



Kern County Sheriff's Office
Policies and Procedures

TITLE: Use of Force – Oleoresin Capsicum		NO: F-0400	
APPROVED: Donny Youngblood, Sheriff-Coroner			
REFERENCE: Penal Codes 831.5(f), 835a, 4023.8(h), 22810, Government Code 7286.5, DPPM F-0100, F-0200, F-1100, F-1300, and P-0600			
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APPLICABILITY

When used in this policy, the terms “officer,” “deputy,” or “peace officer” shall include Sheriff’s Deputies, Detentions Deputies, Detentions Officers, Deputy Coroners, and Park Rangers. The term “civilian employees” shall include Community Service Technicians.

GUIDING PRINCIPLES

In all uses of force, deputies shall adhere to the provisions and Guiding Principles outlined in DPPM F-0100 Use of Force – General and Deadly Force. This policy provides further guidelines regarding approved methods and devices available for the application of force.

POLICY

Deputies are permitted to use oleoresin capsicum (OC) spray when acting within the guidelines of Penal Code (PC) 835a. Detention Deputies who have completed the required training are authorized to use OC spray when acting within the guidelines of PC 831.5(f); when it objectively appears reasonably necessary to use reasonable force, including the use of OC spray to establish and maintain control of prisoners. All deputies shall ensure the use conforms with the policies and procedures set forth in this manual.

The use of OC spray is appropriate in situations when a subject(s) is displaying active resistance or assaultive behavior. OC spray is an organically based, less lethal aerosol weapon, designed to temporarily incapacitate with no lasting after-effects. In most instances, OC spray will immobilize an attacking human or animal for up to 45 minutes. OC, unlike CN or CS agents, is a highly concentrated form of concentrated peppers that affects the mucous membranes. OC spray typically causes a short period of pain, gagging, and involuntary closing of the eyes when directed to the eyes, nose, or mouth.

Less lethal force options, including the use of OC, are only permissible when a deputy reasonably believes that a subject is actively resisting a lawful arrest or poses an immediate threat of violence or physical harm and shall not be used for a suspect or subject who is passively resisting or merely failing to comply with directives. In evaluating reasonableness, the most important factor to be

considered is whether the involved person posed an immediate threat to the safety of the deputies or others.¹

DEFINITIONS

1. **EXTENDED RANGE IMPACT WEAPON** - Means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma.
2. **IMPACT MUNITIONS** - Refers to a group of projectiles that have a low probability of causing serious bodily injury or death when they strike a human target. Even though these munitions are considered less lethal, they are not to be considered non-lethal. For purposes of this policy, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds
3. **CHEMICAL AGENTS** - Means any chemical agent that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this policy, the term includes, but is not limited to: chloroacetophenone tear gas (CN tear gas), 2-chlorobenzalmalonitrile gas (CS gas); and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum (OC).
4. **BEHAVIORS INDICATING A MEDICAL EMERGENCY** – Refers to indicators of medical distress such as an individual exhibiting extreme agitation, violent or irrational behavior, extraordinary strength beyond their physical characteristics, and imperviousness to pain. These signs may indicate an increased risk of sudden death requiring immediate medical attention. See DPPM P-600 for further details.

PROCEDURE A: USE OF FORCE WARNING & DE-ESCALATION

In accordance with DPPM F-100, deputies shall exercise de-escalation techniques, when feasible, to attempt to resolve tense and evolving incidents without using force whenever possible. This includes giving a verbal warning, prior to using oleoresin capsicum (OC) spray, unless it is not feasible to do so.

- **Exception:** The warning is not required if deputies are being assaulted and must immediately defend themselves. Also, if the tactical plan requires an element of surprise, a verbal warning is not required.

¹ The courts have held that less-lethal force options (such as OC) constitute an “Intermediate Force” option and are “unreasonable when an officer has detained a suspect for minor infractions and the suspect clearly poses no threat to the officer or public safety.” [*Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156]

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If the subject is reasonably perceived to be a Spanish speaking, Limited English Proficient (LEP) individual and deputies are fluent in that language, efforts should be made to give the warning in English and Spanish, if feasible. This also gives the subject a reasonable opportunity to voluntarily comply. Warnings shall be documented as outlined in DPPM F-100.

PROCEDURE B: GENERAL DEPLOYMENT CONSIDERATIONS

The following guidelines govern use of OC:

- OC application(s) shall be consistent with this policy, objectively reasonable and proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- Each application of OC is considered a separate use of force and must be consistent with KCSO policy and separately justified in reporting.
- If the application of OC is ineffective, deputies shall consider other objectively reasonable force options proportional to the subject’s resistance level.

