

WINDERMERE POLICE DEPARTMENT

GENERAL ORDER – USE OF FORCE



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| Effective Date: October 1, 2013 | <input type="checkbox"/> Rescinds <input checked="" type="checkbox"/> Amends I-1 (January 1, 2012) | Number: 8.1 |
| SUBJECT: Use of Force | | Print Date: 10/01/13 |
| Distribution: All Personnel | Accreditation Standards: | |

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. Purpose

To establish guidelines for the appropriate use of force and ensure proper training for all personnel.

2. Policy

It is the policy of the agency that personnel only use that level of force objectively reasonable to perform their official duties. Courts examine the factors announced by the U.S. Supreme Court in *Graham v. Conner* to determine whether the use of force was objectively reasonable. A police officer must consider the following factors when using physical force: (a) the severity of the alleged crime at issue; (b) whether the suspect poses an immediate threat to the safety of the officers or other; and (c) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Officers shall not strike or use physical force against any person except when necessary in self defense, in defense of another, to overcome physical resistance to lawful commands, or to prevent the escape of an arrested person. When deadly force is justified, it shall be considered a last resort and be employed for effect and not for warning.

3. Definitions

- A. Approved Expandable Baton – An expandable baton approved by the agency referred to hereafter as the “expandable baton”.
- B. Chemical Agent IPD – An aerosol spray agent such as Oleoresin Capsicum (O and/or Orthochlorobenzylidenemalonitrile (CS), or any other formulation of chemical agent approved by the agency for carry and use.
- D. Excited Delirium – An acute mental disorder characterized by impaired thinking, disorientation, visual hallucinations and illusions. Behavior is without purpose and often violent. Body temperature is significantly increased. Generally, subjects begin with an acute onset of paranoia (someone or something is trying to harm them), followed by violent and/or bizarre behavior. Behaviors may include displaying violence toward inanimate objects (particularly glass), running, screaming and stripping off clothing. Subjects exhibit great strength and a diminished sense of pain.
- C. Imminent Danger – In relation to homicide in self-defense, this term means immediate danger, such as must be instantly met, cannot be guarded against by calling for assistance of others or the protection of the law. Or, as otherwise defined, such as an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense.
- D. In-Custody Deaths – A death, or the onset of a physiological condition resulting in death, that occurs while a subject is in law enforcement custody, or while an attempt is being made to take a subject into custody. The death may or may not involve the application of force. Deaths that occur as the result of vehicle crashes are not included.
- E. Deadly Force – A force that is likely to cause death or great bodily harm, permanent disability or permanent disfigurement and includes, but is not limited to:

Injury, permanent disability or permanent disfigurement.
- F. Totality of Circumstances - all facts and circumstances known to the officer at the time or reasonably perceived by the officer as the basis for the use of force decision.

4. PROCEDURES

I. AUTHORIZED USE OF FORCE

- A. Officers may only use that degree of force necessary to Effect lawful objectives.
- B. As stated in FS 776.05: An officer, of any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to arrest. The officer is justified in the use of any force:
1. “Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
 2. “When necessarily committed in retaking felons who have escaped; or
 3. “When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:
 - a. “The officer reasonably believes that the fleeing felon poses a threat of death of serious physical harm to the officer or others; or
 - b. “The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.”
- C. An officer is permitted to use deadly force only under the following conditions:
- a. He/she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself/herself or another person.
 - b. He/she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. Forcible felony means treason; murder; manslaughter; sexual battery; armed robbery; burglary of an occupied dwelling; arson of an

occupied dwelling; kidnapping; aggravated assault; aggravated battery; aircraft piracy; unlawful throwing, placing or discharging of a destructive device or bomb; any other felony which involves the use or threat of physical force or violence against any individual and such threat of physical force or violence may result in death or great bodily harm.

c. He/she is permitted to use deadly force when retaking felons who have escaped or felons fleeing from justice as follows:

1) The use of deadly force was reasonably necessary to prevent the arrest from being defeated by such flight;

and

2) He/she reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the member or others;

or

3) He/she reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person;

4) When feasible, some verbal warning should be given to halt.

