

Stowe Police Department

<p>General Order: 2.03.3</p> <p>Oleoresin Capsicum Spray</p>	<p>Related General Orders:</p> <p>2.01 Use of Force/Response to Resistance</p> <p>2.02 Response To Resistance Reporting</p>
<p>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.</p>	
<p>Applicable Vermont Statutes:</p>	
<p>Date Implemented: 09/09/2012</p>	<p>Date Revised: 04/14/2015, 01/14/2016</p>

I. PURPOSE:

1. To set forth guidelines and regulations for the type of Oleoresin Capsicum Spray (O/C) authorized by the Stowe Police Department, and to ensure proper training and qualification procedures for all personnel.
2. To outline general guidelines for the carrying and use of Oleoresin Capsicum Spray (O/C) by Stowe Police Department personnel.

II. POLICY:

1. It is the policy of the Stowe Police Department to equip and train its officers so they may perform their duties in a safe and responsible manner.
2. The use of all Oleoresin Capsicum Spray (O/C) shall be in accordance with General Order 2.01 Use of Force

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.

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.

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.

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-lethal. 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.

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 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. PROCEDURE:

GENERAL

1. Sworn personnel of the department who are authorized to carry O/C Spray shall exercise the utmost care and caution in the use.
2. Sworn personnel may carry only Department issued and/or approved O/C Spray within the provisions of Department policy and any applicable State or Federal law.
3. Carrying Department issued O/C Spray while on suspension or during a leave of absence, where the officers' official commission is suspended, is prohibited.
4. Only O/C Spray authorized by the Department shall be used in the performance of duty.
5. Officers will not point their O/C Spray at a person unless circumstances create a strong reasonable cause to believe that it may be necessary to lawfully use the O/C Spray in conformance with other sections of this General Order.
6. Officers will secure and store their O/C Spray in such a manner as to deter unauthorized persons from gaining control over the weapon.
7. Officers will immediately report any loss or theft of O/C Spray to the Department.

O/C (OLEORESIN CAPSICUM) SPRAY (O/C SPRAY)

1. O/C Spray is considered to be a less-lethal weapon.
2. Chemical Spray shall never be used as a punitive measure.
3. O/C should not be used on a handcuffed person to force compliance unless the subject poses a threat to the officer through physical conduct or active resistance cannot otherwise be controlled.

4. O/C shall not be used against a subject who is in a cruiser, handcuffed or restrained, that is under control.
5. Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations. Officers should avoid the use of O/C Spray in situations where the use of O/C could reasonably cause panic (e.g., crowded building, etc.).
6. Officers who employ the use of O/C Spray should do so as a means of obtaining control of an individual.
7. Only that amount of O/C Spray reasonably needed to obtain control of an individual should be used. Once the desired results have been achieved, the officer will stop dispensing O/C.
8. Primary targets of O/C Spray are the face, eyes, nose and mouth.
9. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the pressurized stream. Officers should follow the recommended manufacturer specifications of the spray.
10. Officers should consider the following, in addition to specific officer subject factors, when deciding whether or not to use O/C Spray in a use of force situation:
 - A. Distance from the individual to be sprayed (generally recommended to be between 4 and 12 feet);
 - B. Environmental conditions (e.g., wind, rain, snow, etc.);
 - C. Potential hazards to the individual after being sprayed with O/C that could cause injury (e.g., walking into traffic, falling off elevated surfaces or stairs, etc.);
 - D. The presence of infants (birth to two years of age). If infants are in the immediate area the use of O/C Spray should be avoided if possible.
11. After spraying an individual with O/C, and control of that person has been obtained, the officer will make reasonable efforts to allow the individual relief from the discomfort associated with the application of O/C. Reasonable decontamination or relief efforts may include (as is practical under the circumstances of a situation);
 - A. Calming the individual;

- B. Removing the person from the affected area to an area of fresh air or other form of ventilation;
- C. Instructing the individual to blow his nose;
- D. Allowing the individual to flush affected areas with cold clear water;
- E. Allowing the individual to wash exposed skin with soap and water;
- F. Allowing the individual to remove contact lenses;
- G. Advising the individual not to rub affected areas;
- H. Summoning medical treatment if the person complains of injury, or if the officer reasonably believes that the person needs medical attention. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.

CARE OF O/C SPRAY

1. All O/C Spray shall be cared for in a manner as prescribed by the manufacturer and as instructed by the instructor
2. Officers who carry O/C Spray should routinely inspect the canister and nozzle for signs of erosion, leakage, dirt in the nozzle, fullness and/or other signs of damage.
3. O/C Spray should not be stored in direct sunlight or in areas where the temperature can exceed 120 degrees Fahrenheit, such as in the trunk or passenger compartment of a vehicle.

TRAINING

1. All sworn officers will be trained prior to carrying any Department issued O/C Spray.
2. Initial training will consist of classroom training and hands-on practical application.
3. As part of the annual in-service training, the use of force procedure will be reviewed.

INVENTORY/LOG

1. The Department Training Sergeant shall maintain, and update annually, a log, of all Department O/C Spray. Information will include:

Manufacturer of the O/C Spray

Model of the O/C Spray
Container Size
Serial number (If applicable)
Officer Assigned (Name)

3. A copy of the Department O/C Spray log shall be kept with the Chief of Police. The Department O/C Spray log will be updated upon the purchase of any O/C Spray.

USE OF FORCE – RESPONSE TO RESISTANCE REPORTING

1. All Use of Force-Response to Resistance procedures and reporting forms must be completed as out-lined in General Order 2.02 Use of Force-Response to Resistance Reporting

SECURITY

1. All officers are responsible for the security of any O/C Spray assigned to them.

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.

Issued by: _____
Donald Hull
Chief of Police