



**Boynton Beach Police Department**

# RESPONSE TO RESISTANCE

	<b>Index Code:</b>	401	
	<b>Scope:</b>	All Sworn Members	
	<b>Revision Date:</b>	September 25, 2020	
	<b>Proponent Unit:</b>	Uniform Service Division	
	<b>Rescinds:</b>	IC 401 dated June 10, 2019	
<b>Michael G. Gregory</b> <b>Chief of Police</b>		The original signed copy of this directive is on file in the Professional Standards Office	

**Related References/Accreditation Standards: 4.01, 4.02, 4.04, 4.05, 4.06, 4.07, and 4.09.**

**CONTENTS**

I. PURPOSE .....	1
II. SCOPE .....	1
III. AUTHORITY .....	1
IV. POLICY .....	2
V. DEFINITIONS .....	2
VI. PROCEDURES .....	3
VII. LEVELS OF FORCE .....	4
VIII. SUBJECT RESISTANCE LEVELS .....	5
IX. OFFICER RESPONSE OPTIONS .....	5
X. MEDICAL AID (CFA 4.08) .....	6
XI. REPORTING RESPONSES TO RESISTANCE (CFA 4.07) .....	7
XII. ANNUAL RESPONSE TO RESISTANCE REPORT .....	8
XIII. NOTIFICATION REQUIREMENTS .....	8
XIV. MEDIA RELATIONS .....	9
XV. PSYCHOLOGICAL/PSYCHIATRIC (FITNESS FOR DUTY) EVALUATION .....	9

**I. PURPOSE**

The purpose of this directive is to define appropriate employee conduct and establish guidelines for the use of force when encountering resistance to lawful commands, detainment and/or arrest, and to establish guidelines in reporting requirements for the use of force by Boynton Beach Police Department Members.

**II. SCOPE**

This directive will apply to all Boynton Beach Police Department Sworn Members.

**III. AUTHORITY**

Department members derive their authority to respond to resistance, lethal and less lethal, in the lawful performance of their duties, from Chapter 776, Florida Statutes. (CFA 4.01)

#### IV. POLICY

1. Preservation of Life – The preservation of life should guide all law enforcement actions. Where necessary to use force against a member of the community, the force should be objectively reasonable, proportional, and necessary in defense of an officer, another, or in pursuit of a lawful objective.
2. Communication by Officers – Many incidents involving the use of force may be eliminated or mitigated by thoughtful, clear, continuous, and calm communications when possible. In every encounter with the community, officers should strive to thoughtfully communicate as a reasonably prudent officer would and to use force only when all reasonable efforts to communicate without the use of force are unsuccessful or impracticable.
3. All members shall be issued and provided training in the agency’s Response to Resistance policy before being authorized to carry a weapon. Members shall not be allowed to carry or use agency authorized weapons (lethal or less lethal), on or off-duty, until they have been properly instructed and have demonstrated proficiency, if applicable, with the weapons(s). (CFA 4.01, 4.02, 4.06)
4. An Officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.
5. An officer shall have a Duty to Intervene. Any officers present and observing another officer using force that is clearly beyond what is objectively reasonable under the circumstances, or suspects that another employee is about to use unnecessary force, shall safely intervene to prevent the use of such force. The intervention shall be reported to a supervisor. The officer shall summon and/or administer medical attention in accordance with his/her capability and training.

