

**PORTSMOUTH, NH POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE****O-101
RESPONSE TO RESISTANCE****EFFECTIVE DATE: 11-28-83****REMARKS: Formerly known as the Use of Force policy****REVISIONS: Last Revised 03-07-18; 10-11-18; 05-29-19; 06-16-20; 09-03-20; 11-11-20****I. PURPOSE**

To provide police officers with guidelines on responding to deadly and non-deadly resistance.

II. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only the response to resistance necessary to affect lawful objectives.

III. PROCEDURE

- A. Statement: A police officer who responds to resistance in the performance of his or her duty takes many risks. Officers must not only answer to their own conscience, but to the law, the Police Department, and the public. A crisis situation gives little time for study and thought. Reactions must be based on sound principles and instilled through repeated training. An officer must be ready to act instantly, but with the sound judgment that comes with knowledge.

The best policy of any department is never a perfect guide to cover all instances where an officer might take action. Proper preparation, guidelines, and training can assist the officer's thought process to react with sound judgment and actions.

- B. Definitions:

1. "Deadly Force" means any assault or confinement which the actor commits with the purpose of causing or which the actor knows to create a substantial risk of death or serious bodily injury. (RSA 627:9;II.)
2. "Non-Deadly Force" means any assault or confinement which does not constitute Deadly Force. (RSA 627.9; IV.)
3. "Serious Bodily Injury" means any harm to the body which causes severe, permanent, or protracted loss of or impairment to the health or of the function of any part of the body. (RSA 625:11; VI.)

4. "Deadly Weapon" means any firearm, knife, or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury. (RSA 625:11 VI)
5. "Objectively Reasonable" means those facts and circumstances within the knowledge of the individual which would make a reasonable and prudent person tend to believe that the facts and circumstances are true.
6. "Response to Resistance Incident" means an incident in which any of the following occur:
 - a) The intentional or unintentional discharge of a firearm while on duty, or while off duty taking a police action (except animal euthanasia)
 - b) When an officer draws their firearm and challenges a person, or otherwise points a firearm at another during any police action.
 - c) The use of the ASP baton to strike another person.
 - d) The use/armed display/ unintentional discharge of the Taser
 - e) The use of the RIPP Hobble restraint
 - f) The use of OC Spray
 - g) The use of hand techniques, to restrain, bring into control, or otherwise subdue a resistant person.
 - h) The use of defensive techniques.
 - i) The use of a flashlight, knife, or any other item used as a weapon in cases of extreme emergency.
 - j) Intentional contact, while operating a city owned vehicle, with a person, other vehicle, or any other object.
 - k) K-9 Apprehension: For the purposes of this policy, "K9 Apprehension" shall be defined as;
 - i. any incident in which the K9 was released by the handler to effect the arrest of a suspect, regardless if the apprehension was made or the K9 bit or scratched any individual.
 - ii. SOP O-515 outlines procedures relating to proper use of a K9
7. "De-Escalation" -- Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary.

C. Parameters for Use of Deadly Force

The Portsmouth Police Department has adopted a use of deadly force policy that corresponds with New Hampshire RSA 627, which places a high priority on human life.

1. An officer is justified in using deadly force only when he reasonably believes such force is necessary;

- a. To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or
 - b. To effect an arrest or prevent the escape from custody of a person whom he reasonably believes;
 - i. Has committed or is committing a felony involving the Response to Resistance or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and
 - ii. He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.
 - c. Nothing in this paragraph constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.
2. Officers must also realize that under New Hampshire State Law, deadly force is only deemed reasonably necessary under RSA 627:5 whenever the arresting law enforcement officer reasonably believes that the arrest he/she is making is lawful, and there is apparently no other possible means of effecting the arrest.

