


FORT SMITH POLICE DEPARTMENT

POLICIES AND PROCEDURES

SUBJECT	Response to Resistance		
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APPROVED BY		CALEA STANDARDS	LE4.1.1; LE4.1.2; LE4.1.3; LE4.1.4; LE4.1.5; LE4.2.1; LE4.2.2; LE4.2.3; LE4.302; LE4.3.3; LE4.2.4; LE 41.3.4; LE 26.3.3; COM 2.2.6

I. Purpose and Scope

- A. The policies of the Fort Smith Police Department regarding the use of physical force, non-lethal weapons, discharging firearms, and deadly force are set forth in this policy.
- B. This policy governs all personnel who are acting or who may reasonably be expected to act in the capacity of a law enforcement officer on or off duty. Additionally, it covers on-duty civilian employees who deploy/use force in defense of themselves or others; as a result of performing their duties. This policy should not be construed as to supersede an employee's legal personal prerogatives when acting as a private citizen pursuant to A.C.A. § 5-2-606 "Use of Physical Force in Defense of a Person," § 5-2-607 "Use of Deadly Physical Force in Defense of a Person," § 5-2-608 "Use of Physical Force in Defense of Premises" and/or § 5-2-609 "Use of Physical Force in Defense of Property." However, employees must recognize that actions taken under statutory authority granted private citizens will be investigated and evaluated as such.
- C. Definitions
 1. "Deadly Force" as used in this policy is defined as that force, which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or serious physical injury. [LE 4.1.2]
 2. "Serious Physical Injury" as used in this policy is defined as physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. (A.C.A. § 5-1-102. (21)). [LE 4.1.2]
 3. "Physical Force" as used in this policy is defined as any bodily impact, restraint, or confinement, or the threat thereof. (A.C.A. § 5-2-601. (6)).

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4. "Reasonably believe" or "reasonable belief" as used in this policy is defined as belief that an ordinary, prudent person would form under the circumstances in question and one not recklessly or negligently formed (A.C.A. § 5-1-102 (18)).[LE 4.1.2]
5. "Objectively reasonable", for purposes of this policy, refers to what a well-trained officer would do under the same circumstances.

II. Policy

A. Use of Force by Law Enforcement

1. A law enforcement officer is justified in using non-deadly physical force or threatening to use deadly physical force upon another person if the law enforcement officer reasonably believes the use of non-deadly physical force or the threat of use of deadly physical force is necessary to affect an arrest, prevent the escape of a person in custody, or to defend themselves or a third person from what the law enforcement officer reasonably believes to be the use of physical force while affecting or attempting to affect an arrest or while preventing or attempting to prevent an escape. (ACA § 5-2-610 (a)).
2. A law enforcement officer is justified in using deadly physical force upon another person if the law enforcement officer reasonably believes that the use of deadly physical force is necessary to affect an arrest or to prevent the escape from custody of an arrested person whom the law enforcement officer has probable cause to believe the person has committed, or intends to commit a felony involving death or serious physical injury, and the officer reasonably believes that there is an imminent risk of death or serious physical injury to the officer or another if the subject is not immediately apprehended, or defend themselves or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of deadly physical force.(ACA § 5-2-610 (b)).[LE 4.1.2]
3. At all times, the seriousness of the crime must be a considered factor in the decision making process for the type and level of force to be used; and the force used must be proportional to the resistance level the officer is faced with.
4. In order to respect the sanctity of life, following a use of force, officers shall render or request medical aid, if needed or if requested by anyone, as soon as reasonably possible.
5. **DUTY TO INTERVENE:** If an officer witnesses any officer using what is clearly excessive or unreasonable force, the witnessing officer shall attempt to intervene and stop the excessive or unreasonable force. The witnessing officer must also report the incident to the appropriate chain of command.
 - a. Failure to adhere to this duty speaks to an officer's commitment to truth and integrity. A violation of this section is serious in nature and will result in disciplinary action up to and including termination of employment.
 - b. In our commitment to excellence, the Fort Smith Police Department holds its members to a high level of integrity and transparency. In an effort to achieve this goal, the Fort Smith Police Department requires all of its members to report violations of policy that could be considered detrimental to the image of the department, city, or its

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members. It is also required that all department members report any violation of local, state, or federal law. Any serious policy violation or violation of law shall be immediately reported to the employee's supervisor.

B. Force Used Must be Objectively Reasonable [LE 4.1.1]

1. The U.S. Supreme Court stated that "based on a totality of circumstances, the reasonableness of a particular use of force must be judged from the perspective of the reasonable officer on the scene, rather than the 20/20 vision of hindsight and the calculus of reasonableness must embody allowances for the facts that police officers are often forced to make split second decisions in circumstances which are tense, uncertain, and rapidly evolving." (*Graham v. Conner* 490 U.S. 386 (1989)).
2. The standard of objective reasonableness set forth in the Fourth Amendment does not require that officers choose the least intrusive level of force, only a reasonable one. Officers may use reasonable force to complete a variety of different objectives. These objectives may include:
 - a. Detentions
 - b. Frisks
 - c. Arrests
 - d. Self defense
 - e. Defense of others
 - f. Defense of property
 - g. Preventing a person(s) from self-injury or protective custody commitments
 - h. Preventing a person(s) from destroying evidence
 - i. Stopping a riot
 - j. Preventing prisoner escapes
3. In addition to and as part of the "Objectively Reasonable" standard, officers shall decrease, or **de-escalate**, the severity of their response if the threat level lowers. While "Objective Reasonableness" is the standard by which force will be measured, and the officer MAY escalate the force in response to the resistance given, Officers shall at all times utilize the concept of proportionality (section 4 below) when determining the level of force to use. De-escalation should take place whenever possible, regardless of whether the level of threat increases, i.e., officer should keep de-escalation as the primary focus of their encounters with resistant individuals.
4. Officers shall utilize the concept of proportionality, which involves assessing whether a response to resistance is proportional to the threat being faced as they approach an incident, and continue to assess the situation to decide how to respond. This assessment must take place before an officer reaches the instant where use of force may be necessary. The concept of proportionality considers the nature and severity of the underlying events prior to the decision to use force and utilizes the following considerations:
 - a. Is the officer using only the level of force necessary to mitigate the threat and safely achieve a lawful objective?
 - b. Is there another, less injurious option available that will allow the officer to achieve the same objective as effectively and safely?
 - c. Will the officer's actions be viewed as appropriate, either by the agency or public, given the severity of the threat and totality of circumstances?

