



Policy 1118

Subject

OLEORESIN CAPSICUM (OC) SPRAY

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By Order of the Police Commissioner

POLICY

The purpose of this policy is to establish guidelines for proper use of Oleoresin Capsicum (OC) Spray.

While members must at all times comply with the minimum legal requirements governing the use of force, they must also comply with even stricter standards set forth by Department policy (See Policy 1115, *Use of Force*).

CORE PRINCIPLES

Use of Force: OC Spray. OC Spray is a less-lethal alternative that is an effective tool used to gain compliance. Its use qualifies as a Use of Force, and members shall only use OC Spray consistent with training and certification. As more fully set forth in this policy and in Policy 1115, *Use of Force*, the authorized use of OC Spray is restricted.

Sanctity of Human Life. Members shall make every effort to preserve human life in all situations.

Value and Worth of All Persons. All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.

Peaceful Resolutions. Members shall avoid the Use of Force unless it is not possible to do so.

De-Escalation. Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the Use of Force or with the lowest level of force possible (See Policy 1107, *De-Escalation*).

Avoiding Escalation. Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.

Assessment. Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member uses force.

Use of Force: Reasonable, Necessary, and Proportional. Members shall use only the force reasonable, necessary, and proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.

Reporting Use of Force. Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the Use of Force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

Duty to Intervene. Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).

Duty to Provide Medical Assistance. After any Use of Force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance. If restrained, persons are not to be positioned facedown as it may cause Positional Asphyxia, and placing restrained persons on their back may lead to radial nerve damage to the wrists and forearms. Restrained persons are to be placed in a seated position or on their sides.

Accountability. Members shall be held accountable for Uses of Force that violate law or policy.

Retaliatory Force. Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other punitive reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

Active Aggression — Active Aggression is when a person attacks or attempts to attack a member or another person. Strikes, kicks, or attempted strikes or kicks with hands, fists, the head, elbows, knees, or an instrument, constitute Active Aggression.

Aggravated Aggression — Aggravated Aggression is when a person presents an Imminent Threat of death or serious physical injury to the member or another person based on the Totality of the Circumstances. Aggravated Aggression represents the least encountered but most serious threat to a member or other person. Even when confronted with Aggravated Aggression, the member is required to make every reasonable effort to de-escalate and to continuously assess the member's Use of Force.

Imminent Threat — A person presents an Imminent Threat when the person has the means and ability to harm the member or another person, and the member reasonably believes the person intends to deliver that harm.

OC Spray — Oleoresin Capsicum (OC) is a natural inflammatory agent derived from the pepper plant. As an inflammatory agent, aerosol OC Spray causes a near-immediate inflammation of the eyes and breathing passages. There is an intense burning sensation of the eyes, throat, and other exposed areas of the skin.

OC Dispenser — Manufactured to deliver OC particulates in a liquid form.

Physical Force — A member uses Physical Force any time a member coercively touches, directly or indirectly, any person. Physical Force includes holds, grabs, blows, and strikes, as well as the use of instruments such as batons, devices such as CEWS, tools such as OC Spray, canines, or firearms, whether lethal or less-lethal.

Positional Asphyxia — A form of asphyxia which occurs when someone's position prevents the person from breathing adequately.

Resistance — Members may face the following types of Resistance to lawful directives:

Active Resistance — Active Resistance is when a person moves to avoid detention or arrest but does not attack or attempt to attack the member or another person. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the member's grasp are all examples of Active Resistance. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person's reaction to pain caused by a member or purely defensive reactions to force does not constitute Active Resistance.

Passive Resistance — Passive Resistance is when a non-assaultive person fails to comply with the member's commands without attempting to flee. Passive Resistance may include, but not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody.

Totality of Circumstances — The Totality of Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances may include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the person;
- The number of persons;
- The availability of weapons;
- Whether the person is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options, including tactical repositioning, going to cover, or other de-escalation techniques;
- Environmental factors;
- Availability of back up and specialized units.

