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## USE OF FORCE

### AUTHORITY

#### **California Code Section(s):**

Penal Code Sections 830.5, 832, 835a, 836, and 22820

#### **Related Probation Officer Procedures:**

- E3 Arrest of Juveniles and Adults
- F1 Officer Safety and Tactics Program Personnel
- F3 Conducted Electrical Weapon (CEW)

#### **Related Probation Department Policies:**

- IV3 Contact with News Media
- IV10 Employee Conduct
- IV33 Safety, Uncooperative Clientele, and Threats

#### **Related Federal Case Law:**

Graham v. Connor, 490 U.S. 386 (1989)

### INTRODUCTION

Per 835a PC, “any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.” Force is defined as the application of physical techniques or tactics, chemical agents or weapons to a human or animal. It is not a use of force when the subject is searched, escorted, or handcuffed. A probation officer shall use only the amount of force that appears reasonably necessary to overcome the resistance of the subject based on the totality of the circumstances presented to the probation officer at the moment the force was applied. After using force and when applicable, the probation officer shall secure and take physical control of a subject by applying handcuffs.

### SAFETY CONSIDERATIONS

If the probation officer encounters a situation which may lead to confrontation, or the use of force will significantly increase the safety hazards, the probation officer may disengage to avoid confrontation when reasonably able to do so.

This procedure does not prohibit probation officers from using any lawful means of self-defense when faced with a risk of great bodily injury or a life-threatening situation.

### THE OBJECTIVE REASONABLENESS STANDARD

Any use of force will be evaluated under the “objective reasonableness standard,” taking into consideration the totality of the circumstances known to the probation officer at the time the incident occurs, without benefit of “20/20 hindsight.” The reasonableness of force will be evaluated from the perspective of any reasonable probation officer at the time of the incident. Any evaluation of reasonableness must allow for the fact that a probation officer must often make split second decisions about the amount of force that reasonably appears necessary in a particular situation, sometimes with limited information and in circumstances that are tense, uncertain and rapidly evolving. Further, the “objective reasonableness standard” is the sole

justification for whether the probation officer acted reasonably, not whether the officer had less intrusive alternatives available (*Graham v. Connor*).

### FACTORS USED TO DETERMINE REASONABLENESS

When determining whether to use force, or when evaluating whether a probation officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- Immediacy and severity of the threat to the probation officer or others
- The conduct of the subject, as reasonably perceived by the probation officer at the time
- Probation officer/subject factors: age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of peace officers vs. the number of offenders, etc.
- The effects of drugs or alcohol on the subject.
- The subject's mental state or capacity.
- Proximity of weapons or dangerous improvised devices.
- The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- The availability of other options and their possible effectiveness.
- Seriousness of the offense or violation, or reason for the contact with the subject.
- Training and experience of the probation officer.
- Potential for injury to the probation officer, subject, or others.
- Whether the subject appears to be resisting, attempting to evade arrest by flight, or is attacking the probation officer or others.
- The risk and reasonably foreseeable consequences of escape.
- The apparent need for immediate control of the subject or a prompt resolution of the situation.
- Whether the conduct of the subject no longer reasonably appears to pose an imminent threat to the probation officer or others.
- Prior contacts with the subject or awareness of any propensity for violence.

### DUTY TO INTERCEDE

Any probation officer present and observing another peace officer using force that is clearly beyond that which is objectively reasonable under the circumstance shall, when in a position to do so, intercede to prevent the use of unreasonable force. Any probation officer who intercedes and/or observes another peace officer use force that exceeds the degree of force permitted by law, policy (including Probation Department Policies Section IV10, Employee Conduct) and procedure, should promptly report the situation to a supervisor or manager as soon as possible. Thereafter, as directed by the supervisor or manager, the probation officer shall complete a written report as described in the "Reporting" section of this procedure. Any supervisor receiving a report under these circumstances shall notify the division manager as soon as possible.

### PROVISION OF MEDICAL ATTENTION

Whenever force is used, ask the subject if he/she needs medical attention. If so, or if the probation officer believes medical attention is necessary, the probation officer shall seek medical

attention immediately. If the subject states he/she does not need medical attention, the probation officer shall include this information in his/her written report.

Once any initial medical assessment has been completed or first aid has been rendered, the probation officer shall take photographs of any areas of the subject's body involving visible injury or the subject complains of pain. Further, the probation officer shall take any photographs necessary for evidentiary purposes. Any photographs taken shall be attached to the incident report written by the primary probation officer who utilized force.

### REPORTING

Any use of force shall be documented promptly, completely and accurately by every probation officer involved in or witnessing the use of force incident, on the appropriate incident report form, as soon as possible. The probation officer shall complete this report by the end of the following business day after the probation officer returns to work, or within an alternate time period directed by the Chief Probation Officer (as specific circumstances may warrant). The only exception is if a probation officer provides a voluntary statement after a use of force incident occurs; because the investigating agency is writing a law enforcement report, the probation officer is not required to complete an incident report.

