

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Adopting the Columbia)
County Department of Community Justice- Adult) Order No. 63-2023
Use of Force Policy)

WHEREAS, the Columbia County Department of Community Justice- Adult is required to be trained in the use of force and use of deadly force according to Oregon law; and

WHEREAS, it is in the best interest of the County to adopt a policy setting forth the terms and conditions associated with the use of force and the use of deadly force for the Department of Community Justice-Adult.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Columbia County Department of Community Justice- Adult Use of Force Policy, which is attached hereto, and incorporated herein, is hereby adopted.

Dated this 1 day of November, 2023.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Casey Garrett, Chair

By: 
Kellie Jo Smith, Commissioner

By: 
Margaret Magruder, Commissioner

Approved as to form

By: 
Office of County Counsel

COLUMBIA COUNTY DEPARTMENT OF COMMUNITY JUSTICE, ADULT DIVISION

USE OF FORCE

EFFECTIVE DATE:

By Board Order No. -2023

SUMMARY

This policy describes use of force and identifies the less-lethal and lethal weapons that may be utilized by Officers of the Department and will be used to establish the proper reporting and documentation of the use of physical force by an officer of the Department.

DISCUSSION

The use of force constitutes one of the most serious responsibilities of any officer. This policy provides Officers with guidelines on the reasonable use of force so that they, and members of this community, are protected. It is important for the protection of the officer, the Department, and the community, that incidents involving use of force be properly documented and analyzed.

POLICY

As long as members of the public are victims of crimes, and Officers of the Department are confronted with physical force or deadly physical force in the performance of their duties, it will remain necessary for Officers to be properly equipped and trained for the protection of the public and themselves. Officers are confronted on a daily basis with situations where control must be exercised over another person. Such control may be achieved through various means ranging from the officer's mere presence to the use of deadly physical force.

This policy establishes guidelines on the use of force but does not require specific use of force responses to specific actions by a threat. To the extent that this policy contains additional provisions not addressed in state or federal law, such provisions are not intended, nor may they be construed or applied to create a higher standard of care or duty toward any person, or to provide a basis for criminal or civil liability against the Department or any officer of the Department.

A. A written Use of Force Report will be submitted whenever an officer:

1. Discharges a firearm for other than training or recreational purposes;
2. Takes an action which results in, or is alleged to have resulted in, injury or death of another person;
3. Applies force through the use of any dangerous or deadly weapon technology;

4. Applies physical force necessary to subdue or control when a threat has made it known they are not going to comply with directives.

B. DEFINITIONS

Dangerous Weapon- Any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury. ORS 161.015(1).

Deadly Weapon- Any instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury. ORS 161.015(2).

Deadly Physical Force- Physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. ORS 161.015(3).

Physical force- The use of hands or other parts of the body, objects, instruments, electronic stun devices, chemical agents, firearms or other physical methods to restrain, subdue, control or compel a person to act or stop acting in a particular way. Physical force includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

Reasonable belief- a reasonable believe that that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would constitute an offense.

Violent Felony- (See ORS 419A.004).

PROCEDURE

A. Application of force

Physical force may be used upon another person only when it is objectively reasonable under the totality of the circumstances known to the officer to believe that the person poses an imminent threat of physical injury to the officer or to a third person, OR that the use of physical force is necessary to make a lawful arrest when the officer has probable cause to believe the person has committed a crime or to prevent the escape from custody of the person the officer has probable cause to believe has committed a crime. Force shall be applied only to the degree that the officer reasonably believes necessary to prevent physical injury to the police officer or third party, to carry out a lawful arrest, or prevent escape from custody as described above.

In some instances, physical force may be necessary during an officer contact or community care-taking function. Any force applied by an officer of the Department, which is, under the totality of the circumstances not objectively reasonable, is excessive and is prohibited.

An Officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the person except in circumstances in which physical force is justified under ORS

161.209 (Use of physical force in defense of a person) and 161.215 (Limitations on use of physical force in defense of a person)

B. Reasonableness and Use of Force

An officer will use only the amount of force that reasonably appears necessary, given the facts and circumstances the officer perceives at that time. A person must judge “reasonableness” of the force from the viewpoint of a reasonable law enforcement officer on the scene at the time of the incident. A person judging reasonableness must also consider the “totality of the circumstances”. Any interpretation of “reasonableness” must allow for the fact that Officers are forced to make split-second decisions about the amount of force that is needed in situations that are tense, uncertain and rapidly evolving.

Prior to the use of physical force, if the officer has a reasonable opportunity to do so, the officer shall consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe and feasible, or using a lesser degree of force; and shall give a verbal warning to the person that deadly physical force may be used and provide the person with a reasonable opportunity to comply.

C. Threat. A threat can be:

1. Any person, animal, or object controlled by a person that is presenting a danger to themselves or others.
2. Any person actively resisting arrest or lawful control.
3. Any animal that presents a danger to others and is not under the control of a person.

