PURPOSE:

The purpose of this policy is to provide sworn members with the guidelines on the use of deadly and less lethal force. Use of force in the Sheriff's Office is known as response to resistance/aggression or RTA.

Response to resistance/aggression (RTA) is restricted to areas and levels authorized by statutory law, case law, and policy. A response to resistance/aggression must be appropriate to the situation, using the "objective reasonableness" standard declared by the U.S. Supreme Court in Graham v. Connor, 490 U.S. 386 (1989). The Court stated that the Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. Police officers often are forced to make split-second decisions about the amount of force necessary in a particular situation in circumstances that are tense, uncertain, and rapidly evolving. An unauthorized RTA occurs whenever there is an inappropriate or excessive response to resistance/aggression.

RESPONSE PARAMETERS:

During interactions with the public where the citizen is cooperative and demonstrates no aggression, the deputy will use professional dialogue and direction. However, if the subject is uncooperative and/or exhibits resistance/aggression, the deputy will respond using a reasonable amount of control necessary to control the situation.

A deputy's control responses are to be based on totality of the circumstances:

1. The subject's actions (Is the subject actively resisting arrest or attempting to evade arrest by flight?).
2. The deputy's perception of threat (Does the subject pose an immediate threat to the safety of the officer or others?).
3. The seriousness of the crime committed at issue.

Factors that may affect a deputy's decision in escalating or De-escalating the level of control:

- Deputy and suspect size and gender.
- Number of subjects to be controlled.
- Environmental conditions.

- Reaction time.
- The deputy's knowledge of their own abilities.
- The deputy's knowledge of the subject's history.
- The subject's mental illness.
- Presence or availability of weapons.

RESPONSE TO RESISTANCE OR AGGRESSION PROCEDURE:

Deadly Force Response: Any response used by the deputy that has a substantial likelihood to cause serious bodily harm or death. Serious bodily harm is defined as life threatening.

De-escalation: When possible, taking action in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation without the use of force or with a reduction in the force necessary.

Less Lethal Force Response: Any response used by a deputy other than that which is considered deadly force. When deadly force is not warranted, deputies should assess the incident in order to determine which less lethal technique or weapon will best bring it under control in a reasonable manner. General Order 206 provides additional guidelines regarding intermediate weapons (less lethal and impact).

Physical Control Response: Any use of personal weapons (i.e., hands, knees, feet, takedowns, etc.) required to overcome an assault or active resistance to arrest, or to control or restrain the movement of another, and which results in (or has the potential to result in) death or injury. Physical control response may be either lethal or less lethal. Less lethal physical control responses are divided into 2 categories:

a. Soft Empty Hand Control - Techniques that have a minimal chance of injury. Examples: Touch pressure and joint locks.
b. Hard Empty Hand Control - Techniques that have a probability of injury. Examples: Leg strikes, hand strikes.

Reasonable Belief: The facts or circumstances the deputy knows, or should know, are such as to cause a reasonable person with similar training and experience to act or think in a similar way under the same circumstances.

Deputies should utilize control techniques that are either approved or instructed by South Carolina Criminal Justice Academy certified defensive tactics instructors, or techniques approved and instructed by the Center for Advanced Training.

Competency Requirements - A deputy who believes their training is deficient or not current is to notify their supervisor in writing of the perceived deficiency.

Other Instruments/Techniques - This agency recognizes that in exigent, tense, uncertain, and/or rapidly evolving active confrontations, a deputy may need to reasonably use techniques and/or weapons not a part of this agency's formal training curricula, or not specifically addressed by this policy. Additionally, a deputy may need to use a technique or weapon in a manner inconsistent with training. It is further recognized that due to the unpredictable nature of a person's movements and/or actions under these circumstances, that defensive technique(s) and/or weapon(s) may unintentionally (on the part of the deputy) impact a body area or produce an outcome which does not parallel training.

The presentation or pointing of a weapon, including a firearm, or verbal threats to use a weapon is a "show" of response to resistance/aggression. A "show" of RTA will be documented in a Code 5 (incident report) or on a Code 4 (miscellaneous incident report card) if a Code 5 does not exist. A show of response to resistance/aggression will not be reviewed as an actual RTA.

RESPONSE TO RESISTANCE/AGGRESSION REVIEW AND ANALYSIS – All levels of control used will be fully documented in an Incident Report. When the level of control used is Hard Empty Hand Control or greater, Soft Empty Hand Control that results in injury, or was used in an attempt to cause pain compliance, the incident report will be marked as "RTA."

A Response to Aggression Review form will be completed by the deputy's supervisor. A copy of the report and a completed Response to Resistance/Aggression Review/Analysis form is to be submitted to the Division Commander who reviews the incident and submits the review to the Office of Professional Standards. Any deputy who responds to resistance/aggression or any deputy that witnesses a response to resistance/aggression is required to submit supplemental reports to the incident report. Response to Resistance/Aggression Review/Analysis forms are filed by the Office of Professional Standards for policy and training review. Professional Standards conducts a quarterly review of Response to Resistance/Aggression reports in order to identify trends, training needs, or potential patterns of abuse. The Sheriff reviews the Office of Professional Standard quarterly report.

