

BOULDER COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES MANUAL

SUBJECT: Use of Force

NUMBER: 502

EFFECTIVE: September 1, 2020

SUPERSEDES: July 7, 2020

POLICY:

It is the policy of the Boulder County Sheriff's Office for deputies to comply with the laws of the State of Colorado and use only the amount of physical force that is objectively reasonable to affect an arrest, prevent an escape, defend themselves or another from bodily harm, or preserve the peace. The Sheriff's Office does so in aligning with its mission of valuing the individual, including their race, gender, age, and how they identify in the world, while applying an equity focus. The Sheriff's Office recognizes that deputies will encounter infinitely variable situations in the performance of their duties. Variables between officers and individuals with whom deputies come into contact will range broadly in terms of size, strength, and that individual's level of physical aggression and training (e.g., experience in martial arts, wrestling, etc.). Persons may be under the influence of alcohol or drugs or may suffer from behavioral or mental health issues affecting their willingness to comply or manifest itself in violent tendencies.

In light of these factors, the Sheriff's Office recognizes that objectively reasonable force used by deputies cannot always begin with the lowest levels of force due to circumstances that are frequently tense, uncertain, and rapidly evolving. As such, different levels of force may be objectively reasonable for deputies depending upon the situation.

The Sheriff's Office use of force training program instills in deputies the capability to assess the potential harm that might result from use of force actions and to use verbal de-escalation in lieu of force whenever possible. The Sheriff's Office teaches deputies a variety of tactics and skills including the use of verbal tactics, control holds, electronic control weapons (i.e. Taser®), chemical agents, strikes and kicks, less-lethal impact weapons and firearms. Additionally, canine and special weapons and tactic units are maintained to provide further options for resolving use of force situations. Deputies assess situations and their own abilities and training, select the tactics and level of force that they believe is proportional to the need, with the goal of successfully resolving the situation in the safest manner possible. These decisions are then subject to sheriff's office review and may also be reviewed by criminal and civil courts.

DEFINITIONS:

Active Aggression/Assault: An active attempt to inflict bodily injury against another person or a deputy. An assault against a deputy or other peace officer is considered an elevated risk because of the possibility that the person committing the assault may get possession of one of the deputy's/officer's weapons and use it against another person.

Active Resistance: A refusal to comply with instructions accompanied by physical action that is

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intended to injure, thwart a lawful arrest, or to interfere or overcome an attempt by a deputy to lawfully subdue the resisting individual or another person.

Deadly Physical Force: Any intentional force that has a natural and probable consequence of producing death (§18-1-901(3)(d), C.R.S.).

De-Escalation: A decrease in the severity of force required or used in an incident in direct response to a decrease in the subject's level of resistance.

Defensive Resistance: Refusal to comply with instructions accompanied by resistance that does not yet rise to the level of active resistance but through word, or body posture, a person demonstrates an intention or willingness to cause or to attempt to cause injury to another person.

Elevated Threat: Articulate circumstances and factors that—in combination with the subject's behavior or actions—lead a reasonable officer to believe there is an increased threat to their safety or the safety of another.

Empty-Hand Control: The use of bodily force to gain control of a subject.

Hard-Hand or Strike Control: An empty-hand control technique involving the use of strikes by the human body to restrain and/or control a subject. This may include, but is not limited to, punches and kicks, or strikes by the head, knee, or elbow.

Immediate: An event or action that is taking place.

Imminent: An event or action that is about to happen or occur.

Non-Deadly Force: Any use of force other than that which is considered deadly force. This includes any physical strike or instrumental contact with a person, any attempted or threatened physical strike or instrumental contact that does not take effect, or any significant physical contact that restricts the movement of a person beyond escorting or un-resistant handcuffing, intended to overcome the resistance of another.

Objectively Reasonable: Courts use this term as the standard by which officers' actions will be evaluated in use of force situations. The United States Supreme Court has ruled that because police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation, in circumstances that are frequently tense, uncertain, and rapidly evolving, the reasonableness of the officer's belief as to the appropriate level of force should be judged from the on-scene perspective and not by using the "20/20" vision of hindsight. The reasonableness of the use of a particular level of force will be judged by paying, "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others,

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and whether he is actively resisting arrest or attempting to evade arrest by flight.”

