I. **PURPOSE**

The purpose of this General Order is to establish policy and procedures governing the use of force by sworn members of the Loudoun County Sheriff's Office. The reverence and respect for the dignity of all persons and the sanctity of human life shall guide all training, leadership, and procedures, as well as decisions made by deputies regarding the use of force.

II. **POLICY**

It shall be the policy of the Sheriff's Office to maintain stringent guidelines on the use of force by agency members. Deputies shall comply with the Constitution of the United States concerning justifiable use of force application. The use of force has been construed by the courts to be a seizure under the Fourth Amendment and is subject to the objectively reasonable standard. Deputies shall be trained in approved methods of force and the agency’s use of force policy prior to assignment to duties where use of force may be required. Deputies acting within their official capacity may use only that amount of force which is reasonably necessary to affect lawful objectives. Justifications for using force are those facts known or perceived by a deputy at the time force is utilized. Deputies shall act in good faith when using force in order to conform to legal standards and the requirements of this General Order.

III. **GENERAL**

Prior to the issuance of any weapon (including less lethal), the Training Section shall ensure that each new deputy receives and demonstrates an understanding of written instructions detailing the use of force. The written instructions, at a minimum, shall include this General Order and the General Order pertaining to Firearms (404 section). Sworn personnel shall sign a statement that they have received and understood the contents of this General Order. That statement shall become a permanent part of the employee's personnel record.

Within the first 30 days of employment, each deputy's immediate supervisor shall ensure that new sworn personnel under his/her command receive and demonstrate an understanding of written instructions detailing arrest procedures. The written instructions shall include, at a minimum, General Order #402.1, "Arrest Procedures." Sworn personnel shall sign a statement that they have received and understood the contents of that General Order. This statement shall then become a permanent part of the employee's personnel record.
record.

Before issuance and use of any weapons, including less lethal weapons, ASP expandable batons and Oleoresin Capsicum spray (“OC”), sworn personnel shall attend and successfully complete all required certification courses taught by Department of Criminal Justice Services certified instructors.

Performance of the law enforcement function raises the possibility that at any given time and under circumstances of necessity, deputies may be called upon to use less-lethal and/or deadly force in the performance of their duties. Deputies shall use only the amount of force response necessary and reasonable to accomplish lawful objectives and to control a situation, effect an arrest, maintain security of a correctional facility, or defend themselves or others from harm. Therefore, the intent of this General Order is to provide guidelines governing the use of force by sworn members of the agency and to prohibit the imprudent use of such force so that loss of life or serious bodily harm can be held to a minimum.

Deputies have an affirmative duty to intervene if they observe another law enforcement officer using force that is clearly beyond that which is objectively reasonable under the circumstances, and shall safely intercede to prevent the use of excessive force. Deputies shall promptly report any such incident to a supervisor. All deputies shall receive initial training, within 30 days of hire, and yearly on-going training in the duty to intervene.

IV. DEFINITIONS

A. Deadly Force: Force that results in a bodily injury which creates a substantial risk of death, causes or could cause serious permanent disfigurement, or results in long-term loss or impairment of the function of any part or organ of the body. Deadly force can cause great bodily harm or no harm at all. For example, returning fire is deadly force, even if the deputy misses the target. The deputy must base his/her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he/she, a fellow deputy, or another person faces imminent danger of death or great bodily harm.

B. De-Escalation: A decrease in the severity of a force response used in an incident in direct response to a decrease in the level of resistance. De-escalation is also a tactic designed to place the deputy in a position of advantage when dealing with irrational, unpredictable, or suicidal persons. De-escalation may help deputies stay focused and calm during a crisis situation to bring chaotic moments to as peaceful a resolution as the subject or suspect will afford without risking the safety of law enforcement officers or the subject or suspect.

C. Excessive Force: “any 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.” (Virginia Code 19.2-83.3)

The U.S. Supreme Court, in *Graham v. Connor*, set forth guidelines for determining whether force has been excessively applied; the primary concern is objective reasonableness in its application, as judged by the on-scene deputy. In May 2014, the U.S. Supreme Court reaffirmed the *Graham v. Connor* mandate that an analysis of the use of force should be “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight…We thus allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation” (*Plumhoff v. Rickards*).

