



HRCJTA TB 2020-3

DATE: December 3, 2020
TO: Hampton Roads Criminal Justice Training Academy Member Agencies
FROM: Scott Barlow, Executive Director
SUBJECT: HRCJTA Training Bulletin 2020-3(Presidents Executive Order No. 13929)

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On June 16, 2020, President Trump issued Executive Order 13929, *Standards for Certification on Safe Policing for Safe Communities*. As a part of that Executive Order, any agency wishing to receive Federal discretionary funding must be certified as compliant with two (2) mandatory safe policing principles:

1. Use of force policies that adhere to all federal, state, and local laws, and
2. A policy prohibiting the use of chokeholds, except where deadly force is allowed by law.

In response to this Executive Order VRSA has provided some solid guidance in the areas of “Use of Force”, “De-Escalation”, and “Duty to Intervene”.

VRSA recently adopted the International Association of Chiefs of Police *National Consensus Policy on Use of Force*, after making minor modifications to clearly apply the requirements of the Executive Order to the policy. **Attached to this TB.**

VRSA has also provide a “Duty to Intervene” sample policy. **Attached to this TB.**

Mr. Gary Dillon’s (VRSA Public Safety Specialist) letter to all VRSA member Police Chiefs discusses these areas as well. **Attached to this TB.**

TB 2020-3 is a sharing of the work done by VRSA. The HRCJTA does not take the credit for this work, and sincerely thanks VRSA and Mr. Gary Dillon for providing this important information.



VRSA

Virginia Risk Sharing Association

Date: November 23, 2020

To: VRSA Police Chiefs

From: Gary M. Dillon, Public Safety Specialist 

Re: President's Executive Order No. 13929

On June 16, 2020, President Trump issued Executive Order 13929, *Standards for Certification on Safe Policing for Safe Communities*. As a part of that Executive Order, any agency wishing to receive Federal discretionary funding must be certified as compliant with two (2) mandatory safe policing principles:

1. Use of force policies that adhere to all federal, state, and local laws, and
2. A policy prohibiting the use of chokeholds, except where deadly force is allowed by law.

The Virginia Department of Criminal Justice Services provided guidance to affected agencies last week and those documents are attached to this memo package for your convenience.

VRSA recently adopted the International Association of Chiefs of Police *National Consensus Policy on Use of Force*, after making minor modifications to clearly apply the requirements of the Executive Order to the policy. The policy has been placed in the VRSA sample policy format with appropriate VLEPSC citations and footnotes added. In addition to the two mandatory principles, six of the eight suggested principles have also been referenced in the policy. The new policy, renamed *Response to Resistance*, is included in this package as well as the VRSA *Duty to Intervene* sample policy that we published in May 2020. The principle referencing No-Knock warrants will be addressed in our Search Warrants sample policy after the General Assembly's regular session.

Lastly, to comply with the principle referencing training protocols on use of force and de-escalation, we recommend that you contact your law enforcement academy of record for guidance.

If we can be of further assistance to you or your agency, please do not hesitate to contact me at 804-237-7326 or gdillon@vrsa.us

Package Contents:

VRSA Memo

DCJS/VLEPSC Memo

Standards for Certification on Safe Policing for Safe Communities

Safe Policing for Safe Communities Fact Sheet

VRSA Sample Policy - *Duty to Intervene*

VRSA Sample Policy - *Response to Resistance*

	<p style="text-align: center;">[AGENCY NAME]</p> <p style="text-align: center;">Rules and Regulation 2-06</p>	Effective Date:
		Accreditation Standards: ADM.05.01
		Supersedes Revision Dated:
Subject: Response to Resistance		By Authority of: <i>John Doe</i> , Chief of Police

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This model policy was produced by the International Association of Chiefs of Police (IACP) and its content has been placed within the format of the VRSA law enforcement sample policies. VRSA edited this policy to comply with the *Standards for Certification on Safe Policing for Safe Communities* and appropriate VLEPSC citations and footnotes inserted.

The National Consensus Policy on Use of Force is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States. The policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.

VRSA encourages agencies to use this policy to establish one customized to their agency and jurisdiction. For assistance, please contact Gary Dillon, Public Safety Specialist at 804-237-7326 or gdillon@vrsa.us. Published: 11/23/2020

NOTE:

This General Order is for internal use only and does not enlarge an Officer's civil or criminal 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 this Department, and then only in a non-judicial administrative setting.

I. POLICY:

It is the policy of the [AGENCY NAME] to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.
[ADM.05.01 – a]

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect 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."¹

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

II. PURPOSE:

The purpose of this policy is to provide law enforcement officers with guidelines for the use of less lethal and deadly force.