Passive Resistance: For purposes of Sheriff's policies, this term refers to a type of resistance encountered by deputies where a person refuses to comply with instructions but does not offer any type of physical resistance outside of having their body go limp, stiffening their body or refusing to move. The term also refers to resistance by nonviolent methods to a government, an occupying power, or specific laws, as in refusing to comply, demonstrating in protest, or fasting.

Serious Bodily Injury: Bodily injury which, either at the time of the actual injury or at a later time, involves substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree (§18-1-901(3)(p), C.R.S.).

Soft-Hand Control: An empty-hand control technique that uses grabs, holds, and joint locks to restrain an individual.

Use of Force: Use of any control holds or restraint techniques beyond non-resisted handcuffing, which may include hand control, chemical sprays, electronic control weapons, strikes, kicks, canines, impact weapons, threatened use of deadly force (including the pointing of a firearm at an individual), and any on-duty, non-training related, discharge of a firearm. For purposes of this policy, use of force does not include any escort techniques or holds on a compliant, non-resistive subject.

Verbal Non-Compliance: An individual ignores instructions and/or refuses to comply with instructions but does not offer any type of physical resistance.

PROCEDURE:

- I. General Use of Force Guidelines under Colorado Law
 - A. Deputies shall apply non-violent means, when possible, before resorting to the use of physical force. Deputies may use physical force only if non-violent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person (§18-1-707(1), C.R.S.).
 1. Deputies shall only use force when acting upon good faith and a reasonable belief their force actions are lawful.
 - B. Deputies may only use a degree of force consistent with the minimization of injury to others (§18-1-707(2)(b), C.R.S.).

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C. Correctional Facilities

1. In a correctional facility, a deputy may use objectively reasonable and appropriate physical force when and to the extent that he or she reasonably believes is necessary to maintain order and discipline (§ 18-1-703(1)(b), CRS).

II. Use of Deadly Force

A. A deputy is authorized to use deadly force when necessary to:

1. Defend himself or herself or a third person from what is reasonably believed to be the use or imminent use of deadly force; or
2. To effect an arrest, or to prevent the escape from custody, of a person whom the deputy reasonably believes has:
 - a. Committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or is attempting to escape by use of a deadly weapon (§18-1-707(3)(a), C.R.S.); and
 - b. Only when all other means of apprehension are unreasonable given the circumstances (§18-1-707(3)(a), C.R.S.); and
 - c. The suspect poses an immediate threat to the peace officer or another person (§18-1-707(3)(b), C.R.S.); and
 - d. The force employed does not create a substantial risk of injury to other persons (§18-1-707(3)(c), C.R.S.).
3. When the subject otherwise indicates, except through a motor vehicle violation, that they are likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.
4. Correctional Facilities: Deputies may use deadly force in a correctional facility only upon an objectively reasonable belief the inmate poses an immediate threat to the person using deadly force or another person (§18-1-703(1)(b), C.R.S.).

- ### B. Valuing human life necessitates that deputies either exhaust or eliminate from consideration all other reasonable options based upon the circumstances prior to resorting to the discharge of firearms, and then only when they reasonably believe that such use of a firearm is necessary to protect the deputy or another

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from the imminent risk of serious bodily injury or death.

- C. Deadly force may not be used to apprehend a person solely suspected of only committing a minor or non-violent offense (§18-1-707(2)(a), C.R.S.).
- D. Deputies shall identify themselves as a peace officer and give a clear verbal warning of their intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury, would create a risk of death or injury to other persons, or is impossible under the circumstance (§18-1-707(4), C.R.S.).
 - 1. This warning is not a “threatened use of force” as contemplated by C.R.S. §21-31-904. A deputy is justified in using deadly physical force if the deputy has an objectively reasonable belief that a lesser degree of force is inadequate and the deputy has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving serious bodily injury (§18-1-707(4.5), C.R.S.).