#### V. DEFINITIONS

- A. *Active Physical Resistance*: A subject makes physically threatening and/or evasive movement to defeat a member attempting to gain control during a custodial situation or when being placed under arrest. This may be in the form of bracing tensing, or the subject attempts to push/pull away with the intent to flee or escape, or does not allow the member to get close to him/her.
- B. *Deadly Force*: Any action, by a subject or a member, that is likely to cause death or great bodily injury.
- C. *Defensive Weapon*: The agency approved or authorized firearms and less lethal weapons.
- D. *Defensive Force*: Physical battery with hands, fists, or defensive equipment to overcome violent resistance or to protect self or others from assault or injury.
- E. *Electronic Control Weapon*: A less lethal defensive weapon that uses propelled wires to conduct energy to a remote target, thereby controlling and overriding the central nervous system of the body.
- F. *Force*: The tactics and/or techniques utilized by a member to control or regain control of a subject in self-defense, the defense of others, or to counter resistance by a subject.
- G. *Force – Reasonable*: is the amount of force reasonably necessary to make an arrest. This is called “objective reasonableness.” As described in *Graham v. Connor*, 490 U.S. 386 (1989). The reasonableness of a particular use of force will be judged from the perspective of how a reasonable officer on the scene would respond, rather than from the 20/20 perspective of hindsight. The Response to Resistance review will consider the facts and circumstances, at the time the incident occurred to determine if an officer’s actions were objectively reasonable. Command review also considers officers must make split-second judgments about the amount of force needed in a particular situation under circumstances that are tense, uncertain and rapidly evolving.
- H. *Force – Unreasonable*: is force that is gratuitous or used to punish rather than to achieve legitimate law enforcement results or force used when there is no legal authority to detain a subject.

- I. *Imminent Danger*: A member's perception that a threat is pending, and/or a subject has the capability of inflicting death or great bodily harm, or otherwise incapacitating an employee, with or without a weapon and is demonstrating to do so.
- J. *Less Lethal Force*: Force, which is not likely to cause death or great bodily harm.
- K. *Oleoresin Capsicum (OC)*: A chemical compound consisting of pepper extract or synthetics that temporarily causes involuntary closing of the eyes, respiratory distress, an acute burning sensation on exposed skin and loss of motor control when sprayed about the face of a person or animal.
- L. *Passive Physical Resistance*: A subject physically refuses to comply or respond to a member's lawful command. He/she does not make any attempt to physically defeat the actions of the member, but forces the member to employ physical maneuvers to establish control.
- M. *Physical Force*: Force in excess of the mere touching or grabbing of an individual. Pain inflicting submission restraints to overcome resistance to arrest are included in this definition.
- N. *Serious Physical Injury*: A bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term loss or impairment of a bodily function. The phrases "Serious Physical Injury" and "Great Bodily Harm" are considered synonymous.
- O. *Show of Force*: The display of a defensive weapon, in preparation to make it ready, should the use of force become necessary.
- P. *Use of Force/Response to Resistance*: The completed use of a defensive weapon as it was intended or designed and/or physical force. Some examples of a completed use of a defensive weapon include: the spraying of OC, the striking of an individual with a baton/ASP, or discharging an electronic control weapon (Taser) at an individual.

## VI. PROCEDURES

Guidelines cannot be written to encompass every possible application for the use of any weapon. However, as with any use of force, it must not be used indiscriminately or without just cause.

Nothing in this directive is intended to discourage members from using a higher level of force whenever such force is necessary and can be justified. Members should keep in mind that they must be able to articulate the actions taken by the subject who caused them to reasonably believe the situation escalated to the degree that force was necessary.

Physical force may only be used when the alternatives of advice, warning and persuasion have been exhausted or are inappropriate under the circumstances.

- A. **Justification of the Use of Force**: *Totality of circumstances* is a term the court uses to refer to all the facts and circumstances known to the officer at the time or reasonably believed by the officer as the basis for a use of force decision. The use of force review will consider the totality of circumstances in determining whether the decision was objectively reasonable and, therefore, legally justified. 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 member.

Some situational factors to consider when evaluating the totality of the circumstances are:

1. Severity of the crime;
2. Subject is an immediate threat;
3. Subject's mental or psychiatric history, if known to the member;
4. Subject's violent history, if known to the member;
5. Subject's combative skills;
6. Subject's access to weapons;
7. Innocent bystanders who could be harmed;
8. Number of subjects versus number of members/officers;
9. Durations of confrontation
10. Subject's size, age, weight and physical condition;
11. Member's size, age, weight, physical condition and defensive tactics expertise; and
12. Environmental factors, such as physical terrain, weather conditions, etc.

