



OFFICE OF THE DISTRICT ATTORNEY Investigations Division Standard Operating Procedures



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Number: INV 8-1 USE OF FORCE POLICY FOR INVESTIGATORS OF THE FOURTH JUDICIAL DISTRICT ATTORNEY'S OFFICE

Purpose:

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every Investigator of this Office is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

Policy:

The Fourth Judicial District Attorney's Office maintains a high regard for all human life and serves its community with dignity and without prejudice. Use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. The delivery of public safety services requires our Investigators to have various interactions with members of the public each day; on occasion, those interactions require Investigators to use reasonable force to accomplish a lawful objective. Through policy writing and adherence, training and supervision, we emphasize the use of de-escalation techniques when feasible and the use of deadly force only when the Investigator reasonably believes it is necessary to protect the Investigator or others from imminent danger of death or serious bodily injury. (Note that throughout this policy the terms Investigator and Officer are used interchangeably, see the definition of Officer on page 2 for details).

Definitions:

Bodily Injury: Physical pain, illness or any impairment of physical or mental condition. C.R.S. § 18-1-901 (c).

Chokehold: Any method by which a person applies sufficient pressure to a subject to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air; or applying pressure to the subject's neck, on either side of the windpipe, to stop the flow of blood through the carotid arteries to the brain.

Deadly Physical Force: "Deadly force," as used in this policy, means force, the intended, natural and probable consequence of which is to produce death, and which does, in fact, cause death. C.R.S. § 18-1-901 (3)(d).

Deadly Weapon: Any of the following, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury. This includes a firearm, whether loaded or unloaded; a knife, a bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate. C.R.S. § 18-1-901(3)(e).

Duty to Report Use of Force by Peace Officers: C.R.S. § 18-8-802 (1)(a), a peace officer who, in pursuance of such officer's law enforcement duties, witnesses another peace officer, in pursuance of such other peace officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, uses physical force which exceeds the degree of physical force permitted pursuant to section C.R.S. § 18-1-707 must report such use of force to such officer's immediate supervisor. Failure to do so may result in criminal charges. See C.R.S. § 18-8-802 for required contents of report.

Necessary: In compliance with applicable law, force required to accomplish a lawful objective.

Non- Deadly Weapon: Any object or material, when in the manner it is used or intended to be used, is unlikely to result in death or serious bodily injury.

Objective Reasonableness Standard:

1. The analysis that will be used to evaluate all force, deadly and non-deadly, as outlined in the Supreme Court's decision in *Graham v. Connor* (1989).
2. It will be dependent on the facts and circumstances in each particular case at the time of the use of force without regard to their underlying intent or motivation.
3. Facts and circumstances will include (three prong test):
 - a. Severity of the crime at issue.
 - b. Does the suspect pose an immediate threat to the safety of officers or others?
 - c. Is the suspect actively resisting arrest or attempting to evade arrest by flight?
4. Must take into consideration that officers are often forced to make split second decisions in circumstances that are tense, uncertain, and rapidly evolving.
5. Must be judged from an on-scene perspective; not in 20/20 hindsight.

Officer: For the purposes of this policy, the term officer shall mean all Investigators of this Office who are Colorado POST Certified peace officers.

Officer Created Jeopardy: A tactical error in judgment or action does not necessarily reach the threshold of created jeopardy. For created jeopardy to apply, the following must be considered:

1. The officer's actions immediately prior to and/or immediately connected to the officer's use of force unreasonably created the need for the officer to use force, and
2. The officer's actions must reach the level of recklessness or deliberateness.

Reasonable Officer Standard: Would an officer, facing the same/similar circumstances, with the same/similar training and experience, act in the same/similar way or use similar judgment. This standard is dependent on the totality of the circumstances. The force used does not need to be the best force option or the least intrusive; only a reasonable option. There must be an element of proportionality between the need for and the amount of force used.

Serious Bodily Injury: Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree. C.R.S. § 18-1-901(p).

Use of Force: The use of physical force (including deadly and non-deadly weapons) or show of authority to compel compliance to accomplish a lawful objective, overcome

resistance, self-defense, or to protect another officer or person. It includes but is not limited to (items appear in no particular order and do not represent a force continuum):

1. Discharging a firearm.
2. Knee Strikes.
3. Restraint chain under resistance.
4. Use of chemical sprays.
5. Pressure point techniques.
6. Taking a person to the ground.
7. Intentionally pointing a firearm at a person.
8. Use of conducted electrical weapons. (The DAO does not authorize these weapons at this time)
9. Handcuffing under resistance.
10. Baton strikes. (The DAO does not authorize these weapons at this time)
11. Hard hands (open and closed).
12. Tactical Vehicle Intervention (TVI).
13. Ramming.