Additionally for inmates or prisoners held in a correctional setting, the U.S. Supreme Court has added additional case law that applies via the 8th amendment. The U.S. Supreme Court in *Whitley v. Albers*, addressed whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm (8th Amendment) in a correctional facility. Also, the U.S. Supreme Court held in *Hudson v. McMillian* that the extent of the injury is one of the factors considered in determining whether the force was necessary and wanton. The use of excessive force against a prisoner may constitute cruel and unusual punishment even though the inmate does not suffer serious injury (see also *Wilkins v. Gaddy*). U.S. Supreme Court in *Hope v. Pelzer*, considered unnecessary inflictions of pain are those without penological justification and excessive or where a correctional officer acted with deliberate indifference to the inmate’s health or safety that an unjustified risk of harm may result from actions that surpass what would be required to temper or quell a threat or restore order.

Deputies must also understand the considerations of factors in this policy when determining the reasonable application of force when dealing with subjects post-arrest, transported, booked, pre-arraignment, or subjects who are awaiting trial, and the 14th Amendment. (*Kingsley v. Hendrickson*). This case encompasses and combines factors from both *Graham v. Conner* (4th Amendment) and *Hudson v. McMillian* (8th Amendment) and provides guidelines outlined in this policy for all deputies to articulate objectively reasonable force responses to resistance events in thorough and complete reports.

When considering or evaluating the application of a force response, deputies shall take into account the totality of the circumstances and the following factors to determine the appropriate application of policy and each reasonably necessary force response; the threat perceived by a reasonable deputy at the time or whether the
subject poses an imminent threat to the safety of the deputies or others in a tense, uncertain, or rapidly evolving event; severity of the crime or security problem at issue; the need for a force response as appropriate to the perceived threat to accomplish a legitimate and lawful action; the amount of force used in relation to the need for force; efforts made to temper the severity of the forceful response (opportunity for compliance); considerations of injuries or physical conditions of those involved; and whether the subject is currently resisting or evading.

D. Force Response: Any physical strike, tactic, active countermeasure or instrumental contact with a person; any intentional attempted physical strike or active countermeasure that does not take effect; or any significant physical contact employed by a deputy that restricts the movement of a person. This term also includes the intentional discharge of a firearm, use of chemical spray, impact weapons, electronic control weapons ("ECW"), active countermeasures, the physical repositioning of a person toward the ground, or the deployment of a canine. This term does not include the compliant escort of handcuffed individual or the handcuffing of a person with minimal or no resistance.

E. Less-Lethal Force: Any force response that is not intended to cause death or serious bodily harm or serious injury; if properly used, this type of force may reduce the probability of death or serious physical injury.

F. Less-Lethal Weapon: The use of a weapon that is not fundamentally designed to cause death or great bodily harm. Examples of less-lethal weapons include canine bite, chemical defense equipment, TASER (conducted electrical weapon), expandable baton, nonlethal munitions, and, during exigent circumstances, the agency issued flashlight.

G. Necessary: Required to be done or what was needed to be achieved.

H. 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.

I. Objective Reasonableness: The Fourth Amendment "reasonableness" inquiry is whether a deputy’s actions are "objectively reasonable" in light of the facts and circumstances confronting him/her without regard to his/her underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable deputy on the scene, and its calculus must embody an allowance for the fact that law enforcement officers are often required to make split-
second decisions about the amount of force necessary in situations that are tense, uncertain, and rapidly evolving.

J. Physical Control: The necessary employment of law enforcement restraints and/or other use of force response by a deputy. Achieving compliance or custody through the use of empty-hand, active countermeasures, or leverage enhanced techniques, restraint devices, takedowns, and striking techniques.

K. Response to Resistance: The physical force response, defensive acts, or tactics employed by a deputy to a) overcome an individual’s resistance to the performance of a deputy’s legal duty; b) protect a deputy or another person from physical resistance or acts of aggression that are likely to cause bodily harm; c) apprehend a fleeing criminal suspect if the deputy has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the deputy or others.

L. Reasonable Belief: When facts or circumstances the deputy knows, or should know, are such so as to cause an ordinary and prudent person to act or think in a similar manner under similar circumstances.