Annually, the Office of Professional Standards conducts a Response to Aggression Analysis to include:

- Dates and times of incidents.
- Types of encounters resulting in the 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.
- Impact of findings on policies, practices, equipment, and training.

RESPONSE TO A DEADLY FORCE ASSAULT - A weapon placed in the hands of a deputy is a defensive tool used to protect the public at large and the deputy. The use of a weapon by a deputy is to be based on demonstrated need, tempered with common sense, consistent with state law and Sheriff's Office regulations, and employed under a spur of responsibility and informed professional judgment.

JUSTIFICATION FOR A DEADLY FORCE RESPONSE - As a direct result of Tennessee v. Garner, 105 S. Ct. 1694 (1985), there are two specific justifications in which a deadly force response can be used.

1. Self-defense or defense of the public: To protect the deputy or others from what is reasonably believed to be an imminent threat of death or serious bodily harm.
2. To prevent escape where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that they have committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

NOTE: In incidents where the suspect(s) pose no imminent threat to the officer's safety and/or the safety of others, the use of deadly force to prevent the suspect's escape is not justified.

Verbal Warning - Before using deadly force, the deputy must provide a verbal warning if the situation and time allows.

WARNING SHOTS: Warning shots are **prohibited.**

RESPONSE TO RESISTANCE/ AGGRESSION INVOLVING MOVING VEHICLES:

Past incidents at the Sheriff's Office have proven it is not reasonable to believe a moving vehicle will stop when fired upon. Likewise, unless a deputy is at point blank range, it is improbable that the driver will be disabled and the threat removed. A bullet will not stop a moving vehicle.

As a law enforcement officer, a deputy is charged with the duty to protect life and property, including their own life. Ideally, an evaluation of the incident, their surroundings, and their options should allow the deputy to determine proper tactic or procedure to place them in the best possible position to protect citizens and themselves. Time is always critical and time at the deputy's disposal should be spent avoiding or evading the threat.

Since every situation is different, it would be unwise to completely remove the option of firing at a moving vehicle; however, the discharge of a weapon at or into a moving vehicle will be closely scrutinized. The use of deadly force, after a deputy recklessly or carelessly places themselves in danger, will be subject to serious review.

SHOOTING OF AN ANIMAL:

A deputy may discharge a firearm to stop an animal that represents a threat to the deputy/public safety or as a humanitarian measure where the animal is seriously injured. This would also include for the protection and safety of a Sheriff's Office canine.

REPORTING FIREARMS DISCHARGE:

It is the responsibility of every deputy to immediately report to a supervisor any incident, involving them or another deputy, when shots are fired, accidentally or intentionally. This would exclude training and recreational purposes. The supervisor is to immediately notify the OPS. A written report will be completed to document the incident.

REVIEW AND REMEDIAL TRAINING:

Any deputy determined to have discharged a weapon as a result of an accident or negligence is required to immediately undergo remedial training, in addition to any disciplinary action. If necessary, a special class is to be scheduled to meet this requirement.

PERSONAL INJURY OR PROPERTY DAMAGE:

1. An incident resulting in personal injury or property damage is to be factually detailed in writing.

2. When an incident results in injury, first aid is to be rendered and/or EMS called as soon as feasible while considering the safety of deputies and others. The deputy will request EMS through Communications/Dispatch. When significant bodily injury or property damage occurs on the scene, the Uniform Patrol shift supervisor is to respond immediately.

PROCEDURE FOR LOSS OF LIFE OR SERIOUS INJURY:

Any employee whose action(s) or response to resistance/aggression in an official capacity results in serious injury or death is to be removed from a line duty assignment pending administrative review by the Sheriff.

1. When an incident results in injury, first aid is to be rendered and/or EMS called as soon as feasible. In any circumstance that results in loss of life or serious bodily injury, the Uniform Patrol shift supervisor is to immediately respond to the scene. The Sheriff, Division Commander, and OPS are to be immediately notified. Notification to SLED will be made by OPS.
2. The responding supervisor will obtain preliminary information from the deputy/ deputies involved and secure the scene. This information will be used to ensure public safety.
3. Upon the arrival of the OPS, an account of the incident will be provided by the deputy/deputies involved pursuant to Garrity so that the investigation may begin.

INVESTIGATION PROTOCOL:

In most circumstances, an investigation into an Officer-Involved Shooting will be divided into separate investigations, criminal and administrative. This protocol is the same as In-Custody Death Investigations (See General Order 247).

1. Criminal Investigation: South Carolina Law Enforcement Division (SLED) will conduct a criminal investigation into:
   a. The deputy's response to aggression and/or actions in the incident.
   b. The actions of the subject(s) and file criminal charges against any surviving subject(s) if appropriate.
   c. This investigation is independent of the Sheriff's Office investigation and will utilize SLED resources (forensics, interviews, etc.).
   d. The SLED agent completes their investigation, and it is then forwarded to the Solicitor's Office for a determination on charges.
2. Administrative Investigation: The Office of Professional Standards (OPS) will conduct an administrative investigation to determine if the deputy's actions were within the Sheriff's Office's policy and procedures.