D. Factors to be considered when using force:

An officer may consider the factors listed below when deciding whether to use force, the type of force to use, and the level of force to use in a situation:

1. Conduct of the threat, as reasonably perceived by the officer at the time and whether the conduct continues to pose an imminent threat to the officer or others;
2. Immediacy and severity of the threat to Officers or others;
3. The degree to which the threat has been effectively restrained and his/her ability to resist despite being restrained;
4. The availability of other options and their possible effectiveness;
5. Seriousness of the suspected offense or reason for contact with the threat;
6. Training and experience of the officer;
7. Potential for injury to Officers, suspects and others;

8. Whether the threat appears to be resisting, attempting to evade arrest by flight or is attacking the officer;
9. The apparent need for immediate control of the subject or a prompt resolution of the situation;
10. Age, size, relative strength, condition and skill level of the officer and threat;
11. Influence of drugs or alcohol on the threat;
12. Threat's mental state or capacity;
13. Threat's proximity to a weapon or dangerous improvised devices;
14. Whether there are multiple threats;
15. Officer's injury, disability or level of exhaustion or fatigue;
16. Officer's prior experience or special knowledge of the threat or situation, including a threat's propensity for violence;
17. Risk of escape and reasonably foreseeable consequences of escape;
18. Potential of injury to citizens or other law enforcement Officers;
19. Terrain or environment (including availability of cover, weather and visibility);
20. Availability of additional law enforcement Officers vs. number of subjects;
21. Any other exigent circumstances.

E. Techniques and training for force application

The Oregon Department of Public Safety Standards and Training (DPSST) provides training, guidelines and options as to techniques that may be used in applying physical force to a threat.

Staff will be required to show proficiencies in current use of force practices on a yearly basis.

Techniques for applying physical force not taught at DPSST or by DPSST certified instructors may be used by a member of the department if the technique is both reasonable and justified under the totality of the circumstances.

ORS 161.237 prohibits the knowing use of physical force involving pressure on the neck or throat of a person to impede breathing or circulation except in lawful self-defense or in defense of another to the extent necessary for that purpose.

F. Principals for the use of force. The following principles apply when using force:

1. Physical force may be used when other reasonable alternatives have been exhausted, or an officer reasonably believes those alternatives would be ineffective under the totality of the circumstances. The officer should attempt to use the least amount of force necessary to control the threat. However, it is understood that incidents in which physical force is necessary to control a threat are dynamic in nature, and there are numerous variables involved in the decision-making process used by the officer when applying physical force during an incident.
2. Officers will escalate the use of force as the threat's behavior escalates. Officers will de-escalate the use of force when it is safe and appropriate.
3. The threat, by his or her level of resistance, dictates the level of force an officer will use against him or her. The threat is responsible for any injury he or she may receive while resisting.
4. An officer must overcome a threat's resistance as quickly as possible to minimize the possibility or degree of injury to the threat or the officer.
5. The officer may use any level of force that is objectively reasonable under the totality of the circumstances, including deadly force, without first using a lesser level of force. Force shall be applied only to the degree that the officer reasonably believes necessary to prevent physical injury to the police officer or third party, to carry out a lawful arrest, or prevent escape from custody as described above.

G. Presence/Verbal

Presence is established through the presentation of identification and authority. Officers will attempt to gain compliance through verbal commands whenever possible. If possible, the Officers will continue to give verbal commands during the time physical force is being applied. The continued use of verbal commands are made in a continuing attempt to gain compliance from the threat.

H. Physical Contact

Physical contact is an attempt by an officer to escort or direct an individual prior to, or instead of, escalating to the use of physical control techniques.

Often times, an officer will gain compliance from an individual or group through verbal communication and persuasive touch or directional escort.

I. Physical Control

Physical control techniques may be used when a threat makes it known through active resistance, static resistance, ominous behavior or lethal behavior that he or she is not going to comply with directives of the officer.

Only approved chemical agents may be carried and used by an officer. An officer may use a chemical agent when it appears reasonably necessary to effectively control a resistant individual and to reduce the risk of injury to the officer or the other individual. See Oleoresin Capsicum Aerosol (OC) policy.

A spit-hood may be used when there is perceived danger to the officer, citizen, or to protect the threat. A spit-hood should not be used on a threat having breathing difficulties or appearing to be in a distressed state. Use of a spit-hood must be documented in the Use of Force Report. A spit-hood shall not be used as a means of intimidation or coercion.

J. Serious Physical Control

When an officer is confronted with situations involving violent, combative or potentially dangerous individuals, more significant physical control options may be used to establish and maintain effective control and to reduce the potential of injury to the threat, officer or general public. Although rare, serious physical control techniques can cause physical injury, serious physical injury or the death of a threat. This is especially true if the threat's non-compliant movement and resistance causes the serious physical control technique that is implemented by the officer to strike the threat in an unintended area.

K. Deadly Force

Consistent with ORS 161.239, Deadly force may be used when it is objectively reasonable, under the totality of the circumstances known to the officer, to believe that the person poses an imminent threat of death or serious physical injury to the officer or to a third person and the use of deadly physical force is necessary to make a lawful arrest when the officer has probable cause to believe the person has committed a violent felony, to defend the officer or a third person from the imminent threat of deadly physical force or to prevent the escape from custody of the person when the officer has probable cause to believe the person has committed a violent felony.

