
USE OF FORCE

I. Purpose

The purpose of this policy is to set the use of force guidelines for officers of the Arkansas State Police. Use of force shall be consistent with state and federal laws and with appropriate court precedents. When a court precedent supersedes this policy, officers shall follow the appropriate court ruling.

II. General Guidelines

- A. Officers are allowed to use such force as is reasonably necessary under the circumstances to carry out their duties.
- B. Officers should escalate or de-escalate their use of force in response to the actions of the subject against whom force is used.
- C. Under no circumstances should officers use force as a means of retaliation or punishment.

III. Definitions

For purposes of this policy, the following definitions apply:

- A. “Force” and “Use of Force,” as used in this policy, refers to any form of “physical force” or “deadly physical force” as those terms are defined below.
- B. “Physical force,” as used in this policy, is defined as any bodily impact, restraint, or confinement, or the threat thereof. A.C.A. § 5-2-601(6).
- C. “Deadly physical force,” as used in this policy, is defined as physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury. A.C.A. § 5-2-601(2).
- D. “Non-Deadly Physical force,” as used in this policy, is defined as physical force that under the circumstances in which it is used is not readily capable of causing death or serious physical injury.
- E. “Serious physical injury,” as used in this policy, is defined as physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. A.C.A. §5-1-102(21).
- F. “Reasonably believe” or “reasonable belief,” as used in this policy, is defined as a belief that an ordinary, prudent person would form, under the circumstances in question, and is not recklessly or negligently formed. A.C.A. § 5-1-102(18).



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- G.** “Subject” as used in this policy, is defined as any person with whom an officer has contact in the course of carrying out the officer’s official duties.

IV. Examples of Force

Use of force includes, but is not limited to:

- A.** Striking, pushing, shoving, holding, or any other physical contact by an officer’s body which has the intended purpose of disabling, immobilizing, restraining, detaining, or arresting a subject;
- B.** Carotid restraint which has the intended purpose of restricting the flow of blood to the brain by applying pressure to the sides of a person’s neck;
- C.** Striking a subject with a solid object;
- D.** Use of authorized chemical/irritant agents or a combination of authorized chemical/irritant agents. (Example: Oleoresin Capsicum (OC) spray);
- E.** Use of conducted electrical weapons;
- F.** Use of tire deflation devices;
- G.** Intentionally causing a collision with another motor vehicle for the purpose of functionally damaging or forcing the other vehicle off the road.
- H.** Use of kinetic energy impact projectiles which are intended to incapacitate a subject with a minimal potential for causing death or serious physical injury when compared to conventional projectiles;
- I.** Use of a canine under circumstances where the canine causes injury to a subject at the direction of the handler; or
- J.** Intentional discharge of a firearm in the direction of a subject, an occupied motor vehicle, or an occupied house or other structure.

V. Reasonable Force

- A. Officers are allowed to use such force as is reasonably necessary under the circumstances to carry out their duties.**
- B.** Once the subject’s active resistance has ceased and control has been gained, an officer is no longer authorized to use force.
- C.** Officers have an affirmative duty to intervene if they witness force used by another officer that is clearly unreasonable. (*See Putnam v. Gerloff 679 F2nd 415 8th Cir. 1981*)



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1. When in a position of safety to do so, any officer that observes another officer use force that is clearly unreasonable under the circumstances shall intervene to prevent continued unreasonable force.
2. Any officer who observes another employee use unreasonable force should promptly report such observations to a supervisor.

VI. Actions by an officer which are not considered use of force include, but are not limited to:

- A. The reasonable touching of a person or a firm grasp used to maintain control, guide, or assist an individual;
- B. The application of handcuffs where the person being handcuffed does not offer serious physical resistance; or
- C. The reasonable touching or display of an authorized weapon.

