

DEPARTMENT OF JUSTICE (DOJ) DEADLY FORCE POLICY

2.4 CHAPTER II SUMMARY

- ◆ CSOs are contract employees and not employees of the U.S. Government. However, in order to fully provide security services required by the contract, it is deemed essential that all CSOs have the power to enforce Federal law while on a Federal work site during duty hours and while performing contract duties.
- ◆ In this regard, all CSOs receive special, limited deputation through the U.S. Marshal. This deputation is limited to the extent that it will only apply while the CSO is on duty at the Federal worksite and in the performance of duties.
- ◆ The Firearms Policy states:

A federal law enforcement officer may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.
- ◆ The key elements of the Firearms Policy are:
 - ◆ Necessary
 - ◆ Reasonable Belief
 - ◆ Imminent Danger
 - ◆ Death or Serious Physical Injury

Firearms Qualification

- ◆ The course of fire is designed to simulate real situations and no deviation of ammunition, clothing, stance, or scoring is permitted. This qualification course of fire will be conducted with the following criteria:
 - A. Weapon
 - B. Ammunition
 - C. Firing Distance
 - D. Target
 - E. Clothing
 - F. Scoring
 - G. Qualification
 - H. Safety

2.2 FIREARMS POLICY/DEADLY FORCE

The Firearms Policy states:

A federal law enforcement officer may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

Key elements of the firearms policy are:

- ♦ Necessary
- ♦ Reasonable Belief
- ♦ Imminent Danger
- ♦ Death or Serious Physical Injury

Deadly force

Any force that is likely to cause death or serious physical injury.

Permissible Uses

The need to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the officer or others if such force is not used by the officer; the officer's knowledge that the subject will likely acquiesce in arrest or recapture if the officer uses lesser force or no force at all; the capabilities of the subject; the subject's access to cover and weapons; the presence of other persons who may be at risk if force is not used; and the nature and the severity of the subject's criminal conduct or the danger posed.

Deadly force should never be used upon mere suspicion that a crime, no matter how serious, was committed, or simply upon the officer's determination that probable cause would support the arrest of the person being pursued or arrested for the commission of a crime. Deadly force may be used to prevent the escape of fleeing subject if there is probable cause to believe:

1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and
2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person. As used in this policy, "imminent" has a broader meaning than "immediate" or "instantaneous."

The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer if, for example, he or she has a weapon within reach or is running for cover, carrying a weapon, or running to a place where the officer has reason to believe a weapon is available.

Reasonable Belief

For purposes of this policy, "probable cause", "reason to believe" and "reasonable belief" mean, that facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

Intermediate Force

If force other than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used.

Verbal Warning

If possible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.

Warning Shots and Shooting to Disable

Warning shots are not authorized. Discharge of a firearm is usually considered to be permissible only under the same circumstances when deadly force may be used, that is, only when necessary to prevent loss of life or serious physical injury. Warning shots themselves may pose dangers to the officer or others.

United States Marshals Service



Policy Directive

Subject Index:

Non-Lethal Devices
OC Spray
Baton, Expandable
Stun-Gun
STUNBELT

No. 99-09
January 29, 1999
File No. 0220

NON-LETHAL DEVICES

- I. **PURPOSE:** The purpose of this policy directive is to consolidate the previously issued policy notices that address the use and issuance of U.S. Marshals Service (USMS) approved intermediate weapons and devices. In addition, this policy directive indicates which devices are authorized by the Service, and establishes procedures and reporting responsibilities.
- II. **AUTHORITY:** The Director's authority to issue this directive governing non-lethal devices is set forth in 28.U.S.C. Section 561 (g).
- III. **POLICY:**
 - A. **Authorized Devices:** Only the following non-lethal devices are authorized for use by a Deputy U.S. Marshal:
 1. Oleoresin Capsicum Aerosols (OC Spray);
 2. Expandable Baton, 21" electro less nickel with foam handle;
 3. Stun-Gun;

4. Electronic Restraint Belt (STUNBELT); and
 5. Items approved by the USMS for use by the Special Operations Group.
- B. Only the devices designated by the USMS may be used while in the performance of official duties. Identical equipment used by other law enforcement agencies may be substituted if prior consent has been obtained from district management. For the STUNBELT, substitution requires prior written consent from the Prisoner Services Division.
- C. Non-lethal devices shall be concealed from the general public when and where appropriate. A device should not be inspected or handled in view of the public unless for an operational purpose.

