basic police training. Officers also receive annual refresher training on the use of force as part of the annual firearms qualification.

All supervisors responsible for managing use of force incidents and other police actions that result in death or serious bodily injury shall receive training in the management of the incident.

Officers shall receive awareness training on the criminal and administrative procedures for the investigation of a response to resistance and other police actions that result in death or serious bodily injury.

Recruits and newly hired certified officers will receive copies of the Response to Resistance Policy and Weapons Policy prior to firearms qualifications. Recruits and certified officers will receive specific instructions on the policies and will be tested on the content of the policies.

During scheduled firearms re-qualifications, officers will receive a briefing from the firearms instructors concerning the department's policies on, the use of force, firearms, and authorized ammunition.

Response to Resistance Notification (CALEA 4.2.1)

Officers will make verbal notification at the earliest and safest opportunity, to an on-duty supervisor, whenever force is used in the performance of an official police duty. This applies to all weaponless force that is defined by this policy, the discharge of an officer's firearm, any action taken by an officer that results in injury or death, or the use of a less lethal weapon. Officers working on duty or off duty will notify a supervisor once the WRAP restraint system has been applied on any subject. In situations where an officer takes action that involves the use of force in another jurisdiction, the officer will immediately notify the appropriate law enforcement agency in that jurisdiction and contact an on-duty VBPD supervisor as soon as practical.

Once notified of a use of force, the supervisor shall inquire with the involved officer on the extent of force used and objectively evaluate the circumstances. Additionally, they shall check on the physical and mental welfare of the officer(s) and any involved persons.

Supervisor Response to Use of Force

A supervisor shall respond to the scene of any use of force incident greater than the use of contact controls, i.e., strikes, defensive tactics, weapons, or involves actual or claimed injury to complete the Response to Resistance Report in Axon Standards.

To complete the Response to Resistance Report, the responding supervisor shall conduct a thorough administrative investigation of the use of force unless the incident will be investigated criminally by the Detective Bureau. A thorough investigation should include:

- A. Checking on the welfare of all persons involved.
- B. Identifying and documenting any witness statements to the incident.
- C. Documenting property damage.

- D. Taking photos of the suspect of the use of force including any injuries or lack of injuries to the individual.
- E. Documenting conditions of the scene.

The supervisor conducting the use of force investigation will utilize officer(s) interviews and memos to complete their report in Axon Standards but should not rely solely on the memos to author their report. The investigation should be a gathering of evidence and facts which is then presented in the report.

The investigating supervisor will ensure the involved officer shall submit to the appropriate tests as outlined in the City of Virginia Beach Human Resources Policy 6.15 Substance Abuse Policy when an officer discharges a firearm that is pointed towards a person, regardless of whether an injury is sustained, while on duty, or while off duty and an employee has taken official police action:

Questioning suspects about their injuries and treatment should be narrowly focused on personal welfare questions. Appropriate welfare questions are: **Are you injured? Do you need medical care/treatment?**

Officers and supervisors should be aware that when asking about the welfare of an arrested subject that person may make spontaneous, incriminating statements. A Miranda warning is required before additional questioning or interrogation occurs. Specific questioning about how the individual obtained their injuries and any questioning about criminal activity on the part of the suspect should be done by the arresting officer after reading of Miranda rights.

Every effort should be made to have the supervisors' investigative interviews of witnesses, suspects, and officers and any welfare check questioning recorded on a Body Worn Camera (BWC), and detailed notes should be recorded in the Response to Resistance Report. All statements made to officers are subject to the rules of discovery, therefore statements made by the arrestee during a welfare check shall be included in the arresting officer's investigative report (PD-3) for transmission to the Office of the Commonwealth Attorney (OCA).

In cases where the charges are not being prosecuted by the OCA, the statements shall be retained by the arresting officer in case they are requested by a private attorney.

Negligent Firearm Discharge

When an officer discharges his/her firearm not in the line of duty, including negligent discharges, they will immediately advise the Emergency Communications and Citizen Services (ECCS) of the incident and request that an on-duty supervisor be notified. IAU shall be contacted as soon as possible, and the scene shall be secured until the assigned supervisor responds to conduct a preliminary investigation. The officer should secure the area of the shooting, if possible, and await the arrival of the supervisor.

For many cases, after consultation with IAU and provided the shift commander or CDO is available to respond, IAU can designate an on-duty supervisor to conduct the preliminary investigation which shall be captured via Axon Standards. IAU will generally respond and conduct the preliminary investigation for cases that involve injury or third-party property damage. Additionally, IAU will respond to cases to conduct the preliminary investigation when there is no shift commander or CDO available to respond.

