**ORLEANS COUNTY SHERIFF’S OFFICE**

**GENERAL ORDER**

**SUBJECT: FIREARMS AND USE OF FORCE**

**STANDARD: 6.2, 20.1, 20.5, 21.1, 21.2**

**GO# 208**

**EFFECTIVE DATE:**

**SHERIFF: CHRISTOPHER M. BOURKE**

**AMENDED DATE: 07/07/2020**

1. **PURPOSE:**

Police officers, in the performance of their duties, as authorized to use reasonable and legitimate force in specific cases. This policy, founded in the standards of federal constitutional requirements and state statutes, provides guidance regarding the use and justification for the use of force, including deadly physical force.

1. **POLICY:**

It is the policy of the Orleans County Sheriff’s Office that all sworn members, having completed a MPTC training course, shall carry agency firearms in connection with their official duties. In addition, after required training, sworn officers will carry OC (oleoresin capsicum) spray, a baton or ASP (Armament Systems and Procedures) and an EMD (Electro-Muscular Disruption) system, commonly referred to as an X-26 Taser. Officers shall only be authorized to carry and utilize departmentally issued weapons and utilize them in accordance with law and this department’s policies and procedures.

1. **DEFINITIONS:**
2. **Objectively Reasonable**- An objective standard used to judge an officer’s actions. Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to the officer at the time that the force was used. (Graham v. Connor- 490 US 386 at 396)
3. **Deadly Physical Force**- Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury
4. **Physical Injury**- Impairment of physical condition or substantial pain
5. **Chokehold-** A chokehold shall include, but is not limited to, any pressure to the throat or windpipe which may prevent or hinder breathing to reduce intakes of air.
6. **Low Level Force**- verbal persuasion/officer presence, verbal commands
7. **Intermediate Level Force**- Empty Hand Tactics (including empty handed escort control, use of pressure points), physical restraint (joint locks, come-along holds, and control holds), OC Spray/Aerosol, Taser X26
8. **High Level Force-** Physical Contact (i.e-kicks, elbow strikes, palm or knee strikes and punches), impact/ASP/baton strikes (below clavicle), less lethal devices (ie-beanbag rounds), police K-9 utilization, stop sticks/controlled Deflation devices (Stinger spikes)
9. **Deadly Physical Force-** Firearms, Impact Devices above clavicle (i.e-ASP strike to the head)
10. **DETAILS:**
11. When force is used in making an arrest, unless such force is privileged and legal under the laws governing arrest, the police officer may be liable for civil prosecution and criminal charges. In addition, the force must be used not too severe, but must be in balance with the resistance offered by the violator. In keeping with the New York State Penal/Criminal Procedure Law and the United States Constitution, which are intended primarily to protect the rights of an individual, the laws of arrest and court decisions dealing with arrest strictly prohibit use of excessive or unreasonable force by an officer of the law. The use of force will be guided by the standard of “objective reasonableness”.

The decision to employ deadly physical force is unquestionably the most difficult choice a police officer ever makes. The aftermath of that decision could include the taking of a life, diminished community support for police, a civil suit or criminal charges against the officer. An officer who used deadly physical force may experience profound depression or psychological deterioration that may adversely influence personality, performance, and, in extreme cases, inability to continue employment in the police field. When viewed in this light, it is obvious that deadly physical force is a significant issue to always be in the forefront of law enforcement thinking, and to occupy a primary place in police training, as well as demand explicitly defined and constantly reviewed policies and procedures.

In this complex society, officers are confronted daily with situations where control over others must be exercised to effect arrests and promote public safety. Control may be achieved through oral advice, warnings and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary to gain control, physical force may not be employed until all other reasonable alternatives have been exhausted or would be clearly ineffective under the circumstances. Deputies must be familiar with New York State Penal Law Article 35 (Section 35.30), which permits officers to use whatever force is reasonable and necessary to protect others and themselves from bodily harm. Officer should bear in mind that Article 35 only AUTHORIZES the use of physical/deadly physical force, it does not COMMAND its use.

