



DOUGLAS COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURE

SECTION 139.00		USE OF FORCE	
POLICY # 139.01-139.09		TITLE: SUBJECT CONTROL/ USE OF FORCE	
EFFECTIVE DATE 12/15/2009		REPLACES POLICY DATE 05/15/2008	

Officers shall not strike or use physical force against any person except to advance a legitimate law enforcement goal. Force shall never be used in a punitive, vengeful, retaliatory or indiscriminate manner. As a subject increases his/her resistance level from verbal to physical, an officer may have to increase the level of his/her response until the resistance ceases and the officer is able to gain control of the subject. As soon as the point of compliance is reached, the officer must de-escalate his/her response level to the minimum force necessary to maintain control of the subject. When lethal force is justified, it shall be considered a last resort.

139.01 PURPOSE

The purpose of this policy is to explain the law and Douglas County Sheriff's Office (DGSO) policy on the use of force. Only the force reasonably necessary to accomplish lawful objectives is permitted. **This Agency will not tolerate excessive force.**

The explanation of the limitations of the law regarding the use of force by Officers will give Officers the necessary knowledge to perform their duties confidently and wisely and without subjecting themselves to criminal or civil liability. Officers will comply with the guidelines and directions given during all use of force training by the DGSO.

K.S.A. 21-3215. Law enforcement officer's use of force in making arrest.

(1) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using force likely to cause death or great bodily harm only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

(2) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant was valid, unless such officer knows that the warrant is invalid.

139.02 LANDMARK CASE LAW

Graham v. Connor

The Supreme Court announced the standard for determining whether a law enforcement Officer has used excessive force in the course of an arrest, investigatory stop, or other seizure of a free citizen is the Fourth Amendment “**objective reasonableness**” standard. The nature and quality of the intrusion must be balanced against the governmental interests at stake.

Reasonableness of the force employed depends on three factors:

1. Severity of the crime;
2. Whether the suspect poses an immediate threat to the safety of officers or others; and
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Reasonableness will be judged from the perspective of a reasonable officer on the scene.

Tennessee v. Garner

It is unconstitutional to use deadly force to effect arrests of “nonviolent felony or misdemeanor suspects.” Such force may be used only when it is necessary AND the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others, AND when feasible a verbal warning has been given.

139.03 LIMITATION OF LIABILITY

This Policy is for the internal use of the DGSO only and in no way enlarges an employee’s civil or criminal liability. This Policy should not be construed to create a higher standard of care in any third party claims.

139.04 DEFINITIONS

A. Lethal or Non-Lethal

The law distinguishes between lethal force and non-lethal force. Lethal force means force likely to cause great bodily harm or death. Non-lethal force is any other physical force. A baton and similar impact objects normally are non-lethal force, but they can constitute lethal force, depending on the manner of use.

B. Reasonably Necessary

Force may be used only to accomplish lawful objectives and only to the extent reasonably necessary in light of the circumstances confronting the officer. Officers should use the least amount of necessary force to affect an arrest or gain safe control of a subject.

C. Great Bodily Harm

Great bodily harm is serious physical injury that creates a substantial risk of death, serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

D. Levels of Resistance

1. Compliant: Subject follows all directives from a law enforcement officer.
2. Passive Resistance: A non-compliant subject who does not follow verbal directions. May resist by going limp and/or may give verbal indications of resistance, but does not display active resistance.

3. Active Resistance: A subject who is actively non-compliant and may become more actively resistant upon physical contact by officer. Subject resists by body positioning, attempting to evade or elude, twisting away or thrashing, but is non-assaultive.
4. Active Assaultive Resistance/Non-Life Threatening: Physical action/assaultive behaviors are directed toward the officer or another in an attempt to defeat directives, escape, or to resist control or arrest. Subject's actions, punching, kicking, biting are likely to result in injury to another.
5. Active Assaultive Resistance/Life Threatening: Physical action/assaultive behaviors are directed towards the officer or another in an attempt to injure/disable. Subject's actions are likely to result in death or great bodily harm to another.

E. Law Enforcement Officer or Officer

All Douglas County Sheriff's Office commissioned personnel, Corrections Officers, Special Deputies or any DGSO employee called upon to assist in law enforcement and/or corrections actions.

