



CHARLOTTESVILLE POLICE DEPARTMENT

Note: This directive is for internal use only and does not enlarge an officer’s liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Charlottesville Police Department and then only in a non-judicial administrative setting.

Type of Directive: GENERAL ORDER	Policy Number: 537.00
Subject: RESPONSE TO RESISTANCE - GENERAL	Effective Date: 04/05/2021
VLEPSC Accreditation Standard(s): ADM.05.01	Review Date: Annually
Authorization: Chief R.M. Brackney <i>Rm Brackney</i>	<input type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input checked="" type="checkbox"/> Revises: 11/04/2019

I. POLICY

It is the policy of the Charlottesville Police Department, during every police encounter, to treat all members of the public with dignity, respect, and in adherence with the rights and liberties afforded by the United States Constitution and the Constitution and laws of the Commonwealth of Virginia. A fundamental principle of this agency is to value and preserve human life. Officers **shall** only use force when no other viable option is available and non-physical options are not viable or have been exhausted. In all cases where force is used, only the minimal degree of force which is necessary to overcome resistance **shall** be used. All responses to resistance by a law enforcement officer must be objectively reasonable under the totality of circumstances. The decision to use force “requires careful attention to the facts and circumstances of each case, including the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, “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...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” (*Graham vs Conner, 49 U.S. 386 (1989)*)

All officers are responsible for knowing and complying with this policy and conducting themselves in a manner aligned with departmental expectations and standards of conduct. Any violation of this policy will subject the officer to disciplinary action, up to and including termination, and criminal prosecution. Supervisors **shall** ensure all personnel in their command understand and comply with this policy. This policy is to be reviewed and personnel are to receive training in responding to resistance/use of force, on an annual basis. Any questions, concerns, or clarification requests should be addressed to your immediate supervisor and if necessary through the chain-of-command.

II. PURPOSE

The primary purpose of this policy is to establish rules and regulations governing the use of force by officers of the City of Charlottesville Police Department when responding to resistance.

III. DEFINITIONS

Baton: A roughly cylindrical club made of wood, rubber, plastic or metal, carried as a compliance tool and defensive weapon by law-enforcement officers.

Choke Holds / Neck Restraints: 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.

Conducted Energy Weapon (CEW): Conducted Energy Weapons (Taser) are weapons that disrupt the central nervous system of the body.

Deadly Force: Force that has the substantial likelihood of causing serious bodily harm or death.

De-escalation: Actions or communications during an encounter used in an attempt to stabilize the situation and reduce the immediacy of the threat so more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include but is not limited to the use of such techniques such as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

Defensive Tactics/Techniques: a response to resistance option to gain compliance from resistant or aggressive individuals in arrest or other enforcement situations.

Duty to Intervene: Any law-enforcement officer who, while in the performance of his official duties, witnesses another law-enforcement officer engaging or attempting to engage in the use of excessive force against another person shall intervene, when such intervention is feasible, to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A law-enforcement officer shall also render aid, as circumstances reasonably permit, to any person injured as the result of the use of excessive force.

Escalate: Actions or communications during an encounter that rapidly increase the intensity or seriousness of the encounter that may increase the chance of violence.

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.

Exigent circumstances: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a subject, or some other consequence improperly obstructing legitimate law enforcement efforts. (Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

Graham vs Conner: 490 U.S. 386 (1989), was a United States Supreme Court case where the Court determined that an objective reasonableness standard should apply to a civilian's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person.

Hogtie: Method of binding limbs together, rendering a subject immobile.

Imminent Death: Death that is impending or about to occur.

Kinetic Impact Munitions: Includes impact rounds and baton rounds, such as rubber batons, bean bag rounds, foam baton rounds, and plastic, wax, wood, or rubber-coated projectiles.

Less-Lethal Force: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Objectively Reasonable: A Fourth Amendment standard whereby an officer's belief that they must protect themselves or others from death or serious bodily injury is compared and weighed against what a reasonable or rational officer would have believed under similar circumstances. This determination is made by reviewing all relevant facts and circumstances of each particular case, including, but not limited to the severity of the crime at issue; whether the subject poses an immediate threat to the safety of the officers or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.