D. Parameters for Use of Non-Deadly Force

1. Where deadly force is not authorized, officers should be objectively reasonable in determining which non-deadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner. When possible, officers should seek to utilize de-escalation strategies to prevent situations from deteriorating to the point where they would need to use force. Officers should attempt to gain voluntary compliance in an attempt to reduce the level of force required in a situation through verbal communication efforts. When force is applied, officers will use the minimum amount of force necessary to overcome an individual's resistance and to gain control.
2. Police officers are authorized to use department approved non-deadly force techniques and issued equipment for resolution of incidents as follows:
 - a. To protect themselves or another from physical harm; or
 - b. to restrain or subdue a resistant individual; or
 - c. to bring an unlawful situation safely and effectively under control.
3. Legal Arrest or Detention: Unless a police officer has some reason to know that an arrest or detention is illegal, the officer is justified in using non-deadly force upon another when and to the extent that it is reasonably believed to be necessary to make a lawful arrest or to prevent the escape from custody of an arrested or detained person.
4. Defense of Officer or Third Person: A police officer may also use non-deadly

force to defend him/herself or a third person from what the officer reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect a lawful arrest or while seeking to prevent an escape from custody. RSA 627:5, I.

5. Authorized Non Lethal Weapons

The following non-lethal weapons are authorized:

a. The ASP Expandable Baton

- (1) The department issue police baton is the ASP Expandable F21B baton, and shall be worn by the uniform patrol officer on the duty belt in the issued ASP F21 Side Break baton case. Officers shall not carry short billies, black jacks or any other impact instrument in addition to or instead of the police baton.
- (2) The baton may be used as a defensive weapon to ward off blows or kicks, or to deliver disabling blows to non-vital areas of the body as a means to halt or deter a subject that is committing an assault against the officer or a third person. Officers must remain aware that blows to the head are often ineffective in stopping aggressive behavior, and create a risk of death or serious bodily injury. Intentional blows to the head with the police baton will be considered the use of deadly force, and are only justified if deadly force is being used against the officer or a third person.
- (3) Any time the police baton is used to strike or restrain a person during an incident, the officer will document the use in both the police report, and the Response to Resistance Report Form.

b. SABRE RED Oleoresin Capsicum Aerosol

- (1) Standard Operating Procedure O-103 "Hand Held O.C. Spray" contains detailed procedures concerning the proper use of O.C. Spray.
- (2) Any time OC Spray is used, a police report, and a Response to Resistance Report Form will be completed.

c. Taser

The Taser may be carried and utilized by properly trained officers. Refer to SOP O-110 Taser for standards regarding this weapon

d. Empty hand techniques approved by the Strategic Services Support Division.

- (1) Any incident in which an officer uses physical force to restrain, bring into control, handcuff or subdue another person, will require the completion of a Response to Resistance Form.
- (2) Any defensive tactic, or defensive action will require the completion of a Response to Resistance Form.
- (3) Distraction techniques are designed to assist an officer in gaining control of a non-compliant subject during an arrest or detention. These techniques are designed to be used prior to or during a control technique attempt if necessary and can consist of, but are not limited to, palm heel strikes, knees, elbows, kicks, balance displacement and pressure point techniques.
- (4) Strangle and choke holds and other similar holds that choke or restrict a person's ability to breathe or the flow of blood to the brain are prohibited except when the officer reasonably believes there is an imminent threat of serious physical injury or death to him/herself or a third person and that he/she has no other reasonable alternative for defending himself/herself or another person. Should a member observe or have immediate knowledge that a strangle or choke hold has been used as a last resort, the member shall ensure that medical attention is administered by a qualified medical professional as soon as possible.

Force Necessary: The above authorized tools coupled with empty hand control techniques will be used in direct response to a subject's resistance level, and are intended to assist officers in controlling situations while protecting the officers and others. Officers should assess the circumstances surrounding an incident when judging what equipment or technique the officer will employ. Officers will use only the force that is objectively reasonable to affect lawful objectives or bring the subject under control.

Duty to Intervene: Any officer, regardless of rank or seniority who is present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to end and prevent the further use of such excessive force. Additionally, officers have the duty to intervene in all other situations where an officer is acting in violation of laws, orders, policies, or ethical conduct and immediately notify an on-duty supervisor. Upon being informed of the incident, the on-duty supervisor will notify the Chief of Police in writing.

Availability of Issued Equipment: It is the responsibility of all uniformed officers to have available all issued authorized tools and equipment when on duty. Patrol Shift Supervisors will check officers at the beginning of their tour of duty, and periodically in the field to ensure compliance with this section.

