

 <p>Winter Garden Police Department</p> <p>General Order</p>	<p>Number:</p> <p style="text-align: center;">51</p>
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**51.1 PURPOSE:**

The purpose of this standard operating procedure is to provide members with guidelines on the use of deadly and non-deadly force.

**51.2 SCOPE:**

It is the policy of the Winter Garden Police Department to provide and maintain procedures to follow when an officer is confronted with situations where force is deemed necessary to execute their legal authority. Attempts will be made to achieve control through advice, warnings, and persuasion. However, in situations where resistance to an arrest, or non-compliance to a lawful order, or a threat to life is encountered and reasonable alternatives have been exhausted or would clearly be ineffective, physical force may be used.

**51.3 DEFINITIONS:**

- 51.3.1 Chemical Force - use of OC Spray to compel compliance.
- 51.3.2 Custody - taking control of another individual through some action on the member's part.
- 51.3.3 Deadly Force - force which is likely to cause death or great bodily harm.
- 51.3.4 Electrical Control Device – a device designed to disrupt a subject's central nervous system by means of deploying battery powered electrical energy

sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses.

- 51.3.5 Hospitalization - the admittance of an individual to a hospital for treatment due to injuries incurred by the member's actions.
- 51.3.6 In-Custody Death – 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.
- 51.3.7 Injury - the individual complains of an injury or there is apparent injury.
- 51.3.8 Less-Lethal Munitions – a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.
- 51.3.9 Member – refers to all employees, reserves and volunteers that are under the direction of the Chief of Police.
- 51.3.10 Non-Deadly Force - necessary force which is not likely to cause death or great bodily harm.
- 51.3.11 Non-Hospitalization - the treatment of an individual by a paramedic or treatment in an emergency room (but no admission).
- 51.3.12 Non-Injurious - the individual does not complain of an injury; nor is an injury apparent.
- 51.3.13 Objective Reasonableness – see *Totality of the Circumstances*.
- 51.3.14 Officer - those employees who are certified by F.D.L.E. as Law Enforcement Officers and who possess arrest powers.
- 51.3.15 Physical Force - force that is more than the mere touching of an individual.
- 51.3.16 Totality of the Circumstances - all 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 consideration of the subject's form of resistance; all reasonably perceived factors may have an effect on the situation, and the response options available to the officer.

#### **51.4 AUTHORIZED USE OF FORCE**

- 51.4.1 Officers may only use that degree of force reasonable to affect lawful objectives.
- 51.4.2 As stated in FS 776.05: An officer, or 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:
  - A. Which he or she reasonably believes to be necessary to defend himself or

herself or another from bodily harm while making the arrest;

- B. When necessarily committed in retaking felons who have escaped; or
- C. 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:
  - 1. The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
  - 2. 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.

51.4.3 An officer is permitted to use deadly force only under the following conditions:

- A. The officer reasonably believes that such force is necessary to prevent immediate or imminent death or great bodily harm to himself/herself or another person.
- B. The officer reasonably believes that such force is necessary to prevent the immediate/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. The officer 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. The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others;

or

  - 3. 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;
  - 4. When feasible, some verbal warning should be given to halt.

## 51.5 USE OF FORCE REPORTING

51.5.1 In any of the following situations, the reporting requirements in Section 51.5.2 shall be met:

- A. An application of Impact Weapons or Weapons of Opportunity.
- B. An application of OC spray.
- C. Any time an officer takes action that results in, or is alleged to have resulted in, the injury of another person.
- D. Any time an officer discharges a firearm or electronic control device for a purpose other than training, recreational purposes, or accidental discharge; or initiates any action that could be considered a form of deadly force.
- E. Any time a police canine comes into direct physical contact with a subject.
- F. Exceptions: Per section 51.12.2, when an officer discharges a firearm and causes an injury or death, or an in-custody death occurs, a Use of Force report will not be required.

