

STATE MARSHAL COMMISSION

POLICY STATEMENT & IMPLEMENTING PROCEDURES FOR USE OF FORCE BY STATE MARSHALS EXERCISING THE POWERS OF A PEACE OFFICER

PURPOSE:

When acting in the course of their official duties, state marshals may use physical force as provided in chapters 950 and 951 of the General Statutes and, in doing so, are considered peace officers, as defined by Connecticut General Statutes § 53a-3 (9). Accordingly, marshals have the legal authority to use reasonable force in the execution of their official duties and responsibilities. The use of force is a power that must be exercised in accordance with both law and policy. The law recognizes that, when arresting a person on a civil capias warrant, one shall use no more force than is objectively reasonable to overcome any resistance that may be offered, and with which to defend oneself, or others, from harm. The reasonableness of a particular use of force will be judged from the perspective of a reasonable marshal on the scene, taking into account all of the facts and circumstances with which that marshal was confronted. State marshals who use excessive force in light of this standard violate the law. Whether or not the force used by a marshal is found to be legally excessive, a marshal's actions may still violate this policy.

State marshals who use force in the performance of their duties must answer for their actions and the consequences to the law and to the State Marshal Commission. Their legal responsibility may become a question for the courts and for the Commission. Accordingly, this Use of Force Policy applies to any state marshal who uses force or carries a firearm during the course of his or her official duties, and the failure to adhere to any provisions of this policy may subject the marshal to discipline.

It is important that each marshal be familiar with Attorney General Formal Opinion 2001-017 (on peace officer status/criminal warrants) and Attorney General Formal Opinion 2012-03. The latter has sections on the law governing entering homes only with consent and how to interact with individuals who are not the subject of capias warrants. The State Marshal Commission does not certify or authorize state marshals to enforce the criminal laws of the State of Connecticut.

POLICY:

A. GENERAL REQUIREMENTS FOR STATE MARSHALS

1. Knowledge of the law must be current. State marshals should be knowledgeable about state and federal law, as well as State Marshal Commission policy, concerning the application of physical force.

2. Do not exceed legal authority. State marshals shall not exceed the scope and authority of applicable laws and policies relevant to the use of force.
3. Duty to carry a badge and state marshal identification. State marshals shall carry a badge and identification card at all times when executing their official duties.

B. USE OF PHYSICAL FORCE

1. Appropriate uses of physical force (General Statutes § 53a-22).
 - a. A state marshal acting in the capacity of a peace officer is justified in using physical force upon another person when and to the extent that he or she reasonably believes such to be necessary to:
 - i. Effect a civil capias arrest or prevent the escape from custody of a person whom he or she reasonably believes to be the subject of the capias warrant unless he or she knows that the arrest or custody is unauthorized; or
 - ii. Defend himself or herself or a third person from the use of imminent use of physical force while effecting or attempting to effect a civil capias arrest or while preventing or attempting to prevent an escape during such arrest.
 - b. A state marshal acting in the capacity of a peace officer while effecting a civil capias arrest pursuant to a warrant or preventing an escape from custody is justified in using physical force unless such a warrant is invalid and is known by such officer to be invalid.
2. Level of force. State marshals must utilize the lowest level of physical force necessary to achieve a lawful purpose. State marshals are never justified in using physical force for personal motives or revenge or to punish or retaliate for physical or verbal abuse.
3. Physical force.
 - a. The State Marshal Commission shall construe the use of pepper spray, batons, handcuffs, conducted energy weapons or firearms, when employed by a marshal, as a use of physical force.

C. USE OF DEADLY PHYSICAL FORCE

1. Definition of deadly physical force (General Statutes § 53a-3 (5)).
 - a. Deadly physical force means physical force which can be reasonably expected to cause death or serious physical injury. This includes but is not limited to the intentional discharge of a firearm.
2. When it is acceptable to use deadly physical force (General Statutes § 53a-22 (c)). A state marshal acting in the capacity of a peace officer is justified in using deadly physical force upon another person only when he or she reasonably

believes such to be necessary to defend himself or herself or a third person from the use or imminent use of deadly physical force.

D. STANDARD FOR EVALUATING THE USE OF FORCE

1. Legal standard for evaluating uses of physical force. The reasonableness of a use of force under this Use of Force Policy will be guided by the standards established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). The reasonableness of a particular use of force must be judged from the perspective of a reasonable marshal on the scene, in light of the facts and circumstances confronting him or her. The inquiry into the decision to use physical force is objective.
 - a. Important factors considered when determining the reasonableness of a particular use of force are:
 - i. The severity of the situation at issue;
 - ii. Whether the person against whom the force is used poses an immediate threat to the safety of the marshal or others;
 - iii. Whether such person is actively resisting a civil capias arrest or attempting to evade arrest by flight; and
 - iv. Any other fact or circumstance which reasonably bears upon the decision to use force.
 - b. The question is whether the “totality of the circumstances” justifies a particular use of force applied in the situation. The most important factor is whether the person poses an immediate threat to the safety of the marshal or others.
 - c. Under the Supreme Court’s standard in *Graham*, a state marshal’s actual intent is irrelevant as to whether a use of force is excessive. “An officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional.” *Graham*, 490 U.S. at 397.
2. State marshals may not use deadly physical force in the following situations:
 - a. Where the person is unarmed, non-dangerous, and poses no immediate threat to the marshal or others.
 - b. To prevent the escape of a person wanted on a civil arrest warrant.
3. Warnings required before using deadly force.
 - a. Before using deadly force, a verbal warning shall be given whenever it is feasible and where doing so will not unreasonably increase the risk or injury to the marshal or any other person.
 - b. Warning shots are substantial danger to the marshal and citizens alike and are not authorized by the State Marshal Commission.
4. Shooting in the area of bystanders. In the event that firing a weapon is likely to endanger a third party, a marshal shall not discharge his or her weapon.

