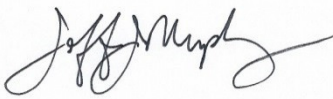




WASHINGTON COUNTY SHERIFF'S OFFICE
GENERAL ORDER A-15



TITLE: Use of Force	ACCRED. STANDARD: 20.1, 20.6, 21.2, 32.4	
EFFECTIVE DATE: October 27, 2003	DATE OF LAST REVISION 08/07/2013 May 15 th 2019; July 9 th 2019	By Order of the Sheriff 

USE OF FORCE

Officers of the Washington County Sheriff's Office are expected to use only the amount of force that is objectively reasonable and necessary under the circumstances to effect an arrest, prevent an escape, or in the defense of themselves or others. They may only use the level of physical force necessary to effect lawful objectives in the performance of their duties utilizing the standard of Objective Reasonableness established by the United States Supreme Court in *Graham v. Connor* and within the limits established in Article 35 of the New York State Penal Law and consistent with training received by each officer in this Office. It is the responsibility of each member to be aware of the standard established in *Graham v. Connor* and the requirements of Article 35 and to guide their actions based upon law.

The use of indiscriminate force is prohibited. Unnecessary force occurs when unjustified physical abuse of a person has occurred or when it is apparent that the type or degree of force employed was neither necessary, appropriate nor objectively reasonable under the circumstances, or when any degree of force is utilized as summary punishment or vengeance.

I. DEFINITIONS

A. **Objectively Reasonable** – An objective standard used to judge an officer’s actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

B. **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.

C. **Physical Injury** – Impairment of physical condition or substantial pain.

D. **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.⁶

II. USE OF FORCE

A. Generally, force is authorized in the performance of an Officer’s duty when reasonably believed to be necessary in the following circumstances:

- I. To prevent the commission of a crime;
- II. To effect a lawful arrest or detention
- III. To prevent a person from attempting to flee from custody;
- IV. To prevent a person from injuring him/herself;
- V. In self-defense or in the defense of another person.

B. Under the 4th Amendment, a police officer may use only such force as is “objectively reasonable” under the circumstances. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene.

Only issued and approved equipment will be carried on duty, and used only when applying physical force, except in an emergency when the officer may use other resources at his disposal.

III. DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

A. When used, force should be only that which is objectively reasonable given the circumstances perceived by the officer at the time of the event.

B. Factors that may be used in determining the reasonableness of force include, but are not limited to:

- I. The severity of the crime or circumstance;
- II. The level and immediacy of threat or resistance posed by the suspect;
- III. The potential for injury to citizens, officers, and suspects;
- IV. The risk or attempt of the suspect to escape;
- V. The knowledge, training, and experience of the officer;
- VI. Officer/subject considerations such as age, size, relative strength, skill level, injury or exhaustion, and the number of officers or subjects;
- VII. Other environmental conditions or exigent circumstances.

IV. PROHIBITED USES OF FORCE

A. Force shall not be used by an officer for the following reasons:

- I. To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present;
- II. To coerce a confession from a subject in custody;
- III. 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;
- IV. 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.

V. DUTY TO INTERVENE

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

B. An officer who observes another officer use force that exceeds the degree of force as described in subdivision A of this section should promptly report these observations to a supervisor.

VI. USE OF FORCE CONTINUUM

For the purpose of all policy and procedures relating to the use of force by members of this agency, the following “Use of Force Continuum”, will be an outline describing specific tactics to be utilized in anticipation of, or in response to changing conditions which a Deputy may encounter in the line of duty.

It is important to note that a Deputy need not utilize each step in the continuum or utilize them in numerical order to be justified in his/her actions.

Level One – Deputy Presence

The mere presence of the Deputy is sufficient to elicit the desired response from a subject. The practice of courtesy in all public contacts encourages understanding and cooperation. Lack of courtesy arouses resentment and often physical resistance. Simple directions, which are complied with while you accompany the subject, 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. This should not be construed to suggest that officers should ever relax and lose control of a situation, thus endangering personal safety or the safety of others.

Level Two – Verbal Commands

The Deputy determines that a verbal command is necessary to gain compliance, whether it is informational, as during a conversation, or instructional, as during a custodial situation.

Level Three – Open Hand / Hands On

The Deputy uses empty hand gestures and/or hands-on assistance either to guide a subject who is in need of assistance or to restrain a subject in a custodial situation.

*Levels 3 & 4 may be interchangeable at the officer’s discretion

Level Four – Taser/Aerosol Agent

The Deputy uses a non-lethal and non-injury producing means of gaining compliance, such as a Taser or Aerosol agent (OLEORESIN CAPSICUM) upon a subject who is resistant, combative or poses a threat of injury to himself or others.