L. Post Use of Force Medical Attention

When an officer of the Department is involved in use of force in which injury has occurred, or there is a potential for injury, the officer shall continually monitor the threat. The officer shall monitor the threat for changes in skin color, breathing and level of consciousness. If any significant changes in any of these areas are noted, the officer shall notify emergency medical personnel immediately.

1. If the threat has been restrained by the use of leg restraints and/or been placed on the ground for control, as soon as practical the officer shall:
 - a. Release pressure/weight from the threat's back or upper body.

- b. Check the threat's breathing and pulse, continuing to monitor until emergency medical personnel arrive.
 - c. Place the threat in a seated position or position the threat on their side to reduce the possibility of positional asphyxia by reducing the restriction to the threat's diaphragm.
2. The officer shall continue to keep medical personnel updated on the condition of the threat if the threat's condition continues to worsen on scene.
 3. The officer shall request emergency medical personnel to evaluate and treat those persons involved and injured prior to release from the scene.
 4. In the situation where chemical agents are applied to the threat, every attempt shall be made to provide relief from exposure. The threat shall be removed from the exposure area into an area of open air. The area(s) of the threat exposed to chemical agents shall be decontaminated by the most current approved method by emergency medical personnel. See Oleoresin Capsicum Aerosol (OC) Policy.
 5. The officer shall contact his or her immediate supervisor and brief them of the incident.
 6. The officer shall have the threat transported to a medical facility for additional treatment if recommended by emergency medical personnel on the scene.
 7. Immediately upon arrival at a correctional facility, the officer shall notify a corrections staff member of the extent of the threat's injuries and medical treatment given and provide the corrections staff with the threat's medical release forms from the medical facility.

M. Post Use of Force Investigation

As soon as practical after an incident in which force has caused, or could have caused injury, the Department, acting at the direction of a Supervisor, shall:

1. Attempt to photograph, or have photographs taken of any and all injuries and/or property damage. If possible, photograph all injuries prior to medical treatment;
2. Identify and interview witnesses at the scene;
3. Identify emergency medical personnel at the scene and obtain their case # for report purposes;
4. Identify police personnel involved in the incident;

5. As soon as practical, seize all damaged clothing of the threat and/or officer(s) injured in the use of force incident and submit them as evidence to the appropriate law enforcement agency;
6. If possible, obtain copies of medical records for treatment of injuries to the threat and/or officer(s) involved in the use of force incident.

N. Use of Force Report

In addition to all other reports written, all Officers involved in the use of physical force, and if injuries have occurred or could have occurred, shall write a "Use of Force Report".

1. A Use of Force Report will be submitted whether on duty or off duty if the officer is acting in an official capacity or identifies himself or herself as a Department employee. The Use of Force Report may cover, but is not limited to, the factors to be considered when using force, as identified at the beginning of this policy.
2. Other information, which the officer(s) may deem pertinent, may also be included in the Use of Force Report such as:
 - a. All persons involved in the incident. This will include, but not be limited to Officers, threat(s), witnesses, emergency medical personnel, ambulance personnel and hospital staff.
 - b. A detailed description of the events leading up to the use of force.
 - c. A detailed description of the threat's verbal and/or physical actions prior to the use of force.
 - d. A detailed description of the verbal commands given, the force used, including, if any, force/techniques, which were attempted, but failed to control the threat.
 - e. A detailed description of the alternatives considered such as verbal de-escalation, waiting, or use of other available resources and techniques if reasonable, safe and feasible. If not reasonable, safe and feasible a description of why it was not.
 - f. A detailed description of the warning provided that force may be used and the opportunity given to comply. If no warning was given, a detailed description of why the officer did not have an opportunity to give a verbal warning that force may be used or provide an opportunity to comply.

O. Review of Use of Force Report

1. The Use of Force Report will be submitted to the Director of the Department by the Supervisor. Additionally, any supervisor may request a review of the report by any area of specialty (i.e., defensive tactics, firearms, etc.). Review by an area of specialty may not be necessary in all cases.

2. The Use of Force Report will be returned to the author if revisions or additional information are necessary.
3. The Department will conduct an annual analysis of Use of Force Reports to assist in determining training needs, equipment upgrades, and/or policy modifications.

P. Training

All Officers shall remain proficient in the use of the chemical agents, deadly and dangerous and weapons issued or permitted by the Department. Training in the use of chemical agents, dangerous and deadly weapons along with nonlethal force techniques shall be provided annually to all Officers. All Officers will receive a minimum of eight (8) hours per year on the use of force and the use of force policy.

Q. Reporting

All incidents in which an officer uses force against another person are to be reported as specified in Use of Force Report Policy.

- R. An Officer is required to report an excessive or unjustified use of force or force used in violation of this policy as soon as practicable, but no later than 72 hours after witnessing the misconduct. A report may be made to a direct supervisor, up the chain of command or to DPSST.