CALEA 11.3.3, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 4.2.1, 4.2.2, 4.2.3

Use of Force / Response to Resistance

CHAPTER 400

400 USE OF FORCE / RESPONSE TO RESISTANCE

400.1 PURPOSE

The purpose of this policy is to provide officers with guidelines on the reasonable use of force or response to resistance. This policy recognizes that the response to resistance by law enforcement requires constant evaluation. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

400.2 POLICY

This policy provides clear standards for the use of force and control of resistive behavior by the Kershaw County Sheriff's Office (KCSO). This directive is for KCSO use only and has no application in any criminal or civil proceeding. The Kershaw County Sheriff's Office Use of Force Policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of this directive will only form the basis for KCSO administrative sanctions. Violations of the law may form the basis for civil and criminal sanctions in a recognized judicial setting.

The KCSO recognizes the value of human life. Law enforcement officers are tasked with the awesome responsibility to protect life and property and to apprehend criminal offenders. The responsibility for a deputy to protect human life must include his own. The KCSO uses only the force reasonable and necessary to accomplish lawful objectives and will apply de-escalation techniques when possible. (SCLEA 1.9)

400.3 DEFINITIONS

***Chokehold*:** Is a physical maneuver that restricts an individual's ability to breathe for the purpose of incapacitation.

***Deputy*:** Any sworn law enforcement officer of the KCSO, including, but not limited to, full-time, part-time, and reserve officers.

Impact Weapon: A weapon used to control a suspect's resistance through the application of strikes and blocking techniques.

Less Lethal Force: Physical force that carries a lower likelihood of causing serious physical injury or death.

Less Lethal Weapon: A weapon used to control a suspect's resistance through the application of strikes, blocking techniques, chemical agents or electronic control devices that carry a lower likelihood of causing serious physical injury or death.

Lethal Weapon: A weapon or instrument whose use is likely to cause physical injury or death.

Lethal Force: Physical force that carries a substantial risk of causing serious physical injury or death.

Physical Force: The striking of a person by the use of a baton, fist, hand, foot, specialty impact weapon or other object; or the application of any type of irritant or gas; or the application of any hold or grip that tends to render the subject unconscious, prevents the normal flow of blood, results in the breaking of the skin, bruising, or results in the swelling of any part of the body.

Reasonable Belief: A degree of risk that a reasonable and prudent person would consider a strong possibility.

Recreational Purposes: Use of a weapon for hunting, target shooting or other recreational events where the firing of a weapon is justified for non-law enforcement personnel or civilians.

Serious Physical Injury: Great bodily injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Vascular Neck Restraint: A physical maneuver that restricts blood flow to the brain for the purposes of incapacitation.

400.4 OBJECTIVELY REASONABLE FORCE (SCLEA 1.9)

Use of force is lawful if it is objectively reasonable under the circumstances and the minimum amount of force necessary to carry out law enforcement duties or protect the officer or others, and will apply de-escalation techniques when possible.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident, meaning that the officer's force should be applied in the same basic way that an "objectively reasonable" officer would in the same circumstances, rather than with the 20/20 vision of hindsight. An evaluation of reasonableness allows for the fact that officers are forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving. The use of force against a subject must be proportional to the resistance.

Factors to Determine the Reasonableness of Force
In determining whether a use of force is "objectively reasonable," a deputy must give careful attention to the totality of facts and circumstances of each particular case, including:

- Seriousness of the suspected offense or reason for contact with the individual;
- Whether the subject poses an imminent threat to the safety of the deputy or others; and
- Whether the subject is actively resisting seizure or attempting to evade arrest by flight.
- Whether the circumstances are tense, uncertain, and rapidly evolving; and
- The foreseeable risk of injury to the involved subjects and others.

It is impossible to list all of the factors that a deputy may face during an incident; thus, it is important to document as many variables and factors that influenced a deputy's decision to use a specific level of force. In addition to the factors listed above, the "totality of circumstances" may include any other factors, including, but not limited to:

- Officer/subject factors (age, size, gender, relative strength, skill level, injuries sustained, level of exhaustion or fatigue)
- The subject's mental state, including signs of mental illness or incapacity;
- Whether the subject appears intoxicated or on drugs;

- The proximity or access of the subject to weapons or a dangerous improvised device;
- Whether the subject is armed and if so, with what type of weapon(s);
- Whether the subject appears to have training or experience in martial arts, boxing, etc.
- The availability to the officer of other (less-lethal) options and their possible effectiveness.
- The time available to an officer to make a decision;
- The availability of officers/resources to de-escalate the situation;
- The presence of bystanders;
- Environmental conditions, the physical environment, including the time of day, weather conditions, the nature of the ground surface (e.g., concrete, asphalt), or environmental hazards.