M. Resisted Handcuffing: When a person resists being placed in handcuffs and the deputy(s) must use open hand controls or other responses to gain compliance by forcibly moving the subject’s wrists or arms, or to physically maneuver the subject’s body so the handcuffs can be applied. The resistance may range from an active struggle or overt evasive movements to intentionally prevent compliant handcuffing. Conversely, compliant or unrestrictive handcuffing occurs whenever the subject complies with the deputy’s verbal commands and/or physically allows the deputy to position their arms in order to apply handcuffs, or the subject positions their arms as commanded for the application of handcuffs.

N. Reportable Responses to Resistance: All force response applications used by a deputy who encounters and responds with an attempt to control any resistance level displayed equal to and above: passive, active, aggressive, and deadly resistance of a citizen, pretrial detainees, or convicted inmates. This does not apply to compliant or unobstructed lawful control, detainment, escort, or handcuffing of any subject.

O. Totality of Circumstances: A term used by the courts to refer to all facts and circumstances known to, or perceived by, the deputy which inform his/her decision to use force. The totality of circumstances includes consideration of the subject’s form of resistance, all reasonably perceived factors that may have an effect on the situation, and the response options available to the deputy. Some situational factors may include, but are not limited to, the severity of the crime, whether the subject is an immediate threat, the subject’s mental/psychiatric or violent history (if known to the
deputy), the subject’s perceived combative or defensive tactics abilities, the weapons possessed by or available to the subject, the possibility of harm to innocent bystanders, the number of subjects compared to the number of deputies, the duration of the confrontation, the subject’s size, age, weight, physical condition, and environmental factors (such as physical terrain, weather conditions, etc.) Additional considerations are the need for force as the appropriate response to the perceived threat; the amount of force used in relation to the need for a force response, efforts made to temper the severity of the force response (opportunity for compliance), the extent of injuries or physical condition of those involved at the time, and if the subject, suspect, or inmate was currently resisting.

V. PROCEDURE

A. Resistance

1. Resistance is manifested by a subject who attempts to evade a deputy’s attempt to control. Resistance is action directed at a deputy by a subject. The amount and type of resistance will vary based on the actions of a subject. Resistance can be categorized into four broad areas:

   a. Passive resistance

   Passive resistance is a subject’s verbal and/or physical refusal to comply with a deputy’s lawful direction, causing the deputy to use physical techniques to establish control. Some examples of passive resistance include:

   i. The subject refuses to move at the deputy’s direction

   ii. The subject peacefully protests at a political event in a public location

   iii. The subject refuses to take his/her hands out of his/her pockets or from behind his/her back when given a lawful verbal command

   b. Active resistance

   Active resistance is a subject’s use of physically evasive movements directed toward the deputy, such as bracing, tensing, pushing, or pulling to prevent the deputy from establishing control over the subject. Some examples of active resistance include:

   i. The subject physically anchors him/herself to a person or object to prevent him/herself from being moved by the deputy
ii. The subject braces or pulls away from the deputy’s grip on the subject’s arm

iii. The subject attempts to avoid controls or flee when the deputy touches or attempts to grab the subject

c. Aggressive resistance

Aggressive resistance is a subject’s attacking movements toward a deputy that may cause injury but are not likely to cause death or great bodily harm to the deputy or others. Some examples of aggressive resistance include:

i. The subject balls up his/her fist and approaches the deputy

ii. The subject pushes or otherwise assaults the deputy as the deputy tries to take the subject into custody

iii. The subject grabs any part of the deputy’s body

d. Deadly resistance

Deadly resistance is a subject’s hostile, attacking movements, with or without a weapon, that create a perception by the deputy that the subject intends to cause, and has the capability of causing, death or great bodily harm to the deputy or others. A deputy uses three criteria for making a decision to use force against deadly resistance:

i. Ability: A deputy must determine whether the subject has the necessary means to cause death or great bodily harm to the deputy or others. “Ability” refers to the subject having the means to carry out his/her intent to cause death or great bodily harm.

ii. Intent: A reasonably perceived, imminent threat to a deputy or another person based on the subject’s actions, behaviors, words, or other indicators. Intent is a perception derived from the totality of the circumstances.

iii. Opportunity: The subject is capable of carrying out an intention to cause death or great bodily harm to the deputy or others. The subject’s weapon often determines opportunity. However, it must be remembered that the wielding of a weapon by the subject is not a requirement for the perception of deadly resistance. Subjects who are physically conditioned or motivated and trained to cause extreme injury may have the intent and capability to cause death or great bodily harm via hand-to-hand combat.
attacks.