5. Shooting at/from motor vehicles. Firing at a motor vehicle in motion or from a motor vehicle in motion is prohibited unless the intended target is using deadly force against the marshal.

E. MEDICAL AID

1. When a state marshal must render medical aid.
 - a. Whenever an injury results from a state marshal's use of force, medical aid shall be rendered or secured as soon as possible.
 - b. When medical aid has been rendered to a person because of a marshal's use of force, the marshal shall notify the State Marshal Commission as soon as possible but in no event later than seventy-two (72) hours, on a form prescribed by the Commission.

F. DOCUMENTING THE USE OF PHYSICAL FORCE

1. Written reporting requirement. A written report regarding a use of force shall be provided to the State Marshal Commission within seventy-two (72) hours, on a form prescribed by the Commission, whenever a state marshal:
 - a. For other than training or recreational purposes, discharges his or her firearm, including an accidental discharge, or draws and points his or her firearm at someone or something;
 - b. Takes action that results in or is alleged to have resulted in the injury or death of another person; or
 - c. Uses physical force in the discharge of his or her official duties except as described below in subsection 2.
2. Reportable uses of force do not include: Reasonable holding, resisting, or positioning of an individual necessary to apply handcuffs and other restraints; or to effect compliance with a lawful command.

G. FIREARMS POLICY

1. Requirements for carrying a firearm. State marshals are authorized to carry firearms in the course of their official duties only under the following circumstances.
 - a. The state marshal has successfully completed, at his or her own cost, the following Police Officer Standards and Training Council (POSTC) approved basic recruit or refresher training/certification requirements, as appropriate, at the POSTC Connecticut Police Academy, subject to any prerequisites that may be required by POSTC:
 - Firearms training course within the preceding year;
 - Practical Shooting Decisions training course within the preceding year;
 - Use of Force training course within the preceding three years;

- Civil Liability training course within the preceding three years;
 - Defensive Tactics training course within the preceding three years;
 - Less Than Lethal Force training course within the preceding three years;
 - Less Than Lethal Force (Baton) training course within the preceding three years;
 - Less Than Lethal Force (OC) training course within the preceding three years; and
 - Emergency Medical Aid training course, as specified by POSTC, within the preceding three years.
- b. The state marshal possesses a valid Connecticut permit to carry pistols or revolvers.
- c. The state marshal has successfully completed a law enforcement oriented psychological examination by a licensed psychiatrist or clinical psychologist.
- d. The State Marshal Commission has reviewed the request at a Commission meeting, voted by a majority vote at said meeting to approve the request, and the state marshal has received written approval from the Commission to carry a firearm in the course of his or her official duties. In considering the request to carry a firearm during the state marshal's official duties, the Commission may consider:
- i. Any written request or evidence submitted by the state marshal;
 - ii. The Psychological Examination Report issued pursuant to subdivision c of this section;
 - iii. The state marshal's disciplinary history before the Commission; and
 - iv. Any other relevant information before the Commission.
- e. At all times while carrying a firearm during the course of his or her official duties, a state marshal shall also carry on his or her person a less-than-lethal option such as a baton and/or pepper spray consistent with this policy.
- f. No state marshal can carry a firearm while making arrests under *capias* warrants unless he or she has completed the firearm policy procedures noted herein and is on the *Capias* Unit.
- g. The state marshal shall provide the State Marshal Commission with proof of insurance consistent with Connecticut General Statutes § 6-30a (a) in an amount of not less than one million dollars (\$1,000,000.00) which names the state of Connecticut, the Department of Administrative Services, the State Marshal Commission and their officers, agents and employees as additional insureds. Such insurance policy shall protect and indemnify the insured from liability, to the limits of the policy, for all claims, including those involving use of a firearm, related to the use of force by a state marshal alleged to have been performed in the course of his or her official duties, including but not limited to, claims of supervisory liability and wrongful death under Connecticut common law and violations of a claimant's civil rights under federal law.

2. Review of permission to carry a firearm.
 - a. The State Marshal Commission reserves the right, at any time, to review permission for a state marshal to carry a firearm while conducting his or her official duties. This includes where a marshal has permission to carry as a member of the Capias Unit and membership on the Capias Unit has lapsed for any reason or is revoked by the Commission.
 - b. The State Marshal Commission reserves the right, at any time, to require that a state marshal successfully complete again any of the above conditions articulated in subsection 1 of this section in order to continue his or her permission to carry a firearm while conducting his or her official duties.