In the incident report, the probation officer must explain:

- The factors perceived by the probation officer.
- Why the use of force was "objectively reasonable" under the circumstances presented to the probation officer.
- The risks created by the subject and why any particular intervention technique was used
- Any medical attention given to the subject, if applicable.
- That the subject refused medical attention, if applicable.
- The names and contact information for any witnesses or additional law enforcement officers present.
- Any other information deemed necessary in order to completely and accurately describe the use of force incident.

### REPUTATION AND PRESENCE

Reputation includes an officer's professionalism, integrity, and demonstrated fairness. The officer's appearance, including the conditions of his/her equipment and display of department insignia, contributes to his/her overall presence as a peace officer, and may have an impact on the behavior of the subject. These characteristics, to be effective, must be consistently maintained.

The presence of more than one probation officer and/or a law enforcement officer may also serve to de-escalate a situation and add to the control of the subject.

### VERBAL SKILLS AND COMMANDS

A probation officer must have strong verbal skills when dealing with subjects, and must develop rapport and an appropriate relationship with subjects. Verbal commands may be used to obtain compliance and to control the situation and/or the subject. Verbal commands must be firm, clear, concise and reasonable to be effective. Strong officer presence and verbal skills may de-escalate the majority of the situations that a probation officer faces.

## CONTROL AND RESTRAINT

Probation officers shall be trained by authorized weaponless defense instructors before they are permitted to utilize any control and restraint techniques. Thereafter, probation officers must complete weaponless defense training as directed.

## OLEORESIN CAPSICUM (OC) SPRAY

A probation officer is authorized to use OC spray after he/she has completed an approved department training program pursuant to Section 22820 PC and 832 PC.

When not carrying the OC spray on his/her person, a probation officer shall assure his/her canister is locked in an equipment or firearms locker.

Probation officers shall inspect their OC spray canisters at least once monthly for leaks and to assure the OC spray is working properly. If a probation officer believes his/her OC spray should be replaced or has any other issues, the officer shall contact the appropriate Officer Safety and Tactics Program Personnel, who will keep track of expiration dates of OC spray, order and issue new canisters when appropriate, and dispose of necessary canisters.

## Deployment

After deploying OC spray, the probation officer shall quickly evaluate the effectiveness of the OC spray, then re-deploy or transition to another means of force or control, when necessary. The probation officer should take advantage of distance and give time for the OC spray to become effective, as well as communicate with fellow officers when deploying in proximity of/or in physical contact with another officer. The officer shall also take physical control and handcuff the subject as soon as possible.

## Decontamination Guidelines

After the subject sprayed with OC spray is secured in handcuffs, the probation officer can begin the decontamination process by:

- Ensuring the subject is breathing normally.
- Being cognizant of anything that may hinder the subject's ability to breathe. The subject must be continually monitored for medical distress.
- Removing the subject from the contaminated area and placing him/her in an area with fresh air, and facing wind, whenever possible. The subject should not be placed on or allowed to lie on his/her stomach while experiencing the effects of OC spray, especially while handcuffed.
- Continuing to verbally reassure the subject, keeping him/her calm, restricting his/her activity, and encouraging blinking of the eyes. If applicable and possible, EMS can assist the subject to remove contact lenses. It is the probation officer's responsibility to notify EMS if assistance is needed.
- Rinsing the affected skin with copious amounts of fresh running water. Explain that excess spray is being washed away and relief from the contamination is inevitable. The subject should not rub his/her eyes, and the probation officer should continue to flush the subject's eyes with water then allow him/her to use a towel to blot them, if possible.

Creams, salves, oils, lotions, burn cream or oil based products or soaps should not be applied or used on or to clean the skin, as these products will only trap the OC spray on the skin.

The subject may produce some amount of bodily fluids, usually in the form of mucous, saliva, and tears. For the officer's protection, universal precautions shall be followed, including wearing rubber/latex gloves for the decontamination process.

Usually a subject will recover within one hour. While monitoring the subject, if symptoms persist and significant improvement is not shown, the probation officer shall seek medical aid immediately. Further, if at any point the subject states he/she is in medical distress, the probation officer shall seek medical aid immediately.

When OC spray is deployed inside of a room/house/structure and safety permits, the probation officer must decontaminate the area by opening doors and windows and using fans to facilitate air circulation. Clothing and other fabrics may be cleaned in their usual manner. Further, if a room/house/structure is exposed to OC spray, a note must be left stating such, and the probation officer's name and phone number must be provided in the note.

If OC spray is deployed on an animal, the officer should remain as far away from the animal as possible. Further, the owner of the animal shall be notified as soon as it is practical to do so. If the owner cannot be contacted or located, the probation officer shall contact the El Dorado County Animal Services for assistance.

#### FIREARM/DEADLY FORCE

The probation officer shall not discharge a firearm in the course and scope of employment except as permitted by these policies and procedures. Improper use of a firearm will result in department sanctions, including disciplinary action, and may result in civil or criminal sanctions.