139.05 STATEMENT OF AUTHORITY

A. Non-Lethal Force

An officer is justified in using non-lethal physical force upon another person when he/she reasonably believes non-lethal force is necessary as follows:

1. To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of force or likely to cause death or great bodily harm;
2. To prevent the escape from custody or investigative detention or to effect an arrest of a person who the officer reasonably believes (or reasonably suspects in the case of investigative detention) has committed a criminal offense;
3. To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest, while preventing or attempting to prevent an escape, or while attempting to effect compliance with a lawful order;
4. To enforce an order directed to an inmate only when a failure to comply with the order jeopardizes the safety of an individual or threatens the security and control of an area of the Jail. Whenever reasonably possible, supervisor approval is required before such force is used;
5. To prevent significant damage to property;
6. To prevent an individual from harming his or herself.

B. Lethal Force

An officer is justified in using lethal physical force upon another person when he/she reasonably believes lethal force is necessary as follows:

1. To defend himself/herself or a third person from what the officer reasonably believes to be the use or imminent use of lethal force or likely to cause death or great bodily harm;
2. To effect an arrest or to prevent the escape from custody of a person who the officer reasonably believes is attempting to escape by means of a lethal weapon, or whom by his/her conduct or any other means indicates that he/she presents an imminent threat of death or great bodily harm to others unless apprehended immediately;

3. To prevent an inmate's escape from custody when an officer reasonably believes the inmate has committed or attempted to commit a felony that involves the infliction of great bodily harm upon another person;
4. If feasible, officers shall give a verbal warning before using lethal force.

C. Risk to Third Parties

In cases where an officer is justified in using deadly force, the officer shall not use deadly force recklessly or in places or circumstances where an injury or death to innocent persons is a reasonable likelihood.

139.06 SUBJECT CONTROL/ USE OF FORCE OPTIONS

A. Firearms

Refer to Section 112.00 of the Douglas County Sheriff's Office policy and procedure manual. The provisions of Section 112.00 are incorporated into this policy.

B. Electro-Muscular Disruption

Refer to Section 149.00 of the Douglas County Sheriff's Office policy and procedure manual. The provisions of Section 149.00 are incorporated into this policy.

C. Oleoresin Capsicum

1. Oleoresin Capsicum, commonly called OC or pepper spray, is a concentrated form of oil and resin of cayenne pepper. It is not a manufactured chemical. OC spray is considered a non-lethal use of force that can be used to prevent or terminate an attack, causing some of the following effects:
 - a. Pain and tearing of the eyes, causing an involuntary closing or rapid blinking;
 - b. Redness of affected skin combined with a feeling of intense heat;
 - c. Inflammation of the mucous membranes of the nose, eyes, mouth, and throat;
 - d. If inhaled, coughing, gagging, and gasping of breath.
2. Commissioned uniformed and plain clothes officers while armed and uniformed non-commissioned officers performing Sheriff's Office functions while on-duty or while engaging in extra-duty private security or other law enforcement related work, shall carry the OC spray issued by the Sheriff's Office.
3. OC spray may be used in compliance with the non-lethal portion of this Policy, when:
 - a. The officer reasonably believes it is necessary to affect an arrest, secure an arrestee, or provide for the safety of the officer(s) or other another person;
 - b. Physical restraint of a person is not reasonably likely to safely bring the person under control;
 - c. Preventing escape;
 - d. Preventing significant property damage;
 - e. Discouraging an attack by an animal;
 - f. Maintaining security and control in the Jail.

4. The officer using the OC spray will thoroughly document the incident on a Use of Force Report Form. Officers shall document thoroughly the events that led to the use of the OC spray and the subject's reaction to the OC spray.
5. Any person affected by OC spray, either intentionally or accidentally, will be provided post use care by the officer who used the OC spray or by another officer if the officer who used the spray is unable to conduct the post-use care.
 - a. When it is practical and safe, post-care consists of rinsing the exposed areas with a saline solution or water as soon as possible following the exposure, placing the exposed person in a well-ventilated area, and observing the person in a manner consistent with the training provided concerning post-use care.
 - b. Officers shall provide access to medical care upon request by the affected person or if it appears reasonably likely to the officer that medical care is needed. Any doubt is to be resolved by providing medical attention.
6. Any officer or employee affected by OC spray shall be provided with post-use care as described above. Documentation of any medical treatment provided to a Douglas County Sheriff's Office employee shall be handled in accordance with procedures.
7. Any use of OC spray must be in accordance with DGSO policy and training.