III. Other Deadly Force Events

- A. Deputies may use deadly force to destroy an animal that represents a threat to public safety or as a humanitarian measure when the animal is seriously injured, and the deputy believes that the deadly force can be used without endangering others.
- B. Discharging a firearm at an occupant of a moving vehicle is only authorized when the deputy is authorized to use deadly force against that occupant and the deputy reasonably believes that the risk to the deputy or others created by discharging a firearm is outweighed by the need to apprehend the suspect(s) without delay.
- C. Discharging a firearm from a moving vehicle at any person outside of that vehicle is only authorized when the deputy is authorized to use deadly force against that person and the deputy reasonably believes that the risk created by discharging a firearm is outweighed by the need to apprehend the person without delay.
- D. Discharging a firearm at a vehicle, whether or not it is moving, with the sole intent of disabling the vehicle, is prohibited unless the deputy is authorized to use deadly force against all occupants of the vehicle.
 - 1. In exceptional circumstances, using a firearm with the sole intent of disabling the vehicle may be the most reasonable action available and provide for the greatest safety to the public and/or deputies. Under these

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circumstances, a command level supervisor may authorize an action under this section be taken when necessary, whether in a planned or unplanned event, using weapon(s) specifically designed to disable vehicles.

IV. Protests and Demonstrations

- A. In response to a protest or demonstration, Sheriff's Office employees shall not:
 - 1. Discharge a kinetic impact projectile and all other non-or less-lethal projectiles in a manner that targets the head, pelvis, or back of a person; or
 - 2. Discharge kinetic impact projectiles indiscriminately into a crowd; or
 - 3. Use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order (§24-31-905, C.R.S.).

V. Use of Force Coordination

- A. When practical, deputies are required to coordinate the application of force in situations where more than one deputy is present and where any use of any level of force is authorized.
 - 1. To ensure effective coordination deputies are encouraged to use principles of the Incident Command System when planning, organizing and using multiple deputies to apply force against a person or persons.

VI. Application of Force

- A. Deputies will use advisements, warnings, and verbal persuasion, when possible, before resorting to the application of force, including firearms.
 - 1. A verbal warning is not required in circumstances where the deputy has to make a split-second decision, or if the deputy reasonably believes that issuing a warning would not be tactically advantageous and would place the deputy or others in jeopardy.
- B. Force shall be de-escalated immediately as the subject's resistance decreases.
- C. Immediately following the use of force and placing the subject into custody,

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deputies shall evaluate and/or observe the subject for injury or complaints of pain resulting from the use of force and obtain any necessary medical care as soon as practicable (§18-1-707(1)(c), C.R.S.).

1. In instances where a serious injury to a subject occurs during a force encounter, deputies are required to render aid, to the best of their physical ability, until relieved by professional medical providers, and to obtain a medical clearance by a physician prior to the subject being booked into the jail.

D. Force shall never be applied as punishment.

E. If the subject of the force sustains serious bodily injury (as diagnosed by a medical professional for purposes of this section) or death, any identified relatives or next of kin are to be notified as soon as practicable (§18-1-707(1)(d), C.R.S.). It is the responsibility of the staff duty officer (SDO) in the primarily involved division to arrange for proper notification to be made.

F. Chokeholds

1. Deputies are not authorized to use choke or strangleholds (e.g., vascular neck restraint, carotid restraint, etc.) to subdue a subject in a non-deadly force encounter, as defined in §18-1-707(2.5)(b), C.R.S.

VII. Duty to Intervene

A. Deputies, regardless of rank, shall intervene to prevent or stop another peace officer from using physical force that exceeds the degree of force permitted by law, without regard for chain-of-command (§18-8-202(1.5)(a), C.R.S.).

1. Failure to intervene to prevent the use of unlawful force subjects the deputy to potential civil and criminal liability (§18-8-202(1.5)(d), C.R.S.).

B. You must report the use of force and the intervention to your immediate supervisor as soon as practicable but no later than the end of shift.

C. Within 10 days of an intervention of use of force, a deputy must submit a report, in writing, and attach or append the report to the original incident report.