II. RESPONSE TO RESISTANCE REPORTING

A. All members shall complete a Response to Resistance Report in the following:

1. Use of any Impact Weapons,
2. Use of a chemical agent,
3. Any time a member takes action that results in, or is alleged to have resulted in, the injury or death of another person;
4. Any time an officer discharges a firearm, whether intentionally or non-intentionally, during the course of his/her duties. Except for approved agency training.

B. Reporting Requirements

1. After securing the scene, members shall immediately notify their supervisor of the incident and the supervisor shall respond to the scene.
 2. The incident shall be documented in a detailed incident report.
 3. Each member using force shall complete a *Response to Resistance Report / Subject Compliance Report*. Members who are present at the time of the use of force and are only witnesses to the use force shall complete a sworn statement concerning the incident. Backup officers who arrive on the scene after the use of force, or who do not witness the use force, do not have to be listed on the *Response to Resistance Report / Subject Compliance Report* or provide a sworn statement as they will be listed in the incident report in accordance with department policy.
 - a. *Response to Resistance Reports / Subject Compliance Report* shall be completed by the member using force and delivered to a supervisor by the end of shift (This does not include deadly force situations, whether a firearm is used or not).
 - b. The supervisor shall review the incident and shall document his/her findings on the *Response to Resistance Report / Subject Compliance Report*. The supervisor will ensure that all witnesses at the scene were documented and interviewed. Individuals who refuse to provide a statement will be documented in the report if they were present. The *Response to Resistance Report / Subject Compliance Report* and all other pertinent documentation will then be forwarded to the Chief of Police via the chain of command.
 - c. Each reported *Response to Resistance / Subject Compliance Report* incident shall be reviewed by the Training Coordinator for future training needs.
- C. Any time an officer draws a firearm, baton and/or chemical agent and points it at a suspect to gain suspect compliance a *Subject Compliance Report* shall be completed.
- D. **Annual Response to Resistance Analysis** - Annually, the Training Coordinator will prepare and analyze the information contained within the *Response to Resistance / Subject Compliance Report* and forward it to the Chief of Police.

III. ADMINISTRATIVE RELIEF FROM DUTY (NON-DISCIPLINARY)

- A. In every instance in which a member's use of force results in death or serious bodily injury to another person, the member shall be immediately relieved of normal duties

until a preliminary administrative review is conducted by the department. If a weapon is involved, the member shall also be relieved of his/her weapon and another department weapon shall be issued immediately.

- B. Assignment to a relieved-of-duty status shall be administrative (non-disciplinary) with no loss of pay or benefits.
- C. Relief from duty with full pay and benefits is intended to serve two purposes:
 - 1. To address the personal and emotional needs of a member involved in the use of deadly force, and
 - 2. To assure the community that verification of the facts surrounding such incidents are fully and professionally explored.
- D. Members so relieved from duty shall remain on a "Relieved-of-Duty" status until assessed by a post trauma counselor designated by the Windermere Police Department, after which the member may be reassigned to duty status at the discretion of the Chief of Police. Members so relieved from duty shall ensure their availability to police investigators until investigation of the incident is concluded.

IV. USE OF FORCE IN NON-VIOLENT CIVIL RIGHTS DEMONSTRATIONS

- A. No employee shall use more force than is reasonably necessary and lawful in dealing with non-violent civil rights demonstrations.
- B. Individuals arrested for a crime committed in a non-violent civil rights demonstration will be treated, whenever possible, in a humane and non-aggressive manner in keeping with their constitutional right to demonstrate peaceably.

- V. **AUTHORIZED WEAPONS** - While exercising law enforcement authority, officers shall carry only weapons (Expandable batons, Firearms, Chemical Sprays, etc.) with which they have proven proficiency. Officers shall carry their firearms when off duty, except when impracticable to do so (while participating in sporting events, swimming, vacationing away, etc.).

- VI. **USE OF FORCE/LEVELS OF RESISTANCE GUIDELINES** - The Windermere Police Department has adopted the recommended Use of Force: Force Guidelines established by the Florida Department of Law Enforcement and implemented 4/1/08.