No set of guidelines for the use of firearms can specifically cover every situation that might arise, yet every Deputy Sheriff is expected to respond to all such emergencies decisively with the highest level of good judgment and professional competence.

The United States Supreme Court, in Tennessee vs. Garner (1985) restricts an officer’s use of deadly physical force to instances where the officer reasonably believes the action to be in defense of any person in immediate danger of serious physical injury.

1. **PROCEDURE:**
2. **Use Of Force Matrix**

The Orleans County Sheriff’s Office has designed and implemented a Use of Force Matrix to explain and define levels of force. The matrix is located under General Order 208A.

1. **Ban of the Use of Chokeholds**
   1. While the use of chokeholds has never been taught to any member of this office, in compliance with NYS Senate Bill S6670B and Assembly Bill A6144 signed by NYS Gov. Andrew Cuomo, it is the policy of the Orleans County Sheriff’s Office to ban the use of chokeholds as a method to gaining control.
   2. New York State Senate Bill S6670B and Assembly Bill A6144 amended New York State Penal Law to state the following;   
      1. “121.13 (a): Aggravated Strangulation. A person is guilty of aggravated strangulation when, being a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or a peace officer as defined in section 2.10 of the criminal procedure law, he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, or uses a chokehold or similar restraint, as described in paragraph b of subdivision one of section eight hundred thirty-seven-t of the executive law, and thereby causes serious physical injury or death to another person.”
2. **Deadly Physical Force**
3. Orleans County Sheriff’s Office personnel may use deadly physical force under the following circumstances, and then only when no other reasonable alternative is available:
4. To defend himself or another person when the officer has **reasonable cause to** **believe** there is **imminent danger of death or serious physical injury** tohimself or another;
5. To apprehend a resisting person who is committing or has committed a crime in which **deadly physical force** is being used or threatened and the officer has **reasonable cause to believe** that such person will cause death or serious injury unless immediately apprehended;
6. To kill a dangerous animal or an animal so badly injured that humanity requires that it be removed from further suffering. In the case of an injured animal, **permission of the owner should be obtained,** whenever possible. Care should be taken to protect bystanders from a ricocheting bullet and, if possible, avoid killing of an animal in the presence of children.
7. Members of the Orleans County Sheriff’s Office shall only fire their weapons at a person to stop and neutralize an assailant to prevent him/her from completing a potentially deadly aggressive act or in the instances as described in this section. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at “available target center mass”. The officer’s intent and purpose is only to stop the deadly aggression or prevent the escape of the subject.
8. No distinction shall be made relative to the age or gender of the intended target of deadly physical force.
9. Self-defense and imminent threat of deadly physical force/serious physical injury shall be the guideline for employing deadly force.

**\*THE OFFICER MUST BE ABLE TO JUSTIFY SELF DEFENSE BY SHOWING**

**THAT THE ASSAILANT HAD:**

**1. The apparent ABILITY to cause serious physical harm or death to the officer**

**or others (some type of weapon or means to cause death),**

**2. A reasonable OPPORTUNITY to effect such serious physical harm or death**

**(a feasible delivery system, or in close enough proximity to cause serious**

**physical harm or death with the weapons or means listed above), and**

**3. Placed the officer or others in actual physical imminent JEOPARDY**

**(offender must have shown intent to cause serious physical harm or death.**

**The officer must be in fear of his or her life or that of another person).**

**\*AS IN ALL USE OF FORCE INSTANCES THE OFFICER MUST BE ABLE**

**TO DEMONSTRATE THAT THE USE OF FORCE WAS:**

**1. The LOGICAL amount of force used under these circumstances,**

**2. The REASONABLE type of force used under these circumstances, and**

**3. The force was a NECESSARY response to eliminate the threat or prevent**

**the injury threatened (all other options were tried or not appropriate, and**

**no other alternative was available to the officer).**

**C. Avoidance Of Recklessness**

1. An officer should never fire a weapon or otherwise employ deadly physical

force in a manner that is likely to cause death or serious physical injury to an innocent

third person. Officers are expected to avoid recklessness in all situations involving

deadly physical force. Even a case where deadly physical force is both permitted

and reasonable under the circumstances, the officer **must consider the safety of**