III. DEFINITIONS:

- A. **DEADLY FORCE:** Any use of force that creates a substantial risk of causing death or serious bodily injury.
- B. **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.
- C. **OBJECTIVELY REASONABLE:** The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.
- D. **SERIOUS BODILY INJURY:** Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.
- E. **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 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 the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.
- F. **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 suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.²
- G. **CHOKER HOLD:** A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.
- H. **WARNING SHOT:** Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

¹ *Graham v. Connor*, 490 U.S. 386 (1989).

² Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

IV. PROCEDURES:

A. General Provisions

1. When it is objectively reasonable that a subject is fully in law enforcement's control, then the force must terminate.³
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.⁴
4. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.⁵
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation [ADM.05.01 – b]

1. 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.
2. 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.

C. Use of Less-Lethal Force [ADM.05.01 – b]

1. 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. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment:
 - a. to protect the officer or others from immediate physical harm,
 - b. to restrain or subdue an individual who is actively resisting or evading arrest, or
 - c. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force [ADM.05.01 – b, c]

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:

³ Section 2 of Executive Order No. 13929, III, A, i

⁴ Section 2 of Executive Order No. 13929, III, A, iv

⁵ Section 2 of Executive Order No. 13929, III, A, ii. See VRSA Sample Policy 2-10 - Duty to Intervene

- a. to protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
- b. to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.

[ADM.05.01 – d]

2. When reasonably practical, the officer shall identify themselves as a law enforcement officer and give a verbal warning of their intent to use deadly force.⁶⁷

3. Deadly Force Restrictions

a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.

b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless:⁸ **[ADM.05.01 – e]**

- i. the use of deadly force is justified;
- ii. the warning shot will not pose a substantial risk of injury or death to the officer or others; and
- iii. the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.

c. Firearms shall not be discharged at a moving vehicle unless:⁹

- i. a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
- ii. the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

e. Choke holds are prohibited unless deadly force is authorized.¹⁰

E. Training

- 1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
- 2. In addition, training shall be provided on a regular and periodic basis and designed to:

⁶ Section 2 of Executive Order No. 13929, III, A, v.

⁷ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁸ Section 2 of Executive Order No. 13929, III, A, vii


⁹ Section 2 of Executive Order No. 13929, III, A, vi

¹⁰ Section 2 of Executive Order No. 13929, II, B

VLEPSC
ADM.05.01 - e,
prohibits the use of
warning shots.
VLEPSC agencies
must prohibit to
remain compliant.



- a. provide techniques for the use of and reinforce the importance of de-escalation;
 - b. simulate actual shooting situations and conditions; and
 - c. enhance officers' discretion and judgment in using less lethal and deadly force in accordance with this policy.
3. All use-of-force training shall be documented.

	[AGENCY NAME]	Effective Date:
	Rules and Regulation 2-10	Accreditation Standards:
		Supersedes Revision Dated:
Subject: Duty to Intervene		By Authority of: <i>John Doe</i> , Chief of Police

NOTE:

This Rule and Regulation is for internal use only and does not enlarge an Officer's civil or criminal 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 this Department, and then only in a non-judicial administrative setting.

I. POLICY:

[OPTION 1] It is the policy of the [AGENCY NAME] Police Department that any member present (both sworn and non-sworn) and observing another member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent the use of such excessive force. Members shall promptly report these observations to a supervisor.

[OPTION 2] It is the policy of the [AGENCY NAME] Police Department that members (both sworn and non-sworn) have an obligation to protect the public and other members. It shall be the duty of every member present at any scene where physical force is being applied to either stop, or attempt to stop, another member when force is being inappropriately applied or is no longer required.

II. PURPOSE:

- A. Legal and Moral Obligation - It is the purpose of this policy to explain the legal and moral obligation of [AGENCY NAME] Police Department members known as the *Duty to Intervene*. This duty is embodied in the [AGENCY NAME] statement of values and mission ← Agencies should consider revising their mission and values. If you do not revise, please remove this section since it will not apply., in the Law Enforcement Officer's Code of Ethics, and in the law. Department members shall have a clear understanding of department expectations pertaining to conduct and activities while on and off duty.
- B. Protection - The [AGENCY NAME] Police Department is committed to protecting its members who act on their duty to intervene to prevent or minimize misconduct by another department member.

III. DEFINITIONS:

Intervene — To come between, whether verbally or physically, so as to prevent or alter a result or course of events.