A. Subject Resistance Levels

1. **Passive Resistance** - a subject's verbal and/or physical refusal to comply with an officer's lawful direction causing the officer to use physical techniques to establish control. Some examples of passive resistance include, but are not limited to, the following:
 - a. The subject refuses to move at the officer's direction.
 - b. The subject peacefully protests at a political event in a public location.
 - c. The subject refuses to take his hands out of his pockets or from behind his back.
2. **Active Resistance** - a subject's use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling away to prevent the officer from establishing control over the subject. Some examples of active resistance include, but are not limited to, the following:
 - a. The subject physically anchors himself/herself to a person or object to prevent himself/herself from being removed.
 - b. The subject braces or pulls away from the officer when the officer grips the subject.
 - c. The subject attempts to run when the officer touches or attempts to grab the subject.
3. **Aggressive Resistance** - a subject's attacking movements toward an officer that may cause injury but are not likely to cause death or great bodily harm to the officer or others. Some examples of aggressive physical resistance include the following:
 - a. The subject pushes the officer back as the officer tries to take the subject into custody.
 - b. The subject grabs any part of the officer's body or otherwise strikes the officer.
 - c. Members are trained to look for pre-incident indicators of attack, such as but not limited to; verbalization of a hostile aggressive intent, hostile aggressive posturing, muscular tensing of the body, (e.g., a subject balls up his fists, the subject's nostrils are flaring from heavy breathing, the subject screams that he will hurt the officer and/or another person with the ability to carry out that threat, the subject aggressively charges the officer, etc.) that can be articulated as aggressive resistance.

4. **Deadly Force Resistance** - a subject's hostile, attacking movements with or without a weapon that create a reasonable perception by the officer that the subject intends to cause and has the capability of causing death or great bodily harm to the officer or others. Some examples of deadly force resistance include the following:
 - a. A subject refuses to drop a knife when ordered to by the officer and moves toward the officer.
 - b. A subject shoots or points a gun at an officer or other person.
 - c. A subject tries to run an officer down in a vehicle.
 - d. A subject has gained a dominant position on the officer with the apparent ability and intent to cause death or great bodily harm. (e.g., a subject mounts an officer while the officer is on the ground).

B. Officer Response Options – The nature of the officer's response to a subject's resistance is determined by the subject's actions. Officers should always try to resolve a situation with the least amount of force necessary. Command presence and verbal communication often will defuse many volatile situations. Sometimes, however, these are not enough or officers may not have the opportunity to use them. Officers need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead, officers need to respond with all the force reasonably necessary for the circumstances in each specific situation.

1. **Physical Control** - achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices, takedowns, approved chemical agents, and striking techniques.
2. **Less Lethal Weapon** - a weapon that is not fundamentally designed to cause death or great bodily harm. Some examples of less lethal weapons include electronic control devices, expandable batons, flashlights, and police canines.
3. **Deadly Force**
 - a. Force that is likely to cause death or great bodily harm. Some examples of deadly force include use of a firearm, eye gouges, empty-hand strikes to the throat, and impact weapon strikes directed to the head.
 - b. FS 776.06 states: "Deadly force means force that is likely to cause death or great bodily harm, and includes, but is not limited to:

- 1) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
 - 2) The firing of a firearm at a vehicle in which the person to be arrested is riding.”
- c. Use of deadly force may be an officer’s first and only appropriate response to a perceived threat. Deadly force does not necessarily mean that someone died from the force used. It can cause great bodily harm or no harm at all. For example, returning fire is deadly force even if the officer misses the target. The officer must base his/her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he/she, a fellow officer, or another person faces imminent danger of death or great bodily harm.

C. Factors For Determining the Use of Deadly Force - Officers use three criteria for making deadly force decisions: ability, opportunity, and intent.

