

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 6-112:)	No. 2014 - <u>8</u>
USE OF FORCE)	(Affecting Administrative
)	Order No. 2003-43)
)	

An amendment to the above-captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 12, 2013, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-112 is amended as indicated on the attached document. All other provisions of § 6-112, as originally adopted, remain unchanged and in effect.

Dated this 8th day of January, 2014.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 1: General Administration
Section 6-112: Use of Force

A. Definitions. In this section the following definitions apply.

~~“Continuum of control” means the options available to manage a subject as depicted by the model attached as Appendix 1.~~

“Deadly physical force” means “force ~~which~~ that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury” as provided in A.R.S. § 13-105(124).

“Deadly weapon” means “anything designed for lethal use, including a firearm” ~~The term includes a firearm~~” as provided in A.R.S. § 13-105(135).

“Impact weapon” means any object or device used to control a subject’s actions, to defend against an attack or to deliver a stunning blow.

“Officers” means both adult and juvenile probation and surveillance officers.

“Serious physical injury” means “includes physical injury ~~which~~ that creates a reasonable risk of death, or ~~which~~ that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb” as provided in A.R.S. § 13- 105(349).

“Slight force” means reasonable force used to place in restraints, control, or direct the movement of a subject that is cooperative or passively resistant.

B. Applicability. Article 6 Section 3 of the Arizona Constitution and A.R.S. §§ 12-251(C) and 8-203(C) authorize the supreme court to establish rules governing the use of force by probation and surveillance officers.

C. Purpose. To outline and clarify the use of force by probation and surveillance officers.

D. Use of Force.

1. Officers shall base use of force decisions upon the facts known to them at the time of the incident and whether, under the circumstances, the use and degree of force is reasonable. An officer is not obligated to use force in any situation that the officer determines to be unsafe.

2. An officer shall determine that physical force is warranted under the circumstances provided by statute before using physical force in the performance of the officer's duties.

a. A.R.S. § 13-404(A) provides:

~~...a~~ [A] person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

b. A.R.S. § 13-406 provides:

A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if: ~~1.~~ Under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect; ~~and~~

~~2. A reasonable person would believe that such person's intervention is immediately necessary to protect the third person.~~

c. A.R.S. § 13-409 provides:

A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:

1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or ~~to~~ prevent the escape.

2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.

3. A reasonable person would believe the arrest or detention to be lawful.

3. An officer shall determine that deadly force is warranted under the circumstances provided by statute before using deadly force in the performance of the officer's duties.

- a. A.R.S. § 13-410(A)(1) provides:

The threatened use of deadly physical force by a person against another is justified pursuant to § section 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:

(1) Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force.

- b. A.R.S. § 13-410(C)(1)(2)(a)(b)(c) provides:

The use of deadly force by a peace officer against another is justified pursuant to § section 13-409 only when the peace officer reasonably believes that it is necessary:

1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.

2. To effect an arrest ... of a person whom the peace officer reasonably believes:

(a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon.

(b) Is attempting to escape by use of a deadly weapon.

(c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

- c. A.R.S. § 13-410(D) provides: Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

4. An officer shall assess the subject's ability and opportunity to do physical harm and determine whether the subject poses an ~~immediate~~ imminent threat of harm to the officer or a third party and shall use reasonable ~~only the amount of~~ force necessary to prevent the harm or stop the threat.

E. Use of Force Options. An officer's use of force shall be reasonable ~~and necessary~~ to control a subject and accomplish lawful objectives. Use of force options include:

1. Clear verbal instructions such as persuasion, warning, or a lawful order ~~a lawful order, advice, a warning or persuasion.~~
2. Empty hand control that includes re-direction, personal defensive tactics, control holds, pressure points, fist strikes, palm strikes, shin kicks, snap kicks, knee strikes and elbow strikes.
3. Oleoresin capsicum (OC) aerosol chemical spray when the officer reasonably believes it is unsafe to approach an aggressive subject and disengagement is not reasonable or practical. After a subject is brought under control by the use of OC, the officer shall whenever practical flush the subject's eyes and other affected tissues with water. Officers shall ensure that immediate medical treatment is sought for subjects who are experiencing breathing difficulty or lingering vision impairment as a result of being sprayed with OC.
4. ~~Impact and deadly weapons; when the officer reasonably believes subject's actions are likely to cause physical harm to the officer or a third party risk of injury to an officer or other person is so significant that the use of lesser options would be ineffective or unsafe.~~
 - a. ~~Weapons may only be used by trained and proficient officers.~~
 - b. ~~Deadly weapons include:~~
 - (1) ~~Firearms for officers authorized in accordance of Arizona Code of Judicial Administration 6-113;~~
 - (2) ~~Impact weapon strikes when used to strike vital areas such as the head or neck; and~~
 - (3) ~~Less than lethal weapons when used to strike vital areas such as the head or neck.~~
5. Deadly weapons include department issued firearms for officers authorized in accordance of the Arizona Code of Judicial Administration 6-113. The use of a deadly weapon requires that the officer reasonably believes the subject's actions were likely to have caused serious physical injury or death to the officer or a third party.

