

**LASSEN COUNTY**  
**JUVENILE DETENTION FACILITY**  
**Policy Manual**  
Article 5  
Classification and Separation

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TOPIC: **Use of Force**

POLICY STATEMENT 5-10

ORIGINATED: November 1997

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REVISED: May 7, 2013

REVIEWED: September 25, 2017, RDR

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**I. Purpose:**

To establish guidelines when and what types of force may be used by staff.

**II. Definition:**

Force is the exertion of strength, weight, power or technique to overcome resistance and/or prevent a youth from hurting oneself or others. Force will only be used when lesser means of intervention are inappropriate.

**III. Policy (Title 15, Section 1357):**

- A. The basic policy of this institution is to provide for the physical safety and security of the youths, staff and visitors within the facility. Within that basic policy, when dealing with aggressive youths, it is necessary that we use only the level of physical intervention/restraint (Reasonable force control instruments) that is needed to immediately stop the aggressive behavior and ensure the safety of youths and others. A physically aggressive youth can be first ordered to stop the behavior and "back off" before physical intervention/restraint is used. If physical intervention/restraint becomes necessary, staff will exert the level of physical intervention/restraint on the aggressive youth which is needed to bring the situation immediately under control and ensure that no unnecessary injuries are suffered by staff or by non-aggressive youths. The type and amount of force used shall be in accordance with the staff's level of training (Critical attacks excluded). The aggressive youth is to be visually examined for any injury and will be examined by medical and mental health staff at the earliest possible convenience.
- B. The immediate safety and security of staff and non-aggressive youths is our primary responsibility. The level of Reasonable force employed will only be

that level appropriate to gain and maintain control a resistive, aggressive, or violent youth and/or overcome said resistance, while ensuring the safety and security of staff, non-aggressive youths, and the involved youths. The primary objective in any deployment of Reasonable force and/or Reasonable force instruments is the safety of staff, non-aggressive youths, involved youths and the security of the facility. Reasonable Force is the amount of force needed as reasonably perceived by an officer of the same training and position. All Reasonable force strategies and/or instruments will always be based upon what is reasonable, available and appropriate given the circumstances, as opposed to what is unavailable and inappropriate given the same circumstances.

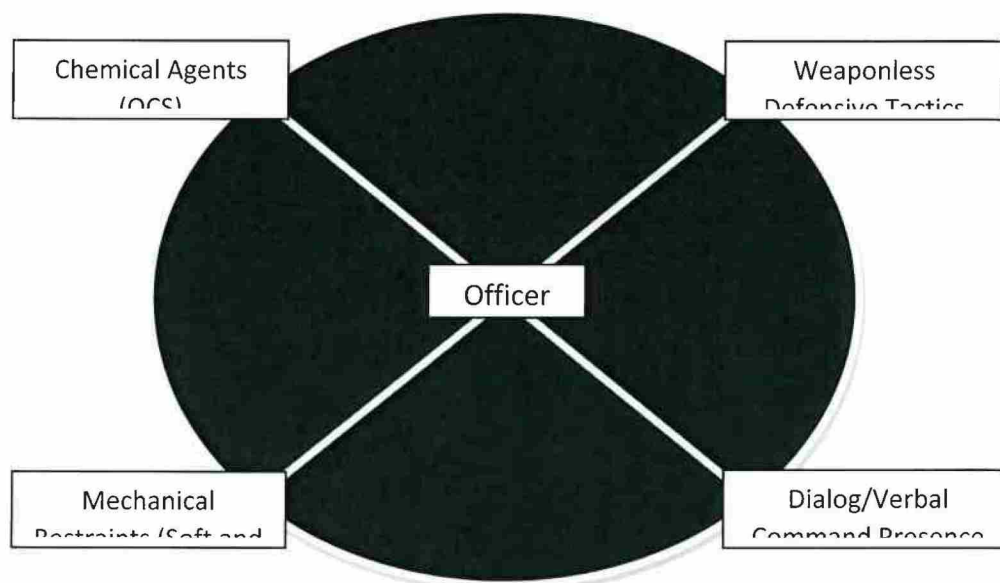
- C. Reasonable force will never be deployed for reasons of punishment or in retaliation for a violator's resistive, aggressive, or violent acts. When applying physical intervention/restraint, staff must not allow anger or emotion to cause a loss of control. It is important that staff develop and utilize professional strategies that stress and reinforce emotional control, judgment and decision-making under stress. If deemed necessary, the Lassen County Sheriff's Department should be requested for backup and used in subduing the youth(s) (Review Emergency Procedures "Response by Sheriff and Police Department).

#### **IV. Restraint/Control:**

- A. In restraint and control situations, staff may utilize only those control and restraining techniques and devices which are approved and provided by the Lassen County Probation Department Weaponless Defense Training and in which the staff have received the approved 40 hours of training.
- B. Youths should not be physically restrained in situations where control can be gained through the use of staff presence or dialogue/counseling.
- C. It is expected that staff uses good judgment, decision-making skills, and teamwork to control a situation.
- D. At every level of the Reasonable force continuum, staff can always increase the level of force without going to another, higher level of force. For example, staff presence may be used by one staff and be escalated by including more than one staff member. In another example, verbal negotiation may begin by giving instructions softly to a youth and escalated by giving orders in a loud voice.
- E. When physical restraint is used, staff members must escalate or de-escalate the use of force as the youth's resistance or behavior changes. (Deescalate only when safe to do so.)

