

USE OF FORCE

	DEPARTMENT SOP: #200	CALEA: 1.3.1,1.3.2,1.3.3,1.3.4, 1.3.12
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PURPOSE: The Department has reviewed Federal and State Laws, Court decisions, and reviewed current standards to develop a comprehensive SOP. This SOP will guide Members through their decision making process involving levels of resistance and the appropriate application of force.

SCOPE: This SOP applies to all Members of the Department.

POLICY: It is the Department's responsibility to provide supervision, training and guidance in the use of force to ensure reasonable and prudent decisions are made. The authority to use force carries with it the need for accountability in order to safeguard the rights of the public and preserve the integrity of the Police Department and the City of Hollywood.

It is the Department's policy that an Officer will use only that level of force, which is objectively reasonable and necessary to bring an incident under control, while protecting the lives of the Officer and others.

NOTE: This Directive is for Department use only and does not apply to any criminal or civil proceeding. The Department SOP should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims.

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PROCEDURE:

The use of force is governed by case law interpreting the US Constitution, Chapter 776 of the Florida Statutes, and the Standard Operating Procedure for the Hollywood Police Department.

I. FLORIDA STATUTES GOVERNING ‘USE OF FORCE’ [4.01,1.3.1,1.3.2,1.3.4]

The Police receive legal authority to use force, to include deadly force, from the following State Laws:

A. “Use of Force” to Protect Others:

F.S. 776.012 provides justification for:

1. A person to use “force, except deadly force, to the extent that the person reasonably believes that such conduct is necessary to defend themselves or others against an offender’s imminent use of unlawful force.”
2. The use of deadly force is only justified “when a person reasonably believes that such force is necessary to prevent”
 - a. “death or great bodily harm to themselves or another”
 - b. or “to prevent the imminent commission of a forcible felony.”

B. “Law Enforcement Officers; Use of Force in Making an Arrest:”

F.S. 776.05, provides that “a Law Enforcement Officer, or any person he 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 the arrest.”

The Statute authorizes that “a Law Enforcement Officer is justified in the use of any force:”

1. “Which he reasonably believes to be necessary to defend himself 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”.
4. However, the use of deadly force when arresting felons fleeing from justice is justified only when:
 - a. “Some warning had been given”
 - b. “The Officer reasonably believes such force is necessary, and the fleeing felon:
 - (1). Poses a threat of death or serious bodily injury to the Officer or others, or
 - (2). The “fleeing felon” has committed a crime involving the infliction or threatened infliction of serious bodily injury to another person...”

C. Legal Authority for Members to Carry and Use Deadly and Non-Deadly Weapons or Firearms while on or Off-Duty. [4.05A,1.3.1,1.3.4]

Members authorized to carry firearms or weapons and use deadly or non-deadly force, do so in accordance with State Statutes and the Standard Operating Procedures. These Statutes provide legal authority for Members to carry and use deadly or non-deadly weapons and firearms while on or off-duty.

II. CONSTITUTIONAL RESTRICTIONS

Despite the State powers granted to Police to use force, the application of Police force can not infringe upon those rights granted to each person by the Constitution.

Any infringement upon a person's constitutional rights can be remedied against a Member, his employers or governing jurisdictions by criminal prosecution under Title 18 U.S.C.241 or 242 or by civil remedies under Title 42 U.S.C. 1983 regardless of the outcome of a State's proceedings.

III. DEPARTMENT "USE OF FORCE" SOP [4.01,1.3.1,1.3.4]

The primary duty of all Officers of the Department is to preserve human life.

Duty to Intervene: All Officers at the scene of a police incident have an obligation to ensure that the requirements of the law and the Department policies and procedures are complied with. Officers are required to maintain control or intervene if the use of force against a subject clearly becomes excessive. Failure to do so may result in both criminal and civil liability.

A description of all situations wherein the use of force, whether non-deadly or deadly force, would be justified is not feasible.

Therefore, it is the Department's policy that an Officer can only use that level of force that is objectively reasonable to bring a subject under control.