### 51.5.2 Reporting Requirements

- A. A supervisor shall be immediately informed of the incident and shall respond to the scene.
- B. The incident shall be documented in a detailed incident report.
- C. Each officer using force shall complete a Use of Force report in Blue Team. Officers who are present at the time of the use of force and are only witnesses to the use of force shall complete a sworn statement concerning the incident or a supplement to the offense report. Backup officers who arrive on the scene after the use of force, or who do not witness the use of force, do not have to be listed in the Use of Force report or provide a sworn statement as they will be listed in the incident report in accordance with department policy (a supplement to the offense report may be required).
  - 1. Use of Force reports shall be completed and forwarded to a supervisor immediately after the incident.
  - 2. Once the supervisor is satisfied that the form is complete, the Use of Force report and all other pertinent documentation will then be forwarded to the Chief of Police via the chain of command.
  - 3. Each reported Use of Force incident shall be reviewed by the Training Coordinator in order to determine if our training procedures need to be revised.
  - 4. Annual Use of Force Analysis - The Support Services Commander shall prepare a Use of Force Analysis, which will include a section on the use of the electronic control device, upon the completion of each calendar year and will submit it to the Chief of Police for review.

51.5.3 Killing of a seriously wounded or dangerous animal

- A. An officer may discharge his/her firearm to kill a seriously wounded or dangerous animal when all other disposition is impractical. If possible, the officer should follow the below listed procedures:
1. Contact the shift supervisor to obtain approval.
  2. Attempt to notify the owner (if any) to obtain the owner's permission to destroy the animal.
  3. The officer will document the incident in an offense report.

51.5.4 Accidental discharge of a firearm or electronic control device:

- A. An accidental discharge of a firearm that does not cause an injury or death, or an electronic control device that does not strike anyone, will be reported as follows:
1. The on-duty shift supervisor will be notified.
  2. The accidental discharge of a firearm will be documented in an offense report and the Firearm Accidental Discharge Report form. If the incident occurs outside the jurisdiction of Winter Garden, the appropriate law enforcement agency will also be notified. The accidental discharge report, along with a copy of the offense report, will be submitted to the Chief via the chain of command.
  3. The accidental discharge of an electronic control device that does not strike anyone will be documented on the Electronic Control Device Accidental Discharge Report form. The form will be submitted to the Chief via the chain of command.

**51.6 ADMINISTRATIVE RELIEF FROM DUTY (NON-DISCIPLINARY)**

- 51.6.1 In every instance in which an officer's use of force results in death or serious bodily injury to another person, the officer shall be immediately relieved of normal duties until a preliminary administrative review is conducted by the department. If a weapon is involved, the officer shall also be relieved of his/her weapon and another department weapon shall be issued.
- 51.6.2 Assignment to a relieved-of-duty status shall be administrative and non-disciplinary.
- 51.6.3 Relief from duty with full pay and benefits is intended to serve two purposes:
- A. To address the personal and emotional needs of a member involved in the use of deadly force.
  - B. To assure the community that verification of the facts surrounding such incidents are fully and professionally explored.
- 51.6.4 Officers relieved from duty shall remain on a "Relieved-of-Duty" status until assessed by a post trauma counselor designated by the Winter Garden Police Department, after which the officer may be reassigned to duty status at the discretion of the Chief of Police. Officers so relieved from duty shall ensure

their availability to police investigators until the investigation of the incident is concluded.

#### **51.7 USE OF FORCE IN NON-VIOLENT CIVIL RIGHTS DEMONSTRATIONS**

- 51.7.1 No officer shall use more force than is reasonably necessary and lawful in dealing with non-violent civil rights demonstrations.
- 51.7.2 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.

#### **51.8 AUTHORIZED WEAPONS**

- 51.8.1 While exercising law enforcement authority, officers shall carry only weapons (electronic control devices, batons, firearms, etc.) with which they have proven proficiency.

