



KERN COUNTY PROBATION DEPARTMENT

Policies And Procedures

TITLE: Use of Force			Article: 1706
APPROVED: William Dickinson, Chief Probation Officer			
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DEFINITIONS

When used in this policy, “law enforcement officers,” or “officers” shall include Deputy Probation Officers and Juvenile Corrections Officers.

The term “force” means physical contact with a person by hand or instrumentality to gain control of that person when verbal command is unavailing, inappropriate, or futile in the circumstances.

- Force shall not mean or include routine or incidental physical contact with a person as is necessary to take the person into actual, physical custody during a routine arrest situation when the arrestee does not offer physical resistance. Similarly, force does not mean or include the application of a wrist lock or control hold to handcuff a subject/youth, prior to movement for security reasons, when there is no physical resistance by the subject/youth.

The term “deadly force” shall mean force likely to cause death or serious bodily injury.

The term “Deliberate Indifference” means the conscious or reckless disregard of the consequences of one's acts or omissions. It entails something more than negligence, but something less than acts or omissions intended to cause harm or undertaken with knowledge that harm will result.

RELATIONSHIP WITH LAW

This policy does not have the effect of law and is not intended to have the effect of law. The law is contained in the federal and state constitutions, statutes, and court decisions. Ultimate liability of law enforcement officers under law can only be determined by the courts. Violation of this policy does not and is not intended to mean that the involved law enforcement officers are liable under the law.

PROBATION DEPARTMENT PHILOSOPHY

The use of any force, including deadly force, by law enforcement officers is a matter of critical concern both to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and, when warranted, may use reasonable force in carrying out their duties.

Law enforcement officers must have an understanding of the extent of their authority; particularly with respect to overcoming resistance from and gaining and maintaining control over those with whom they come in official contact.

The Kern County Probation Department recognizes and respects the value of human life and dignity without prejudice to anyone. It is also understood that officers have the authority to use reasonable force, including deadly force, to protect the public and carry out their duties.

POLICY

The purpose of this policy is to provide officers of the Probation Department with guidelines on the reasonable use of force. It is the policy of the Probation Department that law enforcement officers, in the performance of their duties, shall use reasonable force, given the facts and circumstances known or reasonably believed by the officer at the time of the event, to effectively prevent escape, overcome resistance, or effect arrest. The use of force by law enforcement officers requires constant evaluation. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. (Graham v. Connor (1989) 490 U.S. 386).

Law enforcement officers in a custodial setting may use reasonable force in establishing and maintaining custody of youth to maintain the safety and security of the facility. Force used within the Probation Department Institutions shall never be for the purpose of maliciously or sadistically causing harm. Officers shall never be "deliberately indifferent" to the rights, health or safety of custodial youths (Johnson v. Glick (1973) U.S. Court of Appeals, Second Circuit) and (Whitley v. Albers (1986) U.S. 312). The 8th and 14th Amendments of the United States Constitution protect youths against cruel and unusual punishment.

Law enforcement officers of the Probation Department are granted peace officer authority under Penal Code Sections 830.5(a) and 830.5(b), and, in the performance of their duties, are permitted to use reasonable force to prevent escape, overcome resistance and effect arrests. The use of such force by officers shall conform to Penal Code Section 835a and the policies and procedures set forth in this manual.

Nothing in this policy is intended to hinder or prevent an officer from using deadly force immediately to protect or defend himself or herself, another officer or any other person from a significant threat of death or serious bodily injury.

California Penal Code Section 835a provides that:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Any use of force, including deadly force, by a member of the Kern County Probation Department, must be judged by the standard of "reasonableness." When determining whether to use force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. Those factors include, but are not limited to:

- The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- Officer/subject/youth factors (age, size, relative strength, skill level, injury/exhaustion, number and location of officers vs. subjects).
- Influence of drugs/alcohol (mental capacity).
- Proximity of weapons of any kind.
- Whether the subject/youth poses an immediate threat to the safety of officers or others and the seriousness of the threat.
- Seriousness of the suspected offense or reason for contact with the individual.
- Seriousness of the youth's institution rule violation.
- Whether the subject/youth is resisting arrest by force.
- Whether the subject/youth is evading arrest by flight.
- Whether efforts were made to temper the severity of the force used.
- Training and experience of the officer.
- Potential for injury to citizens, officers, subjects, and youths.
- Number of subjects/youths involved in the event.
- How organized the subjects/youths in the disturbance appear to be.

At times, officers are called upon to make split-second decisions. In such cases, the amount of time available to evaluate and respond to changing circumstances may impact an officer's decision. When judging an officer's decision, this fact shall be given due consideration and weight.

Each officer is expected to use force which is objectively reasonable under the totality of circumstances at the time to prevent escape, overcome resistance, effect arrests, restore order, and maintain the safety and security of the facility.

The decision to use force rests with each officer. While there is no way to specify what force is reasonable in advance, each officer is expected to use these guidelines to make this decision in a professional, impartial, and safe manner.

DIRECTIVE

The follow-up for a use of force by any officer of the Probation Department shall be in accordance with the following procedures:

- A. The officer shall verbally notify their immediate supervisor as soon as practical, after the incident. The information will be passed up to the chain of command.
- B. The circumstances surrounding the incident will be documented in a Special Incident Report by the end of the shift, when practical, or in a PR report prior to the first Court date or within 72 hours, whichever occurs first. The documentation shall include the following information:
 - 1. Description of the incident.
 - 2. Officers/subjects/youths who were involved.
 - 3. Specific force that was used.
 - 4. Justifications for the actions taken.
- C. All officers are required to take immediate action to stop any force that is not objectively reasonable and report it to Administration as soon as practical.
 - 1. Any officer who uses any force that is not objectively reasonable upon any person will be subject to disciplinary measures up to and including termination and/or legal action.
- D. Use of force may require medical attention. Officers shall request medical aid and/or render first aid as soon as the situation allows to safely do so.
- E. Officers must be properly trained in a specific force option pursuant to Department guidelines before using that force option on any subject/youth, barring extraordinary circumstances.
- F. Control holds may be used to gain initial control of a subject/youth, but once a subject/youth has been restrained, with or without mechanical restraints, only the amount of reasonable force needed shall be applied to maintain control.
- G. Administration will review situations involving the use of force and will determine:
 - 1. If policies and procedures were followed.
 - 2. Whether or not Administration needs to review or revise the policies and procedures.
 - 3. Whether or not further investigation is needed.
 - 4. Whether or not the documentation and follow-up could be defended in litigation.
 - 5. Whether or not there are unresolved issues which need follow up.

Pursuant to GC 12525.2, all use of force incidents meeting the following criteria shall be reported to Administration in order to meet DOJ annual reporting mandates:

1. An incident that involves the shooting of a civilian by a Peace Officer.
2. An incident that involves the shooting of a Peace Officer by a civilian.
3. An incident in which use of force by a Peace Officer against a civilian results in serious bodily injury or death.
4. An incident in which use of force by a civilian against a Peace Officer results in serious bodily injury or death.

Serious bodily injury is defined as an injury that involves substantial risk of death, unconsciousness, protracted or obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ. This may include, but are not limited to, loss of consciousness, wounds requiring excessive suturing bone fractures, or concussions.