A. Objective Reasonableness:

It is the duty of individual Officers to determine the appropriate level of force based upon facts and circumstances of each situation. In *Graham v. Conner*, 490 U.S. 386 (1989), the United States Supreme Court held that law enforcement use of force cases are to be judged by an objective reasonableness standard based upon the Fourth Amendment. The use of force is to be judged from the perspective of a reasonable Officer under the same circumstances without the benefit of hindsight. The Court clearly considered that Officers are often required to make split-second, sometimes deadly decisions, in circumstances that are "tense, uncertain, and rapidly evolving."

Objective reasonableness requires the Officer's action to be reasonable and

necessary. The Court concluded that the objective reasonableness test is not a precise or clear rule but requires careful review of the facts and circumstances of each case, including the severity of the crime, whether the suspect posed an immediate threat to the safety of Officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

B. Use of Non-Deadly Force: [1.3.4]

Members will only use that level of force that is objectively reasonable to:

1. De-escalate the incident and bring it under control.
2. Make a lawful arrest.
3. Defend or protect themselves or others.

C. Use of Deadly Force: [1.3.2]

Deadly force is force that is likely to cause death or great bodily harm. The use of Deadly Force must follow current State Law and the Standard Operating Procedure for the Hollywood Police Department.

Deadly Force may only be used when the following exists to:

1. Protect Members and others from what is reasonably believed to be an imminent a threat of death or serious bodily injury, or
2. Whenever possible, the Officer should identify himself or herself and demand that the subject stop: "Stop-Police".

D. Totality of the Circumstances:

Totality of circumstances refers to all facts and circumstances known to the Officer or reasonably perceived by the Officer as the basis for a use of force decision.

IV. DEADLY FORCE TRAINING [4.02, 4.05, 1.3.12]

Before a Member is authorized to carry an approved firearm or weapon, or is placed into a position where he or she may use deadly force, or encounter a "fleeing felon," the Member will:

A. Be Issued a Copy of the Use of Force SOP:

The Member will be issued the Use of Force SOP as part of the Department's Operations Manual.

B. Receive Instruction in the Use of Force, Deadly Force, Less Lethal Force, and Fleeing Felons:

The Member will receive training from the Department's Training and Professional Development Unit as part of their field training assignment.

C. Qualify with the Department's Primary Handgun: [4.05B]

The Member will demonstrate proficiency with the Primary Handgun with a minimum live fire range score of 240. Upon qualification, FDLE 86 A form is completed and submitted for data entry. A copy of the form is placed in the Officer's Training Personnel file.

D. Demonstrate Proficiency with Special Impact Weapons and Chemical Agent: [4.05B]

The Member will demonstrate proficiency with any special impact weapon or chemical agents he or she carries.

V. DEADLY FORCE RESTRICTIONS [4.05,1.3.2]

Members may encounter situations in which lethal force may be justified, but other circumstances are also present which makes the use of deadly force extremely hazardous or ineffective.

The following will be adhered to unless exigent circumstances exist which would prevent compliance:

A. Identification as a Police Officer:

Before discharging a firearm, a Member will, when practical, verbalize a warning, which identifies him as a Police Officer coupled with a verbal command to desist, such as "Police-Stop or I'll Shoot".

B. Danger to Bystanders:

Members must always consider target identification and background. The potential for "Cross-fire" with other Members or striking bystanders is an unacceptable risk taken to apprehend an offender.

C. Warning Shots: [4.04,1.3.3]

In any environment, there is a high probability of bullets ricocheting or hitting an innocent bystander. Therefore, the firing of a warning shot is prohibited even when the use of deadly force is justified.

D. Shooting at or from a Moving Vehicle or Vessel:

Although the use of deadly force may be justified for the occupant within a vehicle/vessel, most conventional Police firearms and ammunition are incapable of penetrating automobile bodies, steel belted tires or angled safety glass from any distance except at very close range.

In addition, the increased speed, the unpredictable movement of a vehicle/vessel, instability of a shooting platform, lack of training, and the increased risk to bystanders decreases the accuracy and effectiveness of striking the intended target.

Therefore:

1. Members will avoid placing themselves in a position (while on foot or within their Police vehicle) where a vehicle moving towards them would be considered a threat of deadly force against the Member.