OPS will report their findings to the Sheriff and/or the Conduct and Procedures Review Board.

OPS will issue a temporary duty weapon to the deputy if their weapon was seized by SLED.

OPS and the Center for Advanced Training will evaluate the Sheriff's Office training, policies, and procedures in light of circumstances that led to the officer-involved shooting.

3. The OPS has the full responsibility for obtaining complete written reports, statements and documentation from the deputies, witnesses and other personnel present at the scene of the incident. The commander of OPS will assign deputies who are involved, a date and time to report to the OPS office to submit their written statement under a Garrity advisement. All investigative reports, including material evidence and information when appropriate, are to be thorough and complete.

4. When deemed appropriate by the Sheriff, the Conduct and Procedures Review Board will convene to review the complete investigation. After review, the Board forwards formal recommendations to the Sheriff, who makes final administrative disposition of the case. The Sheriff may, at his discretion, waive the need for a Conduct and Procedures Review Board.

Whenever a deputy employs any physical means to affect control (including with the use of less-lethal and lethal weapons), unless physically incapacitated, the deputy is to:

1. Ensure arrestee is properly restrained or no longer poses an immediate threat to the safety of others.
2. Ensure restrained subjects are placed in upright position.
3. Ensure handcuffed, obese persons are not required to remain in a prone (lying on chest) position.
4. Determine the overall physical condition of the person(s) subjected to physical control.
5. Ensure first aid and emergency medical assistance, if needed. EMS must be notified and respond to the scene if the person(s) suffered obvious severe injuries, medical distress is apparent or the person(s) is unconscious.

See General Orders 240 and 247 for information concerning transportation of certain high-risk detainees and suspects at risk of in-custody death.

POSSIBLE OR ATTEMPTED INGESTION OF NARCOTICS OR EVIDENCE BY A SUSPECT:

Instances may arise when a deputy believes that a suspect or other person they have encountered is trying to, or already has, ingested narcotics or other evidence. If this occurs, under no circumstances will any deputy forcibly remove the item from the person's mouth or use any type of force for the purposes of preventing the ingestion of the item.

The following procedures will be followed in the instance that a person <u>in custody</u> has ingested or is attempting to ingest narcotics:

1. Verbally advise the person to stop swallowing the item and that failure to do so may cause serious injury or death.
2. If the person swallows the item, the deputy is to request EMS to respond. The person must be transported to the ER by the deputy or EMS to be evaluated.

The following procedures will be followed in the instance that a person <u>encountered</u> has ingested or is attempting to ingest narcotics:

1. Verbally advise the person to stop swallowing the item and that failure to do so may cause serious injury or death.
2. If the person swallows the item, the deputy is to request EMS to respond. Should the person leave the scene or decline transport, the refusal will be documented.

Unless there are charges on the person, a deputy cannot make a citizen receive medical attention from EMS or a medical facility.

NECK HOLDS/RESTRAINTS:

The use of all choke holds or neck restraints, including the Lateral Neck Restraint (shoulder pin) is considered deadly force.

HOG-TYING:

The process of hog-tying detainees for transport is prohibited. For violent detainees, the use of hobble restraints is authorized consistent with current training practices.
When using hobbles, close the car door on the end strap to prevent the detainee from kicking, but <u>do not</u> connect the strap to the handcuffs or the detainee's belt. Do not leave the strap dangling outside of the vehicle from the car door.

POLICY AWARENESS AND INSTRUCTION:

Prior to receiving a field assignment, a deputy trainee's immediate supervisor or Field Training Deputy is to ensure the trainee:

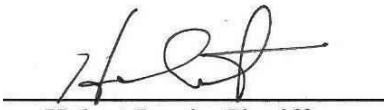
1. Has reviewed and signed for an electronic copy of this general order on PowerDMS.
2. Understands this general order.
3. Signs a Response to Resistance/Aggression Statement.

DUTY TO INTERVENE:

Every employee has the duty to respond, within their scope of training, and/or to report any unreasonable use of force or violation of departmental policy, local ordinance, or state or federal law to a supervisor. It is every employee's duty to protect all citizens and employees of this agency. It is the policy of this agency that:

1. Any deputy present in a situation who reasonably believes that another deputy is using force in violation of law or policy has a duty to intervene to stop the unlawful or inappropriate use of force as long as it is safe and reasonable to do so.
2. Any employee who witnesses or is made aware of an instance of excessive, unlawful, or inappropriate use of force by a deputy, other law enforcement officer, or any public safety employee of any agency has an obligation to report that situation to a supervisor or the Office of Professional Standards immediately.

Failing to intervene or report excessive, unlawful, or inappropriate use of force could lead to civil and/or criminal proceedings being taken as well as disciplinary action.



Hobart Lewis, Sheriff