

<b>ALBEMARLE COUNTY POLICE DEPARTMENT GENERAL ORDER</b>	<b>NO.</b> <b>4-10</b>	<b>DATE OF ISSUE:</b> <b>September 15, 1999</b>
<b>SUBJECT:</b> <b>USE OF FORCE</b>	<b>REVISED/REVIEWED/RESCINDS:</b> <b>Revised: 04/04, 08/05, 07/08</b>	
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I. POLICY

Officers are confronted daily with situations requiring the use of force to affect an arrest or ensure public safety. The degree of force used depends on what the officer perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. The application of any degree of force is only justified when the officer reasonably believes that it is necessary.

II. PURPOSE

The purpose of this policy is to establish guidelines governing the use of force and its limitations, and to clearly describe prohibited activities.

**Nothing in this Policy and attached commentary is intended to create or does create any enforceable legal right or private right of action on the part of any person.**

### III. DEFINITIONS

#### A. DEADLY FORCE

1. The firing of a firearm, even without intent to kill or inflict bodily harm.
2. A force applied in a manner by any means that could reasonably be expected to cause death or serious physical injury.

#### B. NON-DEADLY FORCE

Force employed which is neither likely nor intended to cause death, serious physical injury or great bodily harm.

#### C. SERIOUS PHYSICAL INJURY

Bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

#### D. FIREARMS

A firearm is any weapon from which a projectile is forcibly ejected by an explosive.

#### E. REASONABLE BELIEF

When facts or circumstances the officer 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.

#### F. NECESSARY FORCE

That level of minimum force reasonably necessary to accomplish a legal purpose.

#### G. UNNECESSARY FORCE

1. The use of a higher level of force when the use of a lower level of force will suffice.
2. An unnecessary use of force need not result in any physical injury in order to be defined as such. It is merely the use of a certain level of physical force when none or a lesser level was necessary.

#### H. EXCESSIVE FORCE

1. Force is excessive when its application is inappropriate to the circumstances, resulting in serious injury or death of a person.
  - a. No objective definition of excessive force can be offered
  - b. Each situation must be evaluated according to its particular circumstances.
2. As a guide, the U.S. Supreme Court, in Graham v. Conner, set forth guidelines for determining whether force has been excessively applied.
  - a. The primary concern is the **reasonableness** of the use of force in its application, as judged by a reasonable officer possessing the same information and in the same factual circumstance as the officer in question.

- b. Factors to be considered are:
  - 1) The severity of the crime;
  - 2) The nature and extent of the threat posed by the suspect;
  - 3) The degree to which the suspect resists arrest or detention; and
  - 4) Any attempts by the suspect to evade arrest by flight.
  - 5) In evaluating the reasonable application of force, officers must consider their and the suspects age, size, strength, state of health, and the number of officers opposing the number of suspects.

#### I. USE OF FORCE WHEEL

1. The Use of Force Wheel is an instructional aid wherein an officer is hypothetically placed in the center or “hub” of a “force wheel” and reacts to potential use of force issues using a reasonable amount of force to gain control over a subject.
2. When the subject’s actions indicate a behavioral escalation or de-escalation, the officer’s new use of force option may either travel around the perimeter of the wheel, straight across the wheel or in any direction to meet the tense, uncertain and rapidly evolving situations that the officer may encounter.
3. Examples of the type of force wheel options that are available to officers are:
  - a. Chemical agents
  - b. Defensive tactics
  - c. Firearms
  - d. Impact weapons
  - e. Mere presence of the officer
  - f. Police canine
  - g. Taser
  - h. Verbal communications
4. The officer performing his duties should use the appropriate amount of force in response to the resistance, threat or attack from the subject(s). This will escalate or de-escalate depending on the behavior of the subject(s), along with the circumstances of the arrest or confrontation.
5. Various factors can influence the officer's decision and actions in escalating/de-escalating the situation. Some of these are:
  - a. Ages of officer and subject;
  - b. Relative size and strength;
  - c. Skill levels of officer and subject;
  - d. Dealing with multiple subjects;
  - e. Degree of motivation or mental state of subject(s);
  - f. Officer's special knowledge of subject(s);
  - g. Officer's injury or exhaustion;
  - h. Scene or setting of confrontation;

