



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations	Section: 403.1
Subject: Use of Force	Topic: Use of Force Guidelines
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I. PURPOSE

The purpose of this General Order is to establish policy and procedures governing the use of force by sworn members of the Loudoun County Sheriff's Office. The reverence and respect for the dignity of all persons and the sanctity of human life shall guide all training, leadership, and procedures, as well as decisions made by deputies regarding the use of force.

II. POLICY

It shall be the policy of the Sheriff's Office to maintain stringent guidelines on the use of force by agency members. Deputies shall be trained in approved methods of force and agency use of force policy prior to assignment to duties where use of force may be required. Deputies acting within their official capacity may use only that amount of force which is reasonably necessary to affect lawful objectives. Justifications for using force are those facts known or perceived by a deputy at the time force is utilized. Deputies shall act in good faith when using force in order to conform to legal standards and this General Order.

III. GENERAL

Prior to the issuance of *any* weapon (including less lethal), the Training Section shall ensure that each new deputy receives and demonstrates an understanding of written instructions detailing the use of force. The written instructions, at a minimum, shall include this General Order and the General Order pertaining to Firearms (404 section). Sworn personnel shall sign a statement that they have received and understood the contents of this General Order. That statement shall become a permanent part of the employee's personnel record.

Within the first 30 days of employment, each deputy's immediate supervisor shall ensure that new sworn personnel under his/her command receive and demonstrate an understanding of written instructions detailing arrest procedures. The written instructions shall include, at a minimum, General Order #402.1, "Arrest Procedures." Sworn personnel shall sign a statement that they have received and understood the contents of that General Order. This statement shall then become a permanent part of the employee's personnel record.

Before issuance and use of any weapons, including less lethal weapons, ASP expandable batons and Oleoresin Capsicum spray ("OC"), sworn personnel shall attend and successfully complete all applicable certification courses taught by Department of Criminal Justice Services certified instructors.

Performance of the law enforcement function raises the possibility that at any given time and under circumstances of necessity, deputies may be called upon to use less-lethal and/or deadly force in the performance of their duties. Therefore, the intent of this General Order is to provide guidelines governing the use of force by sworn members of the agency and to prohibit the imprudent use of such force so that loss of life or serious bodily harm can be held to a minimum.

Deputies have an affirmative duty to act if they observe another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances, and shall safely intercede to prevent the use of excessive force. Deputies shall promptly report any such incident to a supervisor.

IV. DEFINITIONS

- A. Less-Lethal Force: Force that has the possibility of resulting in death or serious bodily injury; if properly used, however, this type of force may reduce the probability of death or serious physical injury.
- B. Deadly Force: Force that results in a bodily injury which creates a substantial risk of death, causes or could cause serious permanent disfigurement, or results in long-term loss or impairment of the function of any part or organ of the body.
- C. Use Of Force: The defensive acts or tactics employed by a deputy to a) overcome an individual's resistance to the performance of a deputy's legal duty; b) protect a deputy or another person from physical resistance or acts of aggression that are likely to cause bodily harm; c) apprehend a fleeing criminal suspect if the deputy has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the deputy or others.
- D. Physical Control: The necessary employment of law enforcement restraints and/or other use of force by a deputy.
- E. Reasonable Belief (Force): When facts or circumstances the deputy knows, or should know, are such so as to cause an ordinary and prudent person to act or think in a similar manner under similar circumstances.
- F. Objective Reasonableness: The Fourth Amendment "reasonableness" inquiry is whether a deputy's actions are "objectively reasonable" in light of the facts and

circumstances confronting him/her without regard to his/her underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable deputy on the scene, and its calculus must embody an allowance for the fact that law enforcement officers are often required to make split-second decisions about the amount of force necessary in a particular situation.