IV. PROCEDURES:

A. *Use of OC Spray:*

1. Whenever possible, a deputy should be upwind from the subject before using OC spray and should avoid entering the spray area. The deputy should maintain a safe distance from the subject of between two and ten feet. A single spray burst should be directed at the subject's eyes, nose and mouth. Additional burst(s) may be used if the initial or subsequent burst proves ineffective.
2. A subject sprayed with an OC aerosol should not normally require medical treatment. However, when the person sprayed has been placed in a safe environment, the person should be decontaminated as directed in the approved USMS OC training program. If the subject's symptoms do not decrease after 45 minutes, the subject exhibits symptoms that are not consistent with the normal reactions to OC, or the subject requests medical attention, medical attention will be provided as soon as possible. Most OC substances will naturally dissipate and decontamination of clothing should not be necessary.
3. Subjects that have been sprayed shall be monitored continuously for indications of medical problems and shall not be left alone while in USMS custody.
4. OC spray may be employed against dogs and other animals when the deputy reasonably believes that the animal poses a danger to USMS personnel or other persons.

B. Use of the Expandable Baton:

1. There are several areas of the human body that if struck by an expandable baton would provide a measure of control over a resistant subject. Since the objective is to control with a minimum possibility of permanent injury to the subject, certain body areas as identified in basic training and re-certification should be avoided if possible.
2. The expandable baton should be carried in the issued holster on the deputy's non-handgun side. While in the holster, tip end down, the baton is ready to be tactically drawn and utilized.
3. Each deputy shall re-certify annually to continue carrying the expandable baton.

C. Use of the Stun-Gun or STUNBELT:

1. Before using a Stun-Gun or STUNBELT, the Deputy will undertake all reasonable measures to ensure that the prisoner has no existing medical conditions that would preclude use of the device. The Stun-Gun or STUNBELT will not be used on prisoners known to have the following medical conditions:
 - a. Pregnancy;
 - b. Heart disease;
 - c. Multiple sclerosis, muscular dystrophy, or epilepsy; or
 - d. Any other medical condition known to pose a risk to the prisoner.
2. Use is allowed where there is a reasonable belief that the prisoner poses a substantial escape risk or risk of injury or death to the deputy or others. Activation of the STUNBELT is allowed when the prisoner purposely tampers with the device or takes actions to avoid constant visual supervision by the deputy.
3. Before the STUNBELT can be applied, a deputy must first obtain verbal approval from an immediate supervisor or the official in charge of the assignment, if the supervisor is not available. An employee who intends to carry a Stun-Gun should also first receive verbal approval from district management. Use of the baton or OC Spray does not require prior approval.
4. Prior to applying the STUNBELT, the deputy will advise the detainee that the belt is going to be placed on him or her, and that the belt will be activated under certain circumstances. This notification will be accomplished by reading the *Notification of Electronic Restraint Belt Use (Form USM-536)* aloud to the detainee or by allowing the person to read the form. The detainee will be given the opportunity to sign the

notification. If this is not possible, or the individual refuses, the deputy should record this information on the form.

5. Before using a STUNBELT in any court proceeding, the presiding judge will be fully informed of the USMS's intention to use the STUNBELT for security purposes. The responsible U.S. Attorney and the detainee's representative should also be informed of the rationale for STUNBELT usage and be given a description of how the STUNBELT operates. The STUNBELT will be covered to preclude any prejudicial influence of a jury member.

D. *Technical Problems:* If a non-lethal device does not function as designed, or should other technical problems occur, the deputy will complete the following steps:

1. Write a memorandum describing the problem, the conditions under which the problem occurred, and the identification (brand) or other nomenclature.
2. Send a copy of the memorandum to both the Assistant Director for Training and the Health and Safety Officer. It is not necessary to send the faulty device or weapon unless requested to do so.

E. *Aircraft Restrictions:*

1. OC Spray shall not be carried on commercial or USMS aircraft, either on the person or in checked baggage. Devices containing OC-based materials are designated as hazardous substances, and federal regulations prohibit the transport of such items aboard aircraft.
2. STUNBELTS may not be used aboard aircraft because FAA has not approved their usage. Batons and Stun-Guns may be carried subject to the restrictions set by the carrier.