PROCEDURE C: USE OF OC – SPECIAL CONSIDERATIONS

Vulnerable Populations

The use of a OC should generally be avoided on the following individuals unless deputies can articulate, based on the totality of the circumstances, why they reasonably believe that other options lack feasibility (such as appears ineffective, impractical, or presents a greater danger to the deputy or others) and that the deputy reasonably believed that the need to control the individual outweighs the risk of using OC:

- Is reasonably believed or perceived to be pregnant.²
- Appears to be or is known to be elderly (65 or Older).
- Regardless of age, is believed or perceived to have a pacemaker or is visibly frail or has obviously low body mass.
- Appears to be or is known to be a dependent adult or has a physical/developmental disability.
- Appears to be or is known to be a minor under the age of 14.
- Is in a position or conducting an activity that may increase the risk of substantial injury if the OC spray is deployed. Examples include, but are not limited to:
 - On an elevated platform or other unstable surface where a fall would result in a serious injury or death.

² See “Procedure D - Vulnerable populations” for specific prohibitions on incarcerated pregnant persons.

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- Operating motor vehicles or riding a mode of transportation.
- In physical control of an infant or small child where use of the OC spray may result in the child being dropped or injured.

Crowd Control Situations

All use and reporting of force including the use of extended range impact weapons, chemical agents, including OC, and conducted energy weapons (CEWs) for crowd control incidents must comply with the Sheriff’s Office Crowd Control Policy F-1300.

PROCEDURE D: GENERAL PROHIBITIONS

The following provisions are unauthorized uses of OC and are prohibited:

- The use of OC against a subject(s) who is passively resisting or merely failing to comply with commands.
- The use of OC against subjects who are handcuffed or otherwise restrained, except where the individual is actively resisting, attempting escape, or poses an imminent threat to or themselves or others.
- Refer to DPPM F-1300 for additional prohibitions in crowd control situations.

Vulnerable Populations

Penal Code Section 4023.8, subdivision (h), and this policy strictly prohibits the use of a CEW, Oleoresin Capsicum (pepper spray), or exposure to other chemical weapons on an “incarcerated” pregnant person.

- Whenever staff has knowledge or reasonably believes that an incarcerated person is pregnant, the use of OC will not be used directly on or as an area treatment against that inmate.
- In situations where the use of OC may be used in a location where pregnant incarcerated persons may be exposed to the OC, reasonable steps will be taken to remove the pregnant incarcerated person(s) or otherwise avoid exposing them.
- For this policy, an incarcerated pregnant person is a pregnant person who has received a booking number, whether booked into an actual jail facility or absentee booked away from a jail facility.

PROCEDURE E: OPTIMAL RANGE AND TARGET AREAS

Optimal Range

OC spray does not require the operator to be a minimum distance away from their intended target when deploying. However, pursuant to this policy, deputies are required to attempt to remain at least three feet away from the intended target, unless exigent circumstances dictate otherwise or for tactical, weapon retention, weapon malfunction, and contamination or environmental reasons.

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The recommended range for OC spray (cone) is 3-8 feet for individual target purposes and 8-12 feet for area saturation.

The recommended range for OC spray (stream) is 3-10 feet for individual target purposes and 10-12 feet for area saturation.

Optimal Target Areas

The primary target area for OC spray is the eyes. If the primary target area is obstructed other areas of the body may be targeted. Secondary target areas are forehead, nose, and mouth. Deputies shall always be aware of their background as well as if their intended target is obstructed. The recommended deployment is one (1) two-second burst per application.

PROCEDURE F: POST-APPLICATION CONSIDERATIONS

Medical Treatment

Evaluate and render medical aid as outlined in DPPM F-0100 and DPPM P-0600. Generally, medical treatment is not required for subjects who have been sprayed with OC.

If a subject who has been sprayed with OC experiences continued difficulty in breathing and/or vision impairment for an extended period, deputies shall immediately request medical treatment as outlined in DPPM P-0600. Deputies should initiate immediate medical attention when:

1. Gagging or breathing difficulties persist beyond an initial period of two (2) to four (4) minutes;
2. The person loses consciousness, sweats profusely, or appears to be very sick;
3. Still significantly suffers symptoms forty-five (45) minutes after exposure;
4. The deputy is aware the person sprayed suffers from bronchitis, asthma, emphysema, or similar respiratory disease; or
5. The person displays an unusual reaction to OC (e.g., loss of consciousness); or
6. The person requests medical treatment.

Persons who have been exposed to OC spray shall be provided the opportunity to wash the affected areas as soon as practical. In most cases this should occur within 20 minutes.

There is no immediate cure for pepper spray exposure, but the intensity and duration of the symptoms may be reduced by:

- Moving the subject into an area with fresh air, if possible.
- Flushing the affected area with lots of water to wash away the contaminants.

