

# Stowe Police Department

<b>General Order:</b> 2.01  <b>Use of Force / Response To Resistance</b>	<b>Related General Orders:</b> 2.02 Use of force Reporting 2.03.1 Firearms 2.03.2 Conducted Electrical Weapon 2.03.3 Oleoresin Capsicum Spray 2.03.4 Pepper Ball Devices 2.03.5 Impact Weapons
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
<b>Applicable Vermont Statutes:</b>	
Issued By: Donald B. Hull, Chief of Police	
Date Implemented: 09/09/2012	Date Revised: 04/14/2015, 11/04/2019

## I. **PURPOSE:**

1. To establish Stowe Police Department's ("Department") guidelines and limitations concerning the appropriate and acceptable use of deadly and non-deadly force.

## II. **POLICY:**

1. It is the policy of the Stowe Police Department to provide clear procedures to sworn officers regarding the use of force in the performance of their duties. The safety of innocent persons and officers is of paramount importance.
2. The main responsibility of Department officers is to protect the life and property of the citizens. In compliance with applicable law, officers shall use the amount of force reasonable to control a situation, effect an arrest, overcome resistance to arrest, or defend themselves or others from harm. When force is necessary, the degree of force employed should be in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others. There is a compelling public interest that officers authorized to exercise the use of force do so in an objectively reasonable manner, and in a way that does not violate the civil rights guaranteed by our Constitution and applicable law. Officers who use excessive or unjustified force degrade the confidence of the community that they serve, undermine the legitimacy of a police officer's authority, and hinder the Department's ability to provide effective law enforcement services to the community.

3. Officers who use excessive or unauthorized force shall be subject to discipline, possible criminal prosecution, and/or civil liability. Use of force is only authorized when it is objectively reasonable and for a lawful purpose. Accordingly, the Department will thoroughly review and/or investigate all uses of force by officers to assure compliance with all legal requirements and this General Order.

### III. DEFINITIONS:

**Active Aggression:** Behavior that creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.

**Active Resistance:** A subject using physical activity to resist or takes an affirmative action to defeat an officer's ability to take him/her into custody or to seize him/her, but the subject's actions would not lead a reasonable officer to perceive a risk of physical injury to him/herself, the subject, or a third person. Examples of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact, or other energy enhanced physical or mechanical defiance. Refusing to move upon verbal direction or chaining oneself to an object does not constitute active resistance.

**Authorized Weapons:** Weapons that meet Department specifications and officers are permitted to carry; and for which officers successfully complete proficiency and safety training.

**Conducted Electrical Weapon ("CEW"):** A less-lethal law enforcement device that delivers an electrical pulse to the body of a subject in either a "drive stun" or "probe" mode. When used in "probe mode" the device discharges two probes that remain connected to the CEW via wire and which upon impact deliver an electrical pulse designed to temporarily incapacitate that subject. When used in "drive stun" mode, the device makes direct contact with and delivers an electrical pulse to the body of a subject, but does not result in the same temporary incapacitation of a subject as when used in "probe" mode. CEWs include "Electronic control devices" which are defined at 20 V.S.A. § 2367(a)(1) as "device[s] primarily designed to disrupt an individual's central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses"

**Critical Firearm Discharge:** A discharge of a firearm by a Stowe Police Department officer to the extent such discharges are authorized under this General Order. Range and training discharges, and discharges at animals are not included under this section.

**Deadly Force:** Any physical force that can reasonably be expected to cause death or serious physical injury.

**Force:** Any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of a firearm, use of chemical spray, chokeholds or hard hand control, taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is objectively reasonable under the circumstances, and the minimum amount of force that is necessary to effect an arrest, or protect the officer or other person, is used.

**Great Bodily Harm/Serious Physical Injury:** Serious bodily injury that creates a substantial risk of death, causes serious or permanent disfigurement, or results in long-term loss or impairment of the functioning of any bodily member or organ.

**Hard Hand Control:** Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to subdue a subject and include strikes to pressure points such as: the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).

- Defensive strikes are used by officers to protect themselves from attack and may include strikes to other areas of the body, including the abdomen or head. Techniques in this category include pressure point controls, stunning or striking actions delivered to a subject's body with the hand, fist, forearm, legs, or feet. These techniques target the major muscle groups and are delivered to create muscle cramping, thereby inhibiting muscle action and allowing the officer to subdue the subject. In extreme cases of self-defense, the officer may need to strike more fragile areas of the body where the potential for injury is greater. The use of neck restraints, chokeholds, or other similar weaponless control techniques, however, are prohibited unless the use of deadly force is authorized.