- B. **Force Guidelines:** Force Guidelines recognize that members respond to resistance based on the totality of circumstances at the time of the incident. Circumstances are fluid and dynamic. Formulating a valid response requires continual assessment as the situation changes.

Force Guidelines provide a framework for making decisions involving the reasonable responses to resistance by members. The structure of the Force Guidelines is based on constitutional considerations and case law, and describes appropriate decision-making in a fluid and dynamic situation. The Force Guidelines consider the relationship between subject's resisting and various situational factors in determining the member's response options.

**NOTE:** In all situations members will use only the force necessary to make an arrest or effect lawful objectives.

- C. Members of the Department shall use reasonable force in the performance of their duties in the following circumstances:
1. To prevent a breach of the peace or other unlawful act;
  2. To prevent a person from injuring himself/herself;
  3. To effect the lawful arrest/detainment of persons resisting arrest/detainment or attempting to flee from custody; and
  4. In defense of self or another person.
- D. The Totality of the Circumstances Flowchart shall be applied in all situations – See Appendix B.

## VII. LEVELS OF FORCE

### **Less Lethal Force:**

Less lethal force may be used as long as it is reasonable force and necessary to accomplish a lawful purpose. Less lethal force can include but is not limited to physical tactics (leg sweep, strikes, etc), properly utilized devices (Baton, Taser Conducted Energy Weapon) and/or chemicals (OC, smoke, etc).

### **Deadly Force:**

Deadly Force is force that is likely to cause death or great bodily harm. Some examples of deadly force include, but are not limited to, use of a firearm, eye gouges, empty-hand strikes to the throat and impact-weapon strikes to the side of the neck.

Section 776.06, F.S., states in part: Deadly force means force that is likely to cause death or great bodily harm, and includes, but is not limited to:

- A. The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
- B. The firing of a firearm at a vehicle in which the person to be arrested is riding.

Use of deadly force may be a member's first and only appropriate response to a perceived threat. Deadly force does not necessarily mean that someone died from the force used. It can cause great bodily harm or no harm at all. For example, returning fire is deadly force even if the member misses the target.

The member must base his or her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he/she or another person faces imminent danger of death or great bodily harm.

**Factors for deciding the use of deadly force:** Members use three (3) criteria for making deadly force decisions: ability, opportunity and intent.

1. **Ability** refers to the subject having the means to carry out his or her intent to cause death or great bodily harm. A member must determine whether the subject has the necessary means to cause death or great bodily harm to the member or others. A weapon is not required; a subject must only have the apparent ability to carry out his or her intention. If the subject seems physically able to cause death or great bodily harm, then he has the ability. For example, a 6'4", 250-lb. muscular man threatening to do bodily harm to a member does not necessarily need a weapon. By virtue of his size and physical condition, he has the apparent ability.

2. **Opportunity** means the subject is capable of carrying out an intention to cause death or great bodily harm to the member or others. The subject's weapon often determines opportunity. For example, a suspect armed with a knife may not be an immediate threat to a member standing far away. However, the same person standing closer or carrying a firearm certainly has the opportunity to carry out his intent to cause death or great bodily harm.
3. **Intent** is a reasonably perceived, imminent threat to a member or another person based on the subject's actions. It is a perception derived from the totality of the circumstances. If ability and opportunity are present, a member may assume the subject has intent to cause death or great bodily harm.