Probation officers are authorized to discharge firearms in the line of duty under the following circumstances, each of which must be justifiable as defined by law:

- When there is imminent threat of death or serious bodily injury to another person and/or the probation officer, and the probation officer has a reasonable belief that the use of deadly force is necessary to prevent death or serious bodily injury to another person and/or the probation officer. A probation officer is expected to use sound judgment in making a determination that the use of deadly force is necessary. Imminent does not necessarily mean immediate or instantaneous.
- At an approved range; firearms may be used during approved training, practice, or qualification when supervised by the Rangemaster.

Justification for the use of deadly force is limited to what reasonably appears to be the facts known or perceived by the probation officer at the time he/she decides to shoot. Facts unknown to the probation officer and which could not reasonably have been expected to be known by the probation officer cannot be considered in later determining whether the shooting is justified.

In determining whether the circumstances justify the unholstering and/or discharge of a firearm, the probation officer shall consider and give relative weight to the following factors:

- The other person has the opportunity, ability and means to harm an individual, and the other person's opportunity and ability may place the life of an individual in danger.
- An animal has the opportunity, ability and means to harm an individual and place the life of an individual in danger.

- There has been a display of a firearm or any article that can be used as a weapon by an individual in a threatening manner, which might cause death or serious bodily injury to the probation officer or another person.
- The individual is known to the probation officer to have a record and/or history of violent behavior.
- The probation officer has information from a reliable source (such as a spouse, law enforcement official, employer or landlord) that an individual is or may be armed or is dangerous.
- There are auditory or visual indications at the scene of the potential threat (such as the sound of gunshot(s), screaming or cries, or sounds or signs of an altercation in progress).
- There are other, more reasonable alternatives available. Before escalating to the use of firearms, probation officers should attempt to consider all available alternatives, including disengagement.
- The firearm can be tactically utilized (e.g., whether there are crowds, small children, hostages, etc.).
- The unholstering or use of a firearm will escalate rather than control the situation.

A probation officer shall not:

- Display or brandish as a threat any firearm unless its actual use in the situation would be proper pursuant to these procedures.
- Fire warning shots as this presents a danger to both the officer and innocent persons.

#### RESPONSIBILITIES AFTER DEADLY FORCE IS USED

Whenever a probation officer uses deadly force, the probation officer, as soon as safety permits, and if physically able to do so, shall immediately:

- Assess the situation and determine the condition of any injured person or animal. If there are injured persons, the probation Officer shall render first aid, if appropriate, and summon emergency aid.
- If there is an injured or a dead animal, the probation officer shall attempt to contact the animal's owner. If the animal's owner is unable to be located in a timely manner, or if there is no owner, the probation officer shall contact the El Dorado County Animal Control Services.
- Notify a supervisor, who will notify the Division Manager. The Division Manager will then notify the Chief Probation Officer. The Division Manager or CPO shall immediately activate the Officer-Involved Critical Incident Protocol (see Probation Department Policies section IV23, Officer-Involved Critical Incident Protocol). Activating the Protocol will ensure the notification of the local law enforcement agency with jurisdiction, who will proceed to the scene and conduct a criminal investigation.
- Secure the scene until relieved by law enforcement. The law enforcement supervisor is then responsible for the scene and the investigation.
- Remain in his/her clothing, body armor, and safety equipment as he/she was wearing throughout the deadly force incident, without altering his/her appearance after the incident, as the probation officer's clothing may have evidentiary value.
- As soon as safety permits, any probation officer who directs his/her firearm at a person shall immediately submit a verbal report to his/her supervisor.

### PUBLIC SAFETY STATEMENT

Once the incident scene has been secured and there is no longer any threat to safety, the lead criminal investigator may make an inquiry as to the involvement of each probation officer, in an attempt to ascertain the circumstances surrounding the incident. Although a probation officer may invoke a right to representation as well as a right against self-incrimination, the lead investigator and/or department representative is entitled to answers to certain questions regarding public safety and security of the scene. The questions asked by the lead investigator, such as the number and description of outstanding subjects, the location of evidence, identity of known witnesses, parameters of the incident scene, or the direction the shots were fired, for example, must be answered by the probation officer. During this discussion, the probation officer is not entitled to representation. A probation officer may be subject to disciplinary action for insubordination, up to and including termination, for refusing to provide a public safety statement.

### VOLUNTARY STATEMENT

It is the sole decision of the probation officer to give or not to give a voluntary statement. The probation officer may contact a union representative or attorney for advice, and may choose to give the voluntary statement at the scene or sometime thereafter, after consideration. It is believed most appropriate for the probation officer to cooperate fully with the investigation and give a voluntary statement regarding the events to the criminal investigator. However, it is each probation officer's choice whether to give a voluntary statement or invoke a right to representation.

The probation officer who discharged the firearm shall not discuss the incident with anyone except persons directly involved in the investigation, per Public Safety Officers Procedural Bill of Rights Act (§3303 GC). Pursuant to Probation Department Policies Section IV3, the probation officer shall not comment to anyone from the media, general public, or others not directly involved in the investigation.

If the probation officer has any questions regarding this procedure, the probation officer shall seek guidance from his/her supervisor.