VIII. Use of Force Reporting

A. Any deputy who uses force as defined in this policy during the performance of their

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duties is required to report that use of force to their supervisor as soon as practical and before the end of their shift. The circumstances of the use of force are to be detailed in the report documenting the crime or incident.

1. The deputy who applies force shall include, but is not limited to, the following considerations in their narrative report:
 - a. The threat perceived, or underlying basis for the application of force, including the severity of the threat or security problem;
 - b. The subject's level of resistance;
 - c. The force applied;
 - d. The subject's response to each application of force;
 - e. The extent of injuries to the subject, if any, and any medical aid rendered.
2. In addition, each deputy using force is required to complete and submit a "Use of Force" form to the on-duty supervisor before the deputy ends his or her shift.
 - a. The supervisor who receives the "Use of Force" form is responsible for ensuring that the current procedure for distributing and documenting data on the form is followed.
3. Each deputy who uses force, or witnesses the use of force, is responsible for completing a narrative report detailing his or her involvement and observations.
4. Injuries sustained or alleged by a subject or a deputy as a result of a force encounter will be documented by photograph when possible, provided it does not interfere with or delay medical treatment.

B. Duty to Report Excessive Force

1. Any peace officer who witnesses another peace officer use a level of force that exceeds the level permitted by state statute is required to report that use of force to his or her immediate supervisor in accordance with C.R.S. § 18-8-802.
 - a. Therefore, any deputy - whether or not commissioned as a state

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peace officer - who witnesses the use of force by any other deputy or peace officer that exceeds the level of force permitted by state statute is required to attempt to intervene, to the extent possible, and then make a report to his/her immediate supervisor as soon as practical and no later than the witnessing deputy's end of shift.

- b. Any deputy who receives information from any sheriff's employee regarding the witnessed use of force by a deputy or other peace officer that the employee believes exceeds the level of force permitted by state statute is required to make a report to his/her immediate supervisor.
 - i. The initial report may be verbal; however, in every case the verbal report is to be followed up with a written report within 24 hours. The report is to include the date, time and place of the occurrence; the identity and/or description of the participants; and a description of the events and force used.
- c. The written report is submitted to the author's division chief within the 24-hour time period. The division chief will inform the undersheriff and sheriff of the report's existence and provide a copy to each as soon as practical.
- d. If the officers who allegedly used excessive force are employees of the Sheriff's Office, an internal affairs investigation is initiated.
- e. If the officer or officers who allegedly used excessive force are employees of another law enforcement agency the division chief or the sheriff will transmit the report to the person designated by that agency to receive and investigate such reports.

IX. Investigations

- A. Every use of force incident will be reviewed by a supervisor. If there is reason to believe that an employee used excessive force, regardless of injury, the *Internal Affairs Policy* will be applied.
 - 1. Application of lower levels of force will be reviewed by the deputy's direct supervisor(s) when the subject sustains minor to no injury. Force in this category includes empty-hand control, restraint chairs, RIPP restraints, discharge of duty-carry chemical agents (e.g., OC), threatened use of a

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weapon, use of an Electronic Control Weapon in drive-stun mode, use of Noise Flash Diversion Devices (NFDD) outside an occupied structure when used to create a diversion outside the presence of a member of the community or a subject involved in an incident, and animal euthanasia.

2. Application of higher levels of force, or when lower levels of force result in injury requiring medical treatment, will be reviewed by the involved deputy's affected commander. Force in this category includes the broad deployment of chemical agents, cell extractions, the use of a restraint chair or similar device, strikes delivered with an impact weapon or impact munitions, K9 bites, NFDD's used in any manner beyond §VII.A.1, ECW deployment in dart-mode, multiple ECW exposures, or ECW exposures lasting longer than 15 seconds (cf. *Policy 514 – Conductive Energy Devices*).
 - a. Application of higher levels of force, or when lower levels of force result in injury requiring medical treatment, a formal investigation will be initiated with the purpose of completing a thorough use of force investigation and furthering knowledge of the adequacy of training, equipment, or tactics. The formal investigation is typically memorialized as a Supervisory Review (SR) and will include an investigation of all uses of force, regardless of type, stemming from the same incident.
 - b. After the application of a higher level of force has been investigated, the employee assigned to investigate the use of force shall complete the electronic force training summary form. The purpose of the force training summary is to outline, at a very high-level, the circumstances surrounding the use of force. The information provided is to be analyzed with the intent of improving employee training.
 - i. The electronic force training summary form is maintained by the commander assigned to the Personnel & Training Unit in the Administration Division.
 - ii. This paragraph (§VIII.A.2.b.) is effective August 1, 2020.
 - c. Use of force incidents that result in the death of a subject, serious bodily injury, or the discharge of a lethal firearm or impact munition at a person require the investigating commander or division chief to complete the office's FBI Reporting *Use of Force Form*.