**innocent bystanders** (e.g., firing in a crowded street, firing into the air in a

residential or business area, etc.) The fact that an officer may be justified to use

deadly physical force **does not** constitute a license for reckless conduct by the officer

and such officer may be held criminally and/or civilly liable in the event of abuse (see

Penal Law Section 35.30, subparagraph 2).

**D. Prohibited Use Of Firearms**

1. An officer **shall not** use a firearm in any of the following circumstances:

a. Officers should refrain from discharging firearms unless a clear line of fire is

available and there is a reduced chance of injury to innocent bystanders;

b. To fire warning shots in order to induce a fleeing subject to halt;

c. To fire a weapon to effect an arrest, except as provided in this General Order;

d. To fire at, or from a moving vehicle, unless the occupants of the vehicle are

using deadly physical force against the officer or another;

e. To gain entrance into a building, vehicle or container, unless authorized to do

so and after proper training and qualification by a members of the SWAT

team (i.e. shotgun breaching);

f. To fire a weapon into buildings or through doorways unless at an identifiable

threat;

g. Solely to protect or preserve personal property; or

h. Except for general maintenance, storage, or authorized training, officers

shall not draw or exhibit their firearm unless circumstances create strong reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with this policy.

**E. Medical Care**

1. An officer who injures any person through the discharge of his/her firearm will

ensure, when possible, that steps are immediately taken to provide the injured person with necessary medical treatment.

**F. Subject Management/Resistance Report**

1. An officer who discharges his/her firearm for any reason except for annual qualifications, authorized target practice, or destruction of an injured animal, shall, as soon as possible, submit a report to the Sheriff in accordance with *agency* procedures, and shall complete a *Subject Management*/*Resistance Report,* *Firearms Discharge Report* and a standard incident report if applicable or required by OCSO general orders and procedures.

**G.**  **Regulations for Carrying Firearms**

* 1. All officers authorized to carry a firearm shall be armed with a Sheriff’s Officeapproved firearm when **on-duty**, unless specifically exempt.
  2. The standard issued handgun for the Orleans County Sheriff’s Office is the Glock Model 21, caliber .45 AUTO semi-automatic pistol, for all road patrol and jail personnel and the Glock Model 30, caliber .45 AUTO semi-automatic pistol, for all plain clothes and administrative personnel. These handguns will undergo semiannual armorer’s checks by a certified Glock armorer. The standard issued shotgun for the OCSO is the Remington 870 pump action 12 gauge shotgun. These shotguns will undergo annual armorer’s checks by a certified Remington armorer. The standard issue patrol rifle for the OCSO is the AR-15/M4 or similar style patrol rifle in .223/5.56 caliber. The brand of AR-15/M4 rifle used may vary and is at the discretion of the OCSO administration and firearms staff. These rifles will undergo annual armorer’s checks by a certified AR-15 armorer.
  3. Officers keeping *agency* issued firearms at their residence will store them in the safest manner possible. If the firearm will not be stored in a safe or similar secure device, the firearm is to be within the officer’s area of control, so as not to make the firearm available to other persons.

1. Officers loading and unloading firearms at their residences, or at any other location, will use safe and approved “administrative loading techniques” as taught by the Orleans County Sheriff’s Office firearms instructors. (Tactical loading and emergency loading will be practiced during training, qualifications and practice sessions, as well as being used in emergency situations).

4. All officers shall be armed with a firearm when operating or riding in any Sheriff’s Office vehicle while on-duty, and at all times in a marked Sheriff’s Office vehicle, whether on or off duty, unless specifically exempt.