**Imminent Threat:** An officer's reasonable perception of impending danger, death, or serious injury from any action or outcome that may occur during an encounter. A subject may pose an imminent or impending danger even if he or she is not pointing a weapon at the officer but has, for example, a weapon within reach, is running for cover carrying a weapon, or running to a place where the officer has reason to believe a weapon is available.

**Impact Weapons:** Department approved tools that provide a method for gaining control of a subject when lethal force is not justified, but when empty-hand control techniques are not sufficient to effect control.

**Level of Control:** The amount of force that an officer uses to gain control over a subject.

**Level of Resistance:** The amount of force used by a subject to resist compliance with the lawful order or action of an officer.

**Non-Deadly:** Any force used by an officer that would not reasonably be expected to cause death.

**Non-Verbal and Verbal Non-Compliance:** When a subject expresses his/her intentions not to comply with an officer's directive through verbal and non-verbal means. An officer may encounter statements ranging from pleading to physical threats. Such statements may also include physical gestures, stances, and subconscious mannerisms.

**Objectively Reasonable Force:** The degree of force used in effecting an arrest, investigatory stop, or other seizure is evaluated by using an objective, reasonable police officer standard. The reasonableness of each particular use of force will be judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at the time. (See, *Graham v. Connor*, 490 US 388 (1989.)) In determining the appropriate level of force to be used, officers shall evaluate each situation in light of the unique facts and circumstances of each case. Those factors include, but are not limited to, the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to escape; and whether the subject was posing an imminent threat to officers or others.

**Oleoresin Capsicum (OC) Spray:** An inflammatory agent that irritates the mucus membrane and eyes to cause tears and pain. It is an intermediate weapon that is classified as being non-deadly. It should only be used, however, when an officer is met with a certain degree of resistance or aggression through either actions or words.

**Passive Resistance:** When a subject does not cooperate with an officer's commands, but does not take action to prevent being taken into custody. For example, a protestor who lies down in front of a doorway and must be carried away upon arrest.

**Soft Hand Control:** The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against levels of passive physical resistance.

**Special Circumstances:** Special circumstances include situations where an officer has reason to believe the subject is:

- Operating a motor vehicle.
- Standing in an elevated area, near water, or near flammable materials (including but not limited to alcohol-based chemical sprays).
- Restrained.

**Special Consideration:** A consideration of: (i) the potential additional risk of harm posed by deploying a CEW against a member of a special population or a subject in special circumstances; and (ii) whether other types of force are reasonably available to effectuate custody of or facilitate control over a member of a special population or a subject in special circumstances while still preserving the safety of that person, third parties, and the responding officer(s).

**Special Populations:** Members of special populations include subjects an officer has reason to believe are:

- Cognitively impaired such that they are unable to comply with an officer's instructions.
- Experiencing an emotional crisis that may interfere with the ability to understand the consequences of their actions or follow directions.
- Persons with disabilities whose disability may impact their ability to communicate with an officer, or respond to an officer's directions.
- Under 18 years of age.
- Pregnant.
- Over 65 years of age.
- Physically infirm, subject to or diagnosed with a heart condition, or epilepsy, or a seizure disorder.

**Verbal Commands:** The use of advice, persuasion, and/or warnings prior to resorting to actual physical force. In an arrest situation officers shall, when feasible, give the arrestee simple directions with which the arrestee is encouraged to comply. Verbal commands are the most desirable method of dealing with an arrest situation.

#### **IV. PROCEDURES:**

##### **1. General**

- A. Officers shall use advisements, warnings, and verbal persuasion, when possible before resorting to force.
- B. Force shall be de-escalated immediately as resistance decreases.
- C. When feasible based on the circumstances, officers will use disengagements; area containment; surveillance; waiting on a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and increase officer and civilian safety.

2. Use of Force Authorization and Limitations

- A. Officers of the Department are authorized to use only the amount of force necessary to accomplish lawful objectives. Force may be used:
- a. To effect an arrest or prevent the escape from custody of a person whom the Officer reasonably believes has committed an offense.
  - b. To defend the officer or others from the use, or imminent use, of physical force.
  - c. To take persons into protective custody when authorized by law, such as persons who are a danger to themselves or others, persons incapacitated by alcohol.
  - d. To prevent someone from committing suicide or inflicting serious physical injury upon themselves.
  - e. To assist a licensed physician or psychologist in providing necessary medical treatment.
  - f. To control a situation, and to overcome passive or active resistance to a lawful order.
  - g. To neutralize an unlawful assault and defend themselves or others from harm.

3. The authorized use of physical force ends when resistance ceases and/or the officer has accomplished the purpose necessitating the use of force. Justification for the use of force is limited to the facts known or perceived by the officer at the time such force is used, including levels of resistance, suspect's behavioral cues, the number of officers and/or offenders present, and the availability of other options.

4. Force shall never be used to subject a person to torture and/or other cruel or inhumane or degrading treatment or punishment.