- G. **Totality of Circumstances:** A term used by the courts to refer to all facts and circumstances known to, or perceived by, the deputy which inform his/her decision to use force. The totality of circumstances includes consideration of the subject's form of resistance, all reasonably perceived factors that may have an effect on the situation, and the response options available to the deputy. Some situational factors may include, but are not limited to, the severity of the crime, whether the subject is an immediate threat, the subject's mental/psychiatric or violent history (if known to the deputy), the subject's combative and defensive tactics skills, the weapons possessed by or available to the subject, the possibility of harm to innocent bystanders, the number of subjects compared to the number of deputies, the duration of the confrontation, the subject's size, age, weight, physical condition, and environmental factors (such as physical terrain, weather conditions, etc.)
- H. **Excessive Force:** Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. The U.S. Supreme Court, in *Graham v. Connor*, set forth guidelines for determining whether force has been excessively applied: the primary concern is objective reasonableness in its application, as judged by the on scene deputy.

In May 2014 the U.S. Supreme Court reaffirmed the *Graham v. Connor* mandate that an analysis of the use of force should be "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... We thus allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation" (*Plumhoff v. Rickards*).

V. PROCEDURE

A. **Resistance and Control:**

For purposes of this General Order, the use of force shall be examined from the perspectives of resistance and control; each can take the form of verbal directives or physical action. Justified use of force is measured by two broad standards: whether a deputy's use of force was initiated by a subject's resistance, and whether the amount of force used by a deputy was appropriate and not excessive in relation to the type of resistance offered by a subject.

1. Resistance is manifested by a subject who attempts to evade a deputy's attempt to control. Resistance is action directed at a deputy by a subject. The amount and type of resistance will vary based on the actions of a subject. Resistance can be categorized into four broad areas:
 - a. Passive resistance
 - b. Active resistance
 - c. Aggressive resistance
 - d. Deadly resistance
2. Control is the action a deputy uses to influence or neutralize the resistance of a subject during the investigative or arrest process, or while under arrest.

B. Guidelines for Response to Resistance

These guidelines provide a framework for deputies when assessing the circumstances presented in order to make a decision involving the use of force.

1. A deputy's response to resistance shall be based upon his/her perception of the resistance and ability to overcome the resistance and gain control of a subject. Generally, there are four occasions in which a deputy is justified in using physical control methods:
 - a. To stop potentially dangerous and unlawful behavior
 - b. To protect a deputy or another from injury
 - c. To protect subjects from injuring themselves
 - d. To complete the process of an investigation, or while affecting a lawful arrest when a subject offers a degree of resistance
2. Deputies should strive to use the reasonable amount of effective force practicable to effect control over a subject; however, they need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead, deputies need to respond with all the force necessary for the circumstances in each specific situation. As soon as compliance and control are reached, a deputy must de-escalate his/her response to a reasonable amount of effective force necessary to control a subject.
3. Each succeeding response of deputy-administered control should include

elements of previous responses, when applicable. For example, passive resistance control techniques should include verbal communication and direction.

4. Passive Resistance

a. Passive resistance is a subject's verbal and/or physical refusal to comply with a deputy's lawful direction, causing the deputy to use physical techniques to establish control. Some examples of passive resistance include:

- i. The subject refuses to move at the deputy's direction
- ii. The subject peacefully protests at a political event in a public location
- iii. The subject refuses to take his/her hands out of his/her pockets or from behind his/her back

5. Active Resistance

a. Active resistance is a subject's use of physically evasive movements directed toward the deputy, such as bracing, tensing, pushing, or pulling to prevent the deputy from establishing control over the subject. Some examples of active resistance include:

- i. The subject physically anchors him/herself to a person or object to prevent him/herself from being moved by the deputy
- ii. The subject braces or pulls away from the deputy's grip on the subject's arm
- iii. The subject attempts to run when the deputy touches or attempts to grab the subject's arm or shoulder

6. Aggressive Resistance

a. Aggressive resistance is a subject's attacking movements toward a deputy that may cause injury but are not likely to cause death or great bodily harm to the deputy or others. Some examples of aggressive resistance include:

- i. The subject balls up his/her fist and approaches the deputy
- ii. The subject pushes the deputy back as the deputy tries to take the subject into custody
- iii. The subject grabs any part of the deputy's body