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3. Supervisors may not conduct a force investigation for an incident in which they directed or participated in the application of force.
4. Force reviews that are not assigned as formal IA/SR investigations are documented on the '*Use of Force Supervisory Review Form.*' This form is filed in the Records Section upon its completion under the corresponding incident number.
5. Force investigation dispositions are:
 - a. Justified, Within Department Policy
 - b. Justified, Policy Violation – A use of force is justified, but during the course of the incident the involved deputy(s) violated a department policy or procedure.
 - c. Justified, Training Opportunity – A use of force is justified, no department policy or procedure violations occurred, but the investigation revealed aspects of tactics or force application concerns that can be addressed through training.
 - d. Not Justified, Not Within Department Policy
- B. Each division chief is responsible for tracking their division's use of force and the resulting review disposition, which will be incorporated into the annual use of force report.
- C. In any case where a deputy discharges a firearm at another person, or a death results from an application of any force, a formal investigation is initiated. The Sheriff shall determine who the investigation will be undertaken by based upon the circumstances of each incident (See *Boulder County Investigation Team Policy #503* and the *Boulder County Sheriff's Office Internal Affairs Policy #318*).

X. Administrative Actions

- A. When an employee uses force in the line of duty and death results the employee is placed on administrative leave pending the outcome of a use of force investigation.
- B. When an employee uses force in the line of duty and injury results, the

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employee may be placed on administrative leave, at the discretion of the employee's division chief, pending the outcome of a use of force investigation.

- C. It is the responsibility of the affected employee's division chief, after consulting with the sheriff, to decide the duration of administrative leave. The factors the division chief should consider in making the decision include, but are not limited to, the following:
 - 1. The type of force used and the result of that use of force;
 - 2. The outcome of the investigation into the use of force incident;
 - 3. The mental and physical condition of the affected employee;
- D. Professional assistance may be sought to evaluate the employee's current mental and physical condition.
- E. Any on-going needs the employee may have as a result of the use of force.

XI. Continuums

- A. Levels of Resistance: The levels of resistance, ordered from least to most, are as follows:
 - 1. Verbal Non-Compliance
 - 2. Passive Resistance
 - 3. Defensive Resistance
 - 4. Active Resistance
 - 5. Active Aggression/Assaultive
- B. Force Options: Force options, by broad classification, ordered from the least amount of force to the greatest, are:
 - 1. Verbal Control
 - 2. Empty Hand Control (examples include soft-hand and hard-hand techniques)
 - 3. Less-Lethal Options (examples include blunt impact weapons, chemical

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munitions, and electronic control weapons, K9)

4. Lethal Options

- C. When determining the appropriate level and application of force, deputies shall consider only the amount of force that is objectively reasonable under the circumstances to bring a subject under control and/or arrest.

XII. Training

- A. Training in the application of force shall include, but is not limited to, the following elements:

1. De-escalation tactics and strategies;
2. Reasonable alternatives;
3. Threat perception, assessment, and analysis;
4. Determining the appropriate force response to a perceived threat to ensure the level of selected force in the continuum is appropriate, reasonable, and necessary;
5. Articulation of force application, documentation and reporting; and
6. Current laws, including statutory, constitutional, and applicable case law.

- B. The sheriff, undersheriff, and division chiefs may require employees to attend additional training in the use of force, as they deem appropriate and necessary.

By Order of the Sheriff,



Joseph K. Pelle

9/1/2020

Date

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