- i. Who has dominant position; and
  - j. Escalation/de-escalation of resistance, threat or attack.
6. The Department's Use of Force Wheel shall serve as a basis for the use of an officer's discretion in responding to perceived threats of aggression and is listed in the following ascending order:
    - a. Mere Presence
    - b. Verbal Command
    - c. Defensive Tactics/Open hand
    - d. Chemical Spray
    - e. Impact Weapons/Canine/Less lethal
    - f. Deadly Physical Force
  7. The Use of Force Wheel is based upon the appropriate selection of force options available in response to the required level of compliance from an individual that is to be restrained or controlled. The minimum force option that will safely accomplish lawful objectives should be chosen.
  8. Officers must be familiar with all alternative options on the Use of Force Wheel and should be prepared to respond to the level of the threat present at the specific moment in time, e.g. compliance, escalation, de-escalation.

#### J. INVESTIGATIVE DETENTION

1. An investigative detention is the "stop" in Stop and Frisk.
2. It should occur when reasonable suspicion exists that the individual being stopped has been, is, or is about to be involved in criminal activity.

#### K. IMMINENT

1. As used in this Policy, "Imminent" has a broader meaning than "Immediate" or "Instantaneous".
2. The concept of imminent should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous".
3. Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer, if for example he or she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available.

### IV. PROCEDURES

#### A. GENERAL

1. All sworn personnel shall be issued copies of, and trained in, G.O. 4-10 (Use of Force) before being authorized to carry firearms and less lethal weapons.
2. All sworn personnel will receive training within every calendar year thereafter in the use of force.
3. The Department expects officers to observe the following two guidelines in all applications of force:
  - a. Employ the minimum force reasonably necessary to accomplish a legal purpose.
  - b. Officers may resort to higher levels of force to overcome either increasing resistance or an increasingly dangerous threat to the public safety.
4. Officers may use deadly force only under a reasonable belief that the action is in defense of human life, including the officers' or in defense of any person in imminent danger of serious physical injury.
5. Police officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy:
  - a. To prevent the escape from custody, make an arrest or an investigative detention of a person the officer believes has committed a crime; or
  - b. To defend oneself or another from what the officer believes is the use of force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.
6. **When applying deadly force, the officer's objective must be to stop the threat or incapacitate the suspect, even though death may result.**
  - a. **The objective of the use of any force is to overcome the suspect's resistance to an officer's lawful purpose:**
  - b. **Officers shall avoid unnecessary or excessive applications of force.**
7. Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified.
8. **It is the responsibility of each officer to provide and/or obtain first aid for anyone claiming or needing medical attention after any degree of force is utilized by an officer.**

#### B. NON-DEADLY FORCE

1. The Department trains officers in the **Use of Force Wheel**, emphasizing the recognition of and response to increasing levels of threat.
  - a. Most instances in which force is applied are non-deadly.
  - b. Officers shall assess the incident to determine which technique will best defuse the situation and bring it under control.
  - c. The following discussion reinforces key principles from training.

2. Verbal Control
  - a. Verbal control refers to the manner in which the officer speaks to a person, which of itself can effectively manage a situation.
  - b. Verbal control includes advice, persuasion, admonitions, orders and commands.
  - c. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force.
  - d. The Department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.
  
3. Compliance Techniques
  - a. At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating tension or a suspect's combativeness.
  - b. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody.
  - c. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.
  
4. Taser
  - a. The Taser shall be considered a defensive weapon of the same type, and may be used under the same circumstances in the **Use of Force Wheel**, as OC Spray.
  - b. The Taser may be used to control a dangerous or violent subject when:
    - 1) Deadly force is not justified
    - 2) Attempts to control the subject by other tactics would be, or have been, ineffective
    - 3) There is a reasonable expectation that it is unsafe for officers to approach within contact-range of the subject.
  - c. Use of the Taser near flammable liquids and fumes is strictly prohibited.
    - 1) **Additionally, use of the Taser in conjunction with alcohol based OC Spray is strictly prohibited.**
    - 2) **Departmentally issued OC Spray is alcohol based. DO NOT USE THE TASER AFTER USING OC SPRAY.**
  - d. **For more specifics on the use of the Taser, see GO 4-25, TASER DEVICE.**
  
5. Chemical Agents
  - a. The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective.
    - 1) The only chemical weapon authorized for patrol personnel is the Oleoresin Capsicum (OC) Aerosol Spray.