B. Guidelines for Response to Resistance

These guidelines provide a framework for deputies when assessing the circumstances presented in order to make a reasonable decision involving the use of force.

1. A deputy’s response to resistance shall be based upon his/her perception of the resistance and ability to overcome the resistance and gain control of a subject. When considering or evaluating the application of a force response, deputies shall take into account the totality of the circumstances and the following factors to determine the appropriate application of policy and each reasonably necessary force response:

   a. Threat perceived by a reasonable deputy at the time or whether the subject poses an imminent threat to the safety of the deputies or others in a tense, uncertain, or rapidly evolving event;

   b. Severity of the crime or security problem at issue;

   c. Need for a force response as appropriate to the perceived threat to accomplish a legitimate and lawful action;

   d. The amount of force used in relation to the need for force. The degree a deputy responds to resistance should be in direct relationship to the amount of resistance exerted, or the immediate threat to deputies or others.

   e. Efforts made to temper the severity of the forceful response (opportunity for compliance);

   f. Considerations of injuries or physical conditions of those involved;

   g. Whether the subject is currently resisting or evading.

2. Generally, there are four occasions the aforementioned considerations apply to responding to a subject’s resistance in which it is objectively reasonable.

   a. To stop potentially dangerous and unlawful behavior;

   b. To protect a deputy or another from injury;

   c. To protect subjects from injuring themselves;
d. To complete the process of an investigation, maintain safety and security of a correctional facility, or while affecting a lawful arrest when a subject offers a degree of resistance.

3. Deputies should strive to use the reasonable amount of effective force practicable to effect control over a subject; however, they need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead, deputies need to respond with all the force necessary for the circumstances in each specific situation. As soon as compliance and control are reached, a deputy must de-escalate his/her response to a reasonable amount of effective force necessary to control a subject.

4. Each succeeding responses to resistance should include circumstances of previous responses, when applicable. For example, when ineffective applications of force are not successful. This would also include passive resistance control techniques or verbal communications, direction, and/or any acknowledgement or verbal indications that the resistor is or intends on disobeying commands.

5. Additional Factors Affecting Appropriate Use of Force Responses
   a. In properly determining the appropriate response to a subject's resistance, a deputy must evaluate several factors. For instance, an unarmed, small-framed juvenile subject may be displaying aggressive resistance but may only require a lower response option from a deputy. In contrast, a single deputy faced with a very large, physically conditioned subject may find that his/her response to even mild passive resistance may require escalated responses in order to affect control over the subject.
   b. It should be remembered that a deputy need not retreat in his/her effort to lawfully control a subject but may utilize the amount of force necessary to accomplish his/her lawful duties as a law enforcement officer. A temporary tactical retreat in the face of overwhelming odds, however, may be the wisest choice depending on the situation presented. The deputy should consider risk factors against the immediate need for control with the ability to gain advantages for additional time and resources.

C. Authorized Use of Force

Depending upon the resistance encountered, deputies may use force that escalates from verbal commands to the use of a firearm.

1. Use of Less-Lethal Force
a. For the resolution of incidents, deputies should utilize agency-approved defensive tactics and less-lethal weapons, but only those for which they have been trained, qualified and certified as determined by the agency's training procedures.

b. To avoid injury to deputies, hand-to-hand confrontations should be avoided whenever possible in situations where increased force is justified.

c. When a confrontation escalates suddenly, deputies may use any means or device at hand as an alternative weapon to defend themselves, as long as the force is reasonable, given the existing circumstances.

2. Verbal Skills

a. The direction and result of most encounters with subjects can be controlled by good communication skills on the part of a deputy. In most encounters, the mere presence of a deputy and proper verbal direction will be sufficient to de-escalate potential problems and allow a deputy to execute his/her duty.

b. Good communication skills and de-escalations techniques can prevent many physical confrontations from escalating to higher resistance. Deputies are encouraged to consciously develop and practice good communication and de-escalation skills as part of their basic proficiency in law enforcement techniques.

c. De-escalation techniques are particularly important when dealing with crisis situations involving irrational, unpredictable, intoxicated or suicidal persons. De-escalation may help deputies stay focused, calm, and collect important information during a crisis situation to bring chaotic moments to as peaceful a resolution.