## VIII. SUBJECT RESISTANCE LEVELS

- A. **Passive Resistance** is a subject's verbal and/or physical refusal to comply with a member's lawful direction, causing the member to use physical techniques to establish control.
- B. **Active Resistance** is a subject's use of physically evasive movements directed toward the member – including but not limited to bracing, tensing, pushing or pulling to prevent the member from establishing control over the subject.
- C. **Aggressive Resistance** is a subject's attacking movement toward a member that may cause injury but not likely to cause great bodily harm to the member or others.
- D. **Deadly Force Resistance** is a subject's hostile, attacking movements with or without a weapon that create a reasonable perception by the member that the subject intends to cause and has the capability of causing death or great bodily harm to the member or others.

## IX. OFFICER RESPONSE OPTIONS

- A. **Communication** (*No Potential for Physical Harm*)

Dialogue – A two-way, controlled, non-emotional communication between the officer and subject, aimed at problem identification and/or resolution.

Verbal Direction – An officer tells or commands a subject to engage in or refrain from a specific action or non-action.

Tactical Positioning or Relocation – An officer recognizes an officer safety threat or risk and positions themselves in an advantageous tactical location or safe zone to create time and distance between themselves and the threat/risk to summon and/or await additional resources (e.g. back up) and/or deploy de-escalation techniques.

Touch – A touch used to comfort or console a distraught individual. An officer may use a soft assisting touch when guiding, directing or obtaining the attention of a subject, or a firm strong touch prior to escalating to a higher level of force.

- B. **Physical Control**

Physical Control is achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques – including but not limited to pain compliance, transporters, restraint devices, takedowns and striking techniques.

- C. **Less Lethal Weapons**

Less Lethal Weapons are weapons that are not designed fundamentally to cause death or great bodily harm. Some examples of less lethal weapons include, but are not limited to, electronic control devices (ECD) such as the Taser, expandable or straight batons, Sage® Weapons, chemical agent sprays and flashlights or other weapons of opportunity.

- D. **Deadly Force** (*Lethal Force*)

A member may use lethal force to protect him/herself or others from what he/she reasonably believes to be an immediate threat of death or serious bodily harm. Considerations for the use of deadly force are as follows:

1. Members shall use force only when no reasonably effective alternative appears to exist and shall only use the level of force which a reasonably prudent officer would use under the same or similar circumstances. Lethal force may be used only as a last resort or in emergency situations where other means cannot be considered, consistent with Florida Law and department directives. Justification for using lethal force is those facts known or perceived by a member at the time lethal force is utilized.
  2. A member may use lethal force to effect capture or prevent escape if he/she reasonably believes that the suspect has committed a felony involving the use, or threatened use, of lethal force and he/she has reason to believe that the suspect poses a significant threat of death or serious physical harm to the member or others, and when feasible.
  3. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.
  4. Shooting at or from moving vehicles or vessels is prohibited unless:
    - a. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle, or
    - b. The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all or the reasonable means of defense have been exhausted, are not present, or are impractical, which includes moving out of the path of the vehicle.
    - c. There is no reasonable alternative to apprehend a person who just committed a violent felony resulting in death or great bodily harm and it does not endanger others.
  5. Members shall not intentionally place themselves in the path of an oncoming vehicle or vessel (while on foot or in their police vehicle or vessel.) When confronting an oncoming vehicle or vessel, officers shall make every attempt to move out of the vehicle or vessel's path, rather than discharge their firearm or any other weapon at on-coming vehicle or vessel.
  6. Warning shots are prohibited. A warning shot is defined as the discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury
- E. **Neck Restraints (chokeholds)** are an intentional physical application of pressure to the neck of a non-compliant person by restricting the blood flow to their brain, or choking to restrict oxygen to the brain, using any part of the officer's body or object, such as a strap, rope, baton or flashlight. The use of neck restraints is **prohibited**, unless the use of deadly force is authorized.
- F. An action by any member acting in an official capacity that results or is alleged to have resulted in death or serious bodily injury, shall result in the member being transferred to Administrative Leave with pay, pending the outcome of the preliminary administrative review or investigation. A member may be transferred to Administrative Leave without pay upon an indictment or charges being direct filed on the member by federal or state prosecutors.
- G. An action by any member acting in an official capacity that results, or is alleged to have resulted, in death or serious bodily injury, will result in the member being placed on Administrative Leave, with pay, pending the outcome of the criminal investigation, preliminary administrative review or administrative investigation. (CFA 15.15)

**X. MEDICAL AID (CFA 4.08)**

All members are responsible for providing medical aid commensurate with their training and obtaining medical aid for individuals who complain of, or show signs of, injury or any medical complication while in police custody.