7. Deadly Resistance

- a. Deadly resistance is a subject's hostile, attacking movements, with or without a weapon, that create a perception by the deputy that the subject intends to cause, and has the capability of causing, death or great bodily harm to the deputy or others. A deputy uses three criteria for making a decision to use force against deadly resistance:
 - i. Ability: A deputy must determine whether the subject has the necessary means to cause death or great bodily harm to the deputy or others. "Ability" refers to the subject having the means to carry out his/her intent to cause death or great bodily harm.
 - ii. Intent: A reasonably perceived, imminent threat to a deputy or another person based on the subject's actions, behaviors, words, or other indicators. Intent is a perception derived from the totality of the circumstances.
 - iii. Opportunity: The subject is capable of carrying out an intention to cause death or great bodily harm to the deputy or others. The subject's weapon often determines opportunity. However, it must be remembered that the wielding of a weapon by the subject is not a requirement for the perception of deadly resistance. Subjects who are physically conditioned or motivated and trained to cause extreme injury may have the intent and capability to cause death or great bodily harm via hand-to-hand combat attacks.

8. Response Options

- a. Deputies should always try to resolve a situation with the most reasonable amount of force necessary. The presence of deputies and their verbal communication often will defuse many volatile situations, however these are not always sufficient or deputies may not have an opportunity to communicate verbally. Deputies need not apply force in gradually increasing steps in order to justify physical control. Instead, deputies need to respond with all the force practicable for the circumstances in each specific situation.
- b. Physical Control: Achieving compliance or custody through the use of empty-hand or leverage enhanced techniques, restraint devices, takedowns, and striking techniques.
- c. Less-lethal Weapon: The use of a weapon that is not fundamentally designed to cause death or great bodily harm. Examples of less-lethal weapons include

canine bite, chemical defense equipment, TASER (conducted electrical weapon), expandable baton, nonlethal munitions, and, during exigent circumstances, the agency issued flashlight.

- d. **Deadly Force:** Techniques that may result in death or great bodily harm, such as use of a firearm, empty-hand strikes to the throat and impact weapon strikes to the neck. Deadly force means the response is likely to cause death or great bodily harm, but does not necessarily mean that someone will die as a result of the force used. Deadly force can cause great bodily harm or no harm at all. For example, returning fire is deadly force, even if the deputy misses the target. The deputy must base his/her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he/she, a fellow deputy, or another person faces imminent danger of death or great bodily harm.

9. Factors Affecting Appropriate Use of Force Responses

- a. In properly determining the appropriate response to a subject's resistance, several factors must be evaluated by a deputy. For instance, an unarmed, small-framed female juvenile subject may be displaying aggressive resistance, but may only require a lower response option from a deputy. In contrast, a single deputy faced with a very large, physically conditioned subject may find that his/her response to even mild passive resistance may require escalated responses in order to affect control over the subject.
- b. It should be remembered that a deputy need not retreat in his/her effort to lawfully control a subject but may utilize the amount of force necessary to accomplish his/her lawful duties as a law enforcement officer. A temporary tactical retreat in the face of overwhelming odds, however, may be the wisest choice depending on the situation presented.

C. Authorized Use of Force

Depending upon the resistance encountered, deputies may use force that escalates from verbal commands to the use of a firearm.

1. Use of Less-Lethal Force

- a. For the resolution of incidents, deputies should utilize agency-approved defensive tactics and less-lethal weapons, but only those for which they have been trained, qualified and certified as determined by the agency's training procedures.
- b. To avoid injury to deputies, hand-to-hand confrontations should be avoided

whenever possible in situations where increased force is justified.

- c. When a confrontation escalates suddenly, deputies may use any means or device at hand as an alternative weapon to defend themselves, as long as the force is reasonable, given the existing circumstances.

2. Verbal Skills

- a. The direction and result of most encounters with subjects can be controlled by good communication skills on the part of a deputy. In most encounters, the mere presence of a deputy and proper verbal direction will be sufficient to resolve potential problems and allow a deputy to execute his/her duty.
- b. Good communication skills and proper application of communication techniques can prevent many physical confrontations from escalating to higher resistance. Deputies are encouraged to consciously develop and practice good communication skills as part of their basic proficiency in law enforcement techniques.

3. Handcuffs and Restraints

- a. The purpose of handcuffs, flex cuffs, and transport cuffs is to restrain the movement of a subject in a manner that allows a safe means for transporting that subject. Restraining devices also can be used to prevent further resistance from a subject. Whatever the application, restraining devices should be considered temporary in nature and a means for safely achieving other goals.