Use of Excessive Force:

C.R.S. § 18-8-803, (1) Subject to the provisions of section C.R.S. 18-1-707, a peace officer who uses excessive force in the pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen, including the provisions of part 1 of article 3 of this title concerning homicide and related offenses and the provisions of part 2 of said article 3 concerning assaults. (2) As used in this section, "excessive force" means physical force, which exceeds the degree of physical force permitted pursuant to section C.R.S. 18-1-707. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by section C.R.S. 18-1-707 to a person who has been rendered incapable of resisting arrest.

Duty to Intercede:

Any officer present and observing another officer, regardless of rank, 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. An officer who observes another officer use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor. An officer who fails to intervene or prevent the use of unlawful force in accordance with law commits a class 1 misdemeanor.

Duty to Report Excessive Force

In accordance with C.R.S. § 18-8-802 and/or this policy any officer who witnesses another peace officer using force in excess of that permitted pursuant to C.R.S. § 18-1-707 must report such use of force to a supervisor. Subsequent written notification shall be within 10 days of the occurrence and include the date, time and place of the occurrence, the identity, if known, and description of the participants, and a description of the events and the force used (C.R.S. § 18-8-802(1)(b)). An officer who fails to report excessive force in accordance with law commits a class 1 misdemeanor.

Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often 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.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the reasonableness of force in each incident. Some circumstances may arise in which officers reasonably believe it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Office. The use of any improvised device or method must nonetheless be reasonable and utilized only to the degree which reasonably appears necessary to accomplish a lawful objective within the scope of their duties. Officers, where feasible, will consider the use of de-escalation techniques, and document any use of de-escalation techniques.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

Factors Used to Determine the Reasonableness of Force

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

Graham Factors (*Graham v. Connor* 1989):

1. The severity of the crime at issue.
2. Does the suspect pose an immediate threat to the safety of officers or others?
3. Is the suspect actively resisting arrest or attempting to evade arrest by flight?

Kingsley Factors (*Kingsley v. Hendrickson* 2015):

1. The relationship between the need for the UOF and the amount of force used.
2. The extent of the injury inflicted.
3. Any effort made by the officer to temper or limit the amount of force.
4. The severity of the security problem at issue.
5. The threat reasonably perceived by the officer.
6. Whether the subject was actively resisting.
7. Courts must account for the government's interest (deferring to policies needed to preserve order and discipline).

Medical Emergency/Crisis Intervention Factors:

1. The individual's emotional or mental disturbance.
2. The severity and immediacy of the threat the individual poses to himself or others.
3. Was some degree of force reasonably necessary to lessen the immediate threat?
4. Whether LE officers knew or should have known the individual had special characteristics making him more susceptible to harm from a particular use of force.
5. Was the force used more than reasonably necessary under the circumstances.
6. Diminished capacity caused by health problems, emotional stress, drunkenness, or drugs.

Deadly Force Factors (*Larsen v. Murr*, 10th Circuit 2008):

1. Whether the officers ordered the suspect to drop his weapon [where feasible], and the suspect's compliance with police commands.

- a. For the purpose of this section of the policy, "feasible" means those circumstances when giving a warning does not place the officer or others in greater danger.
2. Whether any hostile motions were made with the weapon towards the officers (or others).
3. The distance separating the officers and the suspect.
4. The manifest intentions of the suspect.

Additional Factors:

1. Officer/subject disparity - age, size, relative strength, skill level, experience, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects.
2. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
3. Proximity of weapons or dangerous improvised devices.
4. The apparent need for immediate control of the subject or a prompt resolution of the situation.
5. Prior contacts with the subject or awareness of any propensity for violence.
6. Whether during the course of the interaction, new facts developed requiring a change in the amount of force required.

General Use of Force Directives

1. All officers must be trained in the use of force per Colorado POST requirements. Officers will have access to the Use of Force Policy and are required to understand and comply with the directives as outlined in this policy.
2. Chokeholds are prohibited.
3. When restraining subjects, officers should not place the subject in a prone position, hands restrained behind the back, feet shackled, and a chain or tether which connects the restrained hands and feet or any position which restricts or impairs respiration. This position is known as a "hog-tie" position.

Response to Protests and Demonstrations

Officers will respect the rights of people to peaceably assemble and not unnecessarily interfere with those who are lawfully exercising their right to do so. In addition to the following directives, officers will abide by those guidelines found in the policy governing First Amendment Assemblies.

1. Officers will not target the head, pelvis, or back of subjects when deploying impact rounds / less-lethal projectiles. (The DAO does not authorize these weapons at this time)
2. Officers will not fire impact rounds indiscriminately into the crowd.
3. Officers must first issue an order to the crowd to disperse prior to using chemical agents / sprays. The order must have been given in a manner to ensure the order was heard; the order should be repeated if necessary. The crowd must be given sufficient time and routes of egress to comply with the order.