2. Members will not shoot at or from a moving vehicle unless all of the following provisions exist:
 - a. Deadly force is being used against the Member or another:
 - b. The Member can not initiate evasive action and has no alternative but to use his firearm to end the threat.
 - c. The discharge will not endanger the lives of innocent people.

VI. USE OF FORCE CONTINUUM [4.08D]

Each situation provides a different set of circumstances that a Member must evaluate to determine an appropriate response to resistance. The Department has adopted FDLE Criminal Justice Standards and Training Commission's "Use of Force Continuum" and the Department's Response to Resistance Matrix (see **Appendix A**) as a guide for Members in their "use of force" decision making process. This continuum is only a guide. Circumstance may dictate that Members may escalate from Level One (1) to Level Six (6) response immediately. A Member is also required to de-escalate anytime the subject's resistance ceases or drops to another level. The Member's control response should be based on; the person's action, fact or what reasonably appears to be fact at the time, the Member's perception of threat, and the Member's knowledge of his own abilities. [4.08D]

A. Subject Resistance Levels:

Members may encounter the following levels of resistance:

1. **Level 1 Presence:** A subject is on the scene of suspicious activity.
2. **Level 2 Verbal Resistance:** Verbal responses indicating unwillingness to comply or respond to the Member's attempts to control the situation. The subject may have threatened the Member with further resistance or, the subject may not respond to the Officer.

3. **Level 3 Passive Physical Resistance:** Subject physically refuses to comply or respond. He does not physically defeat the actions of the Sworn Member but forces the Sworn Member to employ physical maneuvers to establish control.

4. **Level 4 Active Physical Resistance:** The subject makes physically evasive movements to defeat a Sworn Member's attempt to control. This may be in the form of bracing or tensing, attempts to push/pull away or not allowing the Sworn Member to get close or gain control. The subject does not attempt to harm the Sworn Member.

5. **Level 5 Aggressive Physical Resistance:** The subject makes overt, hostile, attacking movements that may cause injury, but are not likely to cause death or great bodily harm to a Member or others.

6. **Level 6 Aggravated Physical Resistance:** The subject makes overt, hostile, attacking movements with or without a weapon with the intent and apparent ability to cause death, great bodily harm or incapacitation to the Member or others.

B. Member Response Levels: [4.05][4.08D]

The following is a list of six responses a Member may employ to respond to a subject's resistance:

1. **Level 1 Presence:** Sworn Member presents himself on a scene and his authority is recognized by the presence of his uniform or by verbal announcement of his identity as a Police Officer.
2. **Level 2 Verbal Dialogue and Direction:** Two-way, controlled non-emotional communication aimed at problem identification and resolution.
 - a. Commands of direction and control are given by the Sworn

Member for the subject to perform a specific action, or refrain from a specific action.

- b. The use of soft touch to comfort, console or obtain the attention of a subject or citizen in a non-confrontational situation is acceptable.

3. Level 3 Physical Control: The Sworn Member uses any of the following empty hand control techniques to restrict a subject's movement for searching, or to gain control to arrest:

- a. **Restraint Devices:** Used to restrict a subject's movement and facilitate searching or to gain control to arrest i.e.; handcuffs, leg irons, flex cuffs, nylon restraints or hobbles.

- b. **Transporters:** Techniques employed to control and/or move a subject with minimal chance of injury, to include: mere guiding and holding to wrist locks, thumb locks, come along holds, arm bars and grabs that gain and retain control over a subject.

- c. **Pain Compliance:** Controlled techniques that force a subject to comply such as: Aerosol Chemical Agent (ACA), touch pressure at specific nerve points of the subject's body i.e.; the hollow behind the ear, under the jaw, side of the neck, hollow behind the collar bone, etc. or joint locks (see **Transporters**).

- d. **Counter Moves:** Techniques that impede a subject's movement. to include: dodging, blocking, grabbing, redirecting, striking, kicking or punching techniques to major muscle groups.

- e. **Take Downs:** Techniques that redirect a subject to the ground in a controlled manner in order

to limit his/her physical resistance i.e.; tackling, throws, sweeps and drags to facilitate the application of a restraint device.