- F. Staff may restrain or control a youth under the following circumstances:
1. For self-defense.
  2. For defense of another staff member or youth(s).
  3. To prevent escape.
  4. To overcome resistance when a youth(s) is physically aggressive.
  5. To effect an arrest.
  6. During transportation of a youth from one location to another if the youth becomes a threat to themselves or others.
  7. Where there is an articulated threat to the safety or security of staff or the facility as a result of a youth's actions.
- G. Levels of Reasonable force deployed will always be based upon what is reasonable and appropriate, given the individual circumstances. Youth's control, through their actions and behavior, what levels of Reasonable force are deployed.
- H. Strategies for physical restraint and control or immobilization of a person through the use of hands-on Reasonable force control instruments. These instruments include, but may not be limited to:
1. Staff presence (or multiple staff).
  2. Dialogue/Counseling/Verbal Command Presence
  3. Oleoresin Capsicum Spray (OCS) – pepper aerosol spray.
  4. Control and search techniques.
  5. Mechanical restraints (soft and hard restraints).
  6. Reasonable Weaponless Defensive Tactics (obtained through training).
- I. The above listing is not to be construed as meaning that the force options are to be used only in the order listed. Lassen County Probation's Use of Force Policy is based on the wheel. Staff will, through their training, be able to identify and implement the level of force needed for each individual incident.

## The Force Wheel



- J. The burden of justifying the use of physical restraint is on the employee(s) involved and is subject to administrative review. If physical control fails to fall within the parameters outlined and a physical assault has been committed by a staff member on a youth, criminal charges may be filed against the employee(s) involved pursuant to the following:
1. California Penal Code, Section 273d, states: "Any person who lawfully inflicts upon any child any cruel or unusual punishment or injury resulting in a traumatic condition is guilty of a felony and upon conviction thereof will be punished by imprisonment in the State Prison for 2, 4, or 6 years or in the County Jail for not more than one year.
  2. Section 240 of the California Penal Code states, "An assault is an unlawful attempt coupled with the ability to commit a violent injury on the person of another."
  3. Section 241(a) of the California Penal Code states, "An assault is punishable by fine not exceeding \$1,000.00 or by imprisonment in County Jail not exceeding six months or both such fine and imprisonment."
  4. Section 242 of the California Penal Code states, "A battery is any willful and unlawful use of force or violence upon the person of another."

5. Section 243(a) of the California Penal Code states, "A battery is punishable by fine of not exceeding \$2,000.00 or by imprisonment in County Jail not exceeding six months or by both such fine and imprisonment."
  6. California Penal Code, Section 673, states: "It shall be unlawful to use in the reformatories, institutions, jails, state hospitals, or any other state, county, or city institution, any cruel, corporal, or unusual punishment or to inflict any treatment or allow lack of care whatever which would injure or impair the health of a prisoner, inmate, or person confined; and punishment by the use of straight jacket, gag, screws, shower bath, or the trussing up of a prisoner, inmate, or person confined is hereby prohibited. Any person who violates the provisions of this section or aides, abets, or in any way contributes to the violation of this section shall be guilty of a misdemeanor."
  7. **The above mentioned guidelines and laws should not be misinterpreted by staff to mean that physical restraint is not used in this facility. There are times when it is clearly necessary, pursuant to the guidelines outlined herein.**
- K. Employees observing improper restraint will immediately attempt to correct the situation and report the occurrence to the Superintendent and/or the Lead Counselor.
- L. Any staff using or witnessing the use of force, including physical, mechanical and chemical, to control a youth is to submit an SIR. Use of force must be documented by all staff involved.

**V. Procedures:**

- A. Staff presence: This is the first option to the maintenance of a sound institutional facility and the prevention of situations requiring physical intervention. It is the effect of staff's honesty, professionalism, integrity, pride and reputation for fairness has on a youth's behavior. These characteristics, to be effective, must be consistently maintained. It must be brought to the supervisor's attention if an employee is witness showing traits that can be a detriment to the well-being of the facility.
- B. Dialogue and counseling: This option is the staff's ability to gain control of the situation through the use of verbalized statements. Dialogue properly used on a daily basis can become the only option necessary in most control situations. Dialogue, including counseling efforts, may also be the single most successful option available. Staff need to be aware of the verbal and

nonverbal cues that could result in an escalation of aggression during counseling.

- C. Verbal commands: During volatile situations dialogue/counseling may not be sufficient to control a situation. Staff should give clear, direct orders to youth while employing command presence.
- D. OCS: See policy statement 5-12.
- E. Room Extraction: See policy statement 5-11.

#### **VI. Referrals:**

- A. In any instance when a youth is injured through the use of hands-on, physical or mechanical restraint, a referral will be made to the medical staff.
- B. If as a result of any restraint, the youth appears to have significant injuries that cannot wait until she/he is seen by Doctor Meadows' staff, the Supervisor or Shift Lead will make the proper arrangements and have youth transported to Banner Lassen Hospital immediately.
- C. Whether injuries are apparent or not, when physical force is used, the youth must be cleared by medical staff during the next sick call.

#### **VII. Documentation:**

- A. The timely submittal of a comprehensive and structured incident report (SIR) is critical. All staff involved with the incident will prepare an incident report before they end their watch and before departing the facility.
- B. The body of the SIR should contain a clear and factual narrative of the events listing times and names of all involved, youth(s) and staff.
- C. A detailed description of why and how force was needed and used and aftercare and/or medical referral/treatment/notifications. The documentation needed will include, the names of the techniques employed during the incident and the results.

#### **VIII. Penal Code Use of Force Authorities**

- 835: Person may be subject to restraint.
- 835a: Reasonable force to effect arrest.
- 834a: Duty of person to refrain from using force /weapon to resist arrest.
- 854: Pursue and retake prisoner.
- 831.5(f): Custodial officer may use reasonable force.
- 831.6(d): Transportation officer may use reasonable force.