Impaired Subjects:
It is important for officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. It is possible that a person's mental state may prevent a proper understanding of an officer's commands or actions, and that the person's lack of compliance may not be a deliberate attempt to resist the officer. A subject may be non-compliant due to a medical condition, mental, physical, or hearing impairment, language barrier, drug interaction, or emotional crisis, and not have criminal intent. In such circumstances, reasonably permitted, an officer's awareness of these possibilities should be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

400.5 USE OF LETHAL FORCE (SCLEA 1.10)

A deputy may use deadly force only when the deputy *reasonably* believes that the action is *reasonable and necessary* in defense of human life, including the deputy's own life, or in defense of any person in imminent danger of serious physical injury or death.

A deputy may not use deadly force to apprehend non-dangerous, apparently unarmed fleeing suspects. However, where the officer has probable cause to

believe that a suspect poses a significant threat of death or serious physical injury to the deputy or others, the deputy may use deadly force if necessary to stop the fleeing suspect**.**

Deadly force may not be used solely to prevent escape or make an arrest for non-violent felonies or misdemeanor offenses.

When it becomes necessary for a deputy to use a firearm in defense of life, when tactically feasible, a deputy will identify himself/herself as a law enforcement officer and issue verbal warnings of their intent to use lethal force. A verbal warning is not required in circumstances where the deputy has to make a split-second decision or if the deputy reasonably believes that issuing the warning would place the deputy or others in jeopardy.

When deputies apply deadly force, the intent is to stop and incapacitate an assailant or a dangerous fleeing felon.

The use of warning shots by a deputy is prohibited. (SCLEA 1.11)

Use of a chokehold, a vascular neck restraint, or any technique restricting the intake of oxygen is prohibited, except in those situations where the use of deadly force is allowed by law. (SCLEA 1.22 and SCLEA 1.23

Discharging a Weapon from a Moving Vehicle

Deputies shall not discharge a firearm at, or from, a moving vehicle unless the use of deadly force is justified and both of the following requirements are met:

- There is a substantial likelihood that the projectile will not strike any person other than the suspect; and
- The risk of the suspect vehicle going out of control after being hit is less than the risk of the suspect not being captured immediately.

Displaying/Drawing Weapon

Firearms shall not be drawn or displayed unless it is tactically necessary based upon considerations of personal safety and the safety of others. The following exceptions are allowed:

- During cleaning, maintenance, approved training, recreational activity, or participation in activities approved in the policy of the KCSO; or
- Upon the direction of a supervisor or commanding officer.

Animals

The killing of an animal is justified:

- For self-defense;
- To prevent substantial harm to the deputy or another; or
- When the animal is so badly injured that humanity requires its relief from further suffering.

A seriously wounded or injured animal may be destroyed only after attempts have been made to summon Kershaw County Animal Control. If possible, permission shall be obtained from the owner (if any) of the animal and a supervisor before it is destroyed for humane reasons. An incident report will also be completed.

Possible or attempted ingestion of narcotics or evidence by a suspect

Instances may arise when a deputy believes that a suspect or other person they have encountered is trying to, or has already ingested, narcotics or other evidence. If this occurs, under no circumstances will any deputy forcibly remove the item from the person's mouth or use any type of force for the purpose of preventing the ingestion of the item.

The following procedures will be followed in the instance a person ***in custody*** has ingested or is attempting to ingest narcotics:

- Verbally advise the person to stop swallowing the item, and that failure to do so may cause serious injury or death.
- If the person swallows the item, the deputy is to request EMS to respond. The person must be transported to the ER by the deputy or EMS to be evaluated.

The following procedures will be followed in the event a person ***encountered*** has ingested or is attempting to ingest narcotics:

- Verbally advise the person to stop swallowing the item, and that failure to do so may cause serious injury or death.
- If the person swallows the item, the deputy is to request EMS to respond. Should the person leave the scene the scene or decline transport, the refusal will be documented.

