

CHAPTER 9 – USE OF FORCE

REV. APRIL 15, 2014

9.01 POLICY

It is the policy of the Bexar County Sheriff's Office that deputies use only the force that reasonably appears necessary to effectively bring an incident under control, while protecting the lives of the officer and others the use of force must be objectively reasonable. The deputy must only use that force which a reasonably prudent officer would use under the same or similar circumstances.

9.02 PURPOSE

A. The purpose of this policy is to provide law enforcement deputies of this agency with guidelines for the use of deadly and non-deadly force. Force may be necessary:

1. When necessary to preserve the peace, prevent commission of offenses, or prevent suicide or self-inflicted injury;
2. When making lawful arrest and searches, overcoming resistance to such arrests or searches, and preventing escapes from custody;
3. When in self-defense, or defense of another, against unlawful violence to person or property;
4. When preventing or interrupting an intrusion on or interference with the lawful possession of property.

B. In each instance of the use of force, the officer should exhaust every reasonable means of employing the minimum amount of force to affect an objective before escalating to the next, more forceful method. However, an officer is not required to engage in prolonged combat or struggle rather than resorting to that method which will most quickly and safely bring the situation under control.

C. The amount and degree of force used in attaining a law enforcement objective as authorized by Texas law is determined by the exercise of good judgment, common sense, logic, and the circumstances surrounding the incident, including but not limited to the:

1. Nature of the case;
2. Behavior of the subject against whom the force is to be directed;
3. Actions by third parties who may be present;
4. Physical conditions; and
5. Feasibility and/or availability of alternative actions.

D. Deputies may use reasonable force to overcome resistance in the lawful performance of duties, even though there is no immediate or apparent danger calling for self-defense. However, deputies must

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be acting within the scope of their official authority. Every reasonable opportunity to comply with the request for cooperation must be given to the person and force used only after all other reasonable means have failed to produce compliance.

E. Before using reasonable force, deputies shall identify themselves as deputies and state their purpose to the offender and others immediately present, unless they reasonably believe their purpose and identity are already known or cannot reasonably be made known.

F. Where possible, an officer will use verbal persuasion first, followed thereafter in ascending order, by:

1. Physical strength and skill, ranging from restraint and come along holds to hand or foot strikes;
2. Approved ASP® baton used in the prescribed manner, chemical agents, Electronic Control Device (ECD)/Electronic Control Weapon (ECW); and
3. Approved firearm. Deputies must bear in mind the order of this continuum of force is not absolute, and the situation may require immediate use of a higher level of force.

G. Each instance of the use of force requires that restraint be exercised to avoid exceeding the force necessary to control a situation. Generally, the use of force against another is not justified in response to verbal provocation alone.

9.03 DEFINITIONS

A. Force - can range anywhere from verbal persuasion exceeding normal conversation to physical strength and skill, designated chemical, Taser™, baton or similar instrument not designed to cause serious bodily harm.

B. Necessary force - is that force which does not exceed the minimum amount and degree of force sufficient to achieve a legitimate law enforcement objective.

C. Deadly force - is that force which is intended or known to cause, or by the manner of its use or intended use is capable of causing death or serious bodily injury.

D. Reasonable grounds - are those set of facts or circumstances, based on reliable and trustworthy information, personal knowledge, or observation, which reasonably shows and would warrant an ordinary, prudent person, in the same or similar circumstances, to believe that a particular person is guilty or is about to commit some offense against the law.

E. Less lethal weaponry - is a degree lower than traditional weapons such as firearms. For the purposes of this policy, the term "less lethal weaponry" includes, but is not limited to pepper spray, pepper ball, distraction devices, Taser™, etc...

F. Non-deadly force - is force applied with the intention to subdue or render a subject non-threatening, with a lower probability of effecting fatal consequences.

G. Defense of third person - A person is justified in using force or deadly force against another to protect a third person if:

1. Under the circumstances as the actor reasonably believes them to be, the actor would be justified in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and
2. The actor reasonably believes that his intervention is immediately necessary to protect the third person. To protect his/her own life or that of another.
3. To prevent the escape of one who has committed or attempted to commit a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of deadly weapon or otherwise indicates that he/she will endanger human life or inflict great bodily harm unless arrested without delay.