Use of Non-Deadly Physical Force

In addition to statutory justification of the use of force extended to citizens, officers may use "reasonable and appropriate physical force" when they reasonably believe it is necessary to:

1. Effect an arrest.
2. Prevent an escape.
3. Defense of self and others.
4. Protect property.
5. Quell a Disturbance.
6. Temporarily detain (Terry Stop).
7. Take a person into protective custody for mental health or intoxicated conditions.
8. Prevent self-inflicted injury.
9. Execute a warrant.

Use of Deadly Physical Force

In accordance with the statutory justifications outline by Colorado law, an officer is justified in using deadly physical force when he reasonably believes it is necessary to stop a subject whom:

1. He believes has committed or attempted to commit a felony with the use or threatened use of a deadly weapon and without immediate apprehension remains an imminent threat to the officer or others by the use or threatened use of force that may result in serious bodily injury or death.
2. To defend himself or a third person from what he reasonably believes is the use or imminent use of force that may result in serious bodily injury or death.
3. He reasonably believes is attempting to escape by the use of a deadly weapon and without immediate apprehension remains an imminent threat to the safety of the officer or others by the use or threatened use of force that may result in serious bodily injury or death.
4. While in a detention facility, to defend himself or a third person from what he reasonably believes is the use or imminent use of force that may result in serious bodily injury or death. (Note that this would apply to Investigators conducting work inside a detention facility)
5. And when the force employed does not create a substantial risk of injury to other persons.
6. Only if it would not place the officer or others in greater danger, the officer will give a warning to the subject before using deadly force. The warning shall consist of identifying him or herself as law enforcement, their intent to use deadly force, and sufficient time for the subject to comply.

Shooting at or from Moving Vehicles

Shots fired at or from a moving vehicle are rarely effective.

1. An officer may discharge a firearm at a moving vehicle, or the driver, only when the officer reasonably believes there are no other reasonable means available to stop the driver from using the vehicle as a deadly weapon against the officer or another person; or,
2. An officer may discharge a firearm at a passenger of a moving vehicle, only when the passenger is using or attempting to use deadly force, other than the vehicle, against the officer or another person, and there are no other reasonable means available to stop the threat.
3. Officers should move out of the path of an approaching vehicle when feasible, instead of discharging their firearm at the vehicle or any of its occupants.
4. Officers should not shoot at a vehicle in an attempt to disable the vehicle.

Exhibiting Firearms

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm.

Exhibiting or drawing a firearm in a situation is objectively reasonable when:

1. The officer has a reasonable belief the tactical situation warrants it.
2. The officer has reasonable suspicion to point his/her duty weapon at an individual.
3. The officer has probable cause to use deadly force.
4. De-escalation (Holstering) shall be done when feasible.

Intentionally pointing a firearm at a person requires a written report of the incident except in the following situations where the on-scene supervisor will direct the reporting requirements:

1. Officers executing an arrest or a search warrant.

Officers will keep their fingers off the trigger and out of the trigger guard until the sights are on the subject and they are prepared to shoot. Firearms with external mechanical safeties shall be on safe until the sights are on the subject and the officers are prepared to shoot.

Reporting the Use of Force

Any reportable use of force by an officer of this Office shall be documented completely and accurately in an appropriate report, depending on the nature of the incident. The report should be completed by the end of the officer's next work day. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Office may require the completion of additional report forms, as specified in Office policy, procedure or law.

Reportable Use of Force

The following are Reportable Uses of Force:

1. Control Techniques: The use of empty hand pain compliance techniques.
2. Pointing a Firearm: Intentionally pointing a firearm at a person.
3. Strikes, Kicks, or Takedowns: The use of strikes, kicks, or takedowns.
4. Chemical Agents: The use of chemical agents (includes Oleoresin Capsicum).
5. Hand and Leg Restraints: Only under resistance.
6. Tactical Vehicle Intervention (TVI).
7. Ramming.
8. Deadly Force: The application of deadly force by any means.
9. Any other use of force application that causes pain and /or injury: The preceding list does not cover every possible use of force application. This category covers any unmentioned use of force applications that are reasonably expected to cause pain or an injury.

Non-Deadly Force Reporting Procedures

All involved officers that use reportable force as defined in this policy must complete a report. The report shall be in the form of an Investigative case report and should include a concise summary statement documenting the use of force incident as part of a crime report, or if there was no associated crime, a report entitled Use of Force will be written.

The narrative should contain the following details:

1. Why and how the contact occurred.
2. Describe the force/resistance used against the officer or others.
3. Describe where feasible any attempts to de-escalate the situation.
4. Describe the force used by the officer against the subject.