- e. Flashlights: Flashlights are a tool designed and intended for illumination. The mass and weight of the typical police flashlight can inflict serious or even fatal injury when used as a weapon. The flashlight is not a substitute for the police baton, and shall not be regarded as such unless under extreme emergency situations.
- f. Knives: Officers shall be authorized to carry knives as outlined in SOP P-102. Knives shall be regarded as tools, which may be utilized for the purpose of cutting articles in the course of duty as may be required. These knives are not authorized to be used as a weapon unless under extreme emergency situations.
- Last Ditch Knives: Officers are authorized to carry *fixed blade or "T" handle style knives* as outlined in SOP P-102. The Last Ditch knife is intended to be readily available as a self defense tool in a deadly force situation as authorized in RSA 627:5.
- g. Other Weapons: Officers of the Portsmouth Police Department are prohibited from carrying unauthorized firearms while on duty. The only authorized firearms which may be carried are the issued duty weapon (Sig P-226, P-229, or P-239; in .40 caliber). Officers may carry other firearms if approved by the Chief of Police. Such approval will be granted in accordance with the approval process outlined in SOP P-238. Officers are prohibited from carrying any weapon prohibited by law, whether on or off duty.
- h. Extreme Emergency Situations: The Portsmouth Police Department recognizes the fact that in cases of extreme emergency, a flashlight or any other available item may be justifiably used as a weapon. However, if possible, officers should make an effort to use approved weapons when lawfully required.

E. Restraint Devices

The following restraint devices are authorized:

- Handcuffs
- Flex cuffs
- RIPP Hobble Restraint System (Refer to SOP O-181)

F. Standards of Proficiency

1. All sworn personnel must demonstrate proficiency annually in the department training programs for the following less than lethal tools and techniques.
 - a. The ASP Expandable F21B Baton;
 - b. Oleoresin Capsicum (See SOP O-103 for detailed O.C. procedures)
 - c. Handcuffs;
 - d. Flex cuffs;
 - e. RIPP Hobble Restraint System;
 - f. Empty Hand Techniques;
 - g. Taser (See SOP O-110 for detailed Taser procedures)

2. Only officers demonstrating this proficiency shall be issued and authorized to carry or use such tools. The Strategic Services Support Division OIC shall designate the training programs.
3. Qualification courses are consistent with the requirements of the NH Police Standards and Training Council Rule #404.03.

IV. **RENDERING MEDICAL AID**

A. **Duty To Render Aid**

As quickly as reasonably possible, it shall be the duty of all sworn officers to summon and/or render appropriate medical aid to any person within the scope of the officers training and ability following a "Response to Resistance" incident once the incident has been brought under control.

B. **Officer Safety**

Officers, who determine that they cannot safely administer first aid to another person due to circumstances resulting from the Response to Resistance incident, need not jeopardize their safety.

Examples of such circumstances are officers or individuals with open wounds, broken or dislocated bones or joints, disorientation due to blunt trauma or stress, or any other disabling injury or symptom which might effect the sound judgment or physical capability to render appropriate aid.

C. **Control**

An incident shall be deemed under control when a suspect is properly restrained with a recognized and approved restraint device and has ceased to be a threat to involved officers or other persons.

D. **Subjects Refusing Medical Aid**

Officers will respect a person's right to refuse medical aid, and shall not render aid in those instances where a person has consciously refused to be assisted.

Subjects in custody who have been injured during an incident which resulted from an officer's Response to Resistance shall be taken to the Portsmouth Regional Hospital for evaluation in the case of minor injuries.

E. **Major Injuries**

In the case of a major or life threatening injury, an officer will request an ambulance as soon as possible. Unconscious persons cannot refuse medical aid, and aid will be rendered except for those situations described in section B.

F. First Aid

Officers rendering first aid will follow the guidelines for first aid as instructed in the American Red Cross First Aid training.

V. **REPORTING RESPONSE TO RESISTANCE**

A. Report of Intentional or Unintentional Discharge

Officers who intentionally or unintentionally discharge a firearm, as defined in section III, B-6 of this policy, for other than a training purpose, shall immediately 1) make a verbal report to the on duty Shift Commander, 2) complete a Response to Resistance form.

Report of Response to Resistance Injury to Supervisor

Whenever a member shall take a police action either on or off duty, that results, or is alleged to have resulted in death, bodily injury or potential bodily injury to another person, or shall apply force through the use of any other action including the application of force through use of non-lethal weapons or techniques, the incident shall be reported by the quickest available means to the Shift Commander and a police report will be completed and forwarded to the Professional Standards Division OIC within 24 hours of the incident. In cases of serious injury or death, the supervisor will immediately notify the Chief of Police, or in the Chief's absence, the Chief's designee. The procedures of SOP O-125 Critical Incidents, O-124 Command Notification, O-127 Reporting of Officer Involved Shootings, will be followed.