- 846: Disarm prisoner, take weapons.
- 836.5: No public officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or overcome resistance.

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TOPIC: **Use Oleoresin Capsicum Spray (OCS)**      POLICY STATEMENT 5-12

ORIGINATED: January 5, 2007

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REVISED: May 7, 2013

REVIEWED: September 25, 2017, RDR

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**I. Purpose:**

To establish guidelines on when and how Oleoresin Capsicum Spray (OCS) may be used by facility staff.

**II. Policy:**

A. The use of OCS is permitted within this facility in accordance with Section 12403 of the California Penal Code. Staff may use OCS under the following conditions:

1. OCS may be used within the scope of staff peace officer authority to control, restrain or subdue imminent or actual violent behavior or if such behavior presents a clear danger.
2. Before OCS may be used, consideration must first be given to the gravity of the situation, the consequences that may reasonably be expected to occur if the behavior does not cease.
3. OCS can be used only after making a reasonable effort to verbally persuade voluntary compliance and after giving a clear warning that OCS may be used if such voluntary compliance is not forthcoming.
4. OCS may be deployed without warning only during those occasions where the safety and security of staff, youths and the institution are threatened.



5. OCS should not be dispensed within a moving vehicle. During transportation of youths, OCS should be used only in life-threatening situations.
    - a. The only exception to the above is when the behavior exhibited is of such nature that even momentary delay would result in further injury to a person. Then, OCS may be applied without warning.
  6. OCS may be used prior to employment of hands-on restraint, physical restraints, or mechanical restraints in order to gain control of an aggressive youth. Staff may elect to use hands-on restraint, physical or mechanical restraints first if they can do so without risking injury to themselves or to the youth, or if OCS is not quickly available.
  7. OCS may not be used for punishment, retaliation or disciplinary purposes. Staff is to ensure that no greater amount of OCS is used than is necessary to gain control of the situation and subdue the youth. OCS should not be used on youths who are resistive but not physically aggressive.
  8. Whenever possible, staff should avoid deploying OCS against youths who have the following medical histories or profiles:
    - a. Any documented medical history of respiratory problems.
    - b. Any documented medical history of heart disease or related problems.
    - c. Anyone taking any psychotropic, stimulant medication.
    - d. Those admitted who are under the influence of stimulant narcotics (cocaine, methamphetamine, PCP).
    - e. Those with a documented medical history of seizures.
    - f. Those who are medically obese.
- B. All individuals who admit to any of the above medical history or those who the arresting officer and/or facility staff recognizes as being present should be identified upon booking. The purpose of this is to alert staff of a "No OCS Profile." All reasonable efforts should be made to avoid spraying these youths with OCS. However, because staff and non-aggressive youth safety is of overriding importance, there may be occasions due to violent circumstances where OCS may have to be used on medical alert youths to prevent serious injury.

C. The Supervising Deputy Probation Officer and OCS Instructor designate those persons authorized to use OCS within the scope of their staff employment at Lassen County Juvenile Detention Facility. If the Supervising Deputy Probation Officer or the OCS Instructor deem that staff are miss using OCS then that staff will have the use of OCS taken away until retrained on the use of OCS. Possible disciplinary action may be taken as well. The staff must:

1. Have completed the chemical agent course or OCS chemical course.
2. Be on duty and authorized to have possession of OCS.

D. Canisters of OCS will be controlled and accounted for as follows:

1. The Supervisor or their designee is responsible for the inventory OSC canisters on his/her shift.
2. The designated storage place for OCS is in the metal cabinet in the Control Room.
3. Canisters must be secured if not in use.
4. Under no circumstances will staff to remove canisters from the institution.
5. Each staff member receiving a canister is responsible for determining that it is more than half full and keeping the OCS activated by shaking the canister once a month.
6. Stored canisters are not to be in an area of extreme heat.

III. **Procedures:** OCS should not be activated at a target distance of less than three (3) feet. An effort should be made to hit the face and chest area with the spray.

- A. In all cases where OCS is deployed, once the youth has been controlled and restrained, the youth must be immediately removed to a safe area where first aid can be provided.
- B. First aid for OCS is fresh air and water. Cool water should be sprayed into the face of the youth and a fan should be placed in front of his/her face. The youth should not wipe his/her face but may blot dry.
- C. Youth should be advised not to decontaminate by washing with warm water and soap. Warm water opens skin pores and increase discomfort. Using soap or any oil or cream-based products also increases discomfort. Advise

the youth to decontaminate using cool water alone first. After a thorough rinse, use warm water only. Warm water and soap may be used the following day or later the same evening.

- D. Staff must observe all youths who have been sprayed with OCS for one (1) hour after deployment on a one-to-one basis.
- E. Any staff contaminated with OCS should follow the same basic regimen.
- F. The same procedures should be followed by any agency bringing in any youth who has been sprayed with OCS. All staff would be alerted to any youths who have been sprayed with OCS.
- G. Documentation: The use of OCS is to be reported in writing on an Incident Report. Involved staff are responsible for completing their reports before the end of his/her shift and before leaving the premises.
  - 1. The report is to depict:
    - a. A clear and factual justification for the use of restraint.
    - b. A description of how the OCS was utilized and the results obtained.
    - c. A complete description of the aftercare procedures and/or medical referral/treatment and parent notification.

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force to affect an arrest in accordance with 835(a) PC. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

#### 300.1.2 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. A officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

### 300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. **Probation** Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Probation Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

#### 300.2.1 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled

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- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of **resistance** of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances in accordance to 830.5 PC:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such **circumstances**, a verbal warning should precede the use of **deadly** force, where feasible.