Use of Force — Any Use of Force or threat of force that falls within Level 1, Level 2, or Level 3 force as defined in Policy 1115, Use of Force, regardless if these techniques make contact or result in visible injury.

GENERAL

1. When OC is inhaled, the respiratory tract becomes inflamed and breathing might become restricted. Physical effects might include involuntary closing of the eyes, coughing, choking, discharge of mucous, lack of coordination and nausea. Psychological effects such as disorientation and fear might also occur.
2. When properly used, OC Spray is usually effective on both humans and animals and will incapacitate most persons for a period of 30 minutes without permanent injury, though the effectiveness varies from person to person. Due to the natural and biodegradable elements contained in OC, physical cleansing procedures that should be used include proper ventilation, removal of contact lenses by qualified personnel, and providing access to cool water. Psychological effects can be reduced through re-assurance and support.

DIRECTIVES

Permitted Use

3. Each application of OC Spray constitutes a Use of Force, and may only be used when reasonable, necessary, and proportional. Any Use of Force must be preceded by an analysis, to the greatest extent possible, applying the principles of the sanctity of life, critical thinking and decision-making, and de-escalation. These principles must be an ever-present priority as a member is making the serious decision of whether to use any type of force, and particularly deadly force/lethal force.
4. Members shall, whenever practical, issue a verbal warning prior to using OC Spray on a person and allow a reasonable amount of time for the person to comply with the warning. If dialogue has failed to bring about a person's compliance, AND the person displays Active Resistance, then OC Spray may be appropriate. If there is no Imminent Threat, members should make additional attempts at verbal persuasion prior to deploying OC Spray.
5. Members shall request a supervisor as soon as practical if the member uses or anticipates the use of OC Spray.
6. The use of OC Spray is no longer justified when a person is no longer a threat.

Deploying OC Spray

7. Members shall aim for the eyebrows/eyes of the person.
8. Members shall not deploy OC Spray from a distance that is less than 3 feet from the person, unless absolutely necessary (e.g., while engaged with a combative person and hands-on arrest techniques are not effective, and the member deploys OC spray to gain compliance without completely disengaging the person, or affecting surrounding persons or members).
9. The recommended deployment is one (1) two-second burst.

Procedures Following the Deployment of OC Spray

10. When possible, members will bring restrained persons under control to be seated in an upright position.
 - 10.1. Members shall **not** place a person face-down in restraints as it may cause Positional Asphyxia nor on their back as this may cause radial nerve damage to the wrist and forearm area.
 - 10.2. Members may place a restrained person on their side, thus eliminating pressure on the diaphragm while still controlling the person on the ground, which may be necessary.
11. Members shall immediately render aid consistent with their training, and notify the Communications Section. The member shall arrange immediate transport to a hospital for medical treatment for persons on whom OC Spray has been used, under the circumstances below:

- 11.1. Persons who complain of or exhibit continued effects after having flushed the affected areas;
 - 11.2. Persons who indicate they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, or heart ailment, that may be aggravated by OC Spray), who complain of difficulty breathing or chest pain, or if the member observes the person breathing with difficulty;
 - 11.3. Persons displaying a reaction not consistent with the expected reaction to aerosol OC Spray, for example, loss of consciousness is not an expected reaction to OC spray; and/or
 - 11.4. If the person wants to go to the hospital.
12. Persons who have been exposed to OC Spray shall be provided the opportunity to wash the affected areas as soon as practical. In most cases this should occur within 20 minutes.
- 12.1. When practical, persons affected by OC Spray shall not immediately be placed into any enclosed spaces (e.g., patrol wagons, holding cells, etc.). after being exposed unless the purpose is for medical treatment
13. Members shall provide verbal instructions on how to wash affected areas and reassurance that the symptoms will subside over time.
14. Members shall not provide any creams, ointments, or bandages, to be used on affected areas.
15. If the person was exposed indoors or in a confined space, members shall remove the person as soon as possible from the contaminated area and to fresh air.