G. An approved weapon - is one that is approved by the BCSO.

1. BAND-IT™ (ECD) - A remotely operated electronic restraint device which produces an electrical shock of 50,000 volts for 8 continuous seconds that can disorient, temporarily immobilize and stun a person without causing permanent injuries. It is activated by a radio transmitter with a range of up to 175 feet. The device may be used in combination with other restraints such as handcuffs, belly chains and leg irons.
2. An ASP® expandable baton. Authorized baton is (16) sixteen inches for plainclothes officer and a (21) twenty-one inch or a (26) twenty-six inch baton for uniformed Deputies
3. Taser™ (ECW) - A device designed to disrupt a subject's motor and sensory nervous system through the use of electrical energy sufficient to cause Neuro-Muscular Incapacitation. Only authorized Bexar County Sheriff's Office Tasers™ shall be carried by Bexar County deputies.
 - a. SPARK TEST: A non-contact demonstration of the Tasers™ ability to discharge electricity. This is accomplished without the cartridge. When activated the unit will visually display an electrical arc between the electrodes.
 - b. DEPLOYMENT: The intentional discharge of a Taser™ at or towards a subject using either the probe or drive stuns modes. This does not include a spark test or an accidental discharge.
 - c. PROBE: A metal dart which is propelled from the cartridge.
 - d. Anti – FELONY IDENTIFICATION Device (AFID): Bar - coded serialized ID tags which resemble confetti. AFID's are discharged from the cartridge when the Taser™ is deployed in probe mode.
4. Oleoresin Capsicum (OC) Pepper spray MK III / MK IVB size unit Pepper Mace.

9.04 TRAINING

A. Only deputies who have successfully completed the prescribed training course and received proper certification which assures safe and proper handling of this equipment shall be eligible/authorized to use/dispense these items in the performance of their duties. No deputy shall carry/dispense any of this equipment without proper training, certification, and approval.

B. This training will be properly documented, approved by the BCSO Academy Commander, and in the deputies training file at the BCSO Training Academy and as appropriate in Personnel Administration.

9.05 AUTHORIZED INSTRUMENTS OF PHYSICAL FORCE

A. Deputies assigned to law enforcement duties are authorized to and shall carry and wear all of the following instruments of physical force while on-duty:

1. Authorized weapon and ammunition.
2. At least one less lethal weapon: An ASP® expandable baton, Taser™ or OC Spray as authorized.
3. A set of handcuff(s).

B. In addition to the above mandatory instruments of force, the law enforcement officer may also carry the following while on-duty:

1. A knife with a blade no longer than 5 ½ inches;
2. A back-up firearm which the officer has received written authorization to carry and has qualified with on the firing range.

C. Deputies assigned to detention (when outside the secure areas of the Jail) shall carry and wear the following instruments of force while on-duty:

1. Licensed Peace Officers: Authorized weapon and ammunition. (Refer to chapter 8 in this manual).
2. Licensed Jailers: Authorized weapon and ammunition. (Refer to chapter 8 in this manual).
3. Two pair of handcuffs. Officer may also carry an ASP® baton, TASER or OC Spray if the officer is certified in its use.

D. Deputies assigned to plain clothes, investigations, special or undercover assignments shall carry the following instruments of force while on-duty:

1. Authorized weapon and ammunition
2. At least one set of handcuffs
3. At their discretion, one less lethal weapon of their choice

4. As determined by the Chief Criminal Investigations Division, with the Sheriff's approval any weapon deemed necessary to conduct undercover operations, including those specifically prohibited in paragraph 9.06.

9.06 NON- AUTHORIZED INSTRUMENTS OF PHYSICAL FORCE

All deputies are prohibited from carry the following while in uniform on-duty or in uniform working off-duty.

- A. Any handgun other than a BCSO authorized weapon, or an authorized back-up weapon.
- B. Any nightstick or baton other than the authorized ASP® expandable baton;
- C. Any illegal or unauthorized knife such as a stiletto or a knife with a blade exceeding 5 ½ inches;
- D. Any illegal or prohibited firearm/weapon or grenades;
- E. Brass knuckles;
- F. Slipper, or saps;
- G. Nunchakus; or
- H. Stun guns.

EXCEPTION: The Chief Criminal Investigations Division, with the Sheriff's approval, may approve any weapon deemed necessary to conduct undercover operations, including those specifically prohibited in paragraph 9.06.

9.07 USE OF FORCE - NON DEADLY

It is the policy of the Bexar County Sheriff's Office to protect life by any legal means necessary and use the least amount of force in order to affect an arrest or quell a violent disturbance. Deputies responding to an incident where use of force is required may attempt to utilize less lethal weaponry when applicable.

- A. The philosophy driving this policy recognizes that violent people will be stopped before harm or injury is inflicted to innocent victims, bystanders, self, and or Deputies responding to the incident. It is the duty and responsibility of the initial responding deputy(s), to use all legal means to restore order.
- B. The prioritization of activities in their order of importance are:
 1. Stop the violent/aggressive behavior with the least amount of force necessary to affect the arrest or quell the disturbance. If possible by the use of less lethal weaponry when/where applicable.
 2. Rescue the victims.