Positional Asphyxia: Death resulting from body positioning restricting the person's ability to breathe.

Reasonable Belief: Is belief based on a set of facts and/or circumstances that would cause a reasonable person to believe something is true.

Resistance: Acts by an individual that opposes an officer's lawful commands. There are two types of resistance:

- "Active" Resistance: Affirmative violent or defensive action to defeat an officer's ability to take them into custody.
- "Passive" Resistance: Nonviolent opposition to authority or refusal to cooperate with legal or lawful requirements.

Serious Bodily Injury: the term "serious bodily injury" means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Warning shot: Discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.

Weapon of Last Resort: A weapon used outside of its intended purpose or design. A weapon of last resort can be used by an officer when the officer's life or the life of another is in imminent threat of death or serious bodily injury. A weapon of last resort can be an object or use of physical tactics.

Vascular Neck Restraint: A physical maneuver which restricts blood-flow to the brain, which can result in unconsciousness.

IV. RESPONSE TO RESISTANCE REQUIREMENTS & PROHIBITED ACTS

1. Officers of the Charlottesville Police Department **shall** only use force that is reasonable and necessary to protect life, protect themselves and/or others from bodily harm, and to affect lawful objectives.
2. Officers **shall** not use deadly force against anyone, including a fleeing felon, except under the following circumstances:
 - a. Protection of the officer's life from imminent threat of serious bodily harm or death.
 - b. Protection of the life of another person from imminent threat of serious bodily injury or death.
 - c. To prevent the escape of a person who has committed a violent felony when the officer has probable cause to believe the person poses an **imminent** danger of death or serious physical injury to the officer or another person.
3. **When reasonably practical**, an officer will give a verbal warning of their intent to use Deadly Force or Less-lethal weapons on individuals prior to the use of the force. (See Virginia Code Ann. § 19.2-83.5, Use of Deadly Force by a Law-Enforcement Officer During an Arrest or Detention)
4. Law Enforcement officers may only use force that is objectively reasonable, necessary, and proportional to effectively and safely accomplish any of the following:
 - a. to lawfully arrest, detain, or search an individual.
 - b. to overcome active physical resistance.
 - c. to prevent the escape of an individual whom the officer has probable cause to believe has committed a serious crime.
 - d. to defend oneself or others from active and actual physical danger; and/or
 - e. to prevent an individual from engaging in acts of serious self-harm, pursuant to Virginia State Code 37.2-808 (Emergency custody).
5. Officers **shall** only use the minimum amount of force necessary to accomplish a lawful purpose/objective, including levels of force lower than the level of threat when reasonable. Officers **shall** not, under any circumstance, use a level of force disproportionate to the level of threat. When it is objectively reasonable that a subject is fully under an officer's control, then the use of force must terminate immediately.
6. Choke Holds and/or Lateral Vascular Neck Restraints are strictly **PROHIBITED**, unless the use of deadly force is appropriate and the technique is utilized as a last resort.
7. While affecting the arrest of a subject who has been placed faced down on the ground, officers **shall** not position themselves on top of the subject in such a way that would restrict the subject's airway or ability to breathe. The use of a knee, arm, or leg positioned in such a manner that restricts a person's airway is **strictly prohibited**. While in a face-down position, officers **shall** not **hogtie** an individual who is detained, due to the increased risk

of positional asphyxia. An individual, who has been placed in a face down position for handcuffing purposes **shall** be returned to an upright position immediately after being secured.