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5. With a focus on the protection of life, officers who encounter an unarmed and minimally threatening individual who is exhibiting conspicuous signs that he/she is mentally unstable must de-escalate the situation and adjust the application of force downward when possible. Officers should be prepared to exercise considerable discretion and to wait as long as necessary to resolve the situation peacefully.
- C. Totality of the Circumstances- In **every** use of force situation, officers must look at the totality of the circumstances that affect the reasonable use of force. There can be many aspects and or considerations within the totality of the circumstances that affect the appropriate and reasonable use of force. Among the totality of circumstances that may govern the reasonableness of using a particular level of force the, U. S. Supreme Court emphasized five key factors in *Graham v. Conner*, commonly called the Graham Reasonableness Inquiry:
1. Does the person present an imminent threat to officers or others?
 2. Is the person presenting active resistance to seizure?
 3. Are the circumstances tense, uncertain or rapidly evolving?
 4. What is the severity of the crime at issue?
 5. Is the subject attempting to evade by flight?

To accomplish lawful objectives, employees will only use the type and degree of force, which is reasonable and necessary based on the circumstances. [LE 4.1.1]

III. Use of Physical Force and Less-Lethal Weapons

- A. This section establishes the degree of non-deadly force which may be used to overcome a level of resistance to arrest or control persons who are in custody and/or to prevent escape.
- B. Officers are authorized to use objectively reasonable force relative to the subject's level of resistance, if necessary, based on the Totality of Circumstances of a particular Response to Resistance incident. Factors to be considered include, but are not limited to:
1. Type of crime committed or attempted;
 2. Relative size, strength, stature, and/or age of officer to subject (Disparity of Force);
 3. Subject under influence of drugs and/or alcohol;
 4. Subject access to weapons;
 5. Injury to, or exhaustion of officer;
 6. Exceptional abilities and/or Trained Adversary (e.g. martial-arts, military training);
 7. Special knowledge of subject (e.g., history of prior violence, criminal history);

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8. Exigent conditions, such as availability of back-up, number of officers relative to number of subjects involved.
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- C. Employees should use defensive tactics in which departmental training has been given in order to control or arrest uncooperative suspects. Employees **shall escalate or de-escalate their response to resistance in direct response to the other person's actions.**
 - D. Employees shall receive biennial in-service training regarding defensive tactics, control holds and other uses of less than lethal physical force and all related training will stress the importance of using the minimum amount of force necessary to achieve the legally justifiable goal of arrest or detention, which would include the escalation and de-escalation of the response level in direct response to the threat faced. **[LE 4.3.1.a] [LE 4.3.3.b]**
 - E. Employees are prohibited from using vascular neck restraints or similar weaponless control techniques which have a potential for serious injury except in the most extreme circumstances in which deadly force is justified. **[LE 4.3.1.d]**
 - F. Authorized Less Lethal Weapons **[LE 4.3.4] [LE 4.3.1.a]**
 1. Oleoresin Capsicum (O.C.) - O.C., a chemical deterrent, may be used in defense against combative, resisting, and/or otherwise violent individuals. O.C. is not necessarily a replacement or substitute for otherwise less-lethal devices or tactics and therefore should only be used when it is determined to be the best available enforcement tool or tactic under the given circumstances. Similarly, O.C. is not intended to be an alternative to the use of deadly force when such is clearly authorized and is necessary as described in this Policy.
 - a. O.C. may be used where verbal direction is ineffective or inappropriate, where passive restraint techniques have failed and an employee must use physical force, or when an employee reasonably believes he will become engaged in a fight with a suspect.
 - b. O.C. may also be used to effect the removal of a person from an automobile or from an enclosed area when it becomes apparent that physical force will be necessary to otherwise accomplish this.
 - c. O.C. will only be used as control and compliance measures against violent and/or resisting individuals and shall never be used for retaliation or for any illicit or unlawful purposes.
 - d. Employees will use only the amount of O.C. reasonably necessary to achieve the desired enforcement results; will discontinue the use of O.C. when it becomes apparent that a suspect may otherwise be taken into custody or whenever the O.C. appears to disable the suspect.
 - e. After control has been established and/or resistance has ceased, employees will make reasonable efforts to allow the O.C.-affected individual relief from the discomfort associated with the application of O.C. Water and sufficient ventilation will reduce the effects of the O.C. **[LE 4.1.5]**

