

EO 03-20 Appendix C DRAFT 09-30-20

Statewide Use of Force Policy DRAFT

1.0 PURPOSE

1.1 To establish guidelines concerning the use of force.

1.2 To provide an understanding of resistance and applying any escalation or de-escalation of force.

2.0 POLICY

2.1 It is the policy of this department that members may employ objectively reasonable use of force to accomplish a legal purpose. The degree of force used depends on what the member perceives as being objectively reasonable under the circumstances.

2.2 The policy is not to be construed to require members to assume unreasonable risks. In assessing the need to use force, the paramount consideration should always be the safety of the member and the public.

2.3 Members shall only carry department authorized weapons and ammunition on duty. The member must be certified and maintain certification on all department authorized weapons through the department or Vermont Criminal Justice Training Council.

2.4 It is the expectation of all members that they shall intervene, when able to do so, upon witnessing the occurrence of excessive force from their perspective as defined within policy. Members are further reminded that they are required to report such occurrences in accordance with applicable agency policy.

2.5 The use of invasive surveillance technologies, autonomous weapon systems, facial recognition software and predictive policing technologies shall not be adopted by this agency without express authorization under state law.

2.6 Officers are reminded that appearance alone impacts public perception. As such, externally worn ballistic vests or heavy body armor, ballistic helmets, and other specialized equipment designed primarily for use in tactical or crowd management situations should not be worn or deployed as a common routine or practice.

(1) Nothing within this subsection should be construed to discourage the use of soft body armor by a law enforcement officer during their routine duties. Soft body armor is designed for extended daily wear with the uniform of the day and is different from hard plated ballistic vests and ballistic helmets, which are more commonly worn for short duration periods.

3.0 DEFINITIONS

3.1 For the purposes of this policy, the following definitions shall be utilized.

(1) Arrest or Detention - is a seizure under the Fourth Amendment and use of force may be applied to effect the seizure.

(2) Use of Force - Any force employed by a law enforcement officer to compel a person's compliance with the officer's instructions that constitutes a greater amount of force than handcuffing a compliant person. Use of force is lawful if it is objectively reasonable under the circumstances to affect an arrest or protect the officer or the other person.

(3) Less-Lethal Force - Levels of force that when employed are neither intended nor expected to cause serious bodily injury or death. Such force is normally that force used to temporarily control or immobilize.

(4) Minor Injury - Injuries that do not require immediate or professional medical treatment. This includes, but is not limited to, bruises, abrasions, tissue swelling, skin redness, and muscle soreness.

(5) Serious Injury - Injuries that, left untreated, could reasonably cause permanent disfigurement, disability, loss of use or death.

(6) Pain - A distressing physical sensation caused by injury or illness; it is also the primary sensation (anticipated or actual) used to resist or control. This includes, but is not limited to, individual stress levels, pain tolerance, and drug or alcohol influence. Intensity of pain sensations are also relative to the individual experiencing it.

NOTE: Physical weapon tools used by law enforcement professionals rely on pain to control resistance. Conversely, physical and weapon tools used by offenders rely on pain to resist. To that end, the Vermont State Police recognizes that the presence of pain, whether actual or anticipated, can cause injury to both members and others during use of force events. Although the vast majority of injuries sustained during the use of force are minor, serious injuries and death are also possible to both the offender and the member.

(7) Impact Tools and Impact Projectiles - Shall refer to the expandable baton, PR-24, bean bag rounds, sponge rounds, pellet rounds, rubber/plastic projectiles, or other field expedient object, or other tools issued or recommended by the Use of Force Training Review Panel.

(8) OC Spray - Shall refer to Oleoresin Capsicum (OC), which is primarily an inflammatory agent with irritant side effects. Only OC approved by the department may be carried. The propellant shall be non-flammable and conductive electrical weapon compatible.

(9) Conductive Electrical Weapon (CEW) - Shall refer to the department issued Taser.

(10) Use of Force Model - This is an objectively reasonable escalation or de-escalation of force measured by the actions and dynamics of the situation in which the member is involved. The force model consists of five stages of confrontation .