1. **Ability** - Refers to the subject having the means to carry out his or her intent to cause death or great bodily harm. An officer must determine whether the subject has the necessary means to cause death or great bodily harm to the officer or others. A weapon is not required; a subject must only have the apparent ability carry out his or her intention. If the subject seems physically able to cause death or great bodily harm, then he/she has the ability. For example, a 6’4”, 250-lb. muscular man threatening to do bodily harm to an officer does not necessarily need a weapon. By virtue of his size and physical condition, he has the apparent ability.
2. **Opportunity** - Means the subject is capable of carrying out an intention to cause death or great bodily harm to the officer or others. The subject’s weapon often determines opportunity. For example, a suspect armed with a knife may not be an immediate threat to an officer standing far away. However, the same person standing closer or carrying a firearm certainly has the opportunity to carry out his intent to cause death or great bodily harm. Additionally, the weapon need not be on the person but in close enough proximity to obtain that weapon within moments.
3. **Intent** - Is a reasonably perceived, imminent threat to an officer or another person based on the subject’s actions, behaviors, words, or other pre-incident indicators. It is a perception derived from the totality of the circumstances. Officers should use the amount of force necessary and reasonable for the

situation. If the ability, opportunity, and intent are present and the officer cannot control the threat using lesser means, then deadly force is justified. (Note: When resistance deescalates, so must your response).

D. Objective Reasonableness - *Totality of circumstances* is a term the courts use to refer to all the facts and circumstances known to the officer at the time or reasonably perceived by the officer as the basis for a use of force decision. The courts will look at the totality of the circumstances in determining whether the decision was objectively reasonable and, therefore, legally justified. The totality of circumstances includes, but is not necessarily limited to, consideration of the subject's form of resistance, all reasonably perceived factors that may have an effect on the situation, and the response options available to the officer. Some situational factors may include the following:

1. Severity of the crime;
2. Subject is an immediate threat;
3. Subject's mental or psychiatric history, if known to the officer;
4. Subject's violent history, if known to the officer;
5. Subject's combative skills;
6. Subject's access to weapons;
7. Innocent bystanders who could be harmed;
8. Number of subjects versus number of officers;
9. Duration of confrontation;
10. Subject's size, age, weight, and physical condition;
11. Officer's size, age, weight, physical condition, and defensive tactics expertise;
and
12. Environmental factors, such as physical terrain, weather conditions, etc.

VII. WEAPONS OF OPPORTUNITY - Nothing in this procedure shall prevent an officer from utilizing any readily available object or empty hand technique as a weapon in circumstances or situations where the actions of a subject constitute Deadly Force Resistance that could result in great bodily injury, permanent disability, permanent disfigurement or death to the officer or others. Any officer using such weapons (e.g.,

flashlights, clipboards, keys, pocket knives, etc.) shall complete the appropriate Response to Resistance from pursuant to this policy.

VIII. AUTHORIZED LESS LETHAL WEAPONS

A. The following is a list of approved less-lethal weapons that Windermere Police Officers are authorized to carry both on-duty and off-duty:

1. Agency issued Expandable Baton,
2. Agency issued Chemical Spray,

B. Officers are authorized to carry non-lethal weapons with them on-duty or off-duty in a concealed manner in compliance with Florida State Statutes. Officers, who are acting in their law enforcement capacity while off-duty and within the incorporated city limits of Windermere, shall be considered to be on-duty as a Windermere Police Officer. During such situations, officers shall utilize those less-lethal weapons in compliance with on-duty standard operating procedures.