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- f. Employees will, at all times, conform to training provided by the Department in the use of O.C. and will carry and use only the authorized O.C. issued by the Department. Only departmentally issued O.C. spray manufactured by Sabre which has a stream dispersal method is authorized for issue. All employees shall attend biennial in-service training in the use of O.C. spray. [LE 4.3.2]
 - g. The use of O.C. against any person will be considered a Response to Resistance and each incident will be documented as detailed in Section V. of this Policy.
 - h. O.C. spray canisters will not be defaced or altered in any way other than by normal use. The Quartermaster will replace expended or expired canisters of O.C.; the expended canister must be turned in prior to receiving a new canister. Officers shall maintain awareness of functionality and the expiration date of O.C. canisters and alert the Quartermaster of the need to replace expended, malfunctioning, or expired canisters.
2. TASER Conducted Electrical Weapon (CEW) – CEW’s are considered a serious use of force and may only be used in defense against combative and/or otherwise violent individuals or to prevent the escape of such violent individuals. CEW’s are not necessarily a replacement or substitute for otherwise less-lethal devices or tactics and therefore should only be used when it is determined to be the best available enforcement tool or tactic under the given circumstances. Similarly, CEW’s are not intended to be an alternative to the use of deadly force when such is clearly authorized and is necessary as described in this Policy.
- a. CEW’s may be used where verbal direction is ineffective or inappropriate, where passive restraint techniques have failed and an employee must use physical force to counteract a physically aggressive or combative subject who poses a risk of immediate danger to the officer or others.
 - b. CEW’s will only be used as control and compliance measures against violent and/or aggressively resisting individuals who pose a risk of immediate danger to the officer or others and shall never be used against passive resistance, for retaliation, or for any illicit or unlawful purposes.
 - c. Employees will only use CEW’s as long as reasonably necessary to achieve the desired enforcement results and will discontinue the use of CEW’s when it becomes apparent that a suspect may otherwise be taken into custody.
 - d. Animal Wardens will be authorized to use a CEW on animals that are attacking, trying to attack, or if the animal is displaying or showing a propensity to bite, provided the animal cannot be caught safely by catch pole or hand. Animal Wardens will be authorized to use a CEW on an animal that must be caught, when the animal otherwise cannot reasonably be captured by other means. Additionally, Wardens who are certified officers may use CEW’s in the same manner as full-time officers.
 - e. Just as any other person nineteen years of age or older has the right to carry a CEW for personal protection, Animal Wardens who are not certified officers and other civilian employees will be authorized to use a CEW on a

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person who is combative. The civilian employee must be able to articulate the individual's aggression that constituted a grave threat to his/her personal safety. In these cases, the first course of action should be to retreat and call for a police officer, if possible.

- f. Employees will at all times conform to training provided by the Department in the use of CEW's and will carry and use only the authorized CEW's issued by the Department. All CEW Users shall attend a TASER User course before being issued CEW's and shall attend annual recertification training as long as they continue to carry CEW's. All TASER Instructors shall attend a TASER Instructor Course and attend biennial recertification training (triennial for recertifying Master Instructors), which also certifies them to carry/use CEW's and exempts them from the TASER User Course. [LE 4.3.2]
 - g. Only the deployment of CEW probes (whether they strike the intended target or not) or "drive stunning" from a CEW, against any person, will be considered a use of physical force, and each incident will be documented as detailed in Section V. of this Policy. *Simply announcing the possible use of the CEW, displaying the CEW, or "spark testing" the CEW is not considered a Response to Resistance, for the purpose of departmental Response to Resistance Reporting.*
 - h. In instances of civilian employees using a CEW on a human, a Response to Resistance report will be completed by the employee to be forwarded through their chain of command, in the same manner as an FSPD officer would use to submit a Response to Resistance report.
 - i. In instances of an animal being exposed to a CEW, the "User" will complete a detailed incident report to document the use of the CEW, and will list any employee who may have witnessed the event.
 - j. In all instances of a CEW being used by civilian employees against another person, the employee involved will notify the on duty patrol supervisor as soon as possible. The employee's supervisor will also be notified of the use of the CEW as soon as practical after the event.
 - k. CEW's will not be defaced or altered in any way other than by normal use. The Training Coordinator will issue all TASER related equipment.
3. Police Batons - The baton permits an employee to defend themselves or others in situations where the use of firearms may not be necessary or justified. It shall be left to the discretion of the employee as to whether or not to carry a baton. However, should the employee choose to carry a baton, only collapsible batons will be authorized, with the exception of those officers that have been deployed as a member of a Mobile Field Force. During a deployment, Mobile Field Force personnel will be authorized to use a fixed baton. The maximum extendable length of any authorized baton will not exceed thirty one inches. [LE 41.3.4]
- a. While enrolled at the training academy, all recruit officers shall receive training in the use of batons. Employees who elect to continue carrying a police baton shall also be required to attend departmental in-service baton training biennially. [LE 4.3.2]