D. Extended Range Impact Weapons (FN 303 Projectile Launcher)

Extended Range Impact Weapons (FN 303) are weapons and their use is considered non-lethal force. The FN 303 is intended to be used in compliance with the non-lethal portion of this policy, as an option to de-escalate potentially violent confrontations. The FN 303 will only be used with approval of the shift supervisor or an officer of higher rank. Deputies should keep in mind that while the use of the FN 303 is a non-lethal force, the potential for great bodily harm or death exists if the person's head or neck is struck at any range, or if the person is struck in the torso or mid-section at range of less than 12 feet. Deputies will observe the range limitations of the weapon as instructed during training. Only impact rounds approved by the department for use in the FN 303 will be allowed to be placed in the weapon's magazines or expelled from the weapon. Medical personnel shall evaluate any person struck by an impact round as soon as possible.

E. Impact Weapons

1. The use by an officer of a baton (26" or collapsible), or other weapons of opportunity such as a flashlight or other devices used to strike a blow to the muscle groups of person's arms or legs will be considered use of non-lethal force. The use of Impact Weapons must comply with the non-lethal portion of this Policy.
2. A gun, baton (26" or collapsible), flashlight or other weapons of opportunity used as a device by an officer to intentionally strike a blow to a person's head is prohibited except in situations when the officer reasonably believes lethal force is authorized.

F. Strangle Holds/Choke Holds

Holds that may choke or restrict the ability of an individual to breathe may be considered the use of lethal force and are permitted only when lethal force is authorized.

139.07 Officers shall carry and/or use only those weapons or other Use of Force gear that has been approved by the Sheriff. (Example: saps, blackjacks, weighted gloves and knives designed as weapons have not been approved and shall not be carried or used.)

139.08 Procedure following Subject Control/ Use of Force by a Douglas County Sheriff's Office Law Enforcement Officer.

A. Use of Force Report

The purpose of completing the Use of Force Report is the immediate documentation of the control/force used so that the pertinent facts will be readily available. The report will also be used to assist in identifying training and equipment needs. The existence of one or more Use of Force Reports cannot be used in an officer's performance evaluation. Furthermore, since the report merely records an historical event, the existence of one or more Use of Force Reports cannot be the basis for discipline. Control that is justified is permissible, regardless of the number of usages.

1. Reporting and Documentation

- a. A Use of Force Report is required in any situation that involves a use of force. Listed below are some examples of situations where completion of a Use of Force Report is required. Each officer using force must prepare a Use of Force Report. When an officer exercising official authority:
 - i. Uses force that causes any visible or apparent physical injury, or which results in the subject saying that he/she was injured;
 - ii. Uses any object, including baton, flashlight, hand, fist, or foot to strike a blow to a subject;
 - iii. Uses force that in any way causes a subject to suffer a blow to the head;
 - iv. Bodily removes or drags a struggling subject from one place to another, utilizing an assertive control technique beyond the "soft hands" technique used to overcome those who passively resist, but who are not physically confrontational;
 - v. Uses OC spray, the EMD or the FN 303 on a subject;
 - vi. Uses CS gas. In the event CS gas is used in the arrest of a suspect or to disperse rioters, mobs, crowds, or barricaded subjects, the on-scene supervisor must give approval for the use of CS gas and initiate the Use of Force Report;
 - vii. Uses force on a subject resulting in the subject losing consciousness;
- b. Each officer using control/force on a subject, whether intentional or accidental, shall notify the Shift Supervisor at once. The officer shall also complete a Use of Force Report and forward it to the shift supervisor no later than the end of the tour in which the control/force was used. If a subject and/or an officer are injured, the Supervisor shall have photos taken of the injuries.
- c. The Shift Supervisor will notify the appropriate division Lieutenant of all subject control/uses of force. The Lieutenant is responsible for investigating the incident and for reviewing pertinent information and reports related to the event. After review of the incident, if a Use of Force Report was not completed by the Reporting Officer, the Lieutenant has the discretion to direct the Reporting Officer to complete a Use of Force Report.
- d. If the Shift Supervisor is unavailable, the Use of Force Report shall be submitted to the Lieutenant. The Lieutenant will ensure that the officer's immediate supervisor receives the original copy no later than the next business day for review by the officer's chain of command.