(11) Lethal Force - Any action, with or without a weapon, that could reasonably cause serious bodily injury or death.

(12) Department Authorized Weapon - Any weapon issued by or authorized for use by the department that requires a member to be trained and/or certified including a firearm, OC spray, conductive electrical weapon and impact tools.

(13) Objectively Reasonable Force - The degree of force used in effecting an arrest, investigatory stop, or other seizure is evaluated by using an objective, reasonable police officer standard. The reasonableness of each particular use of force will be judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at the time. (See, *Graham v. Connor*, 490 US 388 (1989).) The reasonableness of a particular use-of-force must be judged from the perspective of a reasonable officer on the scene (not with 20/20 hindsight). Its calculus must embody an allowance for the fact police officers are forced to make split-second decisions. In determining the appropriate level of force to be used, officers shall evaluate each situation in light of the unique facts and circumstances of each case. Those factors include, but are not limited to: the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to escape; and whether the subject was posing an imminent threat to officers or others.

(14) Prohibited Restraint – Use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain (see also 13 V.S.A. § 1032).

(15) Autonomous Weapon System – A weapon system that, once activated, can select and engage targets without further intervention by a human operator. This includes human-supervised autonomous weapon systems that are designed to allow human operators to override operation of the weapon system, but can select and engage targets without further human input after activation.

(16) Facial Recognition Software – Programs that analyze images of human faces for the purpose of establishing identification.

(17) First Amendment Activities - First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or

otherwise communicate with others and include both verbal and non-verbal expression. Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, and displaying banners or signs. All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution and the Constitution of Vermont. The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified.

(18) High Risk Activities – Responses to incidents involving the potential for or occurrence of an act of violence where the involvement of a weapon is possible, members are at a disadvantage, or members are subject to extreme danger. High-risk activities also include pre-planned enforcement action such as fugitive round-ups, drug raids, and the execution of a search warrant in an environment not already controlled by the agency.

4.0 PROCEDURE - Less-Lethal USE OF FORCE

4.1 General Procedures Regarding Less-Lethal Use of Force

(1) Officers shall use advisements, warnings, verbal persuasion, and verbal instructions when feasible before resorting to force.

(2) Force shall be de-escalated as resistance decreases.

(3) When feasible, based on the circumstances, officers will use tactics such as area containment; surveillance; waiting on a subject; summoning reinforcements; and/or requesting activation of specialized units, in order to reduce the need for force and thereby increase officer, suspect, and civilian safety.

(4) When feasible, officers shall allow individuals time to submit to arrest before force is used.

4.2 Members must weigh the circumstances of each case and employ only that amount of force which is objectively reasonable to control the situation or persons with respect to the control superiority principle. The force employed should be that which is reasonable to overcome the resistance or immediate threat that the person poses to the member or others.

4.3 The dynamics of all encounters are different. When a member determines it is objectively reasonable to use force, the member shall utilize an escalating or de-escalating level of force as determined by the particular needs of the situation.

4.4 This policy shall not prohibit a member from reacting to a perceived threat. The use of force does not have to be progressive, and a member may escalate and de-escalate as is reasonable.

Member's perception of the subject and appropriate response

(1) Compliant - Willfully obeys member's lawful directions and/or requests.

Response: Cooperative controls - include those developed to preserve officer safety and security, including: escorts, communication skills, restraint applications, etc.

(2) Passive Resistance - the preliminary level of non-compliance. Here, the subject, although non-compliant, offers no physical or mechanical energy enhancement toward the resistant effort.

Response: Contact Controls - includes resistant countermeasures designed to guide or direct the non-compliant subject. These "hands on" tactics could include the elbow / wrist grasp, hand rotation position, non-compliant escorts, other low level physical contact, key verbal skills, or equipment display.

(3) Active Resistance - the subject's non-compliance is increased in scope and/or intensity. The subject's non-compliance now includes energy enhanced physical or mechanical defiance such as pulling away.