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- b. When the use of the baton is warranted, employees will attempt to strike the suspect's arms or legs and should not attempt to strike suspects on the head, neck, sternum, spine, groin or kidneys.
 - c. Jabs to the body with the baton should be used under circumstances that inhibit the officer's ability to strike the suspect in the arms or legs (e.g. crowded areas, other officers in the area, etc.).
- 4. Flashlights - In the event it becomes necessary to use a flashlight as a defensive weapon, employees will use it in the same manner as the baton.
 - a. Employees may purchase, at their own expense, and use any rechargeable flashlight which is comparable to and no larger than a department issued flashlight.
 - b. Employees may carry the departmentally issued rechargeable flashlight.
 - c. Mini-Mag style flashlights are authorized under this policy.
- 5. Canines - The use of specially trained police Canines to apprehend or secure suspects constitutes a real or implied response to resistance. In this as in other cases, officers may only use that degree of force that reasonably appears necessary to apprehend or secure a suspect as governed by the department's response to resistance policy.
 - a) Whenever a Canine is deployed to apprehend or secure suspects, the handler shall complete a Response to Resistance report.
 - b) If the Canine has bitten or scratched an individual or has alleged to have done so, whether or not in the line of duty; the handler shall perform the following.
 - (1) If no arrest is made, an offer will be made to the individual to provide medical care and treatment by a qualified medical professional.
 - (2) If an arrest is made, the individual will be provided with medical attention in accordance with Police Department policy #1102.09 III.Q. regarding medical care for prisoners.
 - (3) The officer shall take color photographs of the affected area, if possible, prior to and following medical treatment.
 - (4) Complete a response to resistance report detailing the event.
- 6. Specialty Impact Munitions (SIMs) - Often referred to generically as "bean bags" and are designed to incapacitate a subject with minimal potential for causing death or serious physical injury, when compared to conventional projectiles, and when used in accordance with Fort Smith Police Department policy and training guidelines. The use of SIMs should be considered to be a use of force at a level just below the use of deadly force.
 - a. Only officers who have received departmental training are authorized to employ the SIMs technology.

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- b. When the use of SIMs is authorized, officers will attempt to strike the following areas:
 - (1) Primary Target Area – consisting of the buttocks and thighs
 - (2) Secondary Target Area – consisting of muscle areas of the shoulder, biceps, triceps and forearms. Or a less desirable secondary target area of the skeletal areas such as the elbow, knees or wrists.
 - c. A Response to Resistance report must be completed and an investigation by the Office of Professional Standards shall be conducted in any situation involving the discharge of a SIMs device. The depth of the investigation shall be based upon a review of the circumstances leading up to the incident by the Office of Professional Standards.
 - d. **Although classified as a less lethal force option, the potential exists for SIMs rounds to inflict death or serious physical injury. If death or serious physical injury occurs, a Deadly Force Investigation, such as described in Item VI below, will be conducted.**
7. Firearms- Striking a person with any firearm is prohibited unless the firearm has already been drawn or displayed in accordance with subsection II of this policy and an immediate response to resistance is necessary for the defense of an officer or another person under circumstances where the use of deadly force is not justified and the opportunity to secure the firearm is not present.
8. Pepperball Launcher- The deployment and use of these devices are decisive actions that can assist in achieving the goal of protection of life, property, and/or the restoration of order. They should be considered whenever the use of less-lethal options would assist in enabling an arrest, restoring order, and/or reducing the risk of serious injury.
- a. Only officers who have received departmental training are authorized to employ the Pepperball launcher.
 - b. A verbal warning should be given to the subject advising that continued noncompliance will result in the deployment of this less lethal option.
 - c. If used in a crowd dispersal situation, a warning that riot control agents may be used should be given if there is time to do so.
 - d. The minimum distance for deployment of a Pepperball is 3 feet.
 - e. Pepperball should not be intentionally deployed at/on the following:
 - (1) Persons who are in danger of falling from a significant height.
 - (2) Head, throat, neck, genitals, or spinal column of any person
 - (3) Breasts of a female
 - (4) Persons who are obviously pregnant or in the vicinity of infants unless absolutely necessary.
 - (5) Persons who have an obviously open wound
 - f. Pepperball should not be used by individual officers without cover officers and/or a tactical plan.
 - g. After deployment, persons who have been affected should be monitored for any medical issues. After control has been established and/or resistance has ceased,

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reasonable efforts shall be made to provide the affected with relief. Water and ventilation will ease the discomfort.

- h. If any medical problems are observed, or if the person requests medical assistance, Officers shall summon EMS.
- i. The Pepperball Launcher and associated equipment shall be stored in a location accessible to those trained in the use of the launcher.

G. Only employees demonstrating proficiency in the use of department authorized weapons will be approved to carry or use such weapons. [LE 4.3.3.a]

H. While in uniform, employees will be required to carry a minimum of two authorized less lethal options on their person.

I. Medical Treatment Required [LE 4.1.5]

- 1. When any force is used, the employee shall attempt to determine if any injuries have occurred as soon as practical.
 - i. In these instances, employees will provide medical treatment for the offender by:
 - a. Transporting the offender to the hospital, or,
 - b. Requesting an ambulance for transport to a hospital, if appropriate.
- 3. If a suspect is obviously injured, alleges injury or requests medical assistance when an officer has used lethal or less-lethal force, the employee shall immediately notify an on-duty supervisor.

IV. Deadly Force

A. Statement of Philosophy

- 1. The Fort Smith Police Department, in establishing a philosophy for the use of deadly force, places the ultimate value on human life while considering the legal, moral and ethical implications of its application.
- 2. The citizens of Fort Smith have vested their police officers with the responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection of property must at all times be secondary to the protection of life. **Therefore, the use of deadly force is not allowed to protect property interests.**
- 3. Police officers are confronted daily with situations where control must be exercised to affect arrests and to protect the public safety. Officers may achieve control of situations by the use of verbal warnings or the use of reasonable physical force. The use of any reasonable physical force must be based on reasonable alternatives that have been considered, attempted, or were ineffective. The use of deadly force shall be the last alternative; however, the officer's responsibility to protect human life must include his own.

B. Purpose

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1. This section details the Fort Smith Police Department's policy regarding a police officer's use of deadly force; and,
2. Establishes policies under which the use of deadly force by police officers is permissible.