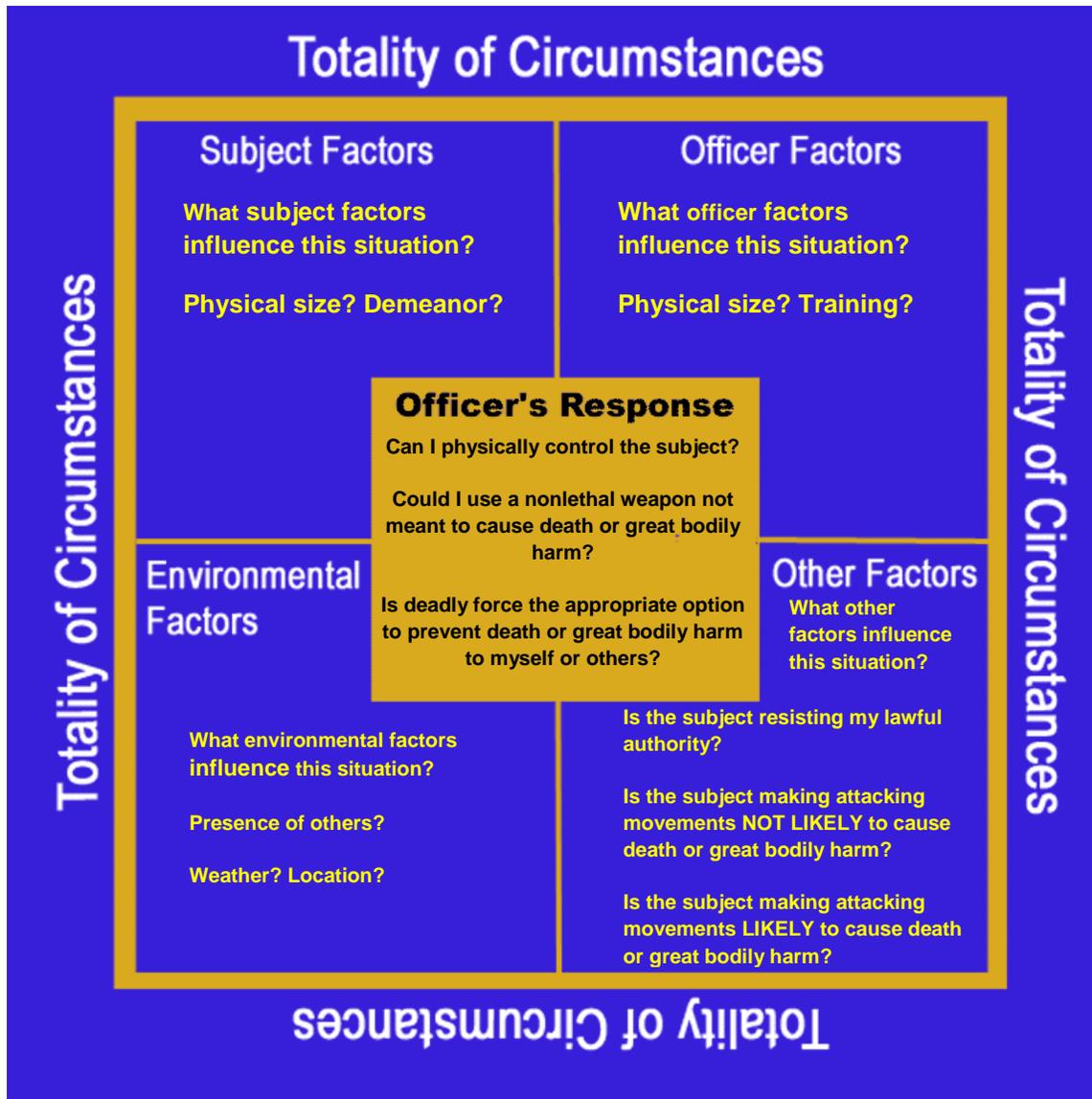
IX. MEDICAL ASSISTANCE

A. Officers using any degree of force during a response to resistance by any subject shall ensure that medical assistance is provided when:

1. The subject complains of injury, requests medical treatment, and/or any member observes or suspects injury to the subject;
 2. The subject exhibits signs of Excited Delirium or other medical emergency;
 3. When directed by a supervisor; or
 4. When medical assistance is necessary:
1. The member shall request medical assistance response to the scene via the Communications Section to assess the subject's condition.
 2. If the responding medical professional determines the subject requires treatment in an emergency room, the officer shall stand by at the hospital until the subject has been medically cleared, unless otherwise directed by the Chief of Police or his designee.
 3. Members shall not sign any medical treatment documentation pertaining to the suspect's injuries.

4. If the subject is in custody, and is subsequently transported to the jail, the booking officer shall be advised of the force applied and the resultant medical treatment and/or concerns.

Windermere Police Department Response to Resistance Guidelines



Chief David A. Ogden