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- Removing clothing that may have come into contact with the spray to decontaminate and prevent re-contamination.
- Avoiding touching the affected area, as it is easy to spread the oil-based solution to other areas of the body by doing so.
- Rapid blinking the eyes to help flush out the OC.

Deputies and supervisors shall ensure the subject exposed to OC Spray is evaluated for any adverse effects as soon as practical. A normal reaction may consist of any of the following:

1. Red and watery eyes.
2. Swelling and discharge of the mucous membranes.
3. Coughing and shortness of breath.
4. Intense feeling of burning at the exposed area.
5. Discoloration of the skin (due to dyes).
6. Chest pain.
7. Throat burning.
8. Gagging or gasping for air.
9. Runny nose.
10. Loss of the ability to speak, dizziness, and in some cases loss of consciousness.

These symptoms will normally disappear naturally within about forty-five (45) minutes.

Stage Emergency Medical Services (“EMS”)

When possible, deputies responding to calls for service that include information indicating possible pre-existing conditions, possible overdose, cocaine psychosis, or other signs of medical distress, etc., should request additional deputies and consider having medical units staged. Subjects experiencing these pre-existing conditions need immediate medical treatment.

Transportation

Persons who have been sprayed with OC spray are to be transported in an upright position and secured with a seat belt. Do not transport subjects who have been sprayed with OC lying face down or face up on the back seat. Do not cover the mouth or nose of a subject except with an approved mask according to training. Deputies are not authorized to use any restraint or transportation method that might unreasonably impair an individual’s breathing or respiratory capacity or a period beyond the point when the individual has been adequately and safely controlled. Once controlled, the individual should be placed into the recovery position (e.g., supine or seated) and monitored for signs of medical distress (Government Code § 7286.5).

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If the subject must be transported in a recumbent (lying down) position, and it is feasible to do so, the subject shall be transported via ambulance and accompanied by a deputy. If an ambulance transport is not feasible or required, the subject will be transported in manner that does not compress their airway or reduce the ability to sustain adequate breathing. The subject shall be monitored for any signs of positional asphyxia or medical emergency.

Evidence Collection

Per DPPM P-0600, photographs of the affected areas of the subject’s body shall be taken to show the existence or absence of injury following a use of force.

Report of Use

Employees must document every application of OC spray in the related Incident Report and the Use of Force Reporting System as outlined in DPPM F-200. This is in addition to the above reporting requirement for crowd control incidents.

Supervisor Notification

In all cases in which deputies use OC they shall make a notification to the on-duty supervisor or watch lieutenant as soon as safely possible. All supervisors shall conduct a review of the application of the OC per DPPM F-200.

Death or injury likely to cause death in conjunction with an OC application:

Any incidents involving death or serious bodily injury after the use of OC will be investigated as outlined in F-1100.

PROCEDURE G: AUTHORIZED EMPLOYEES

Peace officers and designated detentions staff of the Sheriff’s Office, while on duty, may only carry OC spray that has been issued by the Sheriff’s Office, and only after attending Sheriff’s Office approved training on the use of OC sprays.

Civilian employees may carry OC spray on duty if their job function exposes them to a potential for harm and the OC spray may affect the employee’s ability to protect themselves, and the employee:

1. Obtains written approval from their Bureau Chief which is placed in the employee’s personnel file.
2. Completes Sheriff’s Office approved training, and
3. Complies with Penal Code section 22810.

Civilian employees authorized and/or issued Sheriff’s Office OC spray may use the OC spray under the following conditions and/or circumstances:

1. When threatened with physical assault by another person and retreat from the situation is not practicable.

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2. When threatened or attacked by a potentially vicious animal and retreat to safety to avoid being bitten is not practicable.

PROCEDURE H: USE OF OC SPRAY BY CIVILIAN EMPLOYEES

When civilian employees have used OC spray, they will:

- Immediately contact the Communications Center and report the incident.
- Provide assistance as necessary to the sprayed individual, if safe to do so.
- Not attempt to use physical restraint to control the sprayed individual, unless necessary for self-defense.
- If safe to do so, stand by until a responding deputy arrives to take control of the sprayed individual.
- If it is not safe, proceed to a safe location and wait for a deputy.
- Cooperate with the deputy who will conduct the investigation and complete necessary reports.

The Communications Center will:

- Dispatch a deputy to the scene when notified of the incident.
- Notify the on-duty Lieutenant, area supervisor, or Metropolitan Patrol sergeant.

The responding deputy will:

- Thoroughly investigate the incident.
- Ensure the sprayed individual receives assistance as necessary.
- Complete all necessary reports.

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