F. *Storage:* Each deputy issued a non-lethal device is responsible for keeping the device under lock and key or in a protected area where limited or controlled access can be reasonably assured. The OC spray, when carried, will be in a secure, safe, and readily accessible location. Aerosol devices should not be stored in areas where externally high temperatures are likely to occur.

G. *Required Training:* Before using any non-lethal device, each deputy shall have successfully completed the required training program, including the re-certification. In addition, deputies will review the training material for the baton and OC spray annually. Initial and refresher training for non-lethal devices will be conducted by a certified

instructor and will be documented by the district/division office. Documentation of training will serve as the authorization to possess, carry, and employ non-lethal devices. If a deputy is unable to qualify with an authorized non-lethal device, the instructor will conduct and document remedial training necessary to attain qualification before the deputy is authorized to carry the device.

V. RESPONSIBILITIES:

A. *Deputy (U.S. Marshal)*: If a non-lethal device is used on a subject/detainee, the following steps will be taken:

1. Provide medical attention immediately to any person who is obviously injured, alleges an injury, or requests medical attention. When a chemical agent has been applied, first aid shall be administered as soon as practicable. An injured subject will be transported to a medical facility for examination prior to further processing. During transportation, the injured subject will be constantly monitored. If the subject is unconscious or, in the opinion of the concerned deputy or supervisor, has an injury requiring medical attention beyond the capability afforded by training and issued first aid items, the deputy will request that an ambulance or emergency medical service respond to the scene;
2. Report the incident to the immediate supervisor as soon as possible;
3. Complete Form USM-133, *Firearms Discharge Assault Report*. Submit, by mail or FAX, the completed form within 24 hours to the Office of Internal Affairs, U.S. Marshals Service, 600 Army Navy Drive, Suite 907 CS-3, Arlington, VA 22202-4210. If a STUNBELT is activated, the Office of Internal Affairs will notify the Deputy Director, and
4. Photograph and/or videotape any marks or injuries. These should be documented with a measuring tape or ruler. The photographs or videotape will serve as documentation of the size and location of the injuries related to the use of the device. This material will be maintained with the incident documentation (Form USM-133) in a secure file.

VI. DEFINITIONS:

A. *Deputy (U.S. Marshal)*: Includes operational employees assigned to the 1811 job series, U.S. Marshal, an employee who has a valid special deputization, or an employee (or contract employee) who has been authorized specifically by the USMS to carry a non-lethal device as a requirement of his/her duty assignment. (i.e., Detention Enforcement Officer, Aviation Enforcement).

- B. *Non-lethal Force Device*: An authorized device that is intended to be used to subdue a subject but not to cause serious physical injury or death.
- C. *Oleoresin Capsicum Aerosols (OC Spray)*: An inflammatory agent that occurs in various peppers. Oleoresin is a mixture of resin and essential oil occurring naturally in various plants. Capsicum is any of several varieties of red peppers such as chili, cayenne, and bird.
- D. *Stun-Gun*: A device that directs an electrical charge that can be used to control a violent person. This electrical charge can disorient, temporarily immobilize, and stun a person without causing permanent injury.
- E. *STUNBELT*: A restraining device that transmits an electrical charge that can be used to control a violent person. The STUNBELT is activated by a remote control device. For eight continuous seconds, the belt emits a 50,000 volt charge that can disorient, temporarily immobilize, and stun a person without causing permanent injury.

Effective Date:

2/11/99

By Order of:



Eduardo Gonzalez

Director

U.S. Marshals Service

Cancels: United States Marshals Service *Policy and Procedures Manual*, paragraph 2.8-3, *Electronic Stun-Gun (XR-500)*, dated 2/22/85; Policy Notice 94-003, *Expandable Batons*; Policy Notice 94-020, *Oleoresin Capsicum (OC) Aerosols*; and Policy Notice 96-002, *Electronic Restraint Belt*.

Cross Reference: Policy Directive 99-08, *Use of Force*.

Proponent: Executive Services Division, Policy Center, 202/307-9480; FAX 202/307-9831.

This policy directive has been negotiated and approved by the International Council of U.S. Marshals Service Local American Federation of Government Employees.