The member will request that Boynton Beach Fire Rescue (BBFR) respond to the scene and begin medical evaluation and care of such individuals as soon as practical. Fire Rescue emergency medical personnel at the scene of the incident will assess the need for further medical care beyond that provided at the scene.

**Note:** If a prisoner is placed in the prone position for any reason once secure, the prisoner shall be immediately placed in a sitting or standing position; to prevent injury or positional asphyxiation. A prisoner or handcuffed subject shall not be left unattended or unsupervised in a vehicle, at any time.



**XI. REPORTING RESPONSES TO RESISTANCE (CFA 4.07)**

When a member responds to resistance as delineated by departmental directive, whether an injury occurs, the member shall immediately contact their supervisor and advise of the nature of the incident and forced employed.

All reported responses to resistance will be addressed at every level of the affected member’s chain of command to determine whether:

- A. Departmental rules, regulations, policy or procedure were violated; and
- B. The relevant policy was clearly understandable and effective to cover the situation.

The below chart shall be utilized when determining the type of reporting method utilized for response to resistance incidents:

<b>INCIDENT TYPE</b>	<b>POLICE S.I.R.</b>	<b>RISK MANAGEMENT S.I.R.</b>	<b>BLUE TEAM ENTRY</b>
Discharge of a firearm. <i>Other than for training or recreational purposes.</i>	✓		✓
Discharge of a firearm. <i>Where there is injury or death of a person.</i>		✓	✓
Any response to resistance where there is alleged injury, whether visible or not visible or death of a person.		✓	✓
Any response to resistance where there is <i>no</i> report of injury or death of a person.			✓
Any show of force. <i>Example the pointing or aiming of a firearm at the body of an individual.</i>			✓

**Note:** A Blue team Entry DOES NOT replace an Incident Report.

This Directive shall not preclude from completing a Blue Team Entry for extenuating circumstances or upon direction from a supervisor.

In any incident where force is used by a member in performance of their duties, such reports will be completed and forwarded through the chain of command in the following manner:

1. The Blue Team Entry and a copy of the Offense/Incident Report shall be submitted to the supervisor for review, prior to the end of the member’s tour of duty. If the member is incapacitated and is hospitalized due to a response to resistance incident, the supervisor shall collect the relevant information and shall complete the Response to Resistance Report on behalf of the hospitalized employee. (CFA 15.15)
2. The supervisor will review the officers Blue Team entry and will complete a Risk Management Supervisor Incident Report in incidents that result in, or is alleged to have resulted in, injury or death of an officer or another person. Once approved by the supervisor, all documentation relating to the response to resistance/use of force will be forwarded to the Watch Commander for review no later than **4 days (96 hours)** after the incident. (CFA 15.15)

**Note:** If the response to resistance incident may have **violated departmental policy** and may require administrative investigation, the **Chief of Police is to be notified of the incident immediately via chain of command**. Pursuant to any response to resistance, any reviewing department supervisor may recommend appropriate remedial training or can recommend an administrative investigation for the indicated department member.

3. The Watch Commander/Division Commander will review the Blue Team Entry, Offense/Incident Report and corresponding S.I.R. Once approved by the Watch Commander/Division Commander, all documentation relating to the use of force will be forwarded to the Division Commander for review no later than **5 days (120 hours)** after the incident.

**Note:** In the event that any supervisor or Watch Commander/Division Commander is unable to meet the submission deadlines established in this directive, he/she must notify the Chief of Police in writing requesting an extension.