3. State marshals may only use authorized firearms and ammunition.
 - a. State marshals are authorized to carry, in the course of their official duties, any semiautomatic pistol of any caliber that is routinely and customarily used in the police environment by departments in the State of Connecticut. However, state marshals must also comply with General Statutes § 29-38m on the purchase of ammunition and General Statutes § 53-202w on the 10 round limit for large capacity magazines and are subject to procedural and penalty time frames set forth in General Statutes § 53-202x.
 - b. Each state marshal shall provide the State Marshal Commission with a written certificate indicating that his or her approved firearm has been inspected by a qualified armorer within the preceding year, is in good working order, and is operating within the manufacturer's specifications.
 - c. State marshals shall only carry factory-loaded ammunition manufactured by a recognized commercial manufacture of ammunition, suitable to the firearm type being carried by the state marshal. Bullet weight shall be consistent with firearm type and caliber of the firearm being carried by the state marshal. However, state marshals must also comply with General Statutes § 29-38 m on the purchase of ammunition, and General Statutes § 53-202w on the 10 round limit for large capacity magazines and are subject to procedural and penalty time frames set forth in General Statutes § 53-202x.

4. State marshals shall carry firearms discreetly.
 - a. State marshals shall carry firearms in such a manner so as not to unnecessarily cause public alarm.
 - b. State marshals in possession of a firearm during the course of their official duties shall, at all times, display their badges in plain view or otherwise conspicuously identify themselves as a state marshals.

5. Revocation of firearms authorization.
 - a. State marshals who fail to demonstrate compliance with this section, or any other provisions of this Use of Force Policy, who are arrested for a felony, provided the decision will be reviewed upon resolution of the

criminal matter, or who do not otherwise comply with State Marshal Commission Regulations, including § 6-38b-6 et. seq., or state or federal law may have their authorization to carry a firearm revoked, in addition to any other remedial action deemed appropriate by the State Marshal Commission.

- b. A state marshal whose official actions may have caused death or serious physical injury to another person through the use of his or her firearm shall have his or her authorization to carry a firearm or other authorized weapons administratively suspended, and may have his or her state marshal appointment administratively suspended, pending the outcome of an investigation conducted pursuant to State Marshal Commission Regulations §§ 6-38b-7 and 8.

6. Medical Attention.

- a. State marshals shall secure immediate, qualified medical attention, such as an ambulance or paramedic, for any person who is injured or in distress from any action which may be the direct or indirect result of a marshal's use of force.

7. Firearm safety.

- a. Storage of firearms (General Statutes § 29-37i and General Statutes § 53a-217a). Storage of firearms must be consistent with General Statutes § 29-37i and shall not be stored negligently in violation of General Statutes § 53a-217a.
- b. Firearms and vehicles.
 - i. State marshals shall not leave firearms unattended in unlocked vehicles.
 - ii. Whenever a vehicle is parked or left unattended and the firearm is left in the vehicle, the state marshal must unload the firearm, place the firearm in the vehicle's trunk in a locked box, and lock the vehicle.
 - iii. State marshals must keep their firearms out of the reach of a vehicle's passengers at all times.

H. CAPIAS UNIT

1. Requirements for assignment to the Capias Unit. State marshals who wish to be assigned to the Capias Unit shall fulfill the following requirements:
 - a. The state marshal has successfully completed the following Police Officer Standards and Training Council (POSTC) approved basic recruit or refresher training/certification requirements, as appropriate, at the POSTC Connecticut Police Academy, subject to any prerequisites that may be required by POSTC:
 - Use of Force training course within the preceding three years;
 - Civil Liability training course within the preceding three years;
 - Defensive Tactics training course within the preceding three years;

- Handcuffing Techniques training course within the preceding three years;
 - Less Than Lethal Force (Baton) Techniques training course within the preceding three years;
 - Less Than Lethal Force (OC) training course within the preceding three years;
 - Officer Safety/Mechanics of Arrest, Restraint, and Control training course within the preceding three years; and
 - Emergency Medical Aid training course, as specified by POSTC, within the preceding three years.
- b. The state marshal shall provide the State Marshal Commission with proof of an insurance policy consistent with Connecticut General Statutes § 6-30a (a) in an amount of not less than one million dollars (\$1,000,000.00) which names the state of Connecticut, the Department of Administrative Services, the State Marshal Commission and their officers, agents and employees as additional insureds. Such insurance policy shall protect and indemnify the insureds from liability, to the limits of the policy, for all claims related to the use of force by a state marshal alleged to have been performed in the course of his official duties, including, but not limited to, claims of supervisory liability and wrongful death under Connecticut common law, and violations of a claimant's civil rights under federal law.
- c. While engaged in the service of capias warrants, a state marshal cannot use or carry use of force equipment (firearms, batons, pepper spray or handcuffs) unless he or she is on the Capias Unit and has complied with the applicable firearm and capias protocols and training as set forth in this Use of Force Policy. State marshals who are not on the Capias Unit can still execute a capias without use