5. Officers may, but are not required, to carry their issued firearm when off-duty. Officers may carry their issued firearm anywhere within New York State. The Sheriff, or his/her designee may mandate firearms to be carried off-duty when the situation so requires. An off-duty firearm will be carried discretely so as not to alarm the general public. Whenever carrying an off-duty firearm, officers will also carry their badge and Sheriff’s Office identification. *Agency* firearms are not authorized for off-duty employment.

6. Officers shall not surrender their firearm to an assailant, unless as a last resort.

7. If required by a detention or court facility, which has proper gun lockers for securing them, officers will allow their firearm to be locked while in that facility. If no lockers are available, the firearm may be locked in the trunk of the vehicle. In medical facilities which do not have gun lockers, officers will NOT surrender their firearms.

8. Officers will not handle firearms while under the influence of alcohol, drugs of abuse, or any prescribed medication that may impair an officers abilities to function normally.

**H.**  **Qualifications**

1. Each officer must meet certification and training requirements with all

approved duty weapons as set forth by the Orleans County Sheriff’s Office

firearms training course. Qualifications will be conducted wearing the attire

required of the day as prescribed by the Sheriff, or his/her designee, to

include body armor, duty belt, and any other equipment normally worn on

duty. Officers wearing plain clothes (non-uniform) will carry the firearm for

qualifications in the same manner as they carry it on-duty. Each officer will

qualify with a passing score determined by the Sheriff at least *once* a year

with any Agency-issued firearm which the member is authorized to use.

2. The Orleans County Sheriff’s Office firearms training program will include

instruction in the use of force policy, the legal requirements on the use of

deadly physical force, firearms safety, and firearms shooting proficiency for

all weapons the officer is authorized to use in the performance of his or her

duties. The training program will meet or exceed the State mandated training

requirements using a PASS/FAIL method of scoring the targets. There will be

mandatory written testing of all the above topics covered during firearms

training. The written test for that particular block of training will be kept on

file, but the actual employee tests will be graded in a PASS/FAIL method of

scoring.

3. Should any member fail to meet required qualification standards with their

duty firearm, he or she may be subject to disciplinary action for incompetence. Since the New York State Department of Criminal Justice Services, Office of Public Safety requires all police officers to successfully complete an approved firearms requalification each year, officers failing to pass the qualification test after the second attempt on any individual test day will not be allowed to return to active full duty until they have successfully completed retraining and retesting by a range instructor. It will be the officer’s responsibility to arrange with the appropriate Chief Deputy or Jail Superintendent for retraining, retesting and recertification. Any disciplinary action will be determined by the Sheriff in accordance with current contractual agreements.

1. Officers who fail to attend mandatory firearms certification testing due

to illness, vacation, or other excused absence will be given the opportunity upon their return to duty to successfully qualify. It will be their responsibility to make arrangements through the appropriate Chief Deputy or Jail Superintendent for testing. Officers who fail to complete qualifications in a timely manner (as determined by the Sheriff) upon their return to work, may be subject to disciplinary action for failing to qualify.

b. During the annual mandatory firearms qualification sessions, *agency*

issued duty ammunition will be fired for at least a portion of the course

of fire. This will be conducted in conjunction with annual replacement

of duty ammunition. All other testing will be conducted with the ballistic

equivalent of the duty ammunition (i.e. same caliber, same bullet

weight, same approximate velocity and power factor).

c. Effective January 1, 2018, the following level of scoring will be adopted

by the Orleans County Sheriff’s Office.

1. An approved course of fire will be used for all testing.

1. These courses of fire *may* be modified yearly and

approved by the Sheriff. The various courses of fire will be kept on file and maintained by the Range Staff.

2. All targets used for training and testing will have prior approval

of the Sheriff.

3. Only hits that are inside of the “PREFERRED” area (inner hits)

will be counted as hits. Any hits that break the preferred area’s

boundary line will also be counted as an acceptable hit.