#### **51.9 USE OF FORCE/LEVELS OF RESISTANCE GUIDELINES**

- 51.9.1 The Winter Garden Police Department has adopted the recommended Use of Force Guidelines established by the Florida Department of Law Enforcement and implemented 4/1/08.

##### **51.9.2 Subject Resistance Levels**

- A. 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:
  - 1. The subject refuses to move at the officer's direction.
  - 2. The subject peacefully protests at a political event in a public location.
  - 3. The subject refuses to take their hands out of their pockets or from behind their back.
- B. Active Resistance - a subject's use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling to prevent the officer from establishing control over the subject. Some examples of active resistance include, but are not limited to, the following:
  - 1. The subject physically anchors himself/herself to a person or object to prevent himself/herself from being removed.
  - 2. The subject braces or pulls away from the officer when the officer grips the subject.
  - 3. The subject attempts to run when the officer touches or attempts to grab the subject.
- C. 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:

1. The subject balls up his fists and approaches the officer.
2. The subject pushes the officer back as the officer tries to take the subject into custody.
3. The subject grabs any part of the officer's body or otherwise strikes the officer.

D. 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:

1. A subject refuses to drop a knife when ordered to by the officer and moves toward the officer or other persons.
2. A subject shoots or points a gun at an officer or other person.
3. A subject tries to run an officer down in a vehicle.

51.9.3 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 a reasonable amount of force. 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 do not need to 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.

A. Physical Control - achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices, takedowns, OC Spray, and striking techniques.

B. 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, weapons of opportunity when used in this capacity, and police canines.

C. Deadly Force - 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 to the side of the neck or head.

1. FSS 776.06 states: "Deadly force means force that is likely to cause death or great bodily harm, and includes, but is not limited to:

- a. 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

b. The firing of a firearm at a vehicle in which the person to be arrested is riding.”

2. 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 immediate or imminent danger of death or great bodily harm.

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

A. 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 to 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.

B. 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.

C. Intent - Is a reasonably perceived imminent/immediate threat to an officer or another person based on the subject's actions, behaviors, words, or other 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. Remember that when resistance deescalates, so must your response.

51.9.5 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:

A. Severity of the crime.

B. Subject is an immediate or imminent threat.



- C. Subject's mental or psychiatric history, if known to the officer.
- D. Subject's violent history, if known to the officer.
- E. Subject's combative skills.
- F. Subject's access to weapons.
- G. Innocent bystanders who could be harmed.
- H. Number of subjects versus number of officers.
- I. Duration of confrontation.
- J. Subject's size, age, weight, and physical condition.
- K. Officer's size, age, weight, physical condition, and defensive tactics expertise.
- L. Environmental factors, such as physical terrain, weather conditions, etc.

#### **51.10 WEAPONS OF OPPORTUNITY**

- 51.10.1 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.

#### **51.11 AUTHORIZED LESS LETHAL WEAPONS**

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

- A. Issued baton
- B. Issued OC Spray
- C. Issued electronic control device

- 51.11.2 Officers are authorized to carry issued 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 Winter Garden, shall be considered to be on-duty as a Winter Garden Police Officer. During such situations, officers shall utilize those less-lethal weapons in compliance with on-duty standard operating procedures regulating electronic control devices, the Defensive Baton, and OC Spray.

#### **51.12 LINE OF DUTY SHOOTING OR IN-CUSTODY DEATH INVESTIGATIONS**

- 51.12.1 When an officer discharges a firearm at another person and misses, the incident will be investigated by WGPLD's Criminal Investigations Unit and the

Professional Standards Unit. However, the criminal investigative efforts take precedence over any internal or administrative investigation.

51.12.2 When an officer discharges a firearm at another person and causes an injury or death, or an in-custody death occurs, the incident will be investigated by the Florida Department of Law Enforcement (FDLE).