Prohibited Use

16. Members shall not use OC Spray on compliant persons or persons displaying Passive Resistance.
17. Members shall not use OC Spray on a person who is handcuffed or otherwise restrained, except in the rare and exceptional circumstance where:
- 17.1. The person is displaying combative and/or violent behavior,
 - 17.2. The person presents an Imminent Threat to the safety of the member and/or other persons, and
 - 17.3. Lesser means or attempts to resolve the incident such as hands-on arrest or control techniques have failed.
18. Members shall not use OC Spray against persons who are obviously pregnant, are apparently elderly, is known to be a preteen or younger or whose age is objectively apparent to a reasonable officer to be a preteen or younger, or are visibly frail unless exceptional circumstances are present that pose an Imminent Threat of harm to the member or another party, and no reasonable alternative is available.

19. Members shall not use OC Spray upon the operator of a motor vehicle (including any motorized vehicle, a bicycle, or scooter) absent reasonable grounds for believing that the operator is unable to drive away while impaired. Individuals driving while impaired by OC Spray may present a deadly threat to members and the public.
20. Members shall not use OC Spray to prevent the swallowing of narcotics or other contraband.
21. Members shall not use tactics designed to escalate the level of force such as brandishing the OC Dispenser unnecessarily.
22. Members shall not use OC Spray to disperse crowds or others unless a person is committing acts that endanger the member or public safety and security, and the use of OC Spray is objectively reasonable, necessary, and proportional. In such situations the OC Spray shall be directed at the person(s) who present the threat. (See Policy 413, *Mobile Field Force* and Policy 414, *Less-Lethal Munitions and Chemical Agents*).

OC Spray as a Use of Force

23. A use of OC Spray is a Level 2 Use of Force. Members shall refer to Policy 725, *Use of Force Reporting, Review, and Assessment* for all reporting requirements.
24. Members shall notify a permanent-rank supervisor immediately, or as soon as practicable, following a Use of Force. The supervisor will notify the Shift Commander by the end of the shift during which the force occurred. The notification will contain basic information concerning the incident. Any member with knowledge that another member used force must also immediately report that Use of Force to a permanent-rank supervisor. In all instances, the permanent-rank supervisor will conduct a thorough review of the Use of Force, and document this review by completing a BlueTeam entry before the conclusion of the supervisor's tour of duty. The supervisor's review should include and document their analysis of whether the force was consistent with BPD policy, including documenting de-escalation efforts and post-OC Spray application actions taken by the members involved in the Use of Force.
25. The failure of any commander, supervisor or member, to fulfill any of the requirements of this policy will not prevent, inhibit or otherwise affect the ability of the Department to conduct an investigation of any misconduct arising from a Use of Force incident or to otherwise discipline a member for any violation of this policy.

REQUIRED ACTION

Members

26. Uniformed members shall carry the BPD issued 3.3-ounce OC Dispenser on their gun belt. The use of non-issued OC Spray on-duty is prohibited.
27. The OC Dispenser shall be primarily accessible to the weak hand and may not be placed directly behind the firearm holster.
28. Members are accountable for their issued OC Dispenser and are responsible for its care and upkeep.

29. Plainclothes members may carry the 1.8-ounce OC Dispenser, depending on their job assignment. The OC Dispenser must be in an area that is not conducive to accidental discharge.
30. When off-duty, OC Spray Dispensers shall not be accessible to civilians.
31. Depleted, outdated, or damaged OC Dispensers shall be exchanged at the Armory Unit or Northeast Range.

Education and Training (E&T) Section

32. E&T shall provide members with proficiency training on the use of OC Spray before they are certified to carry and/or use OC Spray.

REFERENCED POLICIES

Policy 319, *Duty to Intervene*
Policy 413, *Mobile Field Force*
Policy 414, *Less-Lethal Munitions and Chemical Agents*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 804, *First Amendment Protected Activity*
Policy 1107, *De-Escalation*
Policy 1115, *Use of Force*

RESCISSION

Rescind Policy 1118, *Oleoresin Capsicum (OC) Spray*, dated 24 November 2019.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.