4. Empty-Hand Controls

- a. "Soft" empty-hand controls such as gentle touching, escort holds, pressure point controls and the like are appropriate for use against passive resistance and some forms of active resistance.
- b. "Hard" empty-hand controls are appropriate for use against some forms of active resistance and against all forms of aggressive or deadly resistance. Techniques that fall into this category have a higher probability of creating soft or connective tissue damage, skin lacerations, or bone fractures which require medical attention. Techniques that are considered "hard" empty-hand tactics include stunning and striking actions delivered to a subject's body with the hand, fist, forearm, leg, or foot. Preferably, the target for these tactics will be major muscle structures such as the legs, arms, or shoulders. Strikes delivered to such muscle structures will create muscle cramping, thus

inhibiting muscle action and allowing a deputy to bring a subject under control. However, in extreme cases of self-defense, a deputy may need to strike more fragile areas of the body where the potential for injury is even greater.

5. Less-lethal Weapons

- a. Less-lethal weapons are defined as agency-approved tools which provide a method for controlling a subject when use of deadly force is not justified but empty-hand control techniques are not enough for controlling a subject. Whenever a deputy uses a less-lethal weapon for control, it should be used with the intent to temporarily disable a subject and never with the intent of creating a permanent injury.
- b. The Sheriff's Office approved less-lethal weapons are the ASP expandable baton, chemical defense equipment, less-lethal munitions, TASER, canine bite, and during exigent circumstances, the agency-issued flashlight. If it is obvious that none of these weapons will be successful in controlling or containing the violator, then another less-lethal weapon may be utilized to apprehend and control the resisting subject.
- c. Deputies shall receive classroom training on less-lethal weapons at least biennially to discuss agency policy and/or demonstrate continued proficiency and knowledge of these weapons. Minimally, this training will be accomplished during one of each year's semi-annual firearms training. A certified instructor will conduct the training. Records of attendance for less-lethal weapons training shall be placed in each deputy's electronic training file, which is maintained by the agency Training Section.
- d. Less-lethal weapons may only be deployed when there is an exigent and immediate safety risk that is reasonably likely to be cured by the use of that weapon.
 - i. Refusal to obey commands alone does not constitute active resistance, even when that resistance includes physically preventing the manipulation of the subject's body.
 - ii. Erratic behavior and mental illness alone also do not necessarily create a safety risk.
- e. The proper deployment of a less-lethal weapons is defined in the General Order(s) specific to that less-lethal weapon. Those General Orders contain guidance on the proper deployment method, documentation required,

evidence collection, subject medical care and supervisor responsibilities. All less-lethal weapons shall be deployed in accordance with the LCSO training protocols governing that specific less-lethal weapon.

6. Use of Deadly Force

The Sheriff's Office policy regarding the use of deadly force shall be as follows:

- a. Deputies may use deadly force only when they reasonably believe that such action is in defense of human life, including their own lives, or in defense of any person in imminent danger of death or great bodily harm. Justifications for using deadly force are those facts known or perceived by a deputy at the time force is utilized.
- b. Deadly force may be used to apprehend a fleeing suspect if all other means of affecting an arrest have been exhausted and the deputy has probable cause to believe and reasonably believes that the escape of the suspect will present a threat of serious physical harm to the deputy or others. Mere suspicion that the person committed a crime is insufficient to warrant the use of deadly force. The deputy must have knowledge that a crime was committed and that the person fleeing arrest committed it. The U.S. Supreme Court has addressed the use of deadly force to apprehend fleeing suspects in the case of *Tennessee v Garner*.
- c. When a deputy discharges a weapon at a suspect with the intent to employ deadly force and the projectile does not strike the suspect, it is still considered use of deadly force and shall be investigated accordingly.
- d. Deputies shall not fire warning shots.
- e. Deputies shall not discharge a weapon at or from a moving vehicle except under the most aggravated circumstances.
- f. Deputies shall comply with the Constitution of the United States concerning justifiable use of force. The use of force has been construed by the courts to be a seizure under the Fourth Amendment and is subject to the objectively reasonable standard.
- g. The investigation of the use of deadly force shall be conducted in accordance with General Order 403.12, Investigation of Use of Deadly Force.