The supervisor shall conduct an investigation as if a weapon was discharged within the officer's official capacity. If the supervisor determines that the discharge was negligent, resulting in no injury or property damage belonging to anyone other than that officer involved, the officer will provide a memorandum containing the facts of the incident to the investigating supervisor. In those cases where the on-duty supervisor determines the incident was a negligent discharge, that supervisor shall complete an investigation, document the event on a memorandum, and forward the results and all attachments (to include the officer's memorandum) to the IAU. The Commanding Officer of the Professional Standards Bureau will ensure that a copy is forwarded to the Training Bureau as soon as practical (See Administrative Field Guide for guidelines on the proper method for completing the investigative memo).

All negligent discharge events require IAU to complete a firearms discharge investigation. The investigative memorandum generated by the on-scene supervisor will be the primary source for the IAU Investigator's investigation.

The investigation conducted by the on-scene supervisor is separate from the IAU firearms discharge investigation. In those cases, involving injury or damage to property that does not belong to the officer involved, the supervisor will handle the scene as if a discharge occurred within the officer's official capacity and make the appropriate notifications to ensure that the appropriate criminal and administrative investigations are initiated.

An investigation will **not** be required for a negligent discharge if it occurred during authorized Departmental firearms training, and when the negligent discharge occurs on the firing line where the round is fired safely downrange. When such a discharge occurs, the range officer will appropriately address the matter as a training issue. However, if the negligent discharge occurs off the firing line or if the round is fired in a direction that places others in danger, the range supervisor will ensure that an investigation is completed (See Administrative Field Guide for guidelines on the proper method for completing the investigative memo).

If the incident location of a use of force or negligent discharge of a firearm is not within the City of Virginia Beach, the supervisor shall speak with the officer as soon as practical and determine the type of response needed from the Department.

Response to Resistance Reporting Exemption

- A. Officer-involved shootings or the use of force that results in significant injury or death, will not require a written Response to Resistance Report to be completed by the immediate supervisor. The information for the report will be obtained during the subsequent administrative investigation. The Commanding Officer of the Professional Standards Bureau will determine if the injury rises to the level to be considered under this exemption.
- B. A purposeful discharge of a firearm during training or recreational purposes will not require a Response to Resistance Report.

Reporting Timelines

Unless the Response to Resistance falls under the stated exemptions these reports shall be completed by the end of the supervisor's shift in Axon Standards. If this cannot be accomplished the supervisor will be required to at least start the report, prior to the end of their shift, and it shall contain at minimum a basic narrative that contains information pertaining to the incident and essential who, what, when, where, why, and how elements.

- A. The sergeant shall complete the report within seven (7) days and submit it to the lieutenant for review.
- B. The lieutenant shall have five (5) days to review the report, send it back for corrections and/or edits, if necessary, and send the approved report to the captain.
- C. Once the captain has received the report, they shall have five (5) days to review the report and send it back for corrections and/or edits, if necessary. The captain will finalize all reports except those involving the below-listed officer actions, which shall be forwarded to the respective deputy chief for review and final approval.
 1. Any sage, PepperBall, ASP, or PR24 deployment.
 2. Any response to resistance utilizing strikes such as kicks, punches, etc., against a subject.
 3. Any response to resistance that results in serious bodily injury.
 4. Canine apprehension with physical contact as defined in GO 11.14, which results in a Response to Resistance report.
- D. Based on the specific circumstances regarding the report the deputy chief may be required to forward it to the Police Chief for final approval.

This activity should take no more than 17 days to travel through the command-level approval process before the final disposition and records management takes place. There will be some instances where this cannot be accomplished due to exigent circumstances. Timelines will be adjusted on a case-by-case basis.

Response to Resistance Administrative Review (CALEA 4.2.2)

To determine whether the use of force was consistent with policy and training, supervisors will evaluate if the force was appropriate, necessary, and reasonable under the circumstances known to the officer at the time the force was used. Supervisors at each level will make a recommendation as to whether the force used was permissible under department policy. Additionally, supervisors will ensure that any injuries to either the officer or citizen are properly documented and reported.

Any photographs, body-worn camera (BWC) footage, or other relevant documents must be electronically attached to the Axon Standard report. If the file size is too large to attach, a disc should be created and sent to the Internal Affairs Unit (IAU) along with a hard copy of the Axon-generated report.

Captains are responsible for ensuring that the report contains all required data and attachments.