Response: Compliance Techniques - includes resistant countermeasures designed to counter the subject's enhanced degree of resistance. These tactics could include joint locks, arm bars, take downs, empty hand strikes, distraction strike techniques, OC spray, baton for the purpose of gaining anatomical compliance, impact projectiles, and Conductive Electrical Weapon.

1. Members may deploy an CEW or impact projectiles against subjects who are exhibiting assaultive behavior or who are actively resisting in a manner that, in the member's judgement is likely to result in injuries to the subject, the member or others.
2. The act of fleeing or destroying of evidence, in and of itself, does not justify the use of a CEW or impact projectiles.

The ground handcuffing position should be the primary method of handcuffing at this level and above.

(4) Assaultive or Bodily Harm - The member makes the reasonable assessment that such actions by the offender are likely to result in minor injury but not serious bodily injury or death to the member or others.

Response: Defensive Tactics - includes assaultive countermeasures designed to cease the subject's less-lethal assault on the member or others, regain control, and assure continued compliance. These tactics could include impact tool strikes, kicking or hand techniques, impact projectiles, CEW, etc.

(5) Assaultive Serious Bodily Injury or Death - the member's attempt to gain lawful compliance has culminated in the perception of an attack or the potential for such an attack on the member or others. The member makes the reasonable assessment that such actions by the subject could result in serious bodily harm or death to the member or others.

Response: Lethal Force - includes assaultive countermeasures designed to cease an assault, which is lethal or could cause serious bodily injury to the member or others. These tactics could include the use of a firearm, vehicle, neck restraints, lethal strikes, etc.

4.5 Force Prohibition

(1) At no time, may any member utilize a prohibited restraint.

4.6 Crowd Management and Use of Force

(1) This agency recognizes the right of persons to engage in first amendment activities and will uphold the constitutional rights of free speech and assembly while using the minimum amount of physical force and authority required to address a crowd management or crowd control issue.

(2) This agency will seek to engage in discussion with demonstrators and de-escalate tensions that may arise to the extent that safety factors allow.

(3) Unless emergency or dangerous circumstances exist prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease, and the First Amendment activity can continue.

(4) Crowd dispersal techniques shall not be initiated until an unlawful assembly has been declared and warning has been made to members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.

5.0 PROCEDURE - LETHAL FORCE

5.1 The use of lethal force shall be in compliance with the procedures as stated in this policy.

5.2 Necessity - In evaluating the necessity to use lethal force, the member shall consider the presence of imminent danger to the member or others.

5.3 Imminent Danger - Imminent does not mean immediate or instantaneous, but that an action is pending. Thus, an offender may pose an imminent danger even if he/she is not at

that very moment pointing a weapon at a member. For example, imminent danger may exist if members have a reasonable basis to believe any of the following:

- (1) The subject possesses a weapon, or is attempting to gain access to a weapon, under circumstances indicating an intention to use it against the member or others; or
- (2) The subject is armed and running to gain the tactical advantage of cover; or
- (3) A subject with the capability of inflicting death or serious physical injury - or otherwise incapacitating members without a lethal weapon, is demonstrating an intention to do so; or
- (4) The subject is attempting to escape from the vicinity of a violent confrontation in which he/she inflicted or attempted the infliction of death or serious physical injury.

5.4 A member will apply the principles of ability, opportunity and jeopardy as a guide to establish a reasonable basis for the use of lethal force. The three factors which, when co-existent, create the threat of serious bodily injury or death, are:

- (1) Ability - A potential adversary must be physically capable of presenting the threat of serious bodily injury or death. This ability must be present at the time the member makes the decision to respond with lethal force.
- (2) Opportunity - Circumstances of time, distance, and awareness of the victim's presence must coincide to provide the opportunity to create a risk of serious bodily harm or death to the member or third party.
- (3) Jeopardy - Given the ability and the opportunity, an adversary must commit an overt act which would cause a reasonable person to believe it would result in serious bodily injury or death to the member or a third party.