VII. Use of Non-Deadly Physical Force

An officer is authorized to use non-deadly physical force or threaten to use deadly physical force upon another person if the officer reasonably believes it necessary to:

- A. Effect an arrest or to prevent the escape from custody of an arrested person unless the officer knows the arrest is unlawful; or
- B. Defend himself or herself or a third person from what the officer reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape. (*See A.C.A. § 5-2-610 (a) (1-2).*)

VIII. Use of Deadly Physical Force

- A. Use of deadly physical force is reviewed by an Arkansas prosecutor under Arkansas criminal law to determine if criminal charges will be filed against an officer. Specifically, A.C.A. § 5-2-610(b)(1) - (2) states as follows:

An officer is authorized in using deadly physical force upon another person if the officer reasonably believes that it is necessary to: (1) effect an arrest or prevent the escape from custody of an arrested person whom the officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or (2) defend himself or herself or a third person from what the officer reasonably believes to be the use or imminent use of deadly physical force.

- B. The U.S. Supreme Court has clearly established that deadly physical force is *only constitutionally* authorized **when the officer can articulate facts rising to probable**



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cause that the suspect poses an *immediate threat of death or serious physical injury to either the officer or others.* (See *Tennessee v. Garner*).

- C. Use of deadly force will be judged on whether the officer's actions were objectively reasonable in light of the totality of the facts and circumstances known to the officer at the time, not based on "20-20 hindsight." (See *Graham v. Connor*)
- D. Warning shots are strictly prohibited.
- E. Officers shall not discharge a firearm at a vehicle to disable the vehicle unless the officer reasonably believes that there is an immediate threat of death or serious physical injury to the officer or another person and deadly force is authorized.

IX. Authorized Use of Firearms

The use of a firearm in the performance of an officer's official duties should conform to the requirements set forth in DPS and ASP Policies and Procedures.

X. Appropriate Medical Assistance

Officers should immediately provide appropriate medical assistance to the subject of a use of force to the degree to which they are trained and/or request emergency medical services to respond when necessary. Appropriate medical assistance will be provided in a safe and reasonable manner to any person who is injured or who complains of injury and includes but is not limited to:

- A. As soon as reasonable, placing a person in an appropriate recovery position to aid in breathing and to reduce the chances of positional asphyxiation;
- B. Observing and monitoring the subject for obvious changes in the person's condition which may require additional aid;
- C. Flushing chemical agents from the eyes and face;
- D. Summoning emergency medical personnel;
- E. Providing transportation to a medical facility; and
- F. Application of first aid treatment.



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Definitions: The definitions defined in the Use of Force policy in this Manual also apply to this policy.

Deadly Physical Force

I. Involved Officer(s) Reporting Requirements:

Preliminary Actions: An Officer that has been involved in deadly physical force or the use of deadly physical force should immediately or as soon as practical:

- Render medical assistance to any injured persons;
- Call for any needed medical assistance;
- Secure any weapons, vehicles, or other items used to employ force, if necessary;
- Notify the local Arkansas State Police communications center;
- Notify the on-duty supervisor for the area of occurrence;
- Stand by, preserve the scene, and take whatever other action is appropriate under the circumstances (traffic control, crowd control, etc.);
- Await further instructions from the on-duty supervisor; and
- Make a preliminary verbal report of the incident to the on-scene supervisor or as directed.

Additional Reporting Requirements for Involved Officers: A preliminary verbal report with the Criminal Investigation Division Agent(s) and officer(s) who took such action or used such force is required. Details from that interview should be reduced by the CID interviewing Agent, to an investigative supplement. The investigative supplement and a Use of Force Report (ASP 22) should be completed within 48 hours unless it is impractical to do so under the circumstances.

- All other Arkansas State Police officers, who were involved in or who witnessed the incident involving such deadly physical force should immediately notify the on-duty supervisor. Those officers should also reduce their verbal statements to an Incident Report.
- The officer(s) utilizing deadly physical force and the officer(s) witnessing such force should review all video tapes and audio tapes relating to the incident prior to completing an Incident Report and/or the Use of Force Report (ASP 22).