4. Targets will be scored using a pass/fail system with 80% of the

possible points being a passing score. Each officer will receive

two attempts to pass on the test day. Retraining will occur

before the officer is permitted a second attempt.

5. Aggregate scoring (all stages of fire combined) for the entire

course of fire will be used.

4. The Firearms Training Staff shall see that all newly appointed officers of the

Orleans County Sheriff’s Office demonstrate proficiency in the use of firearms

and shall have the newly appointed officers fire the required training course,

with factory loaded, duty ammunition to the satisfaction of the training officer

before the newly appointed officer is assigned to regular road patrol duty. A

written report of satisfactory completion of this training shall be promptly filed

in the officer’s training file.

5. Firearms Certification Records

1. The Firearms Staff shall maintain a certification record file for every

officer authorized to carry firearms. This file shall consist of the following information:

1. Officer’s name.

2. Certified on-duty firearms including pistol, rifle, and shotgun.

3. Results of shooting test to include date, ammunition, weapon

fired, course of fire, and range officers present.

4. Written exam and officers pass/fail results.

6. Ammunition

1. Only factory loaded ammunition approved by the Sheriff will be carried

in any duty weapon while on or off duty.

1. Formal training will be conducted with duty ammunition and

ammunition that is at least the ballistic equivalent of the duty ammunition (same caliber, same bullet weight, and same approximate velocity).

c. A list of authorized ammunition will be maintained by the firearms staff.

7. Inspection of Weapons

Prior to being issued for duty use, each weapon, whether new or used,

shall be inspected by a certified OCSO armorer:

1. When a firearm is received for inventory, its serial number will be

recorded in an inventory log and on a maintenance log, both of which are kept in the armory.

1. The firearm will be completely disassembled, cleaned and inspected

for function, wear and condition. It will then be lubricated, reassembled and tested with dummy ammunition.

1. When issued to an officer, the officer and a range officer or armorer will

go to the firing range for a qualification exercise for the purpose of familiarization and to insure the firearm is properly sighted in.

1. In compliance with the requirements of New York State Penal Law

section 400.00, a letter showing the make, model and serial number of the weapon will be forwarded to the New York State Police in Albany New York.

1. At least annually, and more often if there is a perceived deficiency,

each weapon shall be re-inspected during a range firearms session. Any problems noted will be immediately repaired. If the armorer cannot make the needed repairs, the weapon will be returned to the factory.

1. Any weapon found to be unsafe or unrepairable will be removed from

service, and the pertinent records marked “unserviceable, do not issue.” The weapon will be stripped of all useable parts and the frame and barrel will be scheduled for subsequent destruction. The New York State Police will be notified by letter that the weapon has been deleted from OCSO’s inventory.

8. Firearms Registration

1. Acquisition of personal firearms - Section 400.00 (12-c) of the New York

State Penal Law imposes certain reporting responsibilities on employees of agencies who would otherwise be exempt from the licensing requirements for purchasing, possessing, carrying or disposing of a firearm. The employee “shall promptly report in writing to his employer, the make, model, caliber, and serial number of each such firearm within ten (10) days of acquisition or disposal including the name and address of the person from whom the weapon was acquired or to whom it was disposed.” Thereafter, the employer must submit the information to the Superintendent of the New York State Police. Failure to comply with the provisions of this section is a misdemeanor.

In order to avoid inadvertent noncompliance, it is be the policy of the OCSO that an employee is prohibited from using OCSO identification to purchase a firearm for which there is a licensing requirement under Section 400.00. Instead, any such purchase must be made on the basis of a valid New York State Pistol License, in which case all the required information will be reported routinely.

b. All members and employees are prohibited from carrying personally owned

or other non-department owned weapons while on-duty, unless specifically

authorized in writing by the Sheriff. The member must qualify with the firearm

with a department firearms instructor prior to carry on-duty, and shall use only

departmentally approved ammunition and holster.

