



ORANGE COUNTY SHERIFF'S OFFICE GENERAL ORDER USE OF FORCE



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ISSUING AUTHORITY – SHERIFF CARL E. DuBOIS DISTRIBUTION – ALL DEPUTY SHERIFFS & OFFICE PERSONNEL

PURPOSE: The purpose of this General Order is to establish a policy for the use of force that is within the limits established by Article 35 of the New York State Penal Law, and consistent with the training given by this agency. It is the responsibility of each member to be aware of the requirements of Article 35 and to guide their actions based upon that law and the Sheriff's Office policy on the use of force.

I. DEFINITIONS.

Definitions of terms in this order are consistent with the definitions as set forth in Article 10 and elsewhere in the New York State Penal Law when applicable.

- A. **Deadly Physical Force** – Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- B. **Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- C. **Reasonable Belief** – The facts or circumstances the Officer/Deputy knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

II. USE OF PHYSICAL FORCE.

The use of physical force is the most serious act in which a law enforcement officer could possibly engage. It is important that the Deputy Sheriff act within the boundaries of legal guidelines, ethics, good judgment and accepted practices, and that the Deputy be prepared by training, leadership and direction to act wisely whenever using force readily capable of causing death or other serious physical injury.

- A. Deputies shall use only the REASONABLE amount of force necessary to effect our lawful objectives.

- B. Deputies may use physical force in the performance of their official duties only when:
1. Effecting or attempting to effect an arrest,
 2. Preventing or attempting to prevent the escape from custody of a person whom the Deputy reasonably believes to have committed an offense,
 3. Defending themselves or another person from what they believe to be the use or imminent use of physical force.
- C. Any other physical force used by a Deputy Sheriff other than as outlined in this General Order shall be inconsistent with the goals of this agency.

D. Duty to Intervene:

1. Any Deputy Sheriff present and observing another officer using force that s/he reasonably believes to be clearly beyond that which is objectively reasonable shall intercede to prevent the use of unreasonable force, if and when the Deputy has a realistic opportunity to prevent harm.

2. A Deputy Sheriff who observes another officer use force that exceeds the degree of force as outlined in this General Order shall promptly report these observations to a Supervisor and any member of the Office of Professional Standard and Compliance (PS&C) by telephone if not on site.

- E. After the use of physical force, the Deputy shall immediately evaluate the need for medical assistance. If necessary, the Deputy or Deputies involved shall arrange for such medical attention.
- F. The use of a weapon or instrument by a Deputy is also the use of force. Deputies may carry only those weapons or instruments when properly trained to do so and as authorized by the Sheriff.
1. The following are the only issued weapons authorized for carry by Deputies and members of the Special Operations Group of this agency:
 - a. Issued firearm, to include Pistol, Shotgun, Carbine and Precision Rifle.
 - b. Issued Oleoresin Capsicum.
 - c. Issued Electro Muscular Disabling Device.
 - d. Issued Expandable or Fixed Baton.
 - e. Issued Less Lethal Impact Munitions Delivery System.
 2. Only approved equipment will be carried on duty and used when applying physical force.

- a. The exception to this rule will be authorized during an emergency situation where a Deputy may use other resources at their disposal.
3. Prior to being issued any non-lethal weapon the Deputy shall receive training on its safe and appropriate use. If the implement has any working parts, it shall be inspected for safe and effective operation. The Deputy receiving such non-lethal weapon will be required to demonstrate proficiency with its use.
 4. Testing on the Deputy's proficiency in the use of non-lethal weapons shall take place every 2 years.
 5. Testing on the Deputy's proficiency in the use of lethal weapons including the Taser shall take place at least once a year.

NOTE: Members are reminded that the removal of an issued firearm from the holster and/or the display of a long arm weapon in the presence of others is considered a use of force and shall be documented. Such removal or display for training, inspection and storage is not considered applicable to this order.