Whenever chemical agents (Office issued Oleoresin Capsicum (OC) spray, are used (except for training purposes), they should be used in accordance with the established policy ONLY TO THE DEGREE NEEDED TO GAIN CONTROL OF THE RESISTING SUBJECT.

OC spray is a non-lethal device that is designed to subdue a person by projecting a specially formulated liquid onto a combative individual. It thus provides the officer with another alternative level of force, short of the use of the baton or firearm. It is a safe and humane means of controlling a violent person compared to the alternatives of the baton or firearm.

OC Spray should only be used in circumstances when it is necessary to overcome violent physical force, or, resistance likely to result in injury to the suspect, the officer, or another person.

A. OC spray shall never be used:

1. As a threat to make a person comply with an officer's verbal order.
2. Against any person in retaliation for their verbal or other abuse of an officer.
3. To elicit information from any person.
4. Only OC spray purchased by the Office and issued to officers is authorized for use by officers of the Office.

B. Instructions for use

The effective range of OC spray is 12 to 15 feet. It is most effective from 3 or more feet. This distance allows the stream to develop a spray pattern. The most effective use of OC spray is a well aimed, one-second burst, aimed into the face of the aggressor from three or more feet. It is not necessary to spray directly into the aggressor's eyes.

The officer shall insure that water is made available to the person to flush the affected areas as soon as practical after being sprayed. The person shall also be informed that medical attention is available. If the person desires medical attention, or otherwise appears in need of same, it is the responsibility of the officer discharging the OC spray to ensure that the person receives medical attention. In all cases when OC Spray is used the officer using it shall file a USE OF FORCE REPORT.

C. Use of Chemical Agents Munitions

1. Chemical munitions are defined for the purpose of this section as projectiles or hand delivered munitions containing one of two chemical agents; Ortho Chlorobenzalmalononitrile (CS) and Oleoresin Campsicum (OC). The projectiles can be fired from the 40mm launching platform. Officers deploying chemical agents will have a cover officer.
2. Chemical agents will be used only in situations where the use of said substances and munitions makes the most sense to bring a close to a dangerous conflict. Potential examples of these situations include but are not limited to barricaded subjects and civil disturbances.
3. Chemical agents will be deployed only by those officers (SERT Operators) who are trained to do so.
4. Prior to any deployment of chemical agents, the surroundings of the target should be considered. Areas of concern include but are not limited to schools, hospitals, and areas containing large amounts of civilians. Evacuations should be considered when practical prior to deployment.
5. When deploying chemical munitions into a structure, the deploying officers shall avoid aiming directly at subjects inside by aiming towards the top corners of openings (windows, doors).
6. The amount of chemical agents deployed shall depend on several factors. Those factors include but are not limited to the size of a structure, the number of suspects, the amount of venting taking place, the number of trained chemical agents officers, and the potential for injuries to other persons inside the structure (hostages, the elderly and juveniles). For outdoor deployment the weather, surroundings and number of suspects should be taken into account. The amount will also be dictated by the initial and developing reaction to the substances by the suspect(s).
7. After the deployment of chemical agents/munitions, verbal commands shall be given to those affected to prevent any confusion and panic. Once the scene is secure, all deployed munitions and fragments shall be collected and removed from the scene.

8. Medical treatment will be offered to all affected by chemical agents deployed by the Washington County Sheriff's Office SERT in a reasonable timeframe and when the scene is secure. Transportation to a hospital will also be facilitated when necessary.

9. Decontamination:

a. Humans: Subjects exposed to Chemical Munitions should be removed from the source of contamination. When practical, they should stand in fresh air for 3-5 minutes. Particles should be brushed from their hair and clothing. Eyes should be open and allowed to tear. Eyes should not be rubbed. For severe eye irritation, eyes should be flushed with large quantities of flowing water. Subjects should be kept calm and activity should be restricted. Subjects should be calmed to prevent panic. If at any point the subject appears to be in medical distress, emergency medical attention shall be provided.

b. Structures: Decontamination of a structure where chemical agents were deployed is not the responsibility of the Washington County Sheriff's Office. However, when possible, the owner/caretaker of the structure will be notified of contamination and advised of the need for decontamination.

D. It shall be the policy of this Agency that the TASER will not be used on any subject that has been knowingly exposed to any chemical agent or OC spray.