F. Notification. An officer involved in any use of force that is greater than slight force shall:

1. Immediately notify their supervisor as soon as practical, but not later than the next business day.
2. Submit a written incident report to their supervisor, ~~as soon as possible,~~ no later than the close of the ~~next~~ third business day. If an officer is under criminal investigation in relation to the use of force incident the Chief Probation Officer Juvenile Court Director, or their

designee, shall prepare the incident report. The written incident report shall include at a minimum:

- a. A description of the events surrounding the use of force.
 - b. The name and case number of probationer or probationers involved in the incident.
 - c. The name of any third party involved in the incident.
 - d. The name of any known witnesses to the incident.
 - e. The disposition of the incident.
 - f. Any medical attention needed for any person in the incident.
 - g. Other information pertinent to the incident.
3. Upon review of the incident report, the supervisor shall immediately forward it through the departmental chain of command to the chief probation officer.
 4. Upon review of the incident report, the chief probation officer shall provide a copy to the AOC probation safety specialist.
 5. The chief probation officer or director of juvenile court services may request an exception or extension of this written report from the administrative director of the AOC.

G. Review Of Use Of Force.

1. The chief probation officer or director of juvenile court services or the designee shall review all incident reports pertaining to the use of force within two business days of receipt. Any incident reports that involve the use or display of a firearm shall follow the procedures outlined in ACJA § 6-113, Firearms Standards.
2. The chief probation officer or director of juvenile court services shall appoint a use of force committee within twenty business days of the incident or upon receipt of allegations of excessive force if any one of the following conditions exists:
 - a. Further investigation is warranted;
 - b. Deadly force was used;
 - c. Allegations of excessive force are brought forth;

- d. Force greater than slight is used against a member of the public; or
 - e. An offender, a staff member, or a member of the public is injured significantly or in a manner that requires investigation.
3. The use of force committee shall consist of at least three members who have knowledge of the reasonable use of force ~~the continuum of control~~ and of defensive tactics. The committee shall include one representative from each of the following:
 - a. Probation department management other than the chief probation officer or director of juvenile court;
 - b. A certified defensive tactics instructor as defined in ACJA § 6-107; and
 - c. A non-involved officer chosen by the officer involved in the use of force.
4. The chief probation officer or director of juvenile court services may appoint additional members necessary to perform the duties of the committee in a specific review.
5. The use of force committee shall review the incident reports, interview witnesses and, when necessary, request that the chief probation officer assign an investigator.
6. Upon conclusion of the review, the use of force committee shall issue a written report within ten business days which shall include:
 - a. A brief summary of the incident;
 - b. The committee's determination of whether the amount of force used violated any departmental policy or the ACJA and was reasonable and justified;
 - c. A dissenting opinion, if any; and
 - d. The signature of each committee member.
7. The use of force committee shall forward the report to the chief probation officer or the director of juvenile court. The chief probation officer or the director of juvenile court shall have the authority to administer any discipline or remedial measures according to the local judicial merit system.
8. The chief probation officer or the director of juvenile court shall provide a copy of the use of force committee report to the AOC along with of any action taken.

*Section 6-112: Use of Force
Appendix I*

CONTINUUM OF CONTROL

<i>LEVEL OF CONTROL</i>	<i>OFFICER'S ACTION</i>	<i>SUBJECT'S ACTION</i>
<i>PRESENCE</i>	<i>Identification of authority Interview Stance Defensive Stance</i>	<i>Subject is cooperative</i>
<i>VERBAL</i>	<i>Advise Questioning & Answering Warning</i>	<i>Subject is cooperative only in response to direction</i>
<i>EMPTY HAND CONTROL</i> <i>Oleoresin Capsicum (OC)</i>	<i>Personal Defensive Tactics Control Holds Pressure Points</i> <i>OC Tactics</i>	<i>Subject's actions are becoming aggressive and may cause physical harm</i>
<i>IMPACT WEAPONS</i>	<i>Baton Weapons of opportunity</i>	<i>Subject's actions are likely to cause physical harm</i>
<i>LETHAL FORCE TECHNIQUES</i>	<i>Potential Deadly Force Tactics</i>	<i>Subject's actions may cause serious physical injury or death</i>