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SHERIFF/HIGH CONSTABLE

## POLICY & PROCEDURE GENERAL ORDER

SUBJECT: <b>USE OF FORCE</b>		# <b>11-01-00</b>
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### **Purpose:**

The purpose of this guideline is to establish standards and procedures governing the use of force by sworn personnel when carrying out their law enforcement responsibilities. It also establishes procedures for reporting, agency response, review, and disposition of use of force incidents.

### **Policy:**

It is the policy of the Virginia Beach Sheriff's Office that public safety be protected, and that order and discipline be maintained in the Virginia Beach Correctional Center. Force may be used by deputies when necessary to enforce this policy, but only to the extent reasonable, and only consistently with these guidelines.

### **Definitions:**

The following terms shall have the meanings indicated for purposes of this policy:

“Deadly force” (or “lethal force”): any force applied in any manner by any means that creates a substantial likelihood of causing death or serious physical injury.

“De-escalation”: a reduction in the level of force being used.

“Deputy”: a sworn law enforcement officer of the Virginia Beach Sheriff's Office.

“DVR”: a direct video recording.

“Inmate”: a person incarcerated at the Virginia Beach Correctional Center. The term “inmate” is often used interchangeably with the term “prisoner.”

“Jail”: the Virginia Beach Correctional Center.

“Lawful objectives”:

- For custodial situations: A situation in which a subject has been apprehended and is in the custody of one or more law enforcement officers. By way of example, and without limitation, the term includes charging proceedings before a magistrate, transportation, and the subject's presence in jail.

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- For law enforcement situations: A situation in which a suspect is being apprehended for criminal conduct and brought under control by a law enforcement official.

“Less lethal weapon”: any weapon for which use as intended does not normally result in death, such as a baton, pepper spray, or a conducted electrical weapon. There may be other less lethal weapons, as authorized by training.

“Reasonable”: what a reasonable law enforcement official would perceive, understand, or do under any particular fact situation. Reasonableness shall be determined by objective criteria, given the facts and circumstances at the time of the incident.

“Staff”: any employee of the Virginia Beach Sheriff’s Office, including both sworn and non-sworn personnel.

“Use of force”: an effort to compel compliance by an unwilling subject. Unresisted handcuffing does not comprise the use of force.

Any reference to the masculine herein shall be deemed also to include the feminine.

## **Procedures:**

### **Use of Force Protocols**

There are various levels of force that may be employed when responding to perceived threats with all issued lethal and less-lethal weapons authorized by the Sheriff. (Refer to Weapons General Order for Sheriff’s Office authorized weapons.) Listed from lowest level of force to highest level of force they include, command presence, verbal commands, compliance techniques (control holds/defensive tactics), less lethal weapons and lethal weapons. Lower levels of force are preferable when feasible, as a general rule. However, if a lower level of force would not be feasible or effective in a particular situation, a deputy may use a higher level of force to overcome either increasing resistance or an increasingly dangerous threat to public safety that would be effective and that is reasonable under the circumstances. At no time is the deputy required to progress through all lower levels of force until an effective response is reached. The initial force applied may be at any level but must be reasonable under the circumstances known to the deputy at the time the force was used. De-escalation of the level of force used must be employed as resistance decreases.

### **General Standards**

Deputies shall observe these general standards in all applications of force:

- A. Employ only a reasonable level of force (as provided in the use of force protocols) that is necessary to effect lawful objectives. The use of a higher level of force is permissible when needed to overcome either resistance or a threat to public safety.
- B. When force is used, it should be used consistently with training and with any applicable guidelines, if training and/or guidelines are applicable to the situation.
- C. Neck restraints are prohibited, except when deadly force is justified.
- D. Force shall not be used for punishment or retaliation.
- E. Following the application of any level of force, once the situation is contained, a deputy shall use best efforts under the circumstances to provide or arrange for the provision of medical help as necessary and shall document doing so.
- F. A deputy must be prepared to provide an explanation of and justification for any use of force.
- G. A deputy who observes another employee use force that exceeds the degree of force permitted by law will promptly intervene and report these observations to a supervisor, or appropriate authority.

### **Duty to Intervene**

In accordance with the Code of Virginia:

- A. Any deputy who, while in the performance of his/her official duties, witnesses another deputy or any law-enforcement officer engaging or attempting to engage in the use of excessive force against another person shall intervene, when such intervention is feasible, to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. Appropriate aid shall also be rendered, as circumstances reasonably permit, to any person injured as the result of the use of excessive force.
- B. Any deputy who intervenes pursuant to subsection A or who witnesses another law-enforcement officer engaging or attempting to engage in the use of excessive force against another person shall report such intervention or use of excessive force in accordance with the Reporting and Documentation section of this policy.
- C. The Virginia Beach Sheriff's Office shall not retaliate, threaten to retaliate, or take or threaten to take any disciplinary action against a law-enforcement officer who intervenes pursuant to subsection A or makes a report pursuant to this subsection.
- D. All employees/appointees will receive and document initial training on Duty to Intervene as well as refresher training on an annual basis.