3. Provide medical assistance to the victim(s) and actor(s).
4. Preserve the crime scene.

9.08 PROCEDURES-GENERAL

- A. The first deputy on the scene will determine if deadly or less lethal weaponry is applicable and advise the on duty supervisor. Whenever possible, the deputy shall standby for the on duty supervisor. The on duty supervisor will make the scene and take control of the situation.
- B. The deputy carrying the less lethal weapon will always have a cover Deputy in position ready to use deadly force if needed.
- C. In a detention situation, a S.E.R.T. team member will stay with the person deploying less lethal weaponry.
- D. Medical personnel will be notified and stage in the immediate area to treat the recipient of non-deadly force and/or deputies.
- E. Deputies will not use "less lethal" weaponry as a pain compliance technique when the subject(s) are restrained in handcuffs and are only verbally resistant.

9.09 LESS LETHAL WEAPONRY

- A. Only authorized "less lethal weaponry" will be used / dispersed where applicable.
- B. The "less lethal weaponry" authorized by the Bexar County Sheriff's Office are:
 1. Pepper ball Launcher: Jaycor SA 200 launcher with live PAVA (Capsaicin II) powder projectile, scented inert powder projectile, inert liquid projectile, glass-shattering projectile. (SWAT, ERT, and SERT specific).
 2. Oleoresin Capsicum (OC) Pepper spray: MK III / MK IVB size unit Pepper mace, MK III / MK IVB Pepper foam MK IX Pepper foam.
 3. Taser™ - Electronic Control Weapon (ECW).
 4. Distraction device(s): Defense Technology/Federal laboratories Multi port plus non bursting canisters, 7001 command initiated (CI), stinger grenade rubber ball, stinger grenade rubber ball & OC, aerial diversion 12. (SWAT, ERT, and SERT specific).
 5. ASP® - Expandable Baton.
 6. BAND-IT™ Electronic Control Device (ECD).

9.10 USE OF DEADLY FORCE

- A. Preparation for use of deadly force.

1. To effectively accomplish their duties, it is recognized that during certain situations, an officer may find himself in a position of having to threaten the use of deadly force to thwart an arising situation possessing the immediate potential of leading to the necessity to protect life or prevent serious bodily injury.
2. Deputies may make special preparations for the use of deadly force as they observe the need to do so, consistent with 9.05, above. Examples of preparatory steps include, but are not all-inclusive:
 - a. Releasing the safety strap on holster;
 - b. Placing the hand on pistol grips;
 - c. Removing the firearm from its holster or pointing the firearm; or
 - d. Removing the shotgun /rifle from the patrol vehicle.
 - e. Generally, an officer may use deadly force only in situations, which indicate that, the officer or another person may be seriously injured or killed in the deadly force is not used.
 - f. "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use, is capable of causing, death or serious bodily injury:
 - 1) The discharge of a firearm is deadly force if directed at a person or at a location where persons may be;
 - 2) The use of a choke hold (carotid choke) calculated to induce unconsciousness IS DEADLY FORCE;
 - 3) The use of an ASP® baton to the head, face, throat, neck, or kidney IS DEADLY FORCE;
 - 4) Striking a person in the head, face, throat, neck, or kidney with a flashlight IS DEADLY FORCE;
 - 5) Heavy or repeated strikes to the head, face, throat, neck, or kidney with the hands or feet may be considered DEADLY FORCE under certain circumstances.
 - g. It shall be incumbent on every officer to exhaust every reasonable means of employing only that amount of deadly force necessary to accomplish the purpose.
 - h. Where feasible, a verbal warning shall be given to the offender prior to the use of deadly force.
 - i. Once the immediate danger of death or serious bodily injury to an officer or another person has passed, deadly force shall not be used.