4. Level 4 Intermediate Weapons:

The use of any Law Enforcement tool to physically control a subject by striking the major muscle groups or causing an electro-muscular disruption to the skeletal muscular system. Strikes would be directed to the inside or outside of the thigh, top of forearms or upper arm, and/or top of calf. Conducted electronic control Device (Tasers) would be directed towards the subject's torso or major muscle groups. These tools include: [4.05]

- a. Department authorized less lethal defensive weapons, such as:

- (1). Baton, utilized by Field Force Unit only

- (2). Expandable Baton

- (3). Electronic control Device (Tasers)

- (4). Canine

- (5). Special Impact Weapon:

- (a). The authorized impact deployment weapon for Members is the orange colored Remington, 870-pump action shotgun.

- (b). The munitions authorized for Members are Defense Technologies of America's #23DS, 12 gauge Beanbag Round.

- b. Items not designed as a weapon, such as:

- (1). Radio.

5. Level 5 Incapacitation Strikes or Stuns: The use of techniques that are intended to stun or render a subject temporarily unconscious or incapacitated. These techniques may be delivered with or without a weapon and may have moderate potential for physical harm i.e. striking, kicking and punching techniques that: [4.05]

a. May stun or render a subject temporarily unconscious such as an empty hand strike to the head, groin area, side of the neck.

b. Incapacitate a subject by purposely:

(1). Hyper-extending joints.

(2). Impacting delicate bone areas such as knees, elbows, collar bones, and wrists.

(3). Disrupting major nerve function.

6. Level 6 Deadly Force: Techniques that may result in imminent death, great bodily harm or permanent disfigurement such as an intermediate weapon strike to the head, neck, throat, eyes, groin or the use of a firearm. Deadly force techniques are a response of last resort. [4.05,1.3.2]

C. Force Guidelines:

The Department examines reasonableness using *Graham v. Connor* and from the articulated facts from the perspective of the Officer with similar training and experience placed in generally the same set of circumstances.

Members are to use the totality of circumstances and "force that is objectively reasonable" to effectively bring an incident under control, to make arrests and protect the lives of the Members and/or others.

1. Therefore, as a subject increases his resistance level from verbal to physical, a Member may have to increase the level of response until the resistance ceases and the Member is able to gain control of the subject. As soon as the point of subject compliance is reached, the Member must de-escalate his response level.

2. Members must evaluate many factors when determining the appropriate response to a subject's resistance. For instance, an unarmed small-framed juvenile may be displaying Level 5 resistance, but may only require a Level 3 response by the average Member.

3. On the other hand, a Member's response to a large and obviously strong person demonstrating even mild resistance or a person attempting to grab the Member's firearm may require the Member to escalate his response to a higher level.

4. A Member need not retreat to lawfully control a subject, but may utilize the amount of force necessary to accomplish his lawful task. This is not to say that a tactical retreat in the face of overwhelming odds may not be a more appropriate option.

5. Members should consider the following factors in determining the appropriate level of response to a subject's resistance or threatened resistance.

a. Subject factors:

(1). Seriousness of the crime committed by the subject.

(2). Size, age, weight, behavior or demeanor.

(3). Apparent or stated physical ability.

- (4). Number of people involved or who may become involved.
- (5). Weapons possessed, available or believed to be possessed.
- (6). Known history of violence.
- (7). Whether physical evidence is likely to be destroyed.
- (8). Presence of innocent victims.

b. Member factors:

- (1). Size, physical ability, and defensive tactic expertise.
- (2). Number of Members present or available.
- (3). Immediate reactive response to sudden attack.
- (4). Weapons or restraint devices available.
- (5). Legal requirements.
- (6). Department SOP.

c. Situational Factors:

- (1). Physical and structural surroundings.
 - (a). Resisting subject in an empty field vs. a crowded sidewalk.
 - (b). Fighting a resisting subject on a flight of stairs vs. level ground.
- (2). Presence of other persons.
- (3). Proximity of subject to Officer and others.
- (4). Non-criminal nature of incident (Baker Act, Marchman

Act, or mentally handicapped individual).

VII. DEADLY FORCE INCIDENTS INVOLVING ANIMALS (Also See Use of Force Reporting Procedures, Firearm Discharge Reports)

A. Vicious or Dangerous Animals:

Members may encounter situations requiring the use of lethal force on a vicious or dangerous animal. In such situations, Members will ensure all reasonable efforts to contain the animal have failed and the animal poses a serious health or safety risk to others if allowed to escape.