1. The TASER will not be used in the following situations unless exigent circumstances exist:

- A. The subject is known to be, appears to be, or states that she is pregnant.
- B. Anywhere near flammable liquids or fumes.
- C. At any subject who may receive a secondary injury resulting from a fall from its use (i.e. subject on balcony, rooftop, ledge, top of stairs, in tree, etc.)
- D. The subject is elderly, a child, frail or infirm.

- E. The subject is in a body of water of sufficient depth that could cause drowning.
- F. At or from a moving motor vehicle.
- G. Against unarmed persons who are arguing with, talking back to, or discourteous to the police.
- H. Passive resistance situations.
- I. With more than one Deputy simultaneously "Tasering" the same subject.
- J. When a K-9 is in the process of apprehension, a TASER will not be deployed.

*Refer to General Order 35 for more details regarding the Taser.

Level Five – Temporary Incapacitation

The Deputy determines that it is necessary to employ a technique which has the potential for injury to the subject, whether it is with an empty hand, baton or other impact weapon.

- A. Use of Less Lethal Projectiles
 - 1. Less lethal projectiles may be used when lower levels of force are not effective.
 - 2. Only trained personnel may use the less lethal projectiles and only flexible or non-flexible 40 mm projectiles are authorized.
 - 3. Less lethal projectiles are to be fired out of a specially designed 40 mm weapon.
 - 4. Only less lethal projectiles will be kept with 40mm weapon.
 - 5. Officers who deploy less lethal projectile weapons should be accompanied by a second officer who shall provide lethal cover.
 - 6. Head and neck areas should be avoided unless the use of deadly physical force is justified, necessary and appropriate.

7. Medical attention should be provided for subjects with less lethal projectiles.

B. Storage and assignment

1. The shift supervisor shall assign 1 - 40mm launcher and less lethal projectiles to a trained northern patrol and 1 - 40 mm launcher and projectiles to a trained southern patrol on each shift, similar to the AED's and stop sticks.
2. The 40mm launchers and projectiles shall be stored in the same locations as the patrol rifles at the Fort Edward and Salem stations when not in use.
3. 1 – 40mm launcher, projectiles and chemical munitions will be kept in the SERT van for use by the SERT team.

Level Six – Deadly Physical Force

The Deputy determines that it is necessary to use a technique which presents a significant risk of death to the subject, whether it be empty hand techniques, strikes with a baton or their issued firearm. When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of options and will not use more forceful measures unless it is determined that a lower level of force is inadequate.

A. Deadly physical force may be used by an officer to protect themselves or another person from what the officer reasonably believes is an imminent threat of serious physical injury or death.

B. Deadly physical force may be used to stop a fleeing suspect where:

I. The officer has probable cause to believe the suspect has committed a felony involving the infliction or threat of serious physical injury or death; **and**,

II. The officer reasonably believes that the suspect poses an **imminent threat of serious physical injury** to the officer or to others.

III. Where feasible, some warning should be given prior to the use of deadly physical force.

Lethal Force - refer to General Order A-16

VI. REPORTING & REVIEWING THE USE OF FORCE

A. After physical force is used, the officer shall immediately evaluate the need for medical assistance and, if necessary, arrange for such attention.

B. Members involved in use of force incidents as described below shall, without delay, notify the highest-ranking officer on the shift. If no supervisor is on duty, the Admin On Call will be notified.

I. Use of force that results in a physical injury.

II. Use of force incidents that a reasonable person would believe is likely to cause an injury.

III. Incidents that result in a complaint of pain from the suspect except complaints of minor discomfort from compliant handcuffing.

IV. Incidents where a conducted energy device (CED/ TASER) was intentionally or accidentally discharged after being displayed.