**I.**  **Procedures for Firearms Discharge**

1. Except for training, practice, qualifications or demonstrations, when an officer

discharges an *agency* issued or authorized weapon, either unintentionally or

intentionally, he or she shall immediately:

1. When appropriate, determine the physical condition of any injured person

and render first aid, requesting any necessary additional emergency medical aid, if necessary.

b. Notify the dispatcher and the immediate on-duty supervisor.

c. The officer will remain at the scene (unless injured) until the arrival of the

appropriate command staff and give a preliminary statement as to what

occurred. However, if the circumstances are such that the continued

presence of the officer at the scene might cause a more hazardous situation

to develop (ex: violent crowd), the ranking commanding officer at the scene

shall have the discretion to instruct the officer to respond to another, more

appropriate location.

d. The officer will protect his/her weapon for forensic examination and upon the

direction of a member of the command staff shall submit said weapon upon

request. Under no circumstances will the officer’s weapon be taken at the scene of the incident while in public view. The weapon will not be taken from the officer until it can be replaced with another weapon unless necessary for medical treatment reasons, or at the discretion of a Command Officer.

e. In cases of injury or death, the officer should not discuss the case with

anyone except supervisory and internal investigatory personnel, the officer’s privately retained attorney and/or union representative, his/her immediate family, and those individuals to whom the prosecutor or Sheriff has granted such authority.

f. A complete detailed written report by the officer shall be prepared and

forwarded to the Sheriff through the Chief-Deputy within twenty (24) hours of the incident, unless the officer is physically unable to do so.

2. Review

1. Upon receipt of a subject resistancereport with a firearm the Sheriff,

Undersheriff or Chief Deputy shall assign the necessary and appropriate personnel to review and investigate the incident, unless the incident is of such a nature that a detailed review and investigation is obviously unnecessary, e.g. the disposition of a deer after injury in a motor vehicle accident.

1. Upon review and investigation of a subject resistance report, which is not of

an inconsequential nature, it is required that all intermediate reporting and reviewing personnel insure that their actions will permit a report of the findings to be submitted to the Sheriff within forty eight (48) hours of the incident.

1. In an effort to protect the community’s interest when a member may have

exceeded the scope of authority in the use of deadly physical force, and, conversely to shield a member from possible confrontation with the community in the event that, acting within the scope of authority, a death or serious injury resulted, the member shall be removed from line-duty assignment pending an administrative review. Such review may include a Grand Jury investigation, or any other process needed to insure a full investigation of the facts and circumstances of the incident. If deemed necessary, other members who may have been involved, however indirectly, may also be removed. Following such removal under this provision, the return to line-duty assignment shall be only with the expressed authorization of the Sheriff.

1. In the event a member is removed from duty under any of the above

provisions, consideration shall be given to providing stress counseling in order to assist the member in coping with the critical or traumatic incident. Orleans County has contracted with a professional organization to provide this service. Access may be obtained through the Orleans County Fire Coordinator or the Orleans County Emergency Medical Services Coordinator by the member involved or by a supervisor acting on the member’s behalf. Initial contact should be made within twenty four (24) hours of the incident. Members may call the above offices during business hours or have the coordinator paged through the *OCEDC*. In addition, Orleans County and the New York State Police offer Employee Assistance Programs to which an officer may be referred: (Orleans County: 1­888­244­0680), State Police: 518 458-1822).

3. The Chief Deputy will be responsible for the investigation of all officer involved

shootings.

4. In cases of an accidental or unintentional discharge of a Sheriff’s Office issued or

authorized firearm where there were no injuries, the on-duty supervisor will conduct

a preliminary investigation. Further investigatory assistance will be requested

through either the Chief Deputy.

a. Reports as to the circumstances of and any damages done by the accidental

discharge will be submitted by the involved officer and supervisor to the Chief

Deputy.

1. Depending upon the circumstances, the involved officer may be required to

undergo remedial training.

1. Disciplinary action may be initiated, depending upon the circumstances and

severity of the incident.

ORDER BY THE SHERIFF

