

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT

GENERAL ORDER 19-07

In the Matter of the Revision of the Court Services Policy Manual for the 23rd Judicial Circuit for the Use of Force Continuum.

FILED

JUL 24 2019

ROBYN INGEMUNSON
CIRCUIT CLERK KENDALL CO.

WHEREAS, the 23rd Judicial Circuit has in place a **COURT SERVICES EMPLOYEE POLICY MANUAL**; and

WHEREAS, in the course or performance of their duties outside of their offices, Probation Officers of the 23rd Judicial Circuit may need to use force as a means of protection or to escape from a dangerous or potentially lethal situation; and

WHEREAS, the 23rd Judicial Circuit has prepared and adopted a **USE OF FORCE CONTINUUM**, which is attached hereto; and

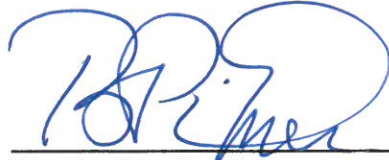
WHEREAS, the **USE OF FORCE CONTINUUM** shall become Chapter 13 of the **COURT SERVICES EMPLOYEE POLICY MANUAL**, and shall become effective on this date; and

WHEREAS, Court Services for DeKalb County and Kendall County shall each develop and implement an Oleoresin Capsicum Spray (OC Spray) Policy for their respective County which shall be approved pursuant to a separate Administrative Order for each County;

NOW, THEREFORE, upon the successful completion of training as set forth in the **USE OF FORCE CONTINUUM** attached hereto, and in accordance with the policy established and approved by the Chief Judge or Presiding Judge of each County; the Chief Judge of the 23rd Judicial

Circuit grants authority for Probation Officers of the 23rd Circuit to carry and use OC Spray as purchased and provided by Court Services of each respective County.

Entered this 24th day of July, 2019.



Hon. Robert P. Pilmer
Chief Judge of the 23rd Circuit

13. Use of Force Continuum

As is stated in Policy 3.25b of this *Manual* Probation Officers are only allowed to use the minimum amount of physical force necessary to defend themselves when threatened with bodily harm through the use of physical force, or when threatened or attacked by an animal. Use of physical force is considered a last resort option utilized only when all other methods of de-escalation have been exhausted. Physical force is never used in response to a verbal threat, property damage, or as a means to gain entry into a home or vehicle.

All court services staff will be regularly trained in the continuum of force policy and various techniques.

Definitions:

- “Imminent” means likely to occur at any moment and has a broader meaning than immediate or instantaneous. The concept of imminent should be understood to be elastic, involving an ongoing period of time depending on the circumstances rather than a moment in time.
- “Immediate” means the officer is faced with an instantaneous or presently occurring threat of serious bodily harm or death.
- “Lethal force” means force that will likely cause serious bodily injury or death.
- “Less than lethal force” means any use of force other than which is considered lethal force.
- “Officer” means a 23rd Judicial Circuit Probation Officer.
- “OC spray” means Oleoresin Capsicum Spray, which is a chemical agent that irritates the eyes and nasal passages causing excessive tears, burning pain, difficulty breathing, swelling of the eyelids and temporary blindness.
- “Injury”:
 - “Bodily injury” means any significant injury that is painful and obvious, or is a type of injury for which medical attention ordinarily would be sought.
 - “Serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation

General:

- An officer may use force only to protect him or herself, or other officer(s), in performance of his or her duties and responsibilities as a 23rd Judicial Circuit Probation Officer.
- An Officer should make every reasonable effort to avoid situations that seriously threaten his or her safety. An officer should always withdraw from a threatening situation, if it can be done safely.
- If an officer has prior knowledge of a serious threat from a probationer and/or a dangerous situation is anticipated, the officer’s supervisor and the appropriate

law enforcement agency shall be contacted in advance for assistance. If law enforcement is unable to assist, a home visit shall not be attempted.

- Mere passive resistance or a verbal argument does not justify the use of force.
- The use of OC spray can have life threatening results if used on an individual with asthma, emphysema or other respiratory illnesses and therefore, proper medical attention is necessary.

The utilization of force is based upon the actions or threats presented and the subject's degree of compliance or noncompliance. The application of force during an officer/subject encounter should be based on the perceived action(s) of the subject within the totality of the circumstances. The actions of the threatening party dictate the level of force an officer can deploy. The officer's response should be based on what the officer reasonably believes is the threat presented. An officer is not required to use all lesser means of force before using lethal force. Probation Officers are not tasked with the apprehension of those committing crimes or posing a threat to public safety. Officers may only apply force when it is employed for self-protection or the protection of another officer, allowing for a safe retreat. The level of force used by an officer must not be excessive or unjustified.

Use of Force Continuum:

The Use of Force Continuum governs self-defense responses of officers and outlines the reactions that officers may use in response to a threat. Any inquiry into the reasonableness of a 23rd Judicial Circuit Probation Officer's actions will view his/her use of force in light of the facts and circumstances confronting him/her. There are three major elements to consider with respect to the Use of Force Continuum:

1. Officer Perception – What was known to the officer in the situation resulting in use of force. Elements to consider are ability/capability of the offender/individual, opportunity and intent.
2. Subject's Action – The actions of the threatening party indicate the level of force an officer can deploy. The officer's response should be based on what the officer reasonably believes is the threat presented. There are four subject action levels judged from the officer's perception;
 - a. Compliant – The subject readily follows all commands or directions of the officer. (ie- Officer requests the subject to return to a seated position or to lower his/her voice and the subject complies).
 - b. Passive Resister – The subject exhibits the preliminary level of noncompliance, which may require the officer to immediately leave the home or area and/or attempts to verbally de-escalate are not effective. (e.g., - Officer requests the subject to return to a seated position and the request is not followed and attempts to de-escalate are not effective.)
 - c. Active Resister – At this level, the scope and intensity of the subject's resistance has increased. The subject is exhibiting physical or mechanical defiance to the officer's control. (e.g., - Blocking the doorway to prevent the officer from exiting the area but has not assumed an aggressive stance.)
 - d. Aggressive Assailant – The officer has the perception of an attack or the potential for such an attack on the officer or another officer. The officer

makes the reasonable assessment that such actions by the subject would not result in death or serious physical injury to the officer or another officer.