C. Avoiding the Use of Deadly Force

1. Regardless of the nature of crime or the justification for directing deadly force at a suspect, officers must remember that their basic responsibility is to protect life. Officers shall not fire their weapons under conditions that would unnecessarily subject bystanders or hostages to death or possible injury except to preserve life or to prevent serious physical injury. Deadly force is an act of last resort and will be used only when other reasonable alternatives are impractical or have failed.
2. Whenever possible, officers shall plan ahead and consider alternatives, which will reduce the possibility of needing to use deadly force.
3. At no time should deadly force be used against any individual who is only a threat to themselves, such as a suicidal subject who is not threatening anyone else. However, if the subject is armed with a deadly weapon and is only directing that threat at themselves, officers should be prepared to use deadly force should it become necessary as authorized in section IV. D. of this policy.

D. The Authorization to Use Deadly Force

1. **Officers may only use deadly force to protect themselves or others from what they reasonably believe to be an imminent threat of death or serious physical injury, based on the totality of the circumstances. (A.C.A. § 5-2-610 (b)) (Tennessee v. Garner 471 U.S. 1 (1985)). [LE 4.1.2]**
2. To Apprehend a Fleeing Felon- An officer may employ deadly force to stop a fleeing suspect **only** if the officer has probable cause to believe **all** of the following: (See: *Tennessee v. Garner* 471 U.S.1 (1985)).
 - a.) The Suspect committed a felony.
 - b.) The deadly force is necessary to prevent the escape of the suspect.
 - c.) The suspect poses an imminent threat of death or serious physical harm to the officer or others should the arrest be delayed.
 - d.) Where feasible, the officer shall identify themselves as a law enforcement officer and warn of their intent to use deadly force.

E. Discharging Firearms at Moving Vehicles or into Structures

1. Discharging firearms at a moving or fleeing vehicle is prohibited unless it is necessary to prevent imminent death or serious physical injury to the officer or another person.
2. Officers will not voluntarily place themselves in a position near an oncoming-accelerating vehicle where deadly force is the probable outcome as a result of the officer's position. When confronted by an oncoming vehicle, officers will move out of its path, if possible, rather than fire at the vehicle.

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3. Officers will not fire into a building or through doors unless the suspect can be identified and is clearly visible at the time of the shots being fired.

F. Drawing, Displaying Weapons and Warning Shots

1. Officers shall not fire warning shots. However, it is understood that in a worst-case scenario, the use of tactical shots, cover or suppressive fire may be necessary to protect the life of officers or others. These tactics may be used when deadly force would be authorized under *Graham v. Connor* standard. [LE 4.1.3]
2. Officers may draw or display firearms when there is a threat or reasonable belief that there is a threat to life or when they have a reasonable fear for their own safety and/or the safety of others.
3. Shotguns and rifles are generally reserved for more hazardous situations. They can hamper the officer's ability to take action, because they cannot be securely holstered, which can be cumbersome and require a hand on the weapon at all times. Therefore, deploying a shotgun or rifle into a situation would be reserved for situations where deadly force is probable, not just "possible," because the need for deadly force is "possible" at any police call or incident. When an officer reasonably believes that the need for deadly force would be probable, deployment of a rifle or shotgun would be justified. For events that do not reach the "probable" level, supervisor permission is required for deployment.

V. Reports and Documentation

- A. Employees using force (includes lethal, less lethal or weaponless force), meeting the below guidelines to control, arrest or prevent the escape of any person will, prior to the end of the employee's shift, submit a detailed report outlining the circumstances and exact type and amount of force used in the following instances: [LE 4.2.1.a] [LE 4.2.1.b] [LE 4.2.1.c] [LE 4.2.1.d]
1. Whenever the response to resistance results in, may reasonably result in, or is alleged to have resulted in a physical injury to the person. Such force includes but is not limited to those instances when:
 - a. An officer strikes, or attempts to strike, another person with his hands, feet, baton, or other instrumentality, device, or method of force whether or not injury results to the person;
 - b. An officer deploys CEW probes (whether they strike the intended target or not) or "drive stunning" from a CEW, against any person;
 - c. A person is injured by a police canine utilized to search for or apprehend suspects; or
 - d. An officer points their weapon at a person.
 2. Whenever a person complains of incurring a physical injury as the result of physical force employed by an officer of this Department; and

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3. Whenever an officer or supervisor believes documentation pertaining to any force employed, or not employed, by an officer is necessary for the protection of the officer, the Department, or the City. Examples of when this section might apply:
 - a. An officer draws their handgun or deploys a rifle or shotgun in a crowded business, causing noticeable alarm to the general public, but did not point it at anyone or fire it.
 - b. A history with the person(s) or location(s) involved indicates that a complaint would likely be lodged.
 - c. Actions by the officer did not rise to the level of requiring documentation by the standards listed above, but person(s) on scene comment negatively about the officer's actions, indicating a complaint might be filed.

- B. When an officer responds to resistance, as described in Section A above, while off duty, yet under the color of authority of a Fort Smith Police Officer, or the response to resistance involves a weapon or instrument issued to the officer by the Fort Smith Police Department, the officer will immediately notify an on-duty Patrol supervisor.
 1. If the off-duty response to resistance occurs within the jurisdiction of the Fort Smith Police Department, the involved officer will submit a detailed report outlining the circumstances and exact type and amount of force used immediately upon the conclusion of the incident.
 2. If the off-duty response to resistance occurs outside the jurisdiction of the Fort Smith Police Department, the officer will submit a detailed report outlining the circumstances and exact type and amount of force used at the earliest reasonable opportunity.