5. The resolution of the incident (detained, arrested, special detentions, medical, etc.).

NON-REPORTABLE USE OF FORCE

The following are examples of Non-Reportable Use of Force and do not require separate reports if there was no associated crime or arrest:

1. Verbal Commands and warnings.
2. Firearms: Drawing and exhibiting a firearm based on the totality of the circumstances without intentionally pointing it at a person.
3. Presence/Appearance: An officer is present in uniform or with a badge or lettering visibly identifying the officer as law enforcement.
4. Non-Deadly Weapons: The display, arcing, illuminating, and pointing of any non-deadly weapons to include CEW's and Oleoresin Capsicum.
5. Hand and Leg Restraints: When conducted for the purposes of escorting.
6. Emergency Restraint Chair: When placed in the chair for medical/crisis intervention and escort purposes and where no physical force was required. (This may occur if an Investigator is working inside a detention facility)
7. Minimal Physical Force: Physical interaction meant to separate, guide, and/or control with the use of control techniques that are not reasonably expected to cause pain or an injury. This includes:
 - a. Use of escort hold techniques that are not reasonably expected to cause pain against a subject(s) who exhibits no or minimal resistance.
 - b. Use of hands to stop, push back, separate, or escort a subject(s) that are not reasonably expected to cause pain against a subject who exhibits no or minimal resistance.
 - c. Deployment of a canine that does not result in contact with the subject(s) who exhibits no or minimal resistance.

Consideration of De-escalation Techniques

Use of force policies, training, and supervision are implemented with the goal of ensuring officers use techniques other than force to effect compliance whenever feasible and safety allows for de-escalation. In situations which are not tense, uncertain, and rapidly evolving, officers should use appropriate de-escalation techniques to delay, reduce the amount of force, or eliminate the need for force when feasible and safety allows for the de-escalation. The officer's ability to de-escalate is more likely when the situation is slowly developing, and the officer and others are not at risk. Conversely, tense and rapidly evolving situations may not lend themselves to de-escalation. Examples of de-escalation types and techniques include but are not limited to:

1. Tactical De-escalation:
 - a. Using time to slow down the pace of the incident (where feasible to do so).
 - b. Use of cover.
 - c. Creating or keeping distance from the threat (reactionary gap); re-positioning to isolate and contain the subject.
 - d. Show of force/ability (waiting for cover, having enough people to handle incident).
 - e. Requesting specialized resources (Outside agency assistance).
2. Verbal De-escalation:
 - a. Communicate by exercising persuasion and advice and providing a warning prior to the use of force where feasible.
 - b. Verbal de-escalation stops and will not be attempted if it endangers the officer or others.
3. Physical De-escalation:

- a. Reducing or stopping the amount of force being applied as the threat becomes neutralized, incapable of resisting, or becomes compliant.

Nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. Disengagement may be an option but must be carefully weighed and measured against the Safety Priorities. Officers will consider the possibility a subject may be noncompliant due to a medical or mental condition, physical or hearing impairment, language barrier, drug interaction, or emotional crisis.

Medical Consideration

Officers shall use the following criteria when using force that requires medical attention:

1. If an injury results from a use of force, the officer will notify the appropriate medical personnel, for example an ambulance crew, trained paramedics, hospital staff, or trained medical staff.
2. If the scene is rendered safe based on the totality of the circumstances, officers should render appropriate medical aid as quickly as reasonably possible to the extent of their training.
3. If the subject suffered serious bodily injury or death as a result of a use of force, a staff member in the rank of Chief Investigator or higher will ensure notification is made to any identified relatives/next of kin of the subject as soon as is practicable; in the case of a death, the staff member shall coordinate with the Coroner's Office.

Individuals showing signs of physical distress after a use of force should be continuously monitored until they can be medically assessed. Even when no injury is apparent, officers shall request a medical response after use of any of the following non-deadly weapons: conducted electrical weapons, oleoresin capsicum, baton as an impact weapon, or special impact munitions.

When feasible and safe, officers will check for proper tightness of restraints, double-lock restraints, and document it in their reports. Once an individual is compliant, subdued, or restrained, they shall be placed in a position which does not hinder their breathing. If feasible the subject should be placed on their side, back, in a sitting position, kneeling position or standing position.

1. Any reporting officer or supervisor on scene shall take responsibility to ensure these questions are asked after the subject has been safely restrained.
 - a. The subject's answers or refusal of medical treatment shall be documented in a case report, incident report, or recorded (audio recording or video recording, as with a cell phone) depending on the situation.
 - b. Are you injured?
 - c. Where are you injured?
 - d. Do you need medical attention?

Individuals who exhibit extreme agitation, very high body temperature, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain (sometimes called excited delirium), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of arrest related death. Situations involving these individuals should be considered medical emergencies. Officers who reasonably suspect or observe a medical emergency should request medical assistance as soon as practicable.

Approval:

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Chief of Investigations
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