5. Verbal Warning

- A. When tactically feasible, an officer will identify him/herself as a police officer and issue verbal commands and warnings prior to the use of force. When feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands. A verbal warning is not required in circumstances where the officer has to make a split-second decision, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy.

6. Use of Deadly Force in Defense of Human Life

- A. An officer is justified in using deadly physical force only when he or she reasonably believes such force is necessary to:
- a. Defend the officer, or a third person, from the imminent threat of death or serious bodily injury.

- b. Effect an arrest or prevent the escape from custody of a person whom they reasonably believe still poses a significant threat of death or serious physical injury to the officer or other persons. Where feasible, the officer should give warning of the intent to use deadly physical force.

*See, Tennessee v. Garner*, 471 U.S.1, 85 (1985.): The United States Supreme Court ruled that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed, non-violent suspect (the case involved a burglary suspect). The Supreme Court further stated that deadly force may be used against an offender who has attempted or committed an offense involving the infliction or threatened infliction of great bodily harm. **Deadly force may not be used against an unarmed, non-violent, property crime offender.** The United States Supreme Court decision went on to state that when an officer is justified in the use of deadly force he will, **if feasible**, first give a verbal warning. (Example: "Police Officer, Halt").

## 7. Deadly Force Restrictions

### A. Warning Shots Prohibited

- a. Officers are prohibited from discharging their firearms as a means of warning or frightening a person.

### B. Shooting at or from Moving Vehicles

- a. Officers are prohibited from discharging their firearms at or from a moving vehicle, motorcycle, or bicycle (collectively, "moving vehicle") unless officers reasonably believe deadly force is necessary to defend the officer or a third person from the use, or imminent use, of deadly force. For purposes of this policy, officers will not discharge their firearms at moving vehicles except under extreme circumstances. Such discharges will be rigorously scrutinized. Officers shall, as a rule, avoid tactics that could place them in a position where a vehicle could be used against them. When confronted with an oncoming, moving vehicle, officers must attempt to move out of its path and should generally avoid placing themselves in situations where the use of deadly force is more likely.

## 8. Risk to Innocent Bystanders

- A. When officers are about to discharge their firearms, they should be aware of their field of fire, including the backstop, so as to not unnecessarily create a substantial risk of harm to innocent persons. Officers are prohibited from discharging their firearms when, based on the totality of the circumstances, discharging a firearm would constitute a greater risk to innocent human life than the subject's actions. (*i.e. discharging a firearm into a crowd, or shooting into a building or through a wall,*

*where the subject is not clearly identified, and it is unknown if there are other occupants present.)*

9. Drawing and Pointing Weapons
  - A. Officers are prohibited from drawing and pointing their firearms at or in the direction of a person absent an objectively reasonable determination that the situation may escalate to the point where deadly force would be authorized under this policy. When it is determined that the use of deadly force is not necessary, officers shall, as soon as practicable, secure or holster their firearms. It is the rule of this department that drawing a firearm and pointing it at a target is considered a use of force.
  
10. Use of Firearm to Destroy Animals
  - A. Officers may use deadly force against an animal that represents a threat to public safety, or as a humanitarian measure where the animal poses a danger to public safety or to the officers' safety, or where the animal is seriously injured after the officers have received authorization from the animal's owner (to the extent practicable).
  
11. Use of Department Weapons for Training and Other Purposes
  - A. Officers may discharge their firearms for the purpose of practice, firearms training, when on the police range or other established shooting ranges, or when authorized by the Chief of Police to participate in law enforcement competition events.
  
12. Use of Firearms While Under the Influence of Alcohol and/or Drugs
  - A. Officers shall not carry or use any firearms or weapons while impaired by alcohol, drugs, or any other medical condition that might interfere with their judgment or proficiency.
  
13. Security, Storage, and Safe Handling of Firearms
  - A. Officers shall be trained in accordance with Department guidelines and shall obey all safety rules when handling any firearm or any other weapon. No person other than Stowe Police Department Officers shall be permitted access to any department-owned firearm, with the exception of: police officers from other jurisdictions in the official performance of their duty; for repair or maintenance as approved by the department; or other circumstances with the express permission of the Chief of Police.

- B. Officers will secure and store firearms, both on and off duty, in such a way as to ensure that no unauthorized person will have access to or gain control over the firearm. All Department firearms kept at home must be secured in a safe place inaccessible to family members, especially children.
- C. Whenever an officer is in the Department and removes his/her handgun or other weapon, the item must not be left in the open and must be secured so that it is not readily accessible to civilians, suspects, victims, or witnesses.