- 2) The only other chemical agent available for use is tear gas, but its use is restricted to special circumstances, by specially trained personnel.
  - b. Oleoresin Capsicum (OC) or "pepper" spray
    - 1) OC spray is an Aerosol Subject Restraint (ASR) device which is designed to temporarily incapacitate a subject.
    - 2) OC becomes an OPTION after the officer has made an attempt at passive control (light subject control) techniques.
      - (a) For example the officer attempts to place a subject's hand behind his back and the subject immediately resists by forcefully pulling his arm away and out of the officer's control.
      - (b) The officer would now have the option of using the OC spray to control the subject.
    - 3) The officer on the scene is responsible for determining the threat level.
      - (a) On some occasions, the officer may believe that active resistance from the suspect is imminent.
        - This may be determined through the suspect's words and/or actions.
          - For example, the suspect who states that he is going to fight the officer or threatens to harm him if he attempts to arrest him.
          - Another example would be a suspect who, as the officer approaches, takes a fighting stance with his hands balled-up in fists and raised in the air.
        - In this type of situation, where the officer can articulate why he believes that active resistance was imminent, he may at his discretion use OC spray without first attempting passive control techniques.
      - (b) The use of OC spray is authorized during the apprehension of a suspect or suspects engaged in criminal activity or other situations where a person or persons are combative and cannot be controlled with a lesser degree of force.
    - 4) **For specifics on O. C. Spray, Use and Follow-up, see G. O. 4-23.**
  - c. Tear Gas
    - 1) These chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
    - 2) Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
    - 3) Tear gas gun is used to fire projectiles to the area of an armed barricaded subject when the use of hand-tossed grenades would be unsafe and impractical.
    - 4) Tear gas may only be used with explicit permission by the Chief of Police or his designee in tactical situations.
6. Defensive Tactics with Impact Devices (Batons)
- a. The Department currently only authorizes the Asp Baton as a striking weapon.
    - 1) This does not limit the future authorization of other striking weapons or batons by the Chief of Police.

- 2) All other forms of striking or punching weapons are prohibited for carrying or use. These prohibited weapons include but are not limited to saps, blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles.
- b. Officers must be certified in the use of any striking weapon or baton before carrying and use.
- c. These weapons may be used in quelling confrontations involving physical violence where:
  - 1) Higher levels of force are unnecessary or inappropriate and
  - 2) Lesser levels are inappropriate or ineffective.
- d. The baton shall not be used to strike handcuffed individuals unless such individuals are violently resisting arrest and/or engaging in other similar conduct requiring the officer to utilize this level of force.
- e. Officers may have to rely on the baton to subdue a violently resisting subject; however:
  - 1) Officers must realize that blows delivered to the head and other vital areas of the body could prove fatal.
  - 2) Blows should be directed to less lethal areas of the body as these produce less resultant trauma and are often more effective.
- f. Strikes to lethal areas of the body may be justified in the following situations:
  - 1) Life threatening situations and
  - 2) When attacked by multiple assailants.
- g. A baton should only be used in accordance with Department authorized training.

#### 7. Weapons Qualification

All officers are required to undergo refresher training and qualification (if applicable) at least once within every two calendar years for any issued/authorized weapons other than firearms.

### C. DEADLY FORCE – FIREARMS

#### 1. Firearms May Be Discharged:

- a. In defense of the officer or others from what the officer reasonably believes to be an imminent threat of death or serious bodily harm; or
- b. To prevent the escape of a fleeing felon whom the officer has probable cause to believe that the fleeing felon will pose a significant threat to human life should escape occur.
  - 1) In evaluating an "immediate threat" the officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the officer or others if apprehension is delayed.
  - 2) Where feasible, officers shall identify themselves and give a warning before shooting.
- c. To kill seriously injured or dangerous animals when no other action is reasonably possible. The officer must use appropriate caution and notify the supervisor following such action.
- d. In routine firearm training or practice at an approved range.