- j. To the extent an officer has reasonable time for consideration, he shall never use deadly force which creates a greater risk to self and others (such as hostages, bystanders, and other Deputies) of death or serious bodily injury, than if he did not use such deadly force. This decision must reflect the circumstances, for example:
 - 1) The nature and seriousness of the risk of injury;
 - 2) The age, physical condition, and behavior of the suspect;
 - 3) Relevant action by any third parties;
 - 4) Physical conditions at the scene, such as visibility;
 - 5) The feasibility of alternative actions; and
 - 6) The opportunity and actual ability of the suspect to injure the officer or others.
- k. Deadly force against one who is fleeing from custody or who is fleeing immediately after committing a felony offense is prohibited, unless immediately necessary to protect against a substantial and immediate risk that the subject will cause death or serious bodily harm to the officer or a third person.
- l. A Carotid Neck Hold is considered to be deadly force even if the only objective is to induce temporary unconsciousness. This application of force is also referred to as a carotid neck restraint or a carotid chokehold. Regardless of the name used, it is described as the application of force or pressure to the neck or throat of the suspect. This technique is unauthorized except in situations where the officer would be justified in using deadly force against an individual.
- m. Striking a suspect anywhere on the body with a metal or plastic flashlight is unauthorized. Deputies are not to use their flashlights as clubs or nightsticks. Striking anyone with a flashlight is only acceptable in situations where the officer would be justified in using deadly force against an individual.
- n. The following are examples which may be considered deadly force situations depending on the circumstance:
 - 1) Shooting at, or stabbing an officer;
 - 2) Striking an officer with a club or a blunt instrument;
 - 3) The pointing of a firearm at an officer;
 - 4) Advancement towards an officer by a suspect exhibiting a firearm, knife or club in a manner and in close enough proximity to the officer to give reason to believe that the officer may be assaulted;
 - 5) A physical struggle in which the suspect is attempting to remove or has removed the officer's firearm or less lethal weaponry from the officer's possession.

9.11 WEAPONS DISCHARGE

Discharge of a weapon by an officer is prohibited:

- A. As a warning shot;
- B. In misdemeanor situations, except those instances consistent with paragraph 9.05 B;
- C. Solely to protect property;
- D. From a moving vehicle, at a moving vehicle, or fleeing vehicle, except where any of the occupants of said suspect vehicle are discharging or attempting to discharge a firearm at or in the direction of the officer or a third person, or the suspect vehicle is pursuing an officer who is trapped with no possible avenue or means to escape the suspect vehicle;
- E. To effect an arrest or prevent an escape, unless immediately necessary to protect the officer or another from death or serious bodily injury; and
- F. Randomly into buildings or other places where offenders are hiding unless immediately necessary to protect the officer or another from death or serious bodily injury.

9.12 DEADLY FORCE AGAINST ANIMALS

- A. Deadly force is sometimes required against animals. It may be used by an officer to protect self or another from serious bodily injury when no reasonable alternatives exist.
- B. Except in the above instances, an officer's supervisor must approve the killing of a dangerous animal or one that is so badly injured that humanity requires its removal from further suffering. When expediently possible, it is referred, but not mandatory, that the permission of the owner be obtained unless it is a wild animal.

9.13 REQUIRED REPORTS

- A. When a deputy requires any force to effect an arrest, subdue, or control an arrested person or prisoner; or in any other situation, the deputy shall fully document and described in writing the reasons for the use of force in the BCSO report. A detailed descriptive version of the facts leading up to the officer's use of force is required. A phrase similar to "only necessary force was used to subdue the situation" is not satisfactory and should be avoided. The report should include the cause of the situation, including verbatim as much as possible the words of the subject, and any actions or other facts pertinent which caused the Deputies to respond with force. All deputies who witnessed or participated in the incident should submit a narrative report. The deputies' supervisors should be notified as soon as possible.
- B. In conjunction with reporting requirements, immediately notify the Deputy Chief and Sheriff whenever deadly force is used.

9.14 INVESTIGATIONS REQUIRED

- A. Other than complete reports required in paragraph 9.09 above, no separate investigation is usually conducted unless a complaint is received making specific allegations against the deputies involved. If required, the Professional Standards & Integrity Division will conduct the investigation.
- B. In instances of shots fired, two distinctions are drawn:
 - 1. An officer's supervisor is notified if there is an accidental discharge of a weapon by an officer or shots are fired by an officer resulting in no hits. During the officer's off-duty hours, the ranking Patrol Supervisor shall ensure that the affected Division Chief is notified for purposes of investigation.
 - 2. Immediately notify an officer's supervisor when shots are fired and a person is hit. During the officer's off-duty hours, the ranking Patrol Supervisor shall ensure that the Chief, Criminal Investigations Division, is notified for purposes of investigation.

9.15 NOTIFICATION TO SHERIFF

Any time an officer fires a weapon, on or off-duty in the absence of personal sport or for training purposes; it shall be the duty of the supervisor receiving the information to insure the Sheriff is notified.

9.16 VIOLATIONS OF POLICY

- A. Violations of this policy and philosophy require an investigation reportable to the Bexar County Sheriff's Office and will result in appropriate disciplinary action.
- B. Approval to carry and/or use of any authorized weapon or device on duty may be revoked, by the Sheriff or the Sheriff's designated representative, at any point that a Deputy has demonstrated an inability or unwillingness to strictly adhere to established organizational policy regarding the use of such weapon or device.

APPENDICES:

- A – Impact Weapons.
- B – Electronic Control Devices (ECD).
- C - Oleoresin Capsicum (OC) pepper spray (chemical agents).