III. DEPUTY RESPONSE OPTIONS - PROGRESSION OF FORCE.

- A. The use of physical force must be conditioned upon the premise that it is only to be used when and to the extent that it is reasonable.
- B. The force continuum begins with the Deputy's presence and ends with the successful completion of the assignment. Under ideal conditions the continuum goes no further than verbal requests and dialogue. It is this agency's goal to generate voluntary compliance with every public contact. When voluntary compliance is unattainable the minimum amount of force in the continuum will be used to gain compliance.
- C. The level of defensive force a Deputy uses is determined by the amount of force a person is using against the Deputy or a third person. In all cases only the minimum amount of force will be used which is reasonable, necessary, without recklessness and legally justifiable to accomplish the mission.
- D. Any stage in the use of force continuum may be skipped based on the circumstances of the situation. If possible, the Deputy should give the subject the opportunity to comply at each stage. Once compliance is achieved the escalation ceases.
- E. The progression of the use of force must be continually assessed. It may be escalated or deescalated depending on the situation.

- F. A Deputy may use deadly physical force upon another person when he reasonably believes that such other person is using or is about to use deadly physical force against the Deputy or a third person.

IV. THE USE OF FORCE CONTINUUM.

The use of force continuum is a logical escalation or de-escalation of force options available in a use of force situation. Deputies need not to progress through each step of the continuum but may meet force with necessary force. A subject's initial actions may be such that Deputies will have to enter the continuum at a higher level.

- A. **VERBAL PERSUASION.** Simple directions that are complied with by the individual are by far the most desirable method of dealing with an arrest situation. Control may be achieved through advice, persuasion and warnings before resorting to actual physical force.
- B. **SOFT HAND TECHNIQUES.** This includes restraining and detaining. Examples of soft hand techniques would include the use of a firm grip, the use of escorting or grappling techniques which are designed to hold a subject down by using the weight of a Deputy's body. Also included in this level would be pressure points, joint manipulation, take down techniques and the application of temporary restraining devices such as handcuffs and leg restraints.
- C. **OLEORESIN CAPSICUM (O.C.)** Deputies may opt to use O.C. on an individual who fails to comply with verbal commands. If an individual refuses to obey orders given to them after having been advised to comply with such orders as part of an authorized arrest, the Deputy may administer a dose of O.C. spray. Deputies shall take into account the physical state of the individual, the age of the individual and any other factors that would make the administering of such dose non-practical. Deputies shall provide for decontamination (application of water and air) to the individual as soon as possible after the arrest. This shall also include the use of O.C. delivery projectiles and dispersion devices deployed only by trained SOG Operators.
- D. **HARD HAND TECHNIQUES.** Trained use of personal defense weapons. Acting in the defense of him/herself or another, Deputies may use personal defensive techniques such as punches, kicks, knee strikes, and elbow strikes to bring a use of force situation to a preferred conclusion and effect a lawful objective.
- E. **ELECTRO MUSCULAR DISABLING DEVICE (EMDD).** This shall include the use of the Taser, stun belt, stun cuff or stun shield or any other EMDD device as authorized by the Sheriff. Use and Deployment of any EMDD will be done only by trained SOG Operators, Supervisors or personnel designated

by the Sheriff.

- F. SPECIALTY IMPACT MUNITIONS. This includes the deployment of 37MM and 40MM specialty impact munitions as well as 12-gauge specialty impact rounds. Deployment of specialty impact munitions will be done only by trained SOG Operators. See SOG Policy and Procedure. (rpo111313)
- G. BATON. This shall include the use of issued expandable or fixed batons (riot batons). Deputies may use issued batons in accordance with training and agency policy.
- H. LETHAL FORCE. This includes the use of a firearm or any other force, which has a reasonable likelihood of causing death or serious physical harm.
- I. Deputy Sheriff's shall not use any more of these force continuum techniques, or combination of techniques than is required to gain compliance to effect an arrest.

Note: The Orange County Sheriff's Office does not teach or justify the use of any restraints used for the purpose of physical control which applies pressure to the throat or windpipe of a person in a manner that is intended to hinder breathing or reduce the intake of air.

1. The use of any choke holds which may hinder or reduce the intake of air should only be employed at the level where deadly physical force is justified.