#### **300.3.1 USE OF FORCE**

Any peace officer may use reasonable force to effect an 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 on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835).

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving. Given that no policy can realistically predict every possible situation a officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this

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policy requires a officer to retreat or be exposed to possible physical injury before applying reasonable force.

#### **300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether to apply force and evaluating whether an officer has used reasonable force, a **number** of factors **should** be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible **effectiveness**.
- (i) Seriousness of the suspected offense or reason for **contact** with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

#### **300.4 REPORTING THE USE OF FORCE**

Any use of physical force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

#### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

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#### **300.5.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of an [EMDT device] or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

#### **300.6 MEDICAL CONSIDERATION**

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial **assessment** of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called **excited delirium**), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

#### **300.7 SUPERVISOR RESPONSIBILITY**

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

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- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the **subject** upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
  - 1. The content of the interview should not be summarized or included in any related criminal charges.
  - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
  - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### **300.7.1 SUPERVISOR RESPONSIBILITY**

The Supervisor shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.



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## Deadly Force Review

### 302.1 PURPOSE AND SCOPE

This policy establishes a process for the Lassen County Probation Department to review the use of deadly force by its employees. This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of deadly force. The Lassen County Probation Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

### 302.2 REVIEW BOARD

The Use of Force Review Board will be convened when the use of force by a member results in very serious injury or death to another. The Use of Force Review Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the employee was on- or off-duty, excluding training or recreational use. The Chief Probation Officer may request the Use of Force Review Board to investigate the circumstances surrounding any use of force incident. The Chief Probation Officer may convene the Use of Force Review Board as necessary. It will be the responsibility of the Assistant Chief Probation Officer or supervisor of the involved employee to notify the Chief Probation Officer of any incidents requiring board review. The involved employee's supervisor will also ensure that all relevant reports, documents and materials are available for consideration and review by the board.

#### 302.2.1 COMPOSITION OF THE BOARD

The Chief Probation Officer should select five Use of Force Review Board members from the following, as appropriate: A designee of the Chief Probation Officer A officer in the involved member's chain of command Training Officer Non-administrative supervisor A peer officer

A sworn peace officer from an outside law enforcement agency Department instructor for the type of weapon, device or technique used

#### 302.2.2 RESPONSIBILITIES OF THE BOARD

The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident. The board members may request further investigation, request reports be submitted for the board's review, call persons to present information and request the involved employee to appear. The involved employee will be notified of the meeting of the board and may choose to have a representative through all phases of the review process. The board does not have the authority to recommend discipline. The Chief Probation Officer will determine whether the board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges the decision not to file criminal charges, or any other action. The board should be provided all relevant available material from these proceedings for its consideration. Absent an express waiver from the employee, no more than two members of the board may ask questions of the involved employee (Government Code § 3303). Other members may provide questions to these members. The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department policies, procedures

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and approved training to those facts. Facts later discovered but unknown to the officer at the time shall neither justify nor call into question an officer's decision regarding the use of force. Any questioning of the involved employee conducted by the board will be in accordance with the department's disciplinary procedures, the Personnel Complaints Policy, the current collective bargaining agreement and any applicable state or federal law. The board shall make one of the following recommended findings: (a) The employee's actions were within department policy and procedure. (b) The employee's actions were in violation of department policy and procedure. A recommended finding requires a majority vote of the board. The board may also recommend additional investigations or reviews, such as disciplinary investigations, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the Chief Probation Officer. The Chief Probation Officer shall review the recommendation, make a final determination as to whether the employee's actions were within policy and procedure and will determine whether any additional actions, investigations or reviews are appropriate. The Chief Probation Officer's final findings will be forwarded to the involved employee's supervisor for review and appropriate action. If the Chief Probation Officer concludes that discipline should be considered, a disciplinary process will be initiated. At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the Chief Probation Officer.

### **302.3 REMOVAL FROM LINE DUTY ASSIGNMENT**

Generally, whenever an employee's actions or use of force in an official capacity, or while using department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The Chief Probation Officer may exercise discretion and choose not to place an employee in an administrative assignment in any case.

## **OLEORESIN CAPSICUM SPRAY**

### **308.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use and maintenance of control devices that are described in this policy.

### **308.2 RESPONSIBILITIES**

### **308.3 RESPONSIBILITIES**

### **308.4 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device and/or technique listed within this section shall be documented pursuant to Policy Manual § 300.4 and 300.5.

#### **308.4.1 OC SPRAY**

Uniformed personnel carrying OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

#### **308.4.2 TREATMENT FOR OC SPRAY EXPOSURE**

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to **cleanse** the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

### **308.5 TRAINING FOR CONTROL DEVICES**

The Training Manager shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- (b) All training and proficiency for control devices will be documented in the officer's training file.
- (c) Officers who fail to demonstrate proficiency with the control device or knowledge of this agency's Use of Force Policy will be provided remedial training. If an officer cannot demonstrate proficiency with a control device or knowledge of this agency's Use of Force Policy after remedial training, the officer will be restricted from carrying the control device and may be subject to discipline.

### **308.6 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy.

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## Disciplinary Policy

### 340.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of this department and are expected of its members pursuant to 1203.6 PC. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning member conduct. Members are also subject to provisions contained throughout this manual as well as any additional guidance on conduct that may be disseminated by the Department or the member's supervisors. Employees should also be familiar with Lassen County Personnel Policy No. 328 and LCMOU Article No. 4.01.

This policy applies to all employees (full- and part-time), reserve officers and volunteers.

### 340.2 DISCIPLINE POLICY

The continued employment of every employee of this department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this policy, whether **on-duty** or off-duty, may be cause for disciplinary action.