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Drug/Alcohol Testing: Upon being notified of a use of force incident where an officer(s) used deadly physical force, the Troop/Company/Section Commander, or his/her designee, from the Division primarily responsible for the matter, should arrange for the drug/alcohol testing of the officer(s) involved as prescribed in Critical Incident Testing. See policy entitled Drug and Alcohol Free Workplace located in the General Manual.

Removal from Line of Duty Assignment Pending Review: Any officer whose actions or use of deadly physical force result in a death or serious physical injury will be temporarily removed from a line of duty assignment pending a preliminary administrative review. This action should not be construed as an indication of wrongdoing by the officer. The Administrative Services Division Commander or his/her designee will serve as the officer's point of contact for informational purposes during the administrative review.

The officer's Division Commander will determine the length of time during which the officer will be temporarily removed from line of duty assignments and may arrange for the officer temporarily to assume other duties, if appropriate under the circumstances. The Division Commander may restore the officer to a line of duty assignment after the preliminary administrative review of the incident has been completed and the officer has completed a debriefing through a professional designated by the department. The department will assist the officer in obtaining additional counseling and any other such services that may assist the officer in recovering from stress and/or other psychological effects resulting from the incident.

II. Use of Deadly Physical Force Review:

Notification of CID Regarding the Use of Deadly Physical Force: Upon being notified of a use of force incident where an officer(s) used Deadly Physical Force, the Troop/Company/Section Commander, or their designee, from the Division primarily responsible for the matter, should promptly notify the local Criminal Investigation Division (CID) Commander. The Troop/Company/Section Commander, or his/her designee, from the Division primarily responsible for the matter, should also make the notifications which are required for matters that fall within Reporting Level One. See policy entitled Chain of Command in this Manual.

The CID will have the primary responsibility for conducting the deadly physical force review. This review will document the criminal violations of the suspect that resulted in the officer's use of deadly physical force and will include all details surrounding the use of deadly physical force by the officer.

If, during the course of the deadly physical force review, evidence obtained during the review indicates a possible criminal violation by the officer(s) in his/her use of deadly physical force the



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agent, after consulting with the local CID Company Commander and with the prosecuting attorney of the appropriate jurisdiction, may transition the deadly physical force review into a deadly physical force criminal investigation. When a deadly physical force review has been transitioned into a deadly physical force criminal investigation, the *Miranda* warning will be read to the officer(s) prior to his/her official interview.

Prosecutor's Review: Upon CID's completion of the deadly physical force review, the file will be delivered to the prosecuting attorney of the appropriate jurisdiction with a copy provided to the Commander of the involved officer. It is recommended that a letter be requested from the prosecuting attorney after his review summarizing his findings and determinations. A copy of this letter should be provided to the officer(s) involved in the incident.

III. Use of Deadly Force Administrative Investigation:

The Troop/Company/Section Commander, or their designee, from the Division primarily responsible for the matter, should notify the Office of Professional Standards. OPS will monitor the CID investigation for administrative purposes. The OPS will send an officer to the scene if death or physical injury has occurred or if directed by the administration.

The Use of Force Report (ASP 22) and a copy of the completed CID investigation will be forwarded to the Division Commander for review. Upon the Division Commander's review of the investigation, in conjunction with OPS, the Division Commander should determine whether the officer's use of force was consistent with Arkansas State Police policy and whether the officer's actions were appropriate.

If the officer's actions were determined to have met legal standards and conformed to ASP policy, the Division Commander will provide a letter to the officer indicating that the officer's actions met legal guidelines and standards required by ASP policy.

If the officer's actions were determined to have met legal standards and conformed to ASP policy, the Division Commander will forward the file to the Deadly Force Review Board.

If the Division Commander determines that Arkansas State Police policy may have been violated the matter will be referred to OPS.