- C. The following procedures will be followed for review and documentation of an employee's response to resistance as outlined in subsection V.A of this Order: **[LE 4.2.2]**
 1. The involved employee will contact his supervisor, who will immediately evaluate the circumstances, amount and necessity of the force.
 2. An Offense Report will be completed, when appropriate.
 3. A Response to Resistance Report will be completed by the employee/s involved, using the BlueTeam program, which details an account of the incident and the exact force used. Any employee, who witnesses the response to resistance, shall submit a detailed memorandum concerning the response to resistance incident. This should be sent electronically to the officer initiating the BlueTeam entry.
 4. The reports will be reviewed and evaluated by any on-duty supervisor. If the supervisor agrees that the amount of force used was justified, the supervisor shall simply approve the report and forward it to the next level in the chain of command. *However, if the supervisor does not feel the level of force used was appropriate, the supervisor will be required to prepare a written memorandum detailing his or her concerns.* This memo shall be included with the Response to Resistance report before it is forwarded. Subsequent to the final supervisory review, all Response to Resistance reports will be forwarded to the Office of Professional Standards.

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5. The employees' Division Commander will ensure that all provisions of this policy are observed, reports are submitted on a timely basis, and each Response to Resistance report is properly completed and reviewed.
- D. On certain occasions, events may have occurred that will necessitate more documentation than that contained on the Response to Resistance Report. When deemed necessary by the supervisor, the following steps will be followed. Reports regarding the response to resistance, including resisting arrest, battery on employees and canine bites, will be prepared as follows:
1. Any photographs, audio recordings, or video recordings will be uploaded, hyperlinked, and/or attached to the BlueTeam entry. Photographs, audio tapes, video tapes or other items that cannot be electronically stored will be placed in an envelope and attached to the Response to Resistance report(s). The initial evaluating supervisor shall be responsible for ensuring that required documentation is obtained and properly completed before routing it through the chain of command.
 2. The order of documentation, if relevant and available, to be submitted with the Response to Resistance report shall be:
 - a. Response to Resistance report;
 - b. Reviewed and approved by the troop supervisors;
- E. When an employee employs the use of O.C. spray or uses physical force to restrain, move and/or place a suspect in a vehicle where no blows are exchanged by either the employee(s) or the suspect, the following procedures will be followed:
1. The involved employee will:
 - a. Contact his supervisor for evaluation of the incident;
 - b. Specify the exact amount of force employed and list the involvement of any other employee(s) in his Response to Resistance Report concerning the incident.
 2. The supervisor will: **[LE 4.2.2]**
 - a. Immediately review and evaluate the circumstances, amount, and necessity of the force;
 - b. Sign the original report as indication of his approval of the employee's actions; and,
 - c. Forward the report through the chain of command, where it will be signed at each level.
 3. If the supervisor does not approve of the employee's actions following his evaluation, he shall indicate such in a supervisor's memorandum report and forward the information to the troop/unit commander for submission to the Bureau Chief through the chain of command.

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4. After review by the Bureau Chief, the Response to Resistance report will be forwarded to the Office of Professional Standards for review and retention.

F. Office of Professional Standards Annual Report

1. The Office of Professional Standards Investigator will review each response to resistance file and shall complete an annual report and analysis to the Chief of Police detailing these incidents. This annual report shall include all incidents involving the response to resistance. (Rev. 12/22/01) [LE 4.2.4]
2. This analysis will review patterns or trends that may indicate training needs and/or policy modification. It should include date and time of incidents, types of encounters resulting in use of force, trends or patterns related to race, age and gender of subjects involved, trends or patterns resulting in injury to any person including employees and the impact of findings on policies, practices, equipment, and training.
3. The Office of Professional Standards will do a documented review of all assaults on law enforcement officers to determine trends or patterns, with recommendations to enhance officer safety, revise policy, or address training issues. [LE 4.2.5]

VI. Deadly Force Investigation and Review

A. Investigation Requirements

1. Whenever a Fort Smith Police Officer becomes involved in an incident in which either the officer or another person is injured or killed as a result of police action and/or the use of deadly force, or whenever an officer intentionally employs deadly force but no injury or death results, two separate investigations shall be initiated - a criminal investigation and an administrative investigation. (This shall not be applicable to those instances where the death or injury is the result of a motor vehicle accident.)
2. At the discretion of the Chief of Police or his/her designee, an outside agency, such as but not limited to the Arkansas State Police or Sebastian County Sheriff's Office, shall be requested to conduct the criminal investigation and submit the investigative file to the Prosecuting Attorney's Office. Should the outside agency decline the request, the Fort Smith Police Department's Criminal Investigation Division shall conduct the investigation.
 - a. If the Fort Smith Police Department's Criminal Investigation Division conducts the investigation, the investigative file will be submitted to the Prosecuting Attorney's Office. The criminal investigation will be thoroughly completed to provide for the review of the officer's action. The investigation will be used to justify the response to resistance or to file any charges, as appropriate.
 - b. The Identification Unit will be summoned to the scene of all officer-involved shootings and will process the scene for evidence in compliance with standard investigative procedures.

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The Office of Professional Standards investigator will conduct a separate administrative investigation to ensure compliance with Fort Smith Police Department Rules and Regulations and Policies and Procedures. The Office of Professional Standards will be immediately notified of all intentional uses of deadly force and will respond to the scene to conduct the administrative investigation if needed at the discretion of the ranking CID supervisor on the scene.

