

**ONTARIO COUNTY Standard Operating Procedures (SOP)
Use of Force**



DIRECTIVE: Use of Force

DIRECTIVE #: 3-7

REFER TO: Undersheriff and Chief Deputy

DATE: Feb. 2021

RELEASING AUTHORITY: Sheriff

REFERENCES: NYSLEAP Chapters 20 & 21, NYS Penal Law Article 35, Executive Law § 837-t; Executive Law § 840(4)(d)(3), 9 NYCRR 6058.3, OCSO SOP 9-7.

I. PURPOSE AND SCOPE

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 member of the Ontario County Sheriff's Office (OCSO) is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Executive Law § 840).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Weapons Use, Training, and Conducted Energy Device policies.

DEFINITIONS:

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. This includes force that, under the circumstances, is readily capable of causing death or serious physical injury (Executive Law § 840).

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Totality of the circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

Brandish - For Use of Force reporting purposes, required under Executive Law §837-t, the definition of brandish means "to point".

II. OBJECTIVE

To establish guidelines affecting the use of force by members of the OCSO; the authority for such action, its legal limitations, and the necessity for determining what level of reasonable force is appropriate and justified, given the facts and circumstances in legitimate law enforcement situations.

III. POLICY

- A. Use of Force:** Deputies shall use only that amount of force that is reasonable, given the facts and circumstances perceived by the Deputy at the time of the event, to accomplish a legitimate law enforcement purpose.
- a. The reasonableness of force will be judged from the perspective of an objectively reasonable Deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that Deputies 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.
 - b. Given that no policy can realistically predict every possible situation a Deputy might encounter, Deputies are entrusted to use de-escalation techniques and well-reasoned decision-making skills, during various law enforcement scenarios.
 - c. It is recognized that circumstances may arise in which Deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this office. Deputies may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.
 - d. While the ultimate objective of every law enforcement encounter is to make every attempt to de-escalate a situation and avoid or minimize injury by utilizing their varying training in such techniques, nothing in this policy requires a Deputy to retreat or be exposed to possible physical injury before applying reasonable force.
 - e. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of the OCSO is expected to use the guidelines of this policy in conjunction with the legal standards set forth in Article 35 of the New York State Penal Law and OCSO's high standards of training, accountability and competency to make such decisions in a professional, impartial, and reasonable manner.
 - f. It is the responsibility of each member to be thoroughly familiar with the conduct described in Article 35, with the definitions pertinent thereto which appear in Articles 10, 35 and 265 of the Penal Law, and with OCSO training and policy as stated.
 - g. It is the utmost priority and philosophy of the Ontario County Sheriff's Office to protect and serve all individuals regardless of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status. Furthermore, it is the OCSO mission for all employees to respect the inherent life, liberty, dignity, and worth of all individuals by preserving human life, and by conducting their duties without prejudice.
- B. Duty to Intercede:** Any Deputy present and observing another police/peace officer 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 police/peace officer use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.
- C. USE OF FORCE TO EFFECT AN ARREST:** A police Deputy or a peace Deputy may use reasonable physical force to effect an arrest, prevent escape of a person from custody, or in defense of self or others from current, active, and immediate physical force (Penal Law § 35.30).

Force shall not be used by a Deputy under the following circumstances:

- (a) To extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
- (b) To coerce a confession from a subject in custody.
- (c) To obtain blood, saliva, urine, or other bodily fluid or cells from an individual for scientific testing in lieu of a court order where required.
- (d) In a manner that is punitive and/or retaliatory during situations involving fleeing suspects, resisting arrest, showing disrespect for officers, or other similar circumstances.

D. FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a Deputy has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to Deputies or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the Deputy at the time.
- (c) Deputy/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of Deputies available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Individual's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the Deputy.
- (k) Potential for injury to Deputies, suspects and others.
- (l) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the Deputy.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose a current, active, and immediate threat to the Deputy or others.
- (p) Prior contacts with the individual or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

E. PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques are techniques to gain compliance without the use of non-lethal techniques such as deploying of a Taser, or the use of O.C. spray. These techniques are designed to cause short-term discomfort for lawful compliance purposes without requiring medical intervention or causing any lasting effects. Pain Compliance Techniques may be effective in controlling a physically or actively resisting individual. Deputies may only apply those pain compliance techniques for which they have successfully completed department-approved training. Deputies utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the Deputy.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the Deputy determines that compliance has been achieved.