1. Hinged or chain handcuffs

If an arrestee alleges that he/she is or may be injured due to handcuffing, the Shift Commander shall be advised immediately. The Shift Commander will follow procedures for sick or injured prisoners detailed in SOP O-185 Prisoners. The details of the incident will be recorded in the arrest report by the arresting officer. A Response to Resistance form will also be completed by the arresting officer.

C. Challenging Persons With Firearm

In situations where an officer has drawn their weapon and challenges a person, or otherwise points a firearm at another person during any police action, a verbal report will be made to the officer's immediate supervisor as soon as possible and in all cases before going off shift. Additionally, a Response to Resistance form is to be completed and the details concerning the challenge will also be documented in either an arrest or incident report.

D. Investigation by Shift Commander

In all incidents involving serious injury, SOP O-125 Critical Incidents will be followed. The Chief of Police will be notified in writing of all response to resistance incidents requiring such an RTR report.

E. Completion of Response to Resistance (RTR) form

An officer involved in a Response to Resistance Incident as defined in section B of this policy, will complete a Response to Resistance form prior to going off duty.

The Response to Resistance form will be given in hand to the on duty Shift Commander, and will be reviewed for completeness prior to the officer leaving the building. The Shift Commander will forward the Response to Resistance report form to the Patrol Division OIC for review, who will in turn forward the form to the Professional Standards Division.

F. Monthly Review; Response to Resistance Reports Procedure

It shall be the responsibility of the Professional Standards Division OIC to conduct a monthly review and analysis of all Response to Resistance reports. The purpose of the review is to determine if any patterns or trends exist, to identify training needs, and to determine if any policy modification is necessary.

The Professional Standards Division OIC is responsible for ensuring the Response to Resistance data is entered into the Guardian Tracking software. All Response to Resistance reports will be reviewed by the Response to Resistance Committee on a monthly basis. The current Response to Resistance Committee members are identified in SOP A-119, *Duty Assignments*. The Committee reports back to the Professional Standards Division OIC with their input on each incident. If any corrective action is necessary, that process is initiated at this point. Either way, the input given by the Committee is added to the initial Guardian Tracking entry.

G. At the end of each calendar year, the Professional Standards Division OIC will complete an annual Response to Resistance analysis and forward it to the Chief of Police. This analysis should also address trends or patterns relative to assaults on officers.

Mark D. Newport, Interim Chief of Police

MDN/emk

Portsmouth, NH Police Department

Response to Resistance (RTR) Form (Rev 09-03-20)

Reporting Officer: _____ **Report No:** _____

Street Location of Incident: _____ **Time of Incident:** _____

Supervisor: _____ **Date:** _____

Offender : Age: _____ **Race/Gender:** (circle below)

Caucasian: M / F **African American:** M / F **Hispanic:** M / F **Other:** M / F

Were any Officers assaulted on this call? (check box if yes)

[CHECK ALL THAT APPLY]

- | | | |
|--|---|---|
| Firearm Discharge <input type="checkbox"/> | RIPP Hobble <input type="checkbox"/> | <u>TASER</u> |
| Challenge with Firearm <input type="checkbox"/> | Injury to Civilian <input type="checkbox"/> | Armed Display <input type="checkbox"/> |
| ASP Baton <input type="checkbox"/> | Injury to Officer <input type="checkbox"/> | Drive Stun <input type="checkbox"/> |
| OC Spray <input type="checkbox"/> | K-9 Apprehension <input type="checkbox"/>
(as defined in O-101) | Cartridge Deployed <input type="checkbox"/> |
| Cruiser Contact <input type="checkbox"/> | Hands on Techniques <input type="checkbox"/> | Unintentional Discharge <input type="checkbox"/> |

*****Ensure the details surrounding the **Response to Resistance** is described in the police report*****

IF NO REPORT, INCLUDE SYNOPSIS BELOW:

- **Officer-** submit form to immediate supervisor
- **Immediate Supervisor-** submit form to Division Commander for review
- **Division Commander-** submit form to the Professional Standards Division