Office of Professional Standards (OPS) Responsibilities: If an investigation is warranted, OPS should report directly to the Deputy Director, or designee, and shall keep the Deputy Director, or designee, informed of the status of the investigation. At the conclusion of the



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investigation and upon receipt of the investigative file, the Deputy Director, or designee, should review the file for accuracy and completeness.

When the file is complete, the Deputy Director, or designee, will forward the file to the respective Division Commander who should request a Command Staff Review Board (CSRB) be convened.

Deadly Physical Force Review Board: The Deadly Physical Force Review Board is established for the purpose of reviewing and evaluating incidents where officers employ deadly physical force. All such incidents will be reviewed by the Deadly Physical Force Review Board as soon as practical after completion of the use of force investigation. The incident being reviewed will consist of a duplicate copy of the criminal investigation. All documents will remain confidential until the criminal investigation and charges, if any, have been adjudicated.

The Deadly Physical Force Review Board should consist of not less than three (3) or more than five (5) members appointed by the Director. The Board should be comprised of the following: a member of the training staff; the ASP State Firearms Officer; a Troop Commander; a Company Commander, and an at-large member. Three (3) board members will constitute a quorum. The Board is responsible for reviewing the officer's use of force and evaluating such force in comparison to training, supervision, equipment needs or other issues identified. The Deadly Physical Force Review Board is not assigned the responsibility for determining legal, policy or procedural violations as they relate to disciplinary actions. The Command Staff Review Board (CSRB) is responsible for the review and determination of policy violations per LE SEC 4.

The senior board member, measured by length of time in rank, should serve as the chairman of the board. The chairman will convene the Deadly Physical Force Review Board for the purpose of reviewing an incident that involves the use of any form of deadly physical force, regardless of whether the use of such force resulted in, or is alleged to have resulted in, death or physical injury.

The Deadly Physical Force Review Board will meet in closed session. The Review Board has the authority to require officers, and to request other witnesses, to appear before it to answer questions concerning the use of the deadly physical force being reviewed.

After conducting its review of the use of deadly physical force incident, the members of the Deadly Physical Force Review Board will confer on the matter. Thereafter, the chairman should assign one (1) member of the Review Board to prepare a written report of the Board's findings and recommendations, if any. Once the written report is approved by all Board members who were in attendance at the meeting, the chairman will provide a copy of the written report to the



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Director. Until the Director acts upon the recommendations of the Deadly Physical Force Review Board, all documents will remain confidential.

Reporting and Investigating Non-Deadly Physical: The following investigative requirements apply when an officer uses non-deadly physical force:

- The officer should immediately notify and make a verbal report of the incident to the on-duty supervisor.
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- The officer(s) who took such action or employed such force should complete an Incident Report and a Use of Force Report (ASP 22). These reports should be completed within forty-eight (48) hours unless it is impractical to complete under the circumstances.
- All other Arkansas State Police officers who were involved in, or who witnessed the incident involving such action or force should immediately notify to the duty supervisor. Those officers should also reduce their verbal statements to an Incident Report.
- The officers utilizing non-deadly physical force and the officers witnessing such force should review all video tapes and audio tapes relating to the incident prior to completing the Incident Report and/or the Use of Force Report (ASP 22).
- A supervisor should be responsible for conducting the use of force investigation and for ensuring that the Incident Report and Use of Force Report (ASP 22) and any additional investigative reports are complete and accurate.

Review of the Use of Non-Deadly Physical Force Incidents: The use of non-deadly physical force by officers should be reviewed by the officer's supervisors and forwarded through the chain of command to the officer's Division Commander.

At every stage of review by the officer's supervisor, the supervising officer should not exhibit approval or disapproval of the officer's use of force in the use of force investigative file. If a supervisor disapproves of the officer's use of force, the supervisor should explain the reason(s) in a memorandum and place a copy of the memorandum in the use of force investigative file.

Upon the Division Commander's review of the investigation, the Division Commander should determine whether the officer's use of force was consistent with Arkansas State Police policy and whether the officer's actions were appropriate. If the Division Commander determines that