IV. DUTY TO INTERVENE

- A. All members must recognize and act upon the duty to intervene to prevent or stop any member from conducting any act that is unethical, or that violates law or policy (e.g., excessive force, theft, fraud, inappropriate language, sexual misconduct, harassment, falsifying documents, inappropriate behavior, etc.). Intervention may be verbal and/or physical. **Failure to intervene may subject a member to disciplinary action.**
- B. All [AGENCY NAME] members benefit when potential misconduct is not perpetrated or when a potential mistake is not made. Preventing misconduct increases public trust and preserves job security and integrity of all department members, ultimately protecting members from destroying their careers as a result of misconduct or, in some instances, as a result of a failure to intervene to prevent misconduct by others.

V. REQUIRED ACTION

A. BY OFFICER(S)

1. If aid is required by any individual, ensure that medical attention has been rendered.
2. Take a preventive approach, whenever possible, if observing behavior that suggests that another member is about to conduct unethical or inappropriate behavior.
3. Examine the circumstances surrounding the incident to determine the appropriate form of intervention.
4. Intervene verbally or physically, depending on the circumstances.

EXAMPLE: While providing backup for a vehicle stop after a minor traffic violation, you notice the primary officer raising their voice and becoming increasingly agitated with the driver, despite the driver's cooperative demeanor. In order to prevent an escalation, you could call the officer's attention to break their agitation, walk up next to the officer and ask a follow up question of the driver to slow down the interaction and give the primary officer a chance to collect themselves, or ask the officer to come speak to you away from the car in order to diffuse the situation.

5. Take an active approach to intervene to stop any unethical behavior or misconduct, when such conduct is being committed by another member.
6. If verbal interventions are not sufficient to stop the act, physically come between the offending member and the other individual involved.

EXAMPLE: You observe an officer strike an individual without any reason. If appropriate, you could tell the officer to "cool it" or that you'll take over the matter and have them step aside. If necessary, step in between the officer and

the individual or hold the officer back in order to stop them from inflicting more unnecessary force.

7. Immediately notify a supervisor after conducting any type of intervention, when safe to do so.
8. When a physical intervention was performed, document the incident in writing and submit it to a permanent-rank supervisor. ← Consider creating form for reporting these instances.

B. DUTY TO INTERVENE BY SUPERVISOR(S)

1. Once learning of an incident involving a member intervening with another member, separate all members involved in the incident.
2. Ensure the preservation of body worn camera and in-car camera footage.
3. Conduct a preliminary investigation to gather any pertinent information that would coincide with the reason for the intervention (e.g., witnesses, in-car and body worn camera footage, other video/surveillance footage, area canvass, etc.).
4. Ensure all parties involved in the incident document in writing their observations/participation in the incident and detailing the circumstances that led to the intervention and what, if anything, occurred once the member intervened.
5. Determine whether the actions leading to the intervention constitute misconduct, unethical behavior, or potential criminal conduct, and notify the Patrol/Shift/Bureau/Division Commander. ← Agencies should designate an organizational function where this conduct is reported.
6. If appropriate, consider making a recommendation that the member who intervened receive recognition for their actions.

C. DUTY TO INTERVENE BY PATROL/SHIFT/BUREAU/DIVISION COMMANDER ←

1. Review reports of member interventions received by the supervisor.
2. Ensure preliminary investigation and findings have been fully documented.
3. Make a recommendation that the incident be closed, or referred to one of the following for follow-up investigation, training, and/or discipline, as appropriate:
↓ Below are examples of typical organizational components in some small to large police departments. Revise to reflect your agency's structure:
 - a. The Office of Professional Standards (OPS)
 - b. Internal Affairs (IA)
 - c. Education and Training Section (E&T)
 - d. Equal Opportunity and Diversity Section (EODS)
4. When appropriate, issue a recognition of the positive actions of the member who intervened.

D. DUTY TO INTERVENE - CHIEF OF POLICE, OPR/IA

1. Ensure all incidents resulting from a member invoking their duty to intervene are reviewed by [OPS, IA, E&T, EODS] personnel. ← Agencies must designate the area of responsibility in their agency for reviewing interventions.
2. Ensure all such cases are classified and investigated thoroughly and properly, according to [AGENCY NAME/DIVISION or UNIT] investigation procedures.

3. Forward cases to other sections (e.g., EODS, E&T, etc.) for investigation/follow-up when appropriate.
4. Approve/disapprove the resulting findings of each OPS/IA investigation deriving from a member intervening or failing to intervene to stop misconduct.

E. DISCIPLINARY PROCEDURES

1. All discipline administered for failing to intervene shall be in compliance with departmental disciplinary policies and procedures.