4. Unintentional weapons discharges not resulting in physical injury will be investigated by the involved officer's chain of command and reviewed by the Chief of Police.

B. On Scene Investigation and Responsibilities

1. The first supervisor on the scene of an officer involved shooting or other incidents established above shall take charge and limit unnecessary access to the scene.
 - a. The field supervisor in charge at the scene will be responsible for the integrity of the crime scene until it is released to the Criminal Investigation Division supervisor. The field supervisor shall also be responsible to contact the Chief of Police and brief him/her on the incident.
 - b. The ranking supervisor from the Criminal Investigation Division will be in command of the overall initial investigation and will notify the Sebastian County Prosecuting Attorney's Office.
2. Once the situation has been stabilized, the officer involved will relate a brief account of the incident to the field supervisor, prior to the arrival of detective personnel, so the supervisor may brief ranking officers requiring administrative information.
3. The troop or Division Commander may relate basic facts to the news media or have the Public Affairs Officer make the initial release. The Public Affairs Officer shall be contacted by the on-scene supervisor in all instances of deadly force being used by a Fort Smith Police Department officer.
4. If the officer involved is not injured, he should retire some distance from the scene to await the arrival of the officer in charge of the investigation. This should be done in the company of some companion such as another supervisor or an officer of equal rank who was not involved in the incident, selected by the involved officer. The purpose of the companion is to serve the involved officer in a supportive role.
5. When the detective supervisor arrives at the scene, the field supervisor will brief them and, if he/ she deems it necessary, the involved officer will report back to the scene and respond to the needs of the investigation. When the Criminal Investigation Division supervisor determines that the involved officer is no longer needed at the scene, the officer shall be released from the scene, after giving the facts necessary to get an overview of the incident.
6. The field supervisor at the scene shall have someone not involved in the incident prepare the initial offense report and other necessary reports and have copies delivered to the Criminal Investigation Division after supervisory review.

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7. The involved officer shall be afforded an early opportunity to communicate with family members. The person designated as companion may assist in making this notification. The detective supervisor shall ensure that this is accomplished.

C. Criminal Investigation Division investigation, if not conducted by an outside agency

1. Officers who actually employ deadly force shall be requested to make a written and/or oral statement. **This statement shall not be taken until a minimum of 48 hours after the occurrence of the incident.**
2. Criminal Investigation Division supervisors shall ensure that statements are taken from all officers involved in the incident.
3. It shall be the responsibility of the Criminal Investigation Division supervisor to update the officer, his supervisors, the Office of the Chief of Police, and the Sebastian County Prosecuting Attorney's Office as to the status of the investigation.
4. The Criminal Investigation Division will prepare a briefing sheet for troop and unit commanders, who will brief their personnel as soon as practical. This informative sheet shall be a brief summary of the incident for the patrol division to apprise the beat officers of the incident.
5. Upon completion of the Criminal Investigation Division's investigation, a copy of the investigative file will be forwarded to the Chief of Police for review.

D. Employee Counseling Assistance and Referral

1. Officers who have employed deadly force which has resulted in injury or death to any person will be referred to a counselor approved by the City of Fort Smith as soon as practical after the incident.
 - a. All officers directly involved in the incident will attend the confidential counseling session, which will be provided by the City of Fort Smith.
 - b. The Office of Professional Standards will be responsible for ensuring that such counseling is scheduled and completed and that appropriate supporting documentation is retained.
2. Employees whose actions or response to resistance results in serious injury or death to any person will be placed on administrative leave (with pay) for a minimum of 48 hours to provide sufficient time for scheduling the counseling session and to assist the Office of Professional Standards.**[LE 4.2.3] [LE 22.1.2.a]**
 - a. Employees who have been placed on such leave will not engage in off duty employment during this time, nor are they expected to perform police-related functions except under extreme circumstances. Employees on administrative leave will be available at the direction of the Office of Professional Standards.
 - b. Employees who have been placed on such leave will not be returned to normal duties until completion and release of the counseling provider.
 - c. The Office of Professional Standards will be responsible for ensuring that the officer is placed on leave and that such action is documented.

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- d. The Office of the Chief of Police will authorize the officer's return to normal duties upon release from the counselor.
 - e. Pending administrative review, the Chief of Police may extend administrative leave, as he deems necessary.
3. Following any traumatic/critical incidents, the involved telecommunicator's may be removed from duty for a period of time to be determined by the on-duty supervisor in consideration of the traumatic effect of the incident. If removed from duty, the telecommunicator will be placed on administrative leave (with pay) to provide sufficient time for scheduling of counseling sessions, as needed, and to assist with any ongoing investigation as may be required. **[COM 2.2.6.a] [COM 2.2.6.b]**

E. Office of Professional Standards Investigation

- 1. The Office of Professional Standards investigation will be conducted upon the completion of the Criminal Investigation Division's investigation, or if unexpected delays are anticipated, upon the authorization of the Criminal Investigations Division Commander or other CID Supervisor.
- 2. The Office of Professional Standards investigator shall advise the involved officer(s) of his rights as to the administrative investigation process. Those rights are:
 - a. The right of the Fort Smith Police Department to conduct an administrative investigation into the specific deadly force incident;
 - b. The right to know if he is suspected of misconduct which, if sustained, could be grounds for administrative disciplinary action up to and including dismissal;
 - c. The right to refuse to answer any questions, but such refusal shall be grounds for disciplinary action up to and including dismissal;
 - d. That the results of the Office of Professional Standards investigative interview cannot be used against the officer(s) in any subsequent criminal proceeding (*Garrity v. New Jersey* 385 U.S. 493 (1967)); and,
 - e. The interviewed officer will be provided a copy of the statements he made during the course of the administrative investigation upon his request.
- 3. In cases that deadly force was used, the Office of Professional Standards investigator shall prepare a report on adherence to policy and submit the Office of Professional Standards file to the involved employees' chain of command for review and recommendations to be forwarded to the Chief of Police. **[LE 4.2.2]**

F. Deadly Force Review [LE 4.2.2]

- 1. The Deadly Force Review Board is established for the purpose of reviewing and evaluating incidents of firearms discharge, both intentional and accidental, resulting in injury or death by members while in the performance of their duties and those incidents where an employee or another person is killed by any other means except motor vehicle accidents.