14. Use of Non-Deadly Force

- A. Officers should only use weapons and control techniques that are issued and/or approved for use by the Department. The use of non-deadly force shall be limited to defensive and control purposes. Officers shall use only the reasonable amount of force necessary to overcome resistance or accomplish the police task. The use of non-deadly force shall conform to applicable Department Standards of Conduct, policies, procedures, and training. Officers shall not carry any less lethal weapons, or employ any non-deadly techniques, prior to successfully completing the relevant Department approved training for each weapon or technique.

15. Authorization to Use Non-deadly Force

- A. Both State and Federal law requires that all uses of force be reasonable. The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Its proper application, however, requires careful attention to the facts and circumstances of each particular case including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor*) In addition, an officer should take into account his or her abilities.
- B. Tactical withdrawal is a reasonable option when considering officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be appropriate responses to a situation, and should always be considered.
- C. Officers are authorized to use Department approved, non-deadly force techniques and authorized weapons to:
  - a. Prevent the escape from custody, or to effect a lawful arrest, of a person whom the officer reasonably believes has committed an offense; or

- b. Protect or defend the officer or others from what he/she reasonably believes to be active resistance while effecting or attempting to effect an arrest, or while preventing or attempting to prevent an escape.

16. Non-Deadly Force Restrictions

- A. The following tactics of non-deadly force may be permitted in circumstances only when deadly force is authorized by this General Order:
  - a. Any chokeholds or neck restraints, with or without a device, that restricts a person's airway;
  - b. Any strike with an impact weapon or object to a person's head or neck; and/or
  - c. Any use of flashlights, radios, or any other items not issued or trained specifically as defensive weapons. In limited circumstances when a confrontation escalates suddenly, however, an officer may use any means or device at hand such as a flashlight, radio, and other issued equipment, to defend him/herself, as long as the level of defensive action is objectively reasonable given the existing circumstances.
  - d. Force shall not be used against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons, or, as objectively reasonable, where physical removal is necessary to overcome passive resistance.

17. Impact Weapons

- A. Authorized impact weapons may be used only when an officer is confronted with occurring or imminent active aggression against him/herself or another person.
  - a. The use of a baton or similar instrument to strike a blow to a subject's arms or legs will be considered use of non-deadly force. The use of any such items to intentionally strike a subject's head or neck is prohibited except where deadly force is authorized by this policy.

18. Oleoresin Capsicum (OC Spray)

- A. Authorized OC spray is an alternative to physical control techniques and the use of other intermediate weapons. As with any other use of force, however, OC spray must not be used indiscriminately or without just cause. Officers must be able to articulate the reason(s) the subject was sprayed with OC spray. OC spray shall be utilized as issued and authorized to prevent injury to the subject(s), officers and others

19. Conducted Electrical Weapon

- A. An Conducted Electrical Weapon (i.e., TASER®) is authorized for use when other less lethal options have been ineffective, or when it reasonably appears that such options will be ineffective in subduing the subject. Conducted Electrical Weapons shall only be used in situations where the subject is actively resisting or attempting to avoid arrest by escape and poses an imminent threat to the safety of him/herself, another person, or the officer.

20. Training and Qualifications

- A. In addition to training required for firearms qualification, officers shall receive Department authorized training designed to simulate actual situations and conditions and, as otherwise necessary, to enhance officers' discretion and judgment in using deadly and less lethal force in accordance with this policy.
- B. All officers shall, at least annually, receive in-service training in the Department's Use of Force Policy and any related case law updates.
- C. Training and proficiency results for any authorized weapon will be documented in the training files.
- D. All officers who fail to demonstrate the required proficiency with Department issued weapons shall receive remedial training. Remedial instruction for Department issued firearms shall follow the Department's Firearms General Order.
- E. An officer failing to demonstrate proficiency with a weapon shall not return to duty with that weapon until such time as proficiency is demonstrated and documented.
- F. Only officers demonstrating proficiency in the use of Department authorized weapons shall be approved to carry such weapons

21. Provide Medical Aid

- A. Any time a person has visible injuries or complains of being injured as a result of force used against him/her by an officer, the officer must take appropriate actions to provide medical care for the injured person. This includes providing first aid, requesting emergency medical services, and/or arranging for other transportation to a hospital or emergency medical facility.
- B. Officers shall be trained in proper treatment procedures for persons exposed to chemical sprays and the effects of other less-than-lethal force. If the person is offered and/or refuses treatment, this refusal shall be recorded in the police report,

along with all relevant information. In addition, the officer will also notify a supervisor as soon as practical.

22. Use of Force Reporting

- A. The Department personnel will follow the procedures set in the Use of Force General Order for reporting and documenting use of force incidents.

**V. DISCIPLINE:**

- 1. Any violation of this policy may be grounds for disciplinary action consistent with any applicable collective bargaining agreement, statute, Department policy or Town policy.