An employee's off-duty conduct shall be governed by this policy to the extent that it is related to act(s) that may materially affect or arise from the employee's ability to perform official duties or to the extent that it may be indicative of unfitness for his/her position.

### 340.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or **inaction** that is detrimental to efficient department service:

#### 340.3.1 ATTENDANCE

- (a) Leaving job to which assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness on scheduled day(s) of work.
- (c) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.
- (d) Failure to notify the Department within 24 hours of any change in residence address, home phone number, or marital status.

#### 340.3.2 CONDUCT

- (a) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily injury on another.
- (b) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment without first notifying the Chief Probation Officer of such action.

# Lassen County Probation Department

## Policy Manual

### *Disciplinary Policy*

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- (c) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.
- (d) Engaging in horseplay resulting in injury or property damage or the reasonable possibility thereof.
- (e) Unauthorized possession of, loss of or damage to department property or the property of others, or endangering it through unreasonable carelessness or maliciousness.
- (f) Failure of any employee to promptly and fully report activities on their own part or the part of any other employee where such activities may result in criminal prosecution or discipline under this policy.
- (g) Failure of any employee to promptly and fully report activities that have resulted in official contact by any other law enforcement agency.
- (h) Using or disclosing one's status as an employee with the Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (i) The use of any information, photograph, video or other recording obtained or accessed as a result of employment with the Department for personal or financial gain or without the express authorization of the Chief Probation Officer or a designee may result in discipline under this policy.
- (j) Seeking restraining orders against individuals encountered in the line of duty without the express permission of the Chief Probation Officer.
- (k) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department.
- (l) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (m) Engaging in on-duty sexual relations including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

#### **340.3.3 DISCRIMINATION**

- (a) Discriminate against any person because of age, race, color, creed, religion, sex, sexual orientation, national origin, ancestry, marital status, physical or mental disability or medical condition.

#### **340.3.4 INTOXICANTS**

- (a) Reporting for work or being at work following the use of intoxicants where such use may impair the employee's ability to perform assigned duties or where there is an immediate suspicion of ineffectiveness during public contact resulting from the use of intoxicants
- (b) Unauthorized possession or use of, or attempting to bring intoxicants to the work site, except as authorized in the performance of an official assignment. An employee who is authorized to consume intoxicants is not permitted to do so to such a degree that it may impair on-duty performance
- (c) Reporting for work or being at work following the use of a "controlled substance" or any drug (whether legally prescribed or otherwise) where such use may impair the employee's ability to perform assigned duties
- (d) Unauthorized possession, use of, or attempting to bring controlled substance or other illegal drug to any work site

# Lassen County Probation Department

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### *Disciplinary Policy*

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#### **340.3.5 PERFORMANCE**

- (a) Unauthorized sleeping during on-duty time or assignments.
- (b) Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature as applicable to the nature of the work assigned.
- (c) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.
- (d) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (e) Disobedience or insubordination to constituted authorities, including refusal or deliberate failure to carry out or follow lawful directives and orders from any supervisor or person in a position of authority.
- (f) The wrongful or unlawful exercise of authority on the part of any employee for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (g) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Department or subverts the good order, efficiency and discipline of the Department or which would tend to discredit any member thereof.
- (h) Knowingly making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Department or members thereof.
- (i) The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any department record, book, paper or document.
- (j) Wrongfully loaning, selling, giving away or appropriating any department property for the personal use of the employee or any unauthorized person.
- (k) The unauthorized use of any badge, uniform, identification card or other department equipment or property for personal gain or any other improper purpose.
- (l) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the employee's duties (lawful subpoena fees and authorized work permits excepted).
- (m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. The Department shall make this manual available to all employees. Employees shall familiarize themselves with this manual and be responsible for compliance with each of the policies contained herein.
- (n) Work-related dishonesty, including attempted or actual theft of department property, services or the property of others, or the unauthorized removal or possession of department property or the property of another person.
- (o) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship, whether on- or off-duty.
- (p) Failure to disclose or misrepresenting material facts, or the making of any false or misleading statement on any application, examination form, or other official document, report or form or during the course of any work-related investigation.
- (q) Failure to take reasonable action while on-duty and when required by law, statute, resolution or approved department practices or procedures.

# Lassen County Probation Department

## Policy Manual

### *Disciplinary Policy*

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- (r) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when a department member knew or reasonably should have known of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by the Department.
- (s) Offer or acceptance of a bribe or gratuity.
- (t) Misappropriation or misuse of public funds.
- (u) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (v) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions: while on department premises; at any work site; while on-duty or while in uniform; or while using any department equipment or system. Gambling activity undertaken as part of an officer's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (w) Substantiated, active, continuing association on a personal rather than official basis with a person or persons who engage in or are continuing to engage in serious violations of state or federal laws, where the employee has or reasonably should have knowledge of such criminal activities, except where specifically directed and authorized by the Department.
- (x) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty, on department property or while in any way representing him/herself as a member of this agency, except as expressly authorized by the Chief Probation Officer.
- (y) Engaging in political activities during assigned working hours except as expressly authorized by the Chief Probation Officer.
- (z) Violating any misdemeanor or felony statute.
- (aa) Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.
- (ab) Any failure or refusal of an employee to properly perform the function and duties of an assigned position.
- (ac) Failure to maintain required and current licenses (e.g., driver's license) and certifications (e.g., first aid).
- (ad) Giving false or misleading statements, or misrepresenting or omitting material information to a supervisor, or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

#### **340.3.6 SAFETY**

- (a) Failure to observe posted rules, signs and written or oral safety instructions while on duty and/or within department facilities or to use required protective clothing or equipment.
- (b) Knowingly failing to report any on-the-job or work-related accident or injury within 24 hours.
- (c) Substantiated employee record of unsafe or improper driving habits or actions in the course of employment.