Officer Involved Shooting

When an intentional discharge of a firearm occurs, the involved officer will be asked a series of questions by a responding supervisor. These questions are referred to as "Public Safety Statements." The public safety statement is intended to establish the level of danger that may still exist, aid the initial operational response to locate suspects, and focus on the initial stage of the investigation. Because the Public Safety Statement is designed to assess any imminent public safety threat to responding officers and citizens, these answers shall be provided to a responding supervisor immediately. Questions asked for purposes of the public safety statement include:

- A. If any shots were fired by involved parties, what was the direction of the fire?
- B. The location of any unsecured weapons
- C. The location of injured persons
- D. A description of at-large suspects and their mode and direction of travel, time elapsed since they fled, and weapons that were available to them.
- E. A description and location of known victims or witnesses
- F. Any information that would help ensure officer and public safety and assist in the apprehension of suspects.

IAU will generate a Firearms Discharge Review action and ensure the Response to Resistance Report in Axon Standards is completed. When appropriate, a written summary of the response to the Public Safety Statement should be completed by the on-scene supervisor and submitted by the end of the shift.

IAU will review each report received from commands for content, clarity, and compliance with this General Order. Commands will be responsible for the adjudication of all Response to Resistance cases but must consider recommendations made by the UOF Board as outlined below.

Once the case is adjudicated by the proper authority, IAU will finalize the report and capture the data in Axon Standards.

Response to Resistance Board

A Response to Resistance Board (RRB) will be convened to make recommendations to the Police Chief for any Use of Force that meets the following criteria:

- A. Any force used during a Response to Resistance resulting in serious injury or death of a citizen. Serious injury will be defined as any injury inflicted by an officer requiring the citizen to be admitted (overnight) to a hospital for care and/ "serious injury" shall be defined as "bodily injury" that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- B. Any Response to Resistance specifically requested for review by a Command, IAU, Deputy Chief, or the Police Chief.

The RRB will not adjudicate Firearms Discharge cases; these will remain the purview of the Firearms Discharge Review Board.

The RRB Board will be required to sign a confidentiality agreement due to the sensitive nature of the material being reviewed and be composed of the following members:

- A. Commanding Officer of the Professional Standards Bureau or designee – Chair, non-voting member
- B. Internal Affairs Unit Sergeant - Case investigator/Presenter, non-voting member
- C. Training Director- Lieutenant of Training Bureau, voting member.
- D. Training Sergeant, voting member
- E. Use of Force Coordinator of the Training Bureau (MPO), voting member

The RRB will be provided with all documentation relevant to the force used, including the Response to Resistance Report, Body Worn Camera (BWC) video(s), and if applicable, the administrative investigation prior to the meeting for review. The Board will make the following recommendations based on a simple majority for each case reviewed:

- A. Whether all forces used during the incident were consistent with Department policy and training
- B. Whether the officer(s) involved employed proper tactics
- C. Whether the incident was avoidable
- D. Whether other force alternatives were available and/or reasonable
- E. Whether the force used comports with training and training considerations

The Commanding Officer of the Professional Standards Bureau or designee shall complete a report outlining the board's findings to include any identified rule violations or newly discovered information and make recommendations concerning the force used to the Police Chief.

If additional information is needed, IAU will conduct a follow-up investigation based on the concerns of the RRB. Once the investigation is completed, the cases will be returned to the RRB for additional recommendations and conclusion.

The recommendation of the RRB will be advisory only. The recommendation will be presented to the Police Chief for adjudication and attached to the investigative file upon conclusion of the board.

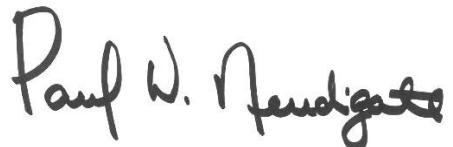
Response to Resistance Annual Reporting (CALEA 4.2.4)

At the conclusion of each calendar year, the Commanding Officer of the Training Bureau or designee shall prepare an analysis for the Police Chief on the Response to Resistance by personnel and recommend any necessary training, equipment, or policy modifications. This report will include the date and time of incidents, types of encounters causing the use of force, and any identifiable trends or patterns related to race, age, gender, or any injuries to any person to include officers.

Assault on Sworn Officer (CALEA 4.2.5)

At the conclusion of each calendar year, the Planning Research Unit shall prepare an analysis for the Police Chief on all assaults on officers to determine if there are any trends or patterns. This analysis will include any necessary training, equipment, or policy modifications to enhance officer safety.

By the Authority of the Police Chief:

A handwritten signature in black ink that reads "Paul W. Neudigate". The signature is fluid and cursive, with "Paul W." on the top line and "Neudigate" on the bottom line.