6.0 APPLICATION OF LETHAL FORCE

6.1 When the decision is made to use lethal force, members may continue its application until the subject surrenders or no longer poses an imminent danger.

6.2 Even when lethal force is reasonable, members must assess whether its use creates a danger to third parties that outweighs the likely benefits of its use.

7.0 USE OF LETHAL FORCE

7.1 In addition to the provisions of Section 2.0 of this Article, the following provisions shall apply to any discharge of a firearm in the performance of duty.

7.2 Defense of Life - Members may use lethal force only when the member has reason to believe that the subject of such force poses an imminent danger of death or serious bodily injury to the member or other persons.

7.3 Fleeing subject - Lethal force may be used to prevent the escape of a fleeing subject if there is a reasonable basis to believe:

(1) The subject has committed a felony involving the infliction or threatened infliction of serious bodily injury or death, and

(2) The subject(s) escape would pose an imminent danger of death or serious physical injury to the member or other persons.

7.4 Verbal Warnings - If feasible, and if to do so would not increase the danger to the member or others, a verbal warning to submit to the authority of the member shall be given prior to the use of lethal force.

7.5 Warning Shots - Warning shots are not permitted under this policy.

7.6 Vehicles - Weapons may not be fired with the sole intent of disabling a moving vehicles. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when the member has reason to believe that the person or persons pose an imminent danger of death or serious bodily injury to the member or others, and the use of lethal force does not create a danger to the public that outweighs the likely benefits of its use.

7.7 Animals - The killing of an animal is justified for the following reasons:

(1) To prevent injury to the member or others.

(2) When the animal is so sick or badly injured that humanity requires its relief from further suffering.

8.0 REPORTING

8.1 When a member uses force in excess of compliant handcuffing, a Use of Force report shall be completed and submitted within 72 hours of the incident to the member's chain of command. The Use of Force report shall include all necessary supporting documentation. Audio/video recordings of the incident shall be reviewed by a front line supervisor and the member's commanding officer. Upon review of the Use of Force report and supporting documentation, senior agency commanders and if applicable, members of the Use of Force Committee, on an as needed basis, may request copies of audio/video recordings be provided to further the review of the incident.

8.2 Any and all recordings (audio or video) of the use of force shall be filed at the local field station in accordance with applicable agency policy. Only copies of recordings shall be distributed as part of the chain of command review.

8.3 When multiple members are involved in a deployment of force, only one member shall complete the Use of Force report. All other members shall complete a supplemental report and file it with the case. These shall then be attached to the Use of Force report.

8.4 The author of the Use of Force report shall ensure every member using force in excess of compliant handcuffing, is properly identified within the report. Members using force in excess of compliant handcuffing shall be differentiated in the Use of Force report from members present but not using force. All other members who used force in excess of compliant handcuffing shall complete a supplemental report. The member authoring the Use of Force report shall ensure any and all applicable supplemental reports are properly attached to or included with the Use of Force report.

8.5 A supervisor should not approve a Use of Force Report until all reports from members using force in excess of compliant handcuffing during the incident are compiled.

8.6 All supervisors participating in the review process are responsible for ensuring the data provided is accurate and the entry contains sufficient detail to establish the use of force by the member is objectively reasonable. A supervisor will supply written documentation in the form of a comment upon completion of his or her review.

8.7 Any supervisor, following review of the available materials and if necessary, consultation with the member for clarification purposes, identifies a member's use of force as not meeting the objectively reasonable standard, he or she shall make notifications in accordance with department policy regarding inappropriate conduct.

8.8 A member discharging a firearm in the performance of duty, other than as outlined in 7.0 of this Article and except for training purposes, shall immediately notify his/her supervisor and shall forward a written report to his/her Commanding Officer within twenty-four (24) hours detailing the circumstances surrounding the firearms discharge.

8.9 Any application of lethal force or use of force that results in death shall be investigated by the Vermont State Police Major Crime Unit. The member(s) involved shall NOT complete a Use of Force Report.