V. USE OF FORCE - CONSIDERATIONS.

- A. When engaged in a use of force situation Deputies should consider Deputy/Subject factors such as:
 - 1. Age,
 - 2. Gender,
 - 3. Size,
 - 4. Fitness,
 - 5. Skill level,
 - 6. Multiple Officers,
 - 7. Multiple Subjects,
- B. Deputies should also consider special circumstances such as:
 - 1. Subject's close proximity to a weapon
 - 2. Special knowledge
 - 3. Injury or Exhaustion
 - 4. Ground Position
 - 5. Disability
 - 6. Imminent Danger

VI. USE OF LESS-LETHAL WEAPONS.

- A. Less-lethal weapons are an alternative use of force option in situations where there is potential for injury to a Deputy, a suspect or third person. The use of less-lethal weapons will be limited to that degree of force which is reasonably necessary to provide protection for the Deputy or a third party, in preventing an escape of a person from custody and/or effecting a lawful arrest. Authorized less-lethal weapons are:
1. Oleoresin Capsicum (O.C.),
 2. Electro Muscular Disabling Device (EMDD)
 3. Specialty Impact Munition Delivery Systems.
 4. Baton
- B. Specifications – Deputies will be issued less than lethal weapons which have been reviewed by a competent authority (i.e. SOG Lieut/Commander) and have been authorized for carry by the Sheriff. Any changes to the specifications of such weapons will be outlined in a memo to the Sheriff.

VII. USE OF FORCE WHEN ENCOUNTERING PASSIVE RESISTENCE.

- A. A Deputy may use physical force to accomplish an official duty with regards to the movement of a person who is failing to comply with a lawful order by the use of passive resistance.
- B. Before using any force, the passively resistant individual(s) must be given verbal commands.
- C. If the person refuses to comply with verbal commands, Deputies are authorized to use only that amount of physical force which is necessary to move the person.

VIII. USE OF DEADLY PHYSICAL FORCE.

- A. A Deputy may use Deadly Physical Force under the following circumstances:
1. To protect themselves or another from what they reasonably believe to be an immediate threat of death or serious physical injury,
 2. To effect an arrest or prevent an escape of a suspect whose freedom is reasonably believed to represent an imminent threat of serious physical injury or death to the officer or another person(s),
 3. To destroy an animal ONLY for the following reasons:
 - (a) Self-defense, or to prevent substantial harm to another person,

(b) When the animal is so badly injured that humanity requires its relief from further suffering and all attempts have been made to get assistance from a Humane Society or agency responsible for the care and disposal of such animal.

- B. Deadly Physical Force through the use of firearms is to be used ONLY after consideration of ALL other reasonable means of attaining the legal objective of control have been considered as modeled in Section IV of this order (Use of Force Continuum).
- C. If a situation arises in which a Deputy is authorized to use Deadly Physical Force, s/he should attempt to identify themselves to the suspect prior to the use of such force. This identification need not be made if it places the life of the Deputy or another person in greater risk.

IX. USE OF DEADLY PHYSICAL FORCE – RESPONSIBILITIES.

- A. The discharging of a firearm by a Deputy is authorized only when permitted to use deadly physical force according to the provisions stated in Section VIII, of this order or as stated in, Firearms Policy.
- B. The responsibility of any use of deadly physical force shall in all cases, be borne solely by the employee who uses such force and/or by the commanding officer ordering such use.
- C. The fact that an employee is justified in using deadly physical force does not allow reckless conduct by the employee if the use of deadly physical force may injure innocent persons whom he/she is not seeking to arrest or retain in custody.
- D. Any employee whose actions(s) or use of force in an official capacity results in the death or serious physical injury of a person(s) will be placed on administrative leave or duty for a minimum period of ten (10) days pending an Administrative Review. This assignment of administrative leave shall not be interpreted to imply or indicate that the employee has acted improperly.

X. PROHIBITED USES OF FORCE

A. Force shall not be used by a Sheriff's Deputy for the following reasons:

1. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
2. To coerce a confession from a subject in custody;

3. To obtain blood, saliva, urine, or other bodily fluid or cells, from an individual for the purposes of scientific testing in lieu of a court order where required;
4. Against persons who are handcuffed or restrained unless it is used to prevent injury, escape, or otherwise overcome active or passive resistance posed by the subject.