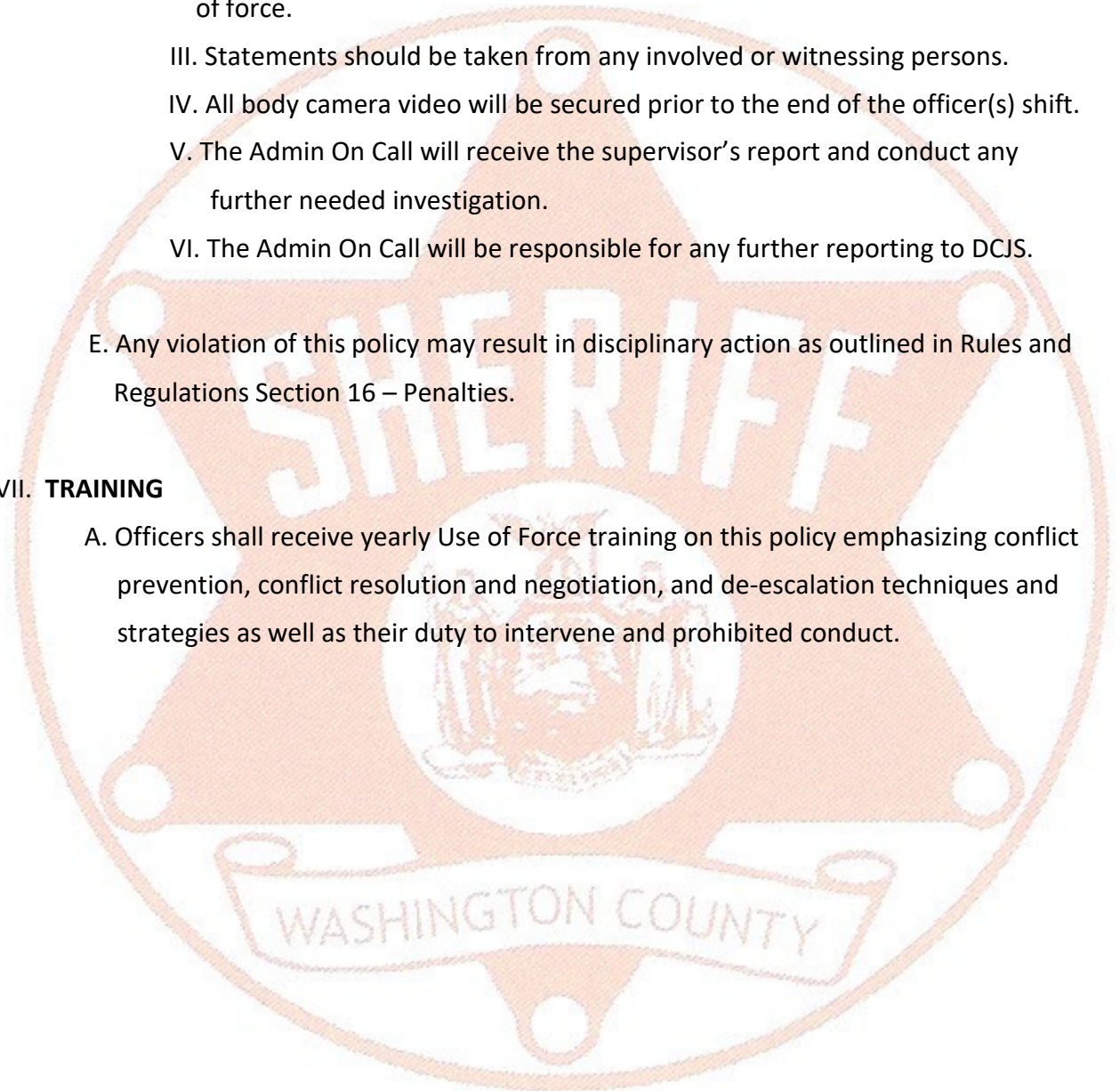
V. Incidents where a firearm was discharged at a subject.

VI. Any incident in which an officer uses physical force in which an object is utilized other than physical strength regardless of injury.

VII. Any incident in which an officer brandishes a firearm, TASER, OC spray or impact weapon at or in the direction of another person.

C. The officer must complete the "Use of Force" report and/or "Firearms Discharge Report" and submit this report within 48 hours of the incident.

D. The supervisor on duty will respond to the scene and (if they weren't involved in the incident) conduct an internal investigation and assess whether the use of force was warranted under the circumstances. The Supervisor will notify the Admin On Call and all reports will be forwarded to the Admin On Call as soon as possible for their review and assessment if further action or investigation is warranted.

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- I. A supervisor that is made aware of a force incident shall ensure the completion of a use of force report by all officers engaging in reportable use of force and, to the extent practical, make a record of all officers present.
 - II. Photographs should be taken which sufficiently document any injuries or lack thereof to officers or suspects in addition to photographs of the scene of the use of force.
 - III. Statements should be taken from any involved or witnessing persons.
 - IV. All body camera video will be secured prior to the end of the officer(s) shift.
 - V. The Admin On Call will receive the supervisor's report and conduct any further needed investigation.
 - VI. The Admin On Call will be responsible for any further reporting to DCJS.
- E. Any violation of this policy may result in disciplinary action as outlined in Rules and Regulations Section 16 – Penalties.

VII. TRAINING

- A. Officers shall receive yearly Use of Force training on this policy emphasizing conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies as well as their duty to intervene and prohibited conduct.