### **Standards for the Use of Deadly Force**

Deputies shall observe these standards in all situations involving the use or possible use of deadly force:

- A. A deputy may employ deadly force, to include aiming or pointing his firearm, only when he has a reasonable belief that the action is in defense of human life, or in defense of any person in imminent danger or facing a significant threat of serious physical injury based on the totality of the circumstances known to the deputy at the time.
- B. When feasible under the circumstances, a verbal warning should be given. 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 the warning would place the safety of the deputy or others in jeopardy.
- C. The use of deadly force may not be used solely to prevent the escape of an unarmed inmate, fleeing felon, or fleeing suspected felon. Deadly force may be used to prevent escape when the deputy has a reasonable belief that the escape poses a significant threat of death or serious physical injury to any person.
- D. In evaluating a “significant threat”, the deputy must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the deputy or others if apprehension is delayed.
- E. A deputy may employ deadly force to kill seriously injured or dangerous animals when no other disposition is reasonably practical.
- F. Firing warning shots is prohibited.
- G. Firing into crowds is prohibited.
- H. Firing a weapon at a moving vehicle is prohibited, except when the deputy reasonably believes that:
  - a. An occupant of a vehicle is using or threatening to use deadly force by means other than the vehicle;
  - b. A vehicle is operated in a manner deliberately intended to strike anyone, all other reasonable and available means of defense have been exhausted (including moving out of the path of the vehicle), and the safety of innocent persons would not be unduly jeopardized by the deputy’s actions. A deputy shall not intentionally stand and/or step into the path of a vehicle, creating circumstances where the use of deadly force becomes necessary.
  - c. A deputy shall take into account the potential risks to bystanders before using a firearm.
  - d. The reasonableness of a deputy’s actions when firing at a moving vehicle will be examined from all the objective facts surrounding the incident. The sole fact that a vehicle’s driver is attempting to avoid apprehension will not justify use of a firearm to attempt to stop the vehicle.
- I. Mere commission of a crime against property without the existence of the aforementioned

elements is not sufficient grounds for the use of deadly force.

### **Reporting and Documentation**

All use of force incidents shall be reported, documented, and reviewed except for those arising in training and Sheriff's Office demonstration. Accordingly, a deputy shall:

- A. Verbally report the incident to his immediate supervisor as soon as possible under the circumstances. If the incident occurs outside of the deputy's normal work hours, the deputy shall verbally report the incident to the Watch Commander as soon as possible under the circumstances. Reporting of the incident is required whether the deputy is on-duty, working extra-duty employment, or off-duty exercising law enforcement authority.
- B. Submit a written report on a Sheriff's Office Incident Report describing the incident in narrative form and in detail. The description shall include, at a minimum:
  - a. A specific description of the acts that led to the application of force
  - b. Any resistance encountered
  - c. A description of all levels of force used
  - d. Injuries, if any, experienced by all parties involved
  - e. Any medical services offered and/or rendered
  - f. The names of all personnel substantially involved in the incident, to include supervisors who responded to the scene and any pertinent witnesses.
- C. All Incident Reports shall be completed and submitted to the deputy's immediate supervisor by the end of the deputy's shift. If the deputy is working extra duty or off-duty employment, he must submit the Incident Report upon completion of that work. The deputy shall submit the Incident Report to the on-duty watch commander if the incident occurs outside of his normal work hours.
- D. Any additional personnel actively involved in a use of force incident shall submit a written memorandum indicating their involvement, including justification of their use of force. This document shall be submitted in the same manner as per subsection C, above.
- E. If immediate action is justified by this policy, the Supervisor shall take such action and forward a status report through the chain of command. If video footage is available, the Supervisor shall ensure that any staff involved in the incident view the footage. The Supervisor shall also ensure that all pertinent details are included in the report and that all required memoranda and statements are attached to the report prior to submitting the Incident Report via the chain of command to the Professional Standards and Accountability Office.
- F. A supervisor shall not investigate any use of force incident in which he participated or directed. The supervisor will review the video footage, if available, and forward the entire report to his supervisor to review for policy and procedure compliance.

- G. Any cell entry/extraction for restoration of security and order should, if reasonably possible under the circumstances, be electronically recorded on a removable media storage device issued to the Sheriff's Office. If a deputy is involved in a cell entry/extraction for restoration of security and order, he shall document the recording of the video file in the narrative portion of the incident report. The deputy shall also download the video recording to the appropriate file located on the f:/drive and save it using the Incident Report number as the title of the document. The Professional Standards and Accountability Office will ensure the electronic video file is preserved properly in electronic media.

### **Review and Disposition**

- A. The sheriff, or his designee(s), shall review all reported incidents involving the application of force to determine whether such force is consistent with General Order Rules/Regulations and Discipline General Order and whether:
- a. Sheriff's Office policies were violated
  - b. Relevant office policies are clearly understandable and effective to cover the situation
  - c. Sheriff's Office training is adequate; and
  - d. Whether any officer safety concerns were identified.
- B. The sheriff or his designee(s) may also convene a board of inquiry to examine an incident in which force was applied. The board of inquiry will ascertain training, policy and equipment needs.

### **Agency Response**

- A. Reassignment: pending administrative review of a use of force incident, any deputy directly involved in an incident involving the loss of life or serious physical injury shall be removed from line-duty assignment for a period of time designated the Sheriff, Undersheriff, or a Chief Deputy. This temporary transfer shall not be interpreted to imply or mean that the deputy has acted improperly. If the deputy's duty weapon is held for investigative purposes, a replacement weapon may be issued to him/her.
- B. Any deputy involved in an incident in which deadly force was applied, or where death or serious injury resulted, shall be offered counseling as soon as possible after the incident. The deputy's immediate supervisors shall be responsible for contacting Human Resources to ensure that such counseling is offered.

## **Training**

All deputies shall be issued copies of this general order and shall also receive training on it prior to being authorized to carry any firearm or any less-lethal weapon. Deputies shall receive training within every calendar year thereafter on the use of force policy.

## **Interpretation and Questions**

Any deputy who has a question about how this guideline is to be applied or interpreted in any specific situation should use the chain of command to seek guidance.

## **Revisions**

The Sheriff may revise this guideline, or any portion thereof, at any time.



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