B. Seriously Injured Animal:

Members will only contact Broward County Animal Control to respond to render assistance to an injured animal.

- 1. Members will not send, or cause to be sent, any injured animal to any private animal hospital or private animal rescue/medical facility.
- 2. Members will not use a firearm or any weapon to prevent the continued suffering of a seriously injured animal.
- 3. This section does not apply to Hollywood Police Department work dogs. Accidents and/or injury to an HPD canine (K-9) will be governed by the Canine Division SOP.

C. Notification:

If a Member uses lethal force on an animal:

- 1. A Supervisor will respond to the scene.
- 2. The Supervisor will ensure that the Shift Lieutenant is notified.

VIII. DEFINITIONS:

A. ACCIDENTAL DISCHARGE:

Any unexpected or unintentional expulsion of a projectile from any firearm. Exceptions include firearm training, firearm practice, recreational activities, and legally sanctioned hunting.

B. COMMISSION:

The Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement.

C. DEADLY FORCE: [1.3.2]

The use of force that is likely to cause imminent death, great bodily harm or permanent disfigurement to the recipient.

D. ELECTRONIC CONTROL DEVICE:

A weapon that uses electricity to override voluntary motor responses, or apply pain in order to gain compliance or overcome resistance.

E. FORCE GUIDELINES:

A framework for providing information to Officers in decision making involving a reasonable use of force.

F. FORCIBLE FELONY:

Treason, murder; manslaughter; sexual battery, car-jacking, home-invasion robbery, robbery, burglary, arson, kidnapping, aggravated assault, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, and any other felony which involves the use or threat of physical force or violence against an individual.

G. GREAT BODILY HARM:

A bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in long-term

loss or impairment of a limb, function or organ.

H. IMMINENT DANGER:

Danger impending, or about to occur, absence intervention of Law Enforcement Officer(s).

I. NON-DEADLY FORCE:

Defensive or controlling action that neither is likely nor intended to cause death, great bodily harm, or serious bodily injury.

J. OBJECTIVE REASONABLENESS:

The use of force is to be judged from the perspective of a reasonable Officer under the same circumstances without the benefit of hindsight.

K. OFFICER INVOLVED SHOOTING:

The purposeful or accidental discharge of a firearm by a Member.

L. PROBABLE CAUSE:

Circumstances within one's own knowledge and experience that is rational, trustworthy and supported by articulated facts to lead a reasonable and prudent man to conclude that the information is true.

M. SERIOUS BODILY INJURY:

See "Great Bodily Harm".

N. Totality of the Circumstances:

Totality of circumstances refers to all facts and circumstances known to the Officer or reasonably perceived by the Officer as the basis for a use of force decision.

O. USE OF FORCE:

A defensive or controlling response by an Officer to overcome a person's threatened or actual physical resistance to an Officer's performance of legal du-

ty; to protect an Officer or another person from physical resistance or acts of aggression that are likely to cause harm.

APPROVED BY:

 04/01/2015

Frank Fernandez Date
Chief of Police

ATTACHMENTS:

- **Appendix A:** Response to Resistance Matrix.

RESISTANCE LEVELS

Checked areas represent suggested acceptable beginning response levels. Any response in an unchecked area requires explanation. Refer to definitions for each level of resistance and response.

- 6 Aggravated Physical
- 5 Aggressive Physical
- 4 Active Physical
- 3 Passive Physical
- 2 Verbal
- 1 Presence

RESPONSE TO RESISTANCE MATRIX

	1	2	3	4	5	6
	Officer Presence	Communication	Physical Control	Intermediate response	incapacitating Control	Deadly Force
Arrival	X					
Interview	X					
Dialogue	X	X				
Verbal Direction	X	X				
Touch	X	X				
Restraint Devices		X				
Transporters			X			
Take Downs			X			
Pain Compliance			X			
Chemical Agent			X			
Counter Moves				X		
Tear					X	
Intermediate Weapons					X	
Incapacitation						X
Deadly Force						X

RESPONSE LEVELS