- e. Off-duty officers involved in use of force situations are subject to the same reporting procedures as on-duty officers. When an off-duty officer is involved in a use of force situation, he or she shall notify Dispatch and a Lieutenant or higher rank immediately. Dispatch shall assist with locating a Lieutenant as needed.
- f. Any employee witnessing a use of force which requires a Use of Force Report shall immediately notify his/her supervisor and complete a Witness Statement.
- g. Notwithstanding the provisions of this section, an officer is not initially required to complete a Use of Force Report when the officer discharges a firearm or has inflicted great bodily harm or death of a subject, and the Sheriff's Office, the Internal Affairs Division, or another designated investigative body has assumed responsibility for the investigation. Nor shall the officer's immediate supervisor or Lieutenant conduct the use of force investigation unless requested by the Internal Affairs Division. The officer may be asked to complete a Use of Force Report at a later date.
- h. If an officer encounters a degree of resistance sufficient to justify a charge of resisting arrest or assaulting a law enforcement officer, the officer is to ensure an offense report and affidavit is prepared. The supervisor should ensure this is completed and forwarded to the District Attorney's Office.

2. Notification

The Sheriff and appropriate Undersheriff shall be notified as soon as possible whenever injuries have been inflicted by a Douglas County Sheriff's Officer, sufficient to cause the injured party to need medical treatment.

- a. The immediate supervisor of the officer involved shall notify his/her Lieutenant as soon as possible, and the Lieutenant shall notify the Undersheriff and Sheriff.
- b. In the absence of a Lieutenant and/or during night hours or weekend, the immediate supervisor shall notify the Undersheriff.
- c. The completed Use of Force Report shall be forwarded to the Undersheriff or designee via the officer's chain of command before the end of the tour of duty during which the incident occurred, unless authorized by a Lieutenant.
- d. After reviewing the report, the Undersheriff will then forward the original Use of Force Report to the Sheriff for his review before forwarding it on to the Internal Affairs Division. The Internal Affairs Division will log it, assign a Use of Force report number, and file the report. If the force used is such that the affected individual requires hospitalization, the Undersheriff shall notify the Internal Affairs Division immediately, regardless of the hour of the day.
- e. If the review reveals that there is a question of whether there is a violation of Sheriff's Office policy and/or the law, the Sheriff shall be notified. The Sheriff or Undersheriff shall direct that a full Internal Affairs investigation be conducted. The Sheriff will determine if the involved officer or officers should be suspended with pay pending completion of the investigation. Such a suspension shall not be considered a disciplinary action. Nor shall it be presumed that the officer(s) are guilty of a violation of policy or law.

B. Medical Treatment

If, in an officer's opinion, a subject needs medical treatment, the officer shall contact a supervisor who shall either authorize the transportation of that subject or make arrangements

necessary for transportation of that subject to a place where medical care can be obtained. If the officer is in doubt as to the necessity of medical treatment, the supervisor shall observe the subject and make that decision. Any doubt should be resolved by immediately seeking medical treatment. In no event shall apparently necessary medical treatment be unreasonably delayed in order to notify or obtain guidance from a supervisor.

139.09 PROCEDURE FOLLOWING USE OF LETHAL FORCE

A. Psychological Services

In all cases where an officer has injured or killed a person using force, the involved officer may be required to undergo a debriefing with a psychologist provided by the Douglas County Sheriff's Office, as soon as possible and preferably within 24 hours of the incident.

Furthermore, officers may be required to undergo a psychological debriefing anytime an officer is subjected to the use of force or threat of force regardless of whether the officer was injured. The purpose of this debriefing is to deal with the emotional and/or psychological after-effects of the incident. The debriefing shall not be related to any investigation of the incident.

B. Administrative Leave

Any officer involved in a lethal force incident shall be placed on administrative leave promptly upon his/her preliminary report of the incident. This leave shall be without loss of pay or benefits pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer acted improperly. While on administrative leave, the officer shall remain available at all times for official Douglas County Sheriff's Office business, including interviews and statements regarding the lethal force incident, and may be recalled to duty at any time. Upon returning to duty, the officer may be assigned to administrative duty for a period of time deemed appropriate by the Sheriff after consultation with appropriate parties.