8. The discharge/firing of Warning shots of any kind is strictly **PROHIBITED**.
9. An officer **shall not discharge a firearm at a moving vehicle** or the occupants of a moving vehicle unless the occupants are using deadly force against the officer or another person present, by means other than the vehicle, or when the vehicle is being operated as a weapon and the officer or third party is faced with imminent death or serious bodily injury. When possible, an officer threatened by an oncoming vehicle **shall** move out of its path instead of discharging a firearm at it or any of its occupants. Officers should keep in mind the following:
 - Shooting at a moving vehicle with a firearm is unlikely to immediately stop or disable the vehicle.
 - Shooting at a moving vehicle could cause injury or death to innocent persons in the vehicle or could strike the driver, causing the vehicle to lose control, resulting in death or injury to innocent parties (uninvolved pedestrians and motorists).
10. A police officer **shall not discharge a firearm** under conditions likely to cause death or injury to an innocent person. The only exception is a situation where an officer, or third party, is faced with imminent death or serious bodily injury and the officer has done everything reasonably necessary to avoid the use of deadly force.
11. Law enforcement officers have a constitutional **Duty to Intervene**, when a citizen's constitutional rights are being violated by the actions of another law enforcement officer. This is especially important under circumstances when an officer witnesses an unreasonable or excessive use of force against another. The failure to intervene when having the ability to do so may subject the witnessing officer to criminal, civil, and administrative sanctions. In addition to stopping the unlawful behavior, the following **shall** apply:
 - Officers are to immediately report their observations of excessive force, unreasonable force, and/or the constitutional violation, to a supervisor and prepare a written report outlining those observations.
 - Any supervisor notified regarding a duty to intervene violation **shall** immediately respond to the scene. The responding supervisor **shall** initiate an investigation into the alleged violation and in consultation with the Chief of Police and if necessary, take immediate personnel action, to include, but not limited to a suspension of police powers of the accused officer.
12. In all instances where force is applied, once the scene is safe and as soon as practical, the officer has a **Duty to Render Aid** to the subject for any medical needs. If the officer believes that medical assistance is needed, or if the subject is requesting medical assistance, the officer **shall** request the assistance of emergency medical personnel.

V. NON-ESCALATION AND DE-ESCALATION

The goal of non-escalation and de-escalation is to gain voluntary compliance from subjects and thereby reduce the need to use force when it is safe, feasible, and without compromising law enforcement priorities.

When reasonable, prior to using force at any level, officers **shall** use proper non-escalation and de-escalation techniques to decrease the likelihood of force and to increase the likelihood of cooperation between officers and members of the public.

Specific non-escalation and de-escalation techniques include time and distance, officer positioning, use of clear and effective communication skills, and/or additional personnel such as CIT trained officers or officers with Less-lethal tools.

Officers should consider whether a subject's lack of compliance is a deliberate attempt to resist or whether it may be related to other factors such as: medical conditions, mental impairment, developmental disabilities, physical limitation, language barrier, drug or alcohol impairment, and/or behavioral crisis.

After evaluating whether a subject's lack of compliance is based on one of the factor's listed above, the law enforcement officer **shall** determine whether force is necessary, and what force is most reasonable to resolve the situation safely. Whenever possible and when such delay will not compromise the safety of the officer or others, will not result in the destruction of evidence, the escape of a subject, or the commission of a crime, an officer will allow an individual reasonable time and opportunity to submit to verbal commands before force is used.