4. The Division Commander will conduct a preliminary administrative review on all incidents involving a member using force. Once approved by the Division Commander, all documentation relating to the use of force will be forwarded to the Office of Professional Standards for an Internal Affairs review no later than **7 days (168 hours)** after the incident.

**Note:** Officer-involved shooting incidents will fall under Index Code 2311, for time frames.

## **XII. ANNUAL RESPONSE TO RESISTANCE REPORT**

The Professional Standards Section will ensure that an administrative review and analysis of Response to Resistance is conducted annually. A detailed report documenting the findings will be forwarded to the Chief of Police for review no later than March 1st of any calendar year.

## **XIII. NOTIFICATION REQUIREMENTS**

### **A. Intentional Discharges of Agency Firearms**

As soon as practical after a member intentionally discharges a firearm on duty, the ranking on-duty supervisor shall be responsible for ensuring the following members are notified of the incident:

1. Chief of Police
2. Deputy Chief of Police
3. Division Commander
4. Watch Commander
5. Criminal Investigations Section Captain
6. Office of Professional Standards Captain
7. Executive Captain
8. Public Information Officer

### **B. Unintentional Discharges of Agency Firearms**

An unintentional discharge is defined as the discharge of an agency firearm, back-up firearm, or a personal firearm loaded with agency ammunition, by the inadvertent act, omission, or negligence of an agency member or when there was no deliberate intent to discharge the weapon.

Every unintentional discharge of an agency firearm will be investigated to ensure compliance with state law and agency policy.

In all cases of unintentional discharge of agency firearms, regardless of the location of the discharge, the involved member will immediately report the unintentional discharge to an on-duty supervisor.

Unless completed by the agency having jurisdiction, the supervisor responding to the scene of an unintentional discharge of an agency firearm shall:

Unintentional discharges of agency firearms, which occur within the jurisdictional boundaries of the Boynton Beach Police Department, shall be documented in an offense or incident report.

A sworn supervisor holding the rank of sergeant or above shall respond to the scene of an unintentional discharge of an agency firearm and shall;

1. Assume command of the incident.
2. Ensure medical treatment is provided to any injured persons.
3. Establish the crime scene and take measures to protect the scene through the positioning of department vehicles, placement of the crime scene tape, or other necessary means.
4. Assign an officer to any injured persons for the purpose of protecting relevant evidence and obtaining investigative information.



5. Ensure that the involved officer who discharged the firearm is separated and the firearm is holstered or otherwise secured without unloading.
6. Identify and separate all potential civilian witnesses and other members who were involved in the incident or present at the scene.
7. Notify the appropriate supervisory personnel.
8. Maintain control of the scene until relieved by an appropriate authority.

The responding supervisor shall ensure the following members are notified of all unintentional discharges of agency firearms:

1. Chief of Police
2. Deputy Chief of Police
3. Division Commander
4. Watch Commander
5. Criminal Investigations Section Captain
6. Office of Professional Standards Captain
7. Public Information Officer

#### **XIV. MEDIA RELATIONS**

The Chief of Police shall approve all media releases on member involved shootings or uses of deadly force. Media releases shall be prepared by the Public Information Officer and reviewed by the Criminal Investigations Division Commander and prior to submission to the Chief for his/her signature and approval.

#### **XV. PSYCHOLOGICAL/PSYCHIATRIC (FITNESS FOR DUTY) EVALUATION**

Any member who discharges a firearm at any person or any officer who has been fired upon, shall be required to participate in a psychological/psychiatric and/or other fitness for duty evaluation as deemed necessary by the City. Any members involved in the incident may voluntarily avail themselves of the Employee Assistance Referral Program.

Any member who through a use of force causes the death or great bodily harm of another person shall be required to participate in a psychological/psychiatric and/or fitness for duty evaluation as deemed necessary by the City.

**APPENDIX A:  
TOTALITY OF CIRCUMSTANCES**