XI. USE OF FORCE INCIDENT REPORT/ REVIEW.

- A. In the event deadly physical force is used and/or attempted, the administration of the Office will be notified immediately.
- B. Deputies who use force in the course of their duties shall notify their on duty supervisor as soon as practical after the incident.
- C. In the event a member of the Sheriff's Office is required to use force upon Another person(s) a *Use of Force TCF-34* and copies of associated reports will be completed and submitted to administration as soon as is practical. The narrative in the *Use of Force TCF-34* will serve as a memorandum from the member.
- D. The narrative of the incident report must include why force was necessary, what type of force was used, how force was applied, the type of equipment or instrument used and the effectiveness of the force used. Details as to who was present should also be included.
- E. A separate Use of force Report shall be filled out for each individual upon whom force was used.
- F. Deputies shall include in the incident report any observed injuries prior to the use of force and a description of all injuries received by the person during the application of force, including complaints of injury or discomfort.
- G. A Deputy who has custody of a person must provide attention to the medical and mental health needs of any person in their custody and obtain assistance and treatment of such needs, which are reasonable and provided in good faith.
 1. This includes appropriate and timely medical attention being provided to a person injured as a result of a use of force incident. Medical assistance shall be obtained as soon as is practical for persons who have sustained injury, express any complaint of injury, been rendered unconscious, or that the deputy has reason to believe has been injured as the result of any use of force incident. If a suspect is injured, deputies have a duty and obligation to provide medical treatment while the person is in custody. All persons shall be

treated with dignity and respect and shall be properly cared for while awaiting the arrival of emergency services personnel. Deputies should consider the medical condition and/or any resistance being used by the injured person before using restraining devices such as handcuffs.

2. The immediate mental health needs of a person shall be based upon the reasonable cause to believe that a person, who appears to be mentally ill, is conducting themselves in a manner which is likely to result in a serious harm to themselves or others.

(NY Civil Rights Law § 28 and NY Mental Hygiene Law § 9.41)

H. The report should include information that details the type of medical and/or mental health treatment that the arrestee had received, where treated and by whom.

I. If treatment is refused, that information shall also be placed in the report.

J. Separate reports shall be filed by Deputies who assist or aid in the arrest of a person where the use of physical force has been applied.

1. If O.C. was applied, the person should be allowed to decontaminate. Those details should also be placed in the report.

2. The Sheriff and or his designee(s) will review all reports of the use of force and make a determination to ensure that the use of force was consistent with departmental policies.

K. In the event a member uses their issued weapon to dispatch an animal, a Firearms Discharge Report (*GEN-05*) will be completed and submitted to their supervisor. A Use of Force Report is not required as per this Order.

L. Deputies shall submit a written report when they take any action that results in, or is alleged to have resulted in, injury or death of another person.

M. Any use of force incident involving physical injury to any party must be reported to PS&C by e-mail and phone call.

XII. USE OF FORCE – REVIEW, DISPOSITION & ANALYSIS.

A. A Use of Force number shall be assigned to the incident by the Chief Deputy Sheriff.

B. The Chief Deputy Sheriff shall investigate or designate an investigator to review and report whether the use of force was necessary, justified and without recklessness.

- C. If the Use of Force is unnecessary, unjustified, and/or reckless the Chief Deputy shall determine administrative action and report same to the Sheriff.
- D. A proper Use of Force shall cause the corresponding case to be closed accordingly.
- E. The Chief Deputy or designee(s) will review and analyze, annually, all reports of the use of force and make a determination to ensure that the use of force was consistent with Office policies. The review will encompass the number of incidents, the levels of force utilized, injuries reported, any discernable trends or training issues that need to be addressed followed by recommendations for training, equipment or corrective measures.

REFERENCES:

NYS Law Enforcement Accreditation Standards: 20.1, 20.5, 20.6, 21.1, 43.8

CALEA – 4.1.1, 4.1.2, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 4.2.1, 4.2.2, 4.2.3, 4.2.4

NYS Penal Law

NYS CPL

NY Civil Rights Law § 28

NY Mental Hygiene Law § 9.41

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