2. Unholstering Weapons  
Firearms may be unholstered when the officer has a reasonable belief that the weapon **may** be needed, without the provocation necessary to warrant its discharge.
3. Shooting at Moving Vehicles is Authorized Only when:
  - a. Any occupant of the other vehicle is using or threatening to use deadly force by means other than the vehicle; **or**
  - b. The subject is operating the vehicle in a manner deliberately intended to strike an officer or a citizen; **and**
    - 1) All other reasonable means of defense have been exhausted (or are not present), which includes moving out of the path of the vehicle, **and**
    - 2) The safety of innocent people would not be unduly jeopardized by the officer's action.
  - c. All due care shall be used to prevent injury to citizens.
4. Shooting from a moving vehicle is **not** authorized under any circumstances.
5. **Warning shots will not be fired for any reason.**
6. Long-Guns
  - a. Shotgun: Due to its wide shot dispersion, the shotgun should primarily be used when:
    - 1) A possibility exists that the officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects;
    - 2) Answering calls when the complainant has indicated a person is armed; or
    - 3) Killing an animal as required.
  - b. Patrol Rifle: The Patrol Rifle may be used when:
    - 1) A possibility exists that the officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects;
    - 2) Answering calls when the complainant has indicated a person is armed; or
    - 3) Killing an animal as required.
7. Firearms Qualification  
Officers are required to qualify at least once within every calendar year with any firearm they are authorized to use.

#### D. LIMITS ON THE USE OF FORCE - PROHIBITED ACTS

1. The following acts associated with the use of force are prohibited.
  - a. Firing into crowds is prohibited.
  - b. Firing a warning shot is prohibited.
  - c. Firing at a moving vehicle is prohibited, except as explained above.

- d. Firing into a building or through doors when the person fired at is not clearly visible is prohibited unless officers are being fired upon from such building or through such door. The use of tear gas in tactical situations is also an exception.
  - e. When in doubt, don't shoot.
2. Application of choke hold or carotid control holds is prohibited, except when the officer reasonably believes such holds are the only means of protecting him or herself or another person from an imminent threat of serious physical injury or death.
  3. Use of Streamlites or Kel-lites or other flashlights as batons is prohibited. Exception: an officer may use a flashlight or any other object designed for a use other than as a weapon, ONLY to defend him or herself or another from imminent physical injury or death and then ONLY if departmentally sanctioned methods are not available or are impractical.
  4. Use of deadly force is prohibited when used against:
    - a. Unarmed, non-dangerous fleeing felons,
    - b. Unarmed, non-dangerous fleeing misdemeanants, or
    - c. Unarmed, non-dangerous fleeing traffic offenders.

#### E. FOLLOW-UP ON USE OF FORCE

1. It is the responsibility of each officer to provide and/or obtain first aid for anyone claiming or needing medical attention after **any** degree of force is utilized by an officer.
2. Reporting Use of Force
  - a. Officers shall document **any** application of force, except for those arising in training or departmental demonstrations.
    - 1) All officers shall follow the guidelines set forth in GO 2-03, Incident Reporting System, to document use of force.
    - 2) The same procedures and investigation will be conducted for any accidental discharge of a Department-issued firearm.
  - b. On-duty supervisor responsibilities
    - 1) The supervisor shall notify the Division Commander or the Bureau Captain of use of force incidents resulting in serious physical injury or death, as soon as practical.
    - 2) The supervisor will follow the guidelines set forth in GO 2-03, Incident Reporting System, to document the use of force.
  - c. Depending on the seriousness of the incident and the injury(s), the Chief of Police shall be immediately notified. The Chief of Police shall cause the notification of the Deputy County Executive and, in the case of a death, the Commonwealth's Attorney and the Medical Examiner.
3. Administrative Procedures
  - a. Upon receipt of the written report of the incident, the Chief of Police shall review the incident and take the appropriate administrative action.

- b. During an internal investigation, the Department will do all within its power to avoid placement of a stigma on the officer whose actions or application of force results in serious physical injury or death in the performance of duty.
- c. Further, internal investigations of such use of force shall be of two types conducted simultaneously:
  - 1) An administrative investigation by the Office of Professional Standards to determine whether Department standards were followed;
  - 2) A criminal investigation to detect lawbreaking.
- d. The criminal investigation shall be discontinued whenever the Department and the Commonwealth's Attorney are satisfied that no crime occurred. (See GO 2-02, Citizen Complaints/Special Investigations)
- e. A copy of the investigation report and final determination will be forwarded by the Operations Bureau Commander to the Commonwealth's Attorney for final review.
- f. The administrative investigation report submitted to the Chief shall include the conclusions and findings as to whether the incident violated Departmental Policy.
- g. At the discretion of the Chief of Police the member(s) whose actions or application of force results in serious physical injury or death may be:
  - 1) Removed from active patrol or investigative duties, or assigned to light duty, with full pay and benefits, pending the resolution of the departmental investigation;
  - 2) Required to participate in the County Employee Assistance Program or be interviewed or counseled by a psychologist provided by the County at no expense to the member, prior to returning to duty.