- A. The ranking officer on the scene will ensure that emergency services are provided to the injured person(s) and that a secure crime scene perimeter is established with restricted access.
  - 1. Only medical personnel, crime scene technicians, medical examiner personnel, State Attorney personnel, investigating FDLE members and other law enforcement investigators assisting FDLE will be permitted inside the crime scene perimeter.
  - 2. The ranking officer will ensure that the Orlando Regional Operations Center is promptly contacted and requested to dispatch an FDLE Critical Incident Team to initiate an investigation and to coordinate crime laboratory services at the scene. FDLE will notify the State Attorney as soon as reasonably possible.
- B. Pending arrival of the FDLE Critical Incident Team, the ranking officer on the scene will ensure that the scene remains secured, that physical evidence and documentation is protected and preserved, and that all law enforcement and citizen witnesses are identified and separated pending initial interview.
  - 1. If feasible, the ranking officer will ensure that arrested persons at the scene are detained pending the arrival of the FDLE Critical Incident Team.
  - 2. The ranking officer will also provide any assistance requested by FDLE during and after the on-scene investigation has been concluded, such as additional collection of evidence from suspects, vehicles, or involved law enforcement personnel, as well as securing other evidence such as radio communications tapes.
  - 3. The ranking officer will also coordinate with local law enforcement in any necessary crowd control efforts.
- C. FDLE will assume operational direction of investigations and forensic assistance or coordination. FDLE may request the assistance of WGPD personnel or personnel from other law enforcement agencies.
- D. WGPD will retain overall directions and responsibility for any internal or administrative investigations initiated in response to the occurrence. However, the criminal investigative efforts take precedence over any internal or administrative investigation.
  - 1. No internal investigative report or administrative statement authored or obtained by WGPD personnel involved in the subject incident that has been provided to WGPD under order or policy shall be provided, or its content revealed, to the members of the Critical Incident Team or the

prosecutor until such time as the members of the of Critical Incident Team and the FDLE Office of General Counsel agree that the criminal investigation will not be adversely impacted by any potential for immunity that may attach to any such statement.

- a. To help assure that the criminal investigation is not impeded or negatively affected by internal or administrative efforts, WGPD's internal or administrative investigation shall be initiated only after the criminal investigative efforts have been concluded or when otherwise specifically authorized by the FDLE's investigative team.
- E. WGPD may issue initial press statements acknowledging an incident, reporting the status of officer(s) involved in the incident, and referral to the investigative process.
1. At the appropriate stages(s) of an investigation, FDLE will forward copies of all investigative reports and investigative summaries to the State Attorney having jurisdiction over the case and to WGPD for review.
    - a. Transmittal of reports and summaries will be done so as to preserve any applicable exemptions from public disclosure and to maintain any confidentiality of information that may apply.
  2. Any press release related to investigative activities and responses to public records requests shall be coordinated jointly by the involved agencies to assure that disclosure, if any, is appropriate and timely.
- F. FDLE will submit all final reports to the State Attorney for review.
- G. FDLE and WGPD acknowledge that the Office of the State Attorney or another law enforcement agency may assert primary jurisdiction and responsibility of investigations. Absent the consent of the agency with primary jurisdiction, FDLE and WGPD will defer to that agency and refrain from participation in the investigation of the incident, but FDLE will provide forensic assistance as requested by the lead investigative agency.

### **51.13 MEDICAL ASSISTANCE**

- 51.13.1 Officers using any degree of force shall ensure that medical assistance is provided when:
- A. The subject complains of injury, requests medical treatment, and/or any member observes or suspects injury to the subject.
  - B. When directed by a supervisor.
  - C. When an applicable Standard Operating Procedure specifically requires such treatment due to the nature of the weapon used.
  - D. 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.

51.13.2 When medical assistance is necessary:

- A. The officer shall request medical assistance response to the scene via the Communications Section to assess the subject's condition.
- B. 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 or the officer is relieved by a correctional officer.
- C. Officers shall not sign any medical treatment documentation pertaining to the suspect's injuries.