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### *Disciplinary Policy*

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- (d) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement **duties**.
- (e) Any personal action contributing to involvement in a preventable traffic collision, or other unsafe or improper driving habits or actions in the course of employment.
- (f) Violating departmental safety standards or safe working practices.

#### **340.3.7 SECURITY**

- (a) Unauthorized, intentional release of designated confidential information, materials, data, forms or reports

#### **340.3.8 SUPERVISION RESPONSIBILITY**

- (a) Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this department and the actions of all personnel comply with all laws
- (b) Failure of a supervisor to timely report known misconduct of an employee to his or her immediate supervisor or to document such misconduct appropriately or as required by policy
- (c) The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose

#### **340.4 INVESTIGATION OF DISCIPLINARY ALLEGATIONS**

Regardless of the source of an allegation of misconduct, all such matters will be investigated in accordance with Personnel Complaint Procedure Policy Manual § 1020. Pursuant to Government Code §§ 3304(d) and 3508.1, the investigation should be completed within one year of the discovery of the allegation unless such investigation falls within one of the exceptions delineated within those provisions.

##### **340.4.1 WRITTEN REPRIMANDS**

Any employee wishing to formally appeal a written reprimand must follow the Lassen County Personnel Policy No. 329 and the LCMOU Article 4.03.

#### **340.5 POST INVESTIGATION PROCEDURES**

##### **340.5.1 SUPERVISOR RESPONSIBILITIES**

Upon receipt of any **completed** personnel investigation, the Supervisor of the involved employee shall review the entire investigative file, the employee's personnel file and any other relevant materials.

The Supervisor may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

- (a) Prior to forwarding recommendations to the Chief Probation Officer, the Supervisor may return the entire investigation to the assigned detective or supervisor for further investigation or action
- (b) When forwarding any written recommendation to the Chief Probation Officer, the Supervisor shall include all relevant materials supporting the recommendation. Actual copies of an employee's existing personnel file need not be provided and may be incorporated by reference



# Lassen County Probation Department

## Policy Manual

### *Disciplinary Policy*

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#### **340.5.2 RESPONSIBILITIES OF THE CHIEF PROBATION OFFICER**

Upon receipt of any written recommendation for disciplinary action, the Chief Probation Officer shall review the recommendation and all accompanying materials.

The Chief Probation Officer may modify any recommendation and/or may return the file to the Supervisor for further investigation or action.

Once the Chief Probation Officer is satisfied that no further investigation or action is required by staff, the Chief Probation Officer shall determine the amount of discipline, if any, to be recommended.

In the event disciplinary action is recommended, the Chief Probation Officer shall provide the employee with written (*Skelly*) notice of the following information within one year of the date of the discovery of the alleged misconduct (absent an exception set forth in Government Code § 3304(d) or Government Code § 3508.1):

- (a) Specific charges set forth in separate counts, describing the conduct underlying each count.
- (b) A separate recommendation of proposed discipline for each charge.
- (c) A statement that the employee has been provided with or given access to all of the materials considered by the Chief Probation Officer in recommending the proposed discipline.
- (d) An opportunity to respond orally or in writing to the Chief Probation Officer within five days of receiving the *Skelly* notice.
  1. Upon a showing of good cause by the employee, the Chief Probation Officer may grant a **reasonable** extension of time for the employee to respond.
  2. If the employee elects to respond orally, the presentation shall be recorded by the Department. Upon request, the employee shall be provided with a copy of the recording.

#### **340.6 EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief Probation Officer after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) This *Skelly* response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the *Skelly* response is not designed to **accommodate** the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief Probation Officer to consider.
- (d) In the event that the Chief Probation Officer elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief Probation Officer on the limited issues of information raised in any subsequent materials.

# Lassen County Probation Department

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### *Disciplinary Policy*

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- (f) Once the employee has completed his/her *Skelly* response or, if the employee has elected to waive any such response, the Chief Probation Officer shall consider all information received in regard to the recommended discipline. Once the Chief Probation Officer determines that discipline will be imposed, a timely written decision shall be provided to the employee within 30 days, imposing, modifying or rejecting the recommended discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason for termination and the process to receive all remaining fringe and retirement benefits.
- (g) Once the Chief Probation Officer has issued a written decision, the discipline shall become effective.

#### **340.7 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file.

The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline.

#### **340.8 POST SKELLY PROCEDURE**

In situations resulting in the imposition of a suspension, punitive transfer, demotion, termination of a non-probationary employee, the employee shall have the right to an evidentiary appeal of the Chief Probation Officer's imposition of discipline pursuant to the operative Memorandum of Understanding (MOU) and personnel rules.

#### **340.9 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES**

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's personnel file
- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the *Skelly* procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline
- (c) At all times during any investigation of allegations of misconduct involving a probationary officer, such officer shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be construed to establish any sort of property interest in or right to the employee's continuation of employment
- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's personnel file

# Lassen County Probation Department

## Policy Manual

### *Disciplinary Policy*

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- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief Probation Officer



# LASSEN COUNTY PROBATION DEPARTMENT

DATE

**Adult Probation**  
**Physical & Mailing:**  
2950 Riverside Dr. Suite  
101  
Susanville, CA 96130  
Phone# 530-251-8212  
Fax# 530-257-9160

Ian Kysel, Staff Attorney  
American Civil Liberties Union Foundation  
1851 E. First Street, Suite 450  
Santa Ana, California 92705

RE: Public Records Act Request

Dear Mr. Kysel:

In response to your public records act request dated DATE sent to Lassen County Probation:

**Juvenile Probation**  
1415A Chestnut Street  
Susanville, CA 96130  
**Mailing Adr:**  
2950 Riverside Dr.  
Suite 101  
Susanville, CA 96130  
Phone# 530-251-8213  
Fax# 530-257-9160

1. Policies and Procedures. With regard to your first request regarding policies and procedures, we will comply with the request and provide copies of the policies and procedures used at the juvenile detention centers prior to January 1, 2018 and post January 1, 2018. See attached. However please note that some requested documents in this section are not applicable and do not exist.