400.6 FORCE CONTINUUM

Deputies shall adhere, whenever possible, to the force continuum, which represents the levels of control from lowest to highest. It is anticipated that some situations will require deputies to immediately use a higher level of control without first attempting a lower level of control. Below is a listing of the levels of control:

- **Officer Presence:** Identification of authority (uniform, etc.)
- **Verbal Direction:** Commands of arrest or control given by the deputy
- **Empty Hand Control:**
  Soft Empty Hand Control - Control techniques with minimal chance of injury (use of pressure points, joint locks, handcuffing, etc.)

  Hard Empty Hand Control - Control techniques that have a probability of causing injury (punches, kicks, etc.)

- **Intermediate Weapon Control:**
  Uses of a deputy's OC spray, Conducted Electrical Weapon (CEW), Impact Weapon, or Specialty Impact Munitions to control a subject who exhibits combative or potentially combative behavior. These weapons must be used only in accordance with the training received on the particular weapon, i.e., a CEW would not be used to incapacitate a subject exhibiting passive resistance.

A deputy may resort to intermediate weapon control when the use of lower levels of control is not likely to succeed, or has been ineffective, and lethal force is not authorized.

- **Lethal Force:** Force used by the deputy that is likely to cause great bodily injury or death. In the event lethal force is justified, and the deputy is unable to employ conventional means (firearm), a deputy is authorized to use any available option in defense of their own or another individual's life.

Numerous factors affect the level of force necessary to control resistive behavior. These factors may affect a deputy's decision to escalate or de-escalate the level of control necessary to overcome resistant behavior. Such variables may include:

- The deputy's size or gender relative to the subject;
- Environmental conditions - the number of deputies and the number of subjects present, the use or display of weapons by subjects, the time of day

or night, etc.;
- The totality of the circumstances - variables as they relate to the incident at hand; and
- The deputy's reaction time - the amount of time necessary to perceive a threat and physically react to counter the threat.

400.7 MEDICAL AID AFTER USING FORCE (SCLEA 1.13)

An individual complaining of, or suffering from, an injury as a result of a use of force by a deputy shall receive appropriate medical attention as soon as possible after the scene has been brought under control.

Personnel shall render medical assistance within the limits and scope of their training.

If medical attention is needed, the deputy shall immediately notify Emergency Medical Services to respond to a secure incident location. The deputy shall attempt to protect the injured person(s) from further injury.

400.8 REPORTING USE OF FORCE (SCLEA 1.14)

The Kershaw County Sheriff's Office shall establish a use-of-force reporting system that allows for the effective review and analysis of all KCSO use-of-force incidents. The reporting system shall be designed to help identify trends, improve training and officer safety, provide accurate and timely information, and serve as a basis for an early warning system.

Deputies shall complete a Use of Force Report whenever they use force against a person above unresisted handcuffing. This includes:

- Discharges a firearm for any purpose other than training, recreation, or the humane destruction of an animal; (SCLEA 1.14 a)
- Displays and presents a firearm at a person or persons.
- Takes an action that results in, or is alleged to have resulted in, injury or death of another person; (SCLEA 1.14 b)
- Applies force to a person through the use of lethal or non-lethal weapons; or (SCLEA 1.14 c)
- Applies physical force (take-downs, punches, strikes, pressure point control, etc.). (SCLEA 1.14 d)

Responsibility of Involved Deputy(s)

When a deputy finds it necessary to use force to effect an arrest, or for any other law enforcement purpose, whether on-duty or off-duty, the officer shall:

- Notify a supervisor as soon as circumstances allow.
- Complete an incident or supplemental report documenting their involvement in the use of force.
- Each deputy using force on a suspect shall also complete a use-of-force report.
- All body camera videos shall be downloaded to Evidence.com before the end of the shift.
- All in-car dash camera videos shall be downloaded before the end of the shift, and all copies shall be forwarded to their supervisor.

Responsibility of the Supervisor

As soon as practical after the conclusion of a use of force incident, a supervisor with the rank of Sergeant or above shall:

- Ensure all involved deputies submit supplemental reports and use-of-force reports.
- Request written statements from involved law enforcement officers from other jurisdictions and other witnesses, if available.
- Notify the Lieutenant of Investigations to assist with evidence collection, photographs of the suspect's injuries, and any statements, if needed.
- If the use of force results in serious injury or death, audio recordings of the incident should be obtained from the Communications Center.
- In situations where liability may be attached, the Chief Deputy will be notified by a member of command staff, and the Sheriff will be notified at his discretion.
- Review and approve all required documents and forward to the division

Commander/Supervisor for review.