- e. Deadly Force Assailant – The officer’s objectively reasonable assessment is such that assaultive actions by the subject could result in death or serious physical injury to the officer or another officer.
3. Officer Response – There are five response levels for officers once one of the four subject actions have taken place. Any response from a lower level can be utilized at any of the above levels if selected by the officer, but “reasonableness” does not require officers to select the least intrusive alternative, only a reasonable one. These levels include the following:
 - a. Presence – Presence is the ability to manage a situation by a person’s professional and authoritative demeanor and appearance.
 - b. Verbal Statements – When confronted with a subject demonstrating resistance behavior, the officer, if feasible and if doing so would not increase the danger to the officer or others, uses verbal interaction or commands to obtain compliance from the subject. Verbal responses may range from a counseling approach to a stronger, more controlling approach such as “STOP!” or “GET BACK!” Other verbal techniques include questioning and assessment, light control (advise), crisis diffusion, and heavy control (warning).
 - c. OC spray – When the subject’s actions are perceived by the officer to be aggressive and may cause physical injury, the officer may use OC spray to inhibit or retard the subject from attacking or from continuing an attack. All use of OC spray shall be in compliance with training and certification provided by the Department.
 - d. Empty-Hand control – At this level, the subject attempts an assault on the officer(s). The officer is justified in using defensive/offensive tactics designed to stop the subject’s assault on the officer or another officer when there is a perceived threat of bodily injury and safe retreat is not an option.
 - e. Lethal Force – When an officer reasonably perceives the subject poses a potential or imminent threat of death or serious physical injury to the officer or another officer, and safe retreat is not an option, the officer is justified in using lethal force.

Less-Than-Lethal Force:

Less-than-Lethal Force – An officer may use force to protect him or herself, or another person when:

1. The officer reasonably believes there is an imminent threat of bodily injury to him or herself, or to another person; or
2. Safe retreat is not a reasonable alternative.

Lethal Force:

Lethal Force – An officer may use lethal force to protect him or herself, or another person, when:

1. The officer reasonably believes there is an imminent threat of death or serious bodily injury to him or herself, or to another person, or
2. Safe retreat is not a reasonable alternative

The 23rd Judicial Circuit Court Services strictly forbids staff to carry firearms or other unauthorized lethal weapons while performing official duties.

Use of Force Continuum Reporting –

- Retreat to a safe distance to seek assistance and render aid if needed.
- The Officer shall immediately notify law enforcement (911) that you have been involved in a use of force incident and request assistance. Be sure to advise them if OC spray was used, who is affected, and medical assistance is required.
- The officer should make reasonable efforts, while ensuring their personal safety, to observe the subject to ensure the subject does not accidentally injure himself or herself as a result of being sprayed by OC spray.
- The Officer MUST file a report with the responding police department and cooperate with any subsequent investigations and/or prosecution of the offender.
- If the incident involved the discharge of OC spray, empty hand control or the use of lethal force, notify the Director or designee(s) of the incident, as soon as possible. The Director will immediately notify the Presiding and Chief Judges.

Officers must promptly report to the Director in writing any incident that is potentially dangerous or actually dangerous including threats to an officer that occurred during the performance of official responsibilities or as a result of that performance. A written report must be completed and provided to the Director within 48 hours.

Reports submitted by the officer in regards to use of force incident shall include all relevant and pertinent information including but not limited to:

- A complete and detailed description of the incident, including the sequence of events and planning which led to the incident and the specific criteria which required the use of force.
- The complete names, addresses and telephone numbers of all persons present during the incident, noting their status as Probation Officer, probationer, and/or other persons.
- The names, telephone numbers, and departments of law enforcement personnel and other participating agencies, and/or other persons involved.

Training:

The duties of a 23rd Judicial Circuit Probation Officer require a heightened awareness of potential danger and a commitment to operating safely. It is vitally important that all

officers routinely think about the practice of safety. Where there is reasonable and perceived threat of injury or death to the officer or another officer, and safe retreat is not an option, officers are authorized to use force. The 23rd Judicial Circuit Court Services has developed a number of trainings to address the safety needs of officers in the performance of their official duties and to assist them in learning how to avoid serious threats. The program offers a systematic approach to the performance of those duties and teaches officers how to carry out their duties in a manner that maximizes their safety. Participation and completion of training is mandatory.

Officers will participate in the following components of training:

- Policy Training – All Officers will be provided a copy of applicable policies and have them explained.
- General Safety – All Officers will be trained in safety expectations while in the field (to include basic home contact safety) and in the office.
- Verbal De-Escalation – All Officers will be trained in how to verbally interact with clients in order to not increase the danger in a given situation.
- OC spray – All officers will have the **option** to be trained and certified in the policy and use of OC spray in accordance with the policy as developed by their respective county.
- Defensive Tactics – All Officers will be trained in the use of control tactics in accordance with the policy and practices as developed by their respective county.