8.10 After each deployment of OC, members will complete an OC Deployment Advisory Questionnaire.

9.0 TRAINING

9.1 Members shall complete a less-lethal use of force training module and review this policy annually.

9.2 Members shall demonstrate proficiency, as determined by the firearms training staff, through a department prescribed course, and must qualify with each authorized firearm for the member. All members will qualify at least annually with their firearm(s), which shall include a review of this policy. Vermont Criminal Justice Training Council certified firearms instructors will conduct this training.

9.3 In the event a member is unable to certify or re-certify in less-lethal use of force or any department authorized weapon, the member will undergo remedial training by a department use of force instructor until proficiency can be demonstrated and documented. Refer to other applicable policies.

10.0 MEDICAL

10.1 In the event that a subject is injured, the member(s) is/are responsible to ensure that reasonable medical aid is provided as soon as it can be safely accomplished.

10.2 The involved member(s) shall notify a supervisor of any known injuries.

10.3 After a subject has been sprayed with OC he/she should be decontaminated as soon as it can safely be accomplished.

11.0 Military Style Equipment

11.1 It is important to recognize that encounters between a member(s) of the public and law enforcement officers can be dynamic and quickly evolving. An officer is afforded considerable discretion on what equipment to deploy during unplanned events. The deployment of equipment alone, meaning selection of items by a law enforcement officer to be available when responding to an incident, does not qualify as a use of force as defined within this policy. Any evaluation of an officer's decision on deployment of equipment shall be based upon a reasonableness standard and will take into consideration the totality of the circumstances.

11.2 Law enforcement officers should be guided by the principle that officer presence alone has the capacity to influence the outcome of any incident. The visual appearance of the officer, which includes equipment selected for deployment, may impact the interaction the officer has with an individual. Officers should be cognizant of this possible impact when applying their discretion to select police tools and equipment. This includes vehicles operated by officers.

11.3 At no time will any officer or agency make use of or deploy the following equipment during law enforcement operations:

(1) Tracked armored vehicles – vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

(2) Weaponized aircraft, vessels, and vehicles of any kind.

(3) Firearms of .50 caliber or higher.

(4) Grenade launchers – firearm or firearm accessory designed to launch small explosive projectiles.

(5) Bayonets – large knives designed to be attached to the muzzle of a rifle/shotgun/long gun for the purposes of hand-to-hand combat.

11.4 Deployment of other specialized equipment such as patrol rifles, shields (both shatter-resistant and ballistic-resistant), impact projectiles, distraction devices, and chemical munitions during unplanned, quickly evolving incidents where a public safety threat exists, is best determined by individual officers applying the principles stated above.

11.4 During pre-planned, anticipated, or long-duration events, deployment of specialized equipment such as patrol rifles, shields (both shatter-resistant and ballistic-resistant), impact projectiles, chemical munitions, distraction devices, and other crowd management tools shall occur only when ordered by the incident commander. The incident commander, recognizing the principles stated above, should determine that either a public safety threat exists, or the incident qualifies as a high risk activity prior to issuing such an order.

(1) Nothing within this subsection should be construed to limit an officer from utilizing any available article of equipment in response to the presentation of an immediate threat of serious bodily injury or death to themselves and/or a member of the public.

11.5 Specialized vehicles such as armored personnel carriers, tactical vehicles (military grade wheeled vehicles such as a Humvee) and mine-resistant ambush protected (MRAP) vehicles may be particularly influential on the dynamics impacting interactions between members of the public and law enforcement personnel. Specialized vehicles shall only be utilized with approval of a commanding officer.

(1) Limitations on use of specialized vehicles:

(A) Specialized vehicles will not be used during routine responses by law enforcement officers to citizen complaints, for traffic enforcement activities, or other functions commonly performed by law enforcement officers.

(B) Specialized vehicles will not be used for any situation involving civil unrest/protests unless the incident involves an imminent act of violence that would cause serious bodily injury or death and the vehicle is needed for public and/or officer safety.

(C) Specialized vehicles will only be deployed and utilized to support high risk activities where there exists an articulable threat of serious bodily injury or death to a member of the public and/or a law enforcement officer.