When a supervisor is involved in a use-of-force incident, the supervisor will not approve their own incident report and other documents.

- A Sergeant uses force, a Lieutenant will approve the incident report, and review all documents.
- A Lieutenant uses force, the Major or Patrol Captain will approve the incident report and review all documents.

400.9 USE OF FORCE REPORT REVIEW (SCLEA 1.20)

The circumstances of a use of force incident shall be reviewed by:

- The deputy's supervisor reviews all submitted reports and ensures the Use of Force report is completed in a timely fashion.
- The Training Division shall review the use of force incident for compliance with training.
- Personnel with experience in use-of-force incidents and training.
- Use of Force Review Committee.
- The Chief Deputy will review the findings of the Training Division and/or other Personnel requested to review the incident.
- The Citizen Review Board may review use of force incidents at the request of the Sheriff or Chief Deputy.

A documented analysis of use of force incidents shall be conducted quarterly or as needed by the Chief Deputy or his designee. The purpose of this analysis is to review any patterns or trends that could indicate training needs and/or the need for policy modification.

400.10 ADMINISTRATIVE LEAVE AFTER USE OF FORCE (SCLEA 1.15)

Any employee whose actions or use of force in an official capacity result in a serious physical injury or death, or other circumstances deemed by the Sheriff, shall be removed from their regular assignment pending an administrative

review. The Sheriff shall determine whether the employee is placed on administrative leave with pay or assigned to administrative duty. The removal of an employee from their regular assignment serves two purposes:

- To protect the community's interest when an employee may have exceeded the scope of their authority in their actions or in their use of force; or
- To shield the employee who has not exceeded the scope of their authority from possible confrontations with the community.

Administrative leave is not considered a form of discipline under this policy.

Any employee whose actions or use of force in an official capacity results in a serious physical injury or death may be required to attend mandatory psychological counseling or "debriefing" at the expense of the KCSO. Such counseling or "debriefing" shall be coordinated by the Human Resources Manager.

The employee may return to normal duty once they are determined to be "fit for duty" by a licensed psychologist/counselor. Upon written confirmation of "fit for duty" status, the Sheriff will confer with the employee to determine when the employee may return to normal duty.

400.11 USE OF FORCE INCIDENTS RESULTING IN SERIOUS PHYSICAL INJURY OR DEATH

Use of Force incidents resulting in serious physical injury or death shall immediately be referred to the State Law Enforcement Division (SLED) by the Sheriff or his designee for investigation.

400.12 RECEIPT OF POLICY

All sworn personnel shall be issued a copy of this directive through the use of PowerDMS software or other digital means and advised of the KCSO policy on the use of force. All sworn personnel must demonstrate proficiency with all weapons issued before being assigned to line duty or being authorized to carry those weapons in the line of duty. The Training Unit shall document the policy instruction and receipt.

400.13 USE OF FORCE TRAINING

At least annually, each deputy shall receive in-service training pertaining to the KCSO's Use of Force Policy. Only deputies demonstrating proficiency in the use

of authorized weapons shall be permitted to carry such weapons. Training and demonstration of proficiency shall be documented and conducted by a certified instructor. Those deputies unable to demonstrate proficiency shall be required to undergo remedial training in accordance with the KCSO training policy. Proficiency with authorized weapons is a necessity to successfully perform the job of a law enforcement officer. If a deputy is unable to demonstrate proficiency after remedial training, the deputy will be brought before the Sheriff for subsequent action, which may include re-assignment or termination.

400.14 DUTY TO INTERCEDE

Any deputy present and observing another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. A deputy who observes another deputy use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

400.15 SUPERVISOR RESPONSIBILITY

When a supervisor is notified of a situation under 400.14 (DUTY TO INTERCEDE), the supervisor will respond to the scene, gather evidence and witness statements, and determine whether an investigator needs to be called. The supervisor will notify the command staff and complete a supplemental report.

400.16 CONCLUSION

KCSO recognizes that in some extreme circumstances, when the survival of an officer or another person is in severe jeopardy, the situation may require that the officer resort to using any available weapon, instrument, and/or technique that is reasonable and necessary to stop the subject's actions. It is immaterial whether the weapon, instrument, and/or technique used is KCSO authorized or not. Such circumstances will be examined and reviewed based on the totality of the circumstances of the incident.