

19-01 - Passive Resistive Persons

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services



PASSIVE RESISTIVE PERSONS

The purpose of this newsletter is to provide guidance to Department personnel in the handling of passive resistive persons.

The Commission on Peace Officers Standards and Training (POST) Learning Domain (LD) 20 has defined passive resistance and has differentiated between passive and active resistance:

- **PASSIVE RESISTANCE:** Does not respond to verbal commands, but also offers no physical form of resistance.

VS.

- **ACTIVE RESISTANCE:** Physically evasive movements to defeat an officer's attempt at control; including bracing, tensing, running away, or verbally or physically signaling an intention to avoid or prevent being taken into, or retained in custody.

Constitutional, statutory, and case laws have established the basic requirements regarding the authority for peace officers to use force in the performance of their duties. The law allows peace officers to use reasonable force to effect an arrest, to prevent escape, to overcome resistance, in self-defense, or in defense of others; however, not all behaviors of persons encountered who are passive resistive, require the use of physical force.

It is necessary for sworn personnel to consider that even when they have the authority to use force, they should attempt to generate voluntary compliance without resorting to physical force, when there is an opportunity to do so.

It is paramount for sworn personnel to be able to identify passive resistive behavior and to be familiar with and evaluate their legal standing based on the law and Department policy. Sworn personnel should be able to apply force options based on the "reasonableness standard," and dictated by the subject's behavior.

The reasonableness standard has been established by and defined in the United States Supreme Court Case of *Graham v. Connor*, 490 U.S. 386 (1989), and is the backbone of our Department's Use of Force Policy. *Graham v. Connor* implies:

- Would another officer;
- Facing like or similar circumstances; and
- Act in the same way or use similar judgement?

The following sections of the California Penal Code (PC) give law enforcement officers guidelines to effect a legal arrest and to apply force when **reasonable**:

- 835 P.C. - An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. **The person arrested may be subject to such restraint as is reasonable for his arrest and detention; and**
- 835(a) P.C. – Any peace officer who has reasonable cause to believe that any person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his right to self-defense by the use of reasonable force, to effect the arrest, prevent escape, or to overcome resistance.

Desk personnel answering calls for service regarding passive resistive persons should consider the Department's policy outlined in FOD 18-006, Critical Calls for Service, and FOD 16-003, Calls for Service Involving Alleged Mentally Ill Persons. When available, a field sergeant and Crisis Intervention trained (CIT) deputy should be assigned to the call.

Field units should continually re-assess the subject's actions and the practical considerations involved in the situation, and must be prepared to transition (escalate/de-escalate) as needed to the appropriate force options, so as to always remain within the bounds of conduct which is **objectively reasonable** under the circumstances.

Tactical elements to consider when responding to persons displaying passive resistive behavior:

- Approach of suspect
- Approach of vehicle (refer to Newsletter 15-26, Refusal or Inability to Exit a Vehicle at the End of a Pursuit)
- Availability and deployment of equipment and weapons (refer to Newsletter 90-9, Less Lethal Weapons Systems.)
- Communication
- Concealment
- Coordination
- Cover
- Distance
- Field of fire
- Fire discipline
- Incident command
- Partner splitting
- Planning
- Position of advantage
- Potential for crossfire
- Shooting backdrop
- Supervision

- Suspect control
- Taking independent action
- Target acquisition

When a subject does not respond to verbal commands, but also offers no physical form of resistance, field units should consider the following:

- Does the subject pose an immediate threat to him/herself or others?
- Is there a situational exigency?
- What legal reason exists that justifies a detention or arrest of the subject?
- Is there a need to engage the individual?

When the decision has been made to engage a subject who is passive resistant, in order to effect an arrest; field units should attempt to employ the following tactics:

- Handle the situation as a tactical incident (refer to MPP section 3-10/150.00, Tactical Incidents);
- When reasonable and under the totality of the circumstances, field units should use de-escalation techniques such as advisements, verbal persuasion, and other force prevention tactics focused on increasing officer and/or public safety;
- Consider factors regarding the subject such as mindset, physical fitness, weapons, comparative size, level of intoxication, number of subjects, training of subject, perceived subject self-defense capabilities, etc.;
- Consider the subject's objective behavior, i.e.; cooperative, passive resistive, active resistive, assaultive/high risk, life threatening/serious bodily injury, and what response by field units does the subject's actions dictate;
- Ask family members or associates, if present, if the subject suffers from a mental illness. Responding personnel may also identify behavior indicative of a person suffering from mental illness. If so, request a Mental Evaluation Team to respond (refer to FOD 16-003, Calls For Service Involving Alleged Mentally Ill Persons);
- Have fire and medical resources stage safely;
- Unless the field sergeant is handling another emergency or priority call, a field sergeant should respond to the call and be responsible for directing force when reasonable; and
- If it is determined that contact or continued contact with the subject may result in an undue safety risk to that person, the public, or Department members, disengagement should be considered. The watch commander shall be consulted and must concur with the decision to disengage.

If you have any questions regarding the information contained in this newsletter, please contact Field Operations Support Services, at [REDACTED TEXT]

ATTACHMENTS

Newsletter 90-9, Less Lethal Weapons Systems

REFERENCES

Case Law

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

Young v County of Los Angeles (9th Cir. – August 26, 2011)

Department Policies

MPP Section 3-10/000.00, [Preamble to the Use of Force Policy](#)

MPP Section 3-10/005.00, [Force Prevention Principles](#)

MPP Section 3-10/010.00, [Use of Force Defined](#)

MPP Section 3-10/020.00, [Authorized Use of Force](#)

MPP Section 3-10/030.00, [Unreasonable Force](#)

MPP Section 3-10/040.00, [Prohibited Force](#)

MPP Section 3-10/050.15, [Performance to Standards - Performance Associated With the Use of Force](#)

MPP Section 3-10/150.00, [Tactical Incidents](#)

Department Field Operations Directives

FOD 18-006, [Critical Calls for Service](#)

FOD 16-003, [Calls for Service Involving Alleged Mentally Ill Persons](#)

Department Newsletters

Newsletter 15-26, [Refusal or Inability to Exit a Vehicle at the End of a Pursuit](#)