F. DEADLY FORCE APPLICATIONS

Notwithstanding the fact that Section 35.30 of the New York State Penal Law permits a police Deputy to use deadly physical force in the prevention of certain crimes; it shall be the policy of the Ontario County Sheriff's Office that members use deadly physical force **only** when the member reasonably believes that the action is necessary in the defense of human life, including the Deputy's own life, or in defense of any person in immediate danger of serious physical injury.

Use of deadly force is justified in the following circumstances:

- (a) A Deputy may use deadly force to protect him/herself or others from what he/she reasonably believes would be a current, active, and immediate threat of death or serious bodily injury.
- (b) Current, active, and immediate does not mean immediate or instantaneous. A current, active, and immediate danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, a current, active, and immediate danger may exist if a Deputy reasonably believes any of the following:
 - 1. The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the Deputy or another person.
 - 2. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.

G. SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Deputies should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

A Deputy should only discharge a firearm at a moving vehicle or its occupants when the Deputy reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the Deputy or others.

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

H. CAROTID CONTROL HOLD

The application of the carotid control hold and/or "choke hold" is not a technique trained or used by members of the OCSO.

I. REPORTING THE USE OF FORCE

Any use of force by a member of this office shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The Deputy 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 OCSO may require the completion of additional report forms, as specified in OCSO policy, procedure or law (Executive Law § 840).

Any employee using physical force pursuant to his/her duties as a law enforcement Deputy, whether on or off duty, shall report or cause to be reported all facts relative to the incident on a Subject Resistance Report.

J. NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force. In the case of off-duty incidents the Deputy shall make the incident known to the on-duty supervising Deputy.

K. MEDICAL CONSIDERATIONS

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the Deputy's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another Deputy and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if not available, the primary handling Deputy shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the Deputy reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, 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 Deputies to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

When an individual refuses medical treatment for obvious injuries, such refusal, whenever possible, should be in the presence of/witnessed by medical personnel and so noted by the Deputy on the Subject Resistance Report. In instances where the subject has an apparent serious physical injury and refuses medical treatment due to possible mental illness, intoxication, or drug impairment the Deputy shall consider applying Section 9.41 of the New York State Mental Hygiene Law.

L. SUPERVISOR RESPONSIBILITIES

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to (Executive Law § 840):

(a) Obtain the basic facts from the involved Deputies. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his/her Miranda rights, the following shall apply:

1. The content of the interview should not be summarized or included in any related criminal charges.
2. The fact that a recorded interview was conducted should be documented in a property or other report.
3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. A photo showing no injury may be as important as a photo showing injury. These photographs should be retained until all potential for civil litigation has expired.

(e) Identify any witnesses not already included in related reports, including any Deputies present at the incident.

(f) Review and approve all related reports. Supervisors should require that Deputies who engaged in the use of force submit the appropriate report.

(g) Determine if there is any indication that the individual may pursue civil litigation. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

(h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

1. Disciplinary actions will be consistent with any applicable disciplinary guidelines and collective bargaining agreements. In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

M. COMMAND STAFF RESPONSIBILITY

The Undersheriff shall review each use of force by any personnel to ensure compliance with this policy and to address any training issues and should ensure that there is enough information to meet the use of force reporting requirements for the DCJS (Executive Law § 837-t; 9 NYCRR 6058.3).

N. REPORTING RESPONSIBILITIES

The Sheriff or his/her designee shall ensure that reports are submitted to the DCJS when a Deputy (Executive Law § 837-t; 9 NYCRR 6058.3):

- (a) Brandishes, uses, or discharges a firearm at or in the direction of another person.
- (b) Uses, or deploys a chemical agent or control device, including but not limited to oleoresin capsicum (OC), pepper projectiles, tear gas, batons, or kinetic energy projectiles.
- (c) Brandishes, uses, or deploys an impact weapon.
- (d) Brandishes, uses, or deploys an electronic control weapon, including an electronic stun gun, flash bomb, or long-range acoustic device.
- (e) Engages in conduct which results in the death or serious bodily injury of another person.

O. TRAINING

Deputies will receive annual training on this policy and demonstrate their knowledge and understanding. Training topics should include applications of use of force conflict prevention, conflict resolution and negotiation, and de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition as well as duty to intervene and prohibited conduct as required by the State Use of Force Model Policy (Executive Law § 840).

PUBLICATION OF POLICY

This policy shall be readily available to the public upon request and shall be posted on the OCSO website (Executive Law § 840)