2. Training materials. Lassen County has no responsive documents.

3. Data. The information you are requesting is specifically exempt under Welfare and Institutions Code section 827. As was determined in the case of *Wescott v. Yuba County* (1980) 104 Cal.App.3d 103, 106, the Court specifically found that WIC section 827 is controlling over the public records act to the extent of any conflict. As such, records contained in the juvenile probation files are not subject to the public records act. Further, the Court also cited to the case of *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 regarding the scope of section 827's confidentiality requirement which determined it also included police reports pertaining to minors who were not involved in juvenile court proceedings but had never been temporarily detained. The court went on to find a very broad definition of those records covered by 827 and found that 827 was written very broadly to include probation records. In fact, WIC section 827 (e) provides for "[f]or purposes of this section a 'juvenile case file' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." As such, the request for data clearly does fall within juvenile case files information and is only available through a request directly to the court.

If you have questions or require more information, please contact me as below.

Thank you,

S. Melyssah Rios  
Senior Deputy County Counsel  
[mrrios@co.lassen.ca.us](mailto:mrrios@co.lassen.ca.us)  
(530) 251-8334

cc: Jennifer Branning, Chief Probation Officer

**Juvenile Detention Facility**  
1415B Chestnut Street  
Susanville, CA 96130  
**Mailing Adr:**  
2950 Riverside Dr.  
Suite 101  
Susanville, CA 96130  
Phone# 530-251-8324  
Fax# 530-251-1891

It is the mission of the Lassen County Probation Department to positively impact the community through commitment to Public Safety our mission statement and evolving best practices.

LASSEN000024



# LASSEN COUNTY PROBATION DEPARTMENT

June 11, 2018

**Adult Probation**

**Physical & Mailing:**  
2950 Riverside Dr. Suite  
101  
Susanville, CA 96130  
Phone# 530-251-8212  
Fax# 530-257-9160

Ian Kysel, Staff Attorney  
American Civil Liberties Union Foundation  
1851 E. First Street, Suite 450  
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RE: Public Records Act Request

**Juvenile Probation**

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Susanville, CA 96130  
**Mailing Adr:**  
2950 Riverside Dr.  
Suite 101  
Susanville, CA 96130  
Phone# 530-251-8213  
Fax# 530-257-9160

Dear Mr. Kysel:

In response to your public records act request dated May 9, 2018 sent to Lassen County Probation:

1. Policies and Procedures. With regard to your first request regarding policies and procedures, we will comply with the request and provide copies of the policies and procedures used at the juvenile detention centers prior to January 1, 2018 and post January 1, 2018. See attached.

2. Training materials. Lassen County has no responsive documents.

2. Data. The information you are requesting is specifically exempt under Welfare and Institutions Code section 827. As was determined in the case of *Wescott v. Yuba County* (1980) 104 Cal.App.3d 103, 106, the Court specifically found that WIC section 827 is controlling over the public records act to the extent of any conflict. As such, records contained in the juvenile probation files are not subject to the public records act. Further, the Court also cited to the case of *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 regarding the scope of section 827's confidentiality requirement which determined it also included police reports pertaining to minors who were not involved in juvenile court proceedings but had never been temporarily detained. The court went on to find a very broad definition of those records covered by 827 and found that 827 was written very broadly to include probation records. In fact, WIC section 827 (e) provides for "[f]or purposes of this section a 'juvenile case file'

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means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.” As such, the request for data clearly does fall within juvenile case files information and is only available through a request directly to the court.

Portions of this request also fall under the investigative records exemption under section 6254(f). Investigative and security records created for law enforcement, correctional, licensing purposes are exempt from disclosure. There are also third party privacy rights to take into consideration – which after a balancing test indicates that the privacy interest of the individuals who may be involved outweigh the public interest in disclosure. Disclosure of such records (if any) would appear to constitute an unwarranted invasion of privacy.

However, please note that some requested documents in this section are not applicable and do not exist.

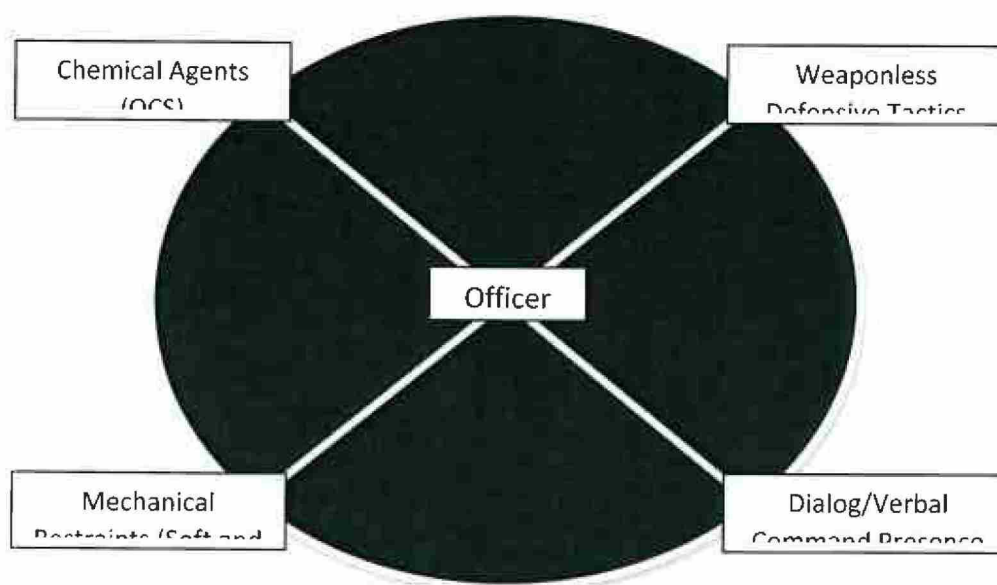
If you have questions or require more information, please contact me as below.