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2. All incidents as noted above will be reviewed within ten (10) working days after the Office of Professional Standards has completed its investigation.
3. The Chief of Police, at his/her discretion, may have the Deadly Force Review Board review any other firearm discharge or intentional use of deadly force not resulting in injury or death.
4. The objective of the Deadly Force Review Board is to make recommendations to the Chief of Police concerning firearms discharges and other incidents described herein based on:
 - a. Avoidance of similar incidents in the future;
 - b. Adequacy of training;
 - c. Adherence to training and department policy;
 - d. Adequacy of supervision; and,
 - e. Adequacy of investigation.
5. The Chief of Police shall appoint the Deadly Force Review Board for each incident comprised of the following:
 - a. Chair: Deputy Chief, when possible, not in the officer's chain of command.
 - b. Member: Captain, when possible, not in the officer's chain of command.
 - c. Member: Lieutenant, when possible, not in the officer's chain of command.
 - d. Member: Sergeant, when possible, not in the officer's chain of command.
 - e. Member: Training Lieutenant
 - f. The City Attorney or his representative may be asked to be present as an adviser.
6. The Chair will convene the Deadly Force Review Board for the purpose of reviewing the Criminal Investigation Division's investigation and the Office of Professional Standards investigation of each incident.
7. After conducting the review, the Review Board shall develop its findings and recommendations. The Chair will submit a written report specifically covering the issues identified in subsection VI.F.4.a through VI.F.4.e., and any recommendations to the Chief of Police within five (5) working days.
8. The Chief of Police will either accept the Deadly Force Review Board's report, or if further review is necessary, disseminate the report to the appropriate staff member(s).

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- G. All investigations shall be completed within forty five (45) days from the date of the incident unless evidentiary or investigative considerations warrant delay and the Chief of Police approves. [LE 26.3.3]
- H. The Deadly Force Review Board shall complete its review as prescribed by subsection F of this order.

VII. Accidental Discharge

- A. Accidental discharge of firearm by police officer (no injuries involved)
 - 1. This procedure will be followed any time a member of the Department, on duty or off duty, accidentally discharges a firearm and no injury or death occurs.
 - 2. Procedure
 - a. Any employee who accidentally discharges a departmentally approved firearm for other than training or recreational purposes will contact an on-duty police supervisor who will initiate an investigation.[LE 4.2.1.a]
 - b. The supervisor will ensure that the employee(s) involved submit a detailed memorandum report on the incident. [LE 4.2.1.a]
 - c. The supervisor will evaluate the employee's performance and submit his/her findings, in writing, to be reviewed at each level in the chain of command. All documentation shall be entered into Blue Team under incident type "Firearm Discharge." [LE 4.2.2]
 - d. The involved employee's Division Commander will review the incident and submit a recommendation to the Chief of Police. The files on all accidental weapons discharges will be retained in the Office of Professional Standards. [LE 4.2.2]
- B. Accidental Discharge of Firearm by Police Officer (With Injury)
 - 1. This procedure will be followed any time a member of the Fort Smith Police Department, on duty or off duty, accidentally discharges a firearm resulting in injury or death.
 - 2. Investigation requirements:
 - a. Any accidental discharge of a firearm by an officer resulting in death or serious physical injury will be fully investigated pursuant to Section VI of this policy.
 - b. Any officer who accidentally discharges a firearm resulting in injury where there is no threat of death or permanent disability will immediately contact an on-duty police supervisor who will respond to the scene and initiate an investigation.
 - c. The supervisor will complete an offense report and ensure that the involved officer(s) submit a detailed written report as soon as practical after the incident. The supervisor in charge may also request assistance from the Criminal Investigation Division as needed toward the successful

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completion of the investigation and for any necessary criminal investigation.

- d. The Identification Unit will be summoned to the scene and will photograph and process the scene as needed.
- e. The Office of Professional Standards investigator will be notified and briefed as to the specific circumstances of the incident.

C. Discharge of Firearm upon Animals

- 1. This procedure will be followed any time a member of the Department discharges a weapon upon an animal while on duty:
 - a. Any officer who discharges a firearm upon an animal will contact an on-duty police supervisor who will initiate an investigation.
 - b. If the involved officer is not an Animal Control officer, he/she shall contact Animal Control who will remove the injured animal for treatment. If the animal is dead, the Animal Control officer shall remove the animal from the scene.
 - c. The supervisor will ensure that the involved employee(s) submit a detailed report of the incident. **[LE 4.2.1.a]**
 - d. The supervisor will evaluate the employee's performance and submit his/her findings, in writing, to be reviewed at each level in the chain of command. All documentation shall be entered into Blue Team under incident type "Firearm Discharge."
- 2. The involved employee's Division Commander will review and submit his/her written finding to the Office of Professional Standards investigator on all weapons discharges upon animals.

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