3. Handcuffs and Restraints

a. The purpose of handcuffs, flex cuffs, and transport cuffs is to restrain the movement of a subject in a manner that allows a safe means for transporting that subject. Restraining devices also can be used to prevent further resistance from a subject. Whatever the application, restraining devices should be considered temporary in nature and a means for safely achieving other goals.

b. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the deputy, or another person. In these situations,
only the minimal amount of force necessary to control the situation shall be used.

4. Empty-Hand Controls

a. "Soft" empty-hand controls such as gentle touching, escort holds, pressure point controls and the like are appropriate for use against passive resistance and some forms of active resistance.

b. "Hard" empty-hand controls are appropriate for use against some forms of active resistance and against all forms of aggressive or deadly resistance. Techniques that fall into this category have a higher probability of creating soft or connective tissue damage, skin lacerations, or bone fractures which require medical attention. Techniques that are considered "hard" empty-hand tactics include stunning and striking actions delivered to a subject's body with the hand, fist, forearm, leg, or foot. Preferably, the target for these tactics will be major muscle structures such as the legs, arms, or shoulders. Strikes delivered to such muscle structures may create muscle cramping, thus inhibiting muscle action and allowing a deputy to bring a subject under control. However, in extreme cases of self-defense, a deputy may need to strike more fragile areas of the body where the potential for injury is even greater.

5. Less-lethal Weapons

a. Less-lethal weapons are defined as agency-approved tools which provide a method for controlling a subject when use of deadly force is not justified but empty-hand control techniques are not enough for controlling a subject. Whenever a deputy uses a less-lethal weapon for control, it should be used with the intent to temporarily disable the subject’s ability to resist to create opportunity for controls and never with the intent of creating a permanent injury.

b. The Sheriff's Office approved less-lethal weapons are the ASP expandable baton, chemical defense equipment, less-lethal munitions, TASER, canine bite, and other equipment as issued, trained, and certified by the training section.

c. Deputies shall receive classroom training on less-lethal weapons at least biennially to discuss agency policy and/or demonstrate continued proficiency and knowledge of these weapons. Minimally, this training will be accomplished during one of each year’s semi-annual firearms training or another designated time during the same year. A certified instructor will
conduct the training. Records of attendance for less-lethal weapons training shall be placed in each deputy’s electronic training file, which is maintained by the agency Training Section.

d. Less-lethal weapons may only be deployed when there is an exigent and immediate safety risk that is reasonably likely to be resolved by the use of that weapon.

i. Erratic and/or suspicious behavior, or mental illness, alone, does not necessarily create a safety risk.

e. The proper deployment of a less-lethal weapons is defined in the General Orders specific to that less-lethal weapon. Those General Orders contain guidance on the proper deployment method, documentation required, evidence collection, subject medical care and supervisor responsibilities. All less-lethal weapons shall be deployed in accordance with the LCSO training protocols governing that specific less-lethal weapon.

6. Use of Deadly Force

The Sheriff’s Office policy regarding the use of deadly force shall be as follows:

a. Deputies may use deadly force only when they reasonably believe that such action is in defense of human life, including their own lives, or in defense of any person in imminent danger of death or great bodily harm. Justifications for using deadly force are those facts known or perceived by a deputy at the time force is utilized.

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

c. Deadly force may be used to apprehend a fleeing suspect if all other means of affecting an arrest have been exhausted and the deputy has probable cause to believe and reasonably believes that the escape of the suspect will present a threat of serious physical harm to the deputy or others. Mere suspicion that the person committed a crime is insufficient to warrant the use of deadly force. The deputy must have knowledge that a crime was committed and that the person fleeing arrest committed it. The U.S. Supreme Court has addressed the use of deadly force to apprehend fleeing suspects in *Tennessee v Garner*.

d. When a deputy discharges a weapon at a suspect with the intent to employ deadly force and the projectile does not strike the suspect, it is still
considered use of deadly force and shall be investigated accordingly.

e. Deputies shall not fire warning shots.

f. Deputies shall not discharge a weapon at or from a moving vehicle except under the most aggravated circumstances.

g. Neck Restraints are prohibited unless deadly force is reasonably necessary and objectively appropriate.

h. Once the scene is safe and as soon as practical, a deputy shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

i. The investigation of the use of deadly force shall be conducted in accordance with General Order 403.12, Investigation of Use of Deadly Force.