Thank you,

S. Melyssah Rios  
Senior Deputy County Counsel  
[mrios@co.lassen.ca.us](mailto:mrios@co.lassen.ca.us)  
(530) 251-8334

cc: Jennifer Branning, Chief Probation Officer

## The Force Wheel



- J. The burden of justifying the use of physical restraint is on the employee(s) involved and is subject to administrative review. If physical control fails to fall within the parameters outlined and a physical assault has been committed by a staff member on a youth, criminal charges may be filed against the employee(s) involved pursuant to the following:
1. California Penal Code, Section 273d, states: "Any person who lawfully inflicts upon any child any cruel or unusual punishment or injury resulting in a traumatic condition is guilty of a felony and upon conviction thereof will be punished by imprisonment in the State Prison for 2, 4, or 6 years or in the County Jail for not more than one year."
  2. Section 240 of the California Penal Code states, "An assault is an unlawful attempt coupled with the ability to commit a violent injury on the person of another."
  3. Section 241(a) of the California Penal Code states, "An assault is punishable by fine not exceeding \$1,000.00 or by imprisonment in County Jail not exceeding six months or both such fine and imprisonment."
  4. Section 242 of the California Penal Code states, "A battery is any willful and unlawful use of force or violence upon the person of another."

5. Section 243(a) of the California Penal Code states, "A battery is punishable by fine of not exceeding \$2,000.00 or by imprisonment in County Jail not exceeding six months or by both such fine and imprisonment."
  6. California Penal Code, Section 673, states: "It shall be unlawful to use in the reformatories, institutions, jails, state hospitals, or any other state, county, or city institution, any cruel, corporal, or unusual punishment or to inflict any treatment or allow lack of care whatever which would injure or impair the health of a prisoner, inmate, or person confined; and punishment by the use of straight jacket, gag, screws, shower bath, or the trussing up of a prisoner, inmate, or person confined is hereby prohibited. Any person who violates the provisions of this section or aides, abets, or in any way contributes to the violation of this section shall be guilty of a misdemeanor."
  7. **The above mentioned guidelines and laws should not be misinterpreted by staff to mean that physical restraint is not used in this facility. There are times when it is clearly necessary, pursuant to the guidelines outlined herein.**
- K. Employees observing improper restraint will immediately attempt to correct the situation and report the occurrence to the Superintendent and/or the Lead Counselor.
- L. Any staff using or witnessing the use of force, including physical, mechanical and chemical, to control a youth is to submit an SIR. Use of force must be documented by all staff involved.

#### V. Procedures:

- A. **Staff presence:** This is the first option to the maintenance of a sound institutional facility and the prevention of situations requiring physical intervention. It is the effect of staff's honesty, professionalism, integrity, pride and reputation for fairness has on a youth's behavior. These characteristics, to be effective, must be consistently maintained. It must be brought to the supervisor's attention if an employee is witness showing traits that can be a detriment to the well-being of the facility.
- B. **Dialogue and counseling:** This option is the staff's ability to gain control of the situation through the use of verbalized statements. Dialogue properly used on a daily basis can become the only option necessary in most control situations. Dialogue, including counseling efforts, may also be the single most successful option available. Staff need to be aware of the verbal and



nonverbal cues that could result in an escalation of aggression during counseling.

- C. Verbal commands: During volatile situations dialogue/counseling may not be sufficient to control a situation. Staff should give clear, direct orders to youth while employing command presence.
- D. OCS: See policy statement 5-12.
- E. Room Extraction: See policy statement 5-11.

#### **VI. Referrals:**

- A. In any instance when a youth is injured through the use of hands-on, physical or mechanical restraint, a referral will be made to the medical staff.
- B. If as a result of any restraint, the youth appears to have significant injuries that cannot wait until she/he is seen by Doctor Meadows' staff, the Supervisor or Shift Lead will make the proper arrangements and have youth transported to Banner Lassen Hospital immediately.
- C. Whether injuries are apparent or not, when physical force is used, the youth must be cleared by medical staff during the next sick call.

#### **VII. Documentation:**

- A. The timely submittal of a comprehensive and structured incident report (SIR) is critical. All staff involved with the incident will prepare an incident report before they end their watch and before departing the facility.
- B. The body of the SIR should contain a clear and factual narrative of the events listing times and names of all involved, youth(s) and staff.
- C. A detailed description of why and how force was needed and used and aftercare and/or medical referral/treatment/notifications. The documentation needed will include, the names of the techniques employed during the incident and the results.

#### **VIII. Penal Code Use of Force Authorities**

- 835: Person may be subject to restraint.
- 835a: Reasonable force to effect arrest.
- 834a: Duty of person to refrain from using force /weapon to resist arrest.
- 854: Pursue and retake prisoner.
- 831.5(f): Custodial officer may use reasonable force.
- 831.6(d): Transportation officer may use reasonable force.

- 846: Disarm prisoner, take weapons.
- 836.5: No public officer or employee shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or overcome resistance.