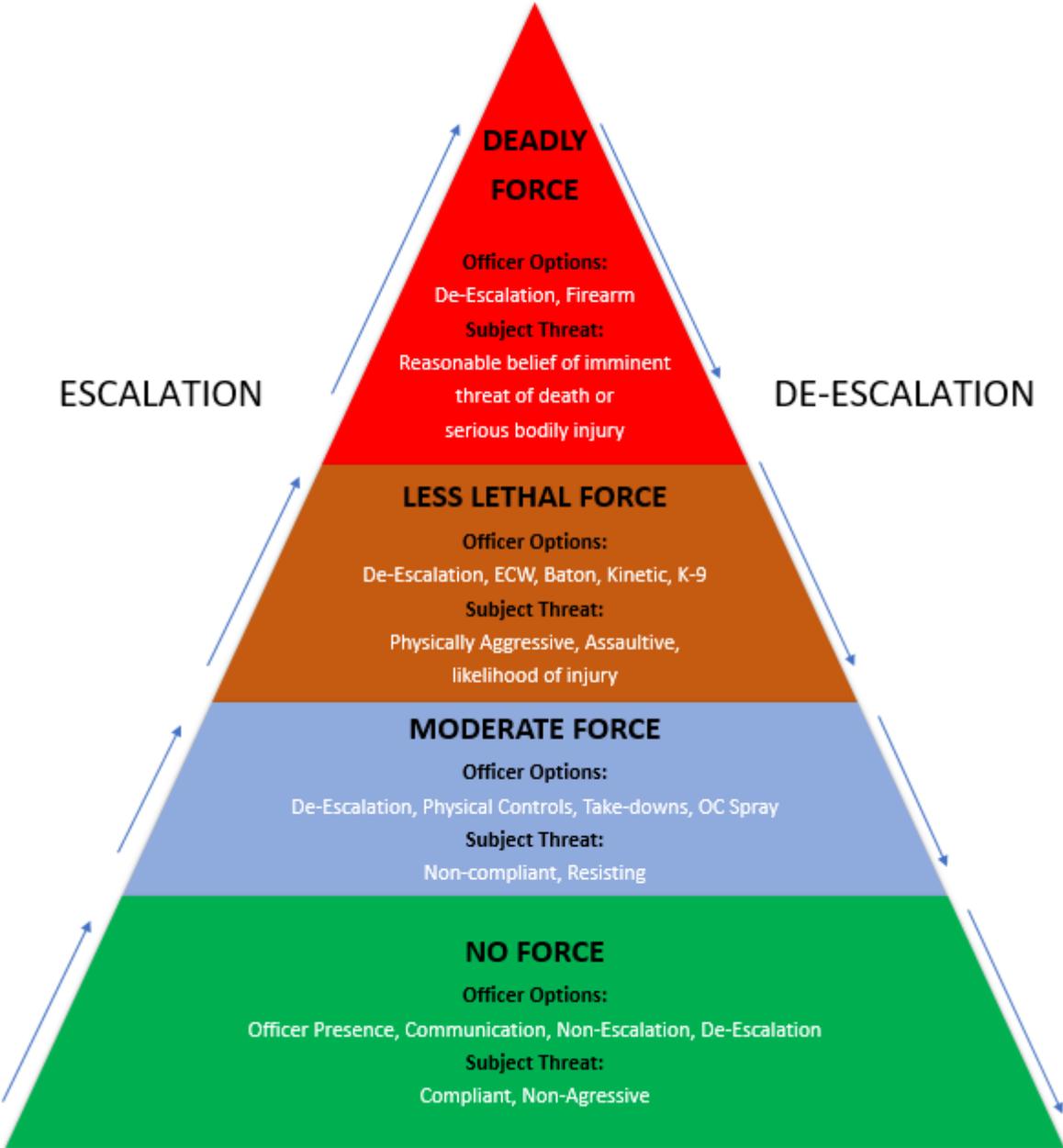
VI. RESPONSE TO RESISTANCE OPTIONS

The Department's "*Response to Resistance Decision Making Chart*" **shall** serve as a basis for the use of an officer's discretion in responding to perceived threats and acts of resistance with all issued lethal or non-lethal weapons authorized by the agency.

The "*Response to Resistance Decision Making Chart*" reflects what the officer's escalation of force options are when presented with certain behaviors while conducting official police business. It is the subject's behavior that places the officer and/or others in danger. The subject's threat is the primary factor in choosing a force option. However, the officer should also consider the totality of the circumstances to include, but not limited to, a subject's altered state due to alcohol or drugs, mental impairment, medical conditions, or the proximity of weapons.

RESPONSE TO RESISTANCE DECISION MAKING CHART

USE THE OPTION THAT REPRESENTS THE MINIMAL AMOUNT OF FORCE NECESSARY TO REDUCE THE IMMEDIATE THREAT



The following are examples of how to interpret the “*Response to Resistance Decision Making Chart*”. These examples are for illustrative purposes and not intended as an exhaustive list.

No Force: The level of control where an officer can interact with a subject and mere presence and verbal communication/commands are enough to gain compliance. Examples of “No force” are:

- Officer Presence (uniformed officer displaying a professional demeanor).
- Non-escalation and/or de-escalation techniques.
- Clear verbal commands/communications given in a clear and concise manner in order to gain control and compliance. Examples of verbal commands are: “Stop, Police”; “Police, Don’t Move” and “You’re Under Arrest, Put Your Hands on Your Head.”
- Hands control (compliant handcuffing).

Moderate/Limited Force: The level of control necessary to interact with a subject who is displaying active resistance and is non-responsive to de-escalation efforts. This level of force has a low probability of causing injury and includes physical controls such as control holds and other weaponless techniques. Examples of “Moderate/Limited Force” are:

- Defensive Tactics/Techniques (response to resistance options to gain compliance from actively resistant or aggressive individuals during arrest or other enforcement situations (Examples: take-downs, come-alongs, and distraction strikes). When using defensive tactics/techniques, officers should use only those tactics/techniques in which they have been trained and which are approved by the Virginia Department of Criminal Justice Services (DCJS). Defensive tactics training is mandated by DCJS for all sworn department personnel. All officers **shall** receive training in the use of defensive tactics during initial basic law enforcement training. Additionally, refresher training **shall** be provided to all officers on an annual basis by DCJS approved/certified defensive tactics instructors.
- OC Spray

Less Lethal Force: When de-escalation techniques are not effective or appropriate, an officer may consider the use of Less-lethal force to control a non-compliant or actively resistant individual. This level of force poses a foreseeable risk of significant injury or harm but is less likely to cause death. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment:

- to protect the officer or others from immediate physical harm,
- to restrain or subdue an individual who is actively resisting or evading arrest, or
- to bring an unlawful situation safely and effectively under control.

Examples of Less-lethal force options are:

- Conducted Energy Weapon (CEW/TASER)
- Impact Weapons (ASP, Baton, Bean Bag rounds)
- K-9

Deadly Force: Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, weapons of last resort, and certain interventions to stop a subject's vehicle.

VII. USE OF DEADLY FORCE

The following procedures **shall** be followed in the event of an officer's use of deadly force.

- It **shall** be the responsibility of the on-duty supervisor to immediately notify their full chain of command to include the Chief of Police, for any response to resistance that results in death or serious injury to a citizen or an officer.
- The Commonwealth's Attorney for the City of Charlottesville **shall** be notified by the Chief of Police or their designee.
- After consultation with the Commonwealth's Attorney, the Chief of Police will determine investigative responsibility regarding the subsequent criminal investigation, to include the Department, the Virginia State Police, and/or other agencies.

See General Order 522.10, Response to Officer Involved Critical Incidents for further procedures governing the use of deadly force.

VIII. RESPONSE TO RESISTANCE - REPORTING REQUIREMENTS

Each officer using force **shall** complete a "*Subject Resistance Report*" to document all response to resistance incidents.

A "*Subject Resistance Report*" is not required in the following situations [unless an injury occurs or there is a complaint of injury by either the subject or to any involved officer(s)]:

- The mere presence of an officer or a police canine.
- An officer's issuance of verbal commands.
- Compliant Handcuffing (with no resistance).
- Escort holds (with no resistance).
- The physical removal of an otherwise passively resisting demonstrator.
- The unholstering or display of a firearm or other weapon. These occurrences will be documented on a Department "*Weapons Compliance Form*".

Officers **shall** immediately notify their shift supervisor of any response to resistance mentioned in this directive, regardless of whether or not an arrest is made.

In addition to an Incident Based Report (IBR) required to document the incident, a "*Subject Resistance Report*" will also be submitted by the officer to the shift supervisor. The form must be completed in its entirety and submitted for review/approval prior to the end of the officer's shift.

In the event of an injury to either the subject or officer, or an officers use of an impact weapon, police canine, CEW, or OC spray; the immediate supervisor receiving notification **shall** immediately respond to the scene to ensure the safety and well-being of the involved officer(s) and subject(s).

In the event that a response to resistance/use of force application results in death or serious physical injury to any person, the officer involved in using such force may be removed from line duty assignment and placed on paid administrative leave or as otherwise directed by the Chief of Police, pending the completion of an administrative review/investigation of the incident.

If the subject of the response to resistance is not seriously injured (e.g., complaint of pain, minor abrasion, or small scrape) the supervisor **shall** review, add any remarks, sign, date the “*Subject Resistance Report*”, and submit it through their chain-of-command.

All reviewing personnel **shall** consider relevant training, department policy, and law pertaining to the response to resistance administered by the officer.

The Division Commander **shall** review the “*Subject Resistance Report*” and any and all attachments for completeness and policy compliance, sign and date the report, and indicate one of the following.

- “In compliance. No further action required”. The Division Commander will then submit the “*Subject Resistance Report*” to the Assistant Chief of Police for review/approval.
- “Full Response to Resistance (RTR) investigation ordered”. The Division Commander will consult with the Assistant Chief of Police, who will determine investigative responsibility.
- “Commonwealth Attorney Review Requested”. The Division Commander recognizes criminal conduct and further consultation is needed. The Division Commander will make immediate notification to the Assistant Chief of Police. The Assistant Chief will consult with the Chief of Police to determine investigative responsibility after consultation with the Commonwealth Attorney.

Note: The Assistant Chief of Police or the Chief of Police may order a full RTR investigation or a Commonwealth Attorney review at any time.

If a full investigation is ordered, a supervisor, as approved by the Assistant Chief of Police, **shall** be assigned by the Division Commander to investigate the response to resistance. The assigned investigator will investigate whether the officer’s response to resistance was consistent with and in compliance with departmental policies, training protocols, laws, and document all findings.

In the event the subject on whom force was used invokes his right to counsel, prior to being interviewed by the person authorized to conduct the administrative investigation, the investigating supervisor **shall** refrain from obtaining a statement until they consult the Commonwealth’s Attorney’s Office.

The supervisor **shall** prepare a report of the investigation with their findings and attach it to the “*Subject Resistance Report*”. The report **shall** include the following elements:

- The time a supervisor responded to the scene.
- Steps taken to secure the scene, officer and subject.
- Witnesses identified and interviewed including recorded statements.
- Summary of alleged injuries and injury/scene photographed.

- Subject’s interview and recorded statements.
- Description of injuries of subject and/or officer and medical treatment received.
- Retrieval of relevant BWC videos and images, ECC records, and 911 recordings.
- Analysis of relevant training, policy, and law pertaining to the response to resistance administered by the officer.

The reviewing supervisor **shall** include copies of any related incident reports, photographs, videos, witness summaries, all other relevant information, and submit it through the chain-of-command to the appropriate Division Commander within a reasonable time period after the incident.

Upon completion of the RTR investigation, the Division Commander will submit the “*Subject Resistance Report*”, the full investigative file, and a memorandum to the Assistant Chief of Police that fully describes the facts, circumstances, and findings, as well as their approval (and disciplinary recommendations, if necessary). The Assistant Chief will forward the full file to the Chief of Police for final review/approval.

When a response to resistance incident has completed the full review process, the Assistant Chief of Police shall forward the “*Subject Resistance Report*”, the investigative report, all investigative attachments, and any other related documentation to the Office of Professional Standards for filing and retention.

The Office of Professional Standards is responsible for ensuring all documentation relating to Departmental response to resistance incidents are properly secured, stored, retained pursuant to Virginia Library of Congress retention schedules, and/or expunged when appropriate (in response to a court order). Prior to any expungement or destruction, the Office of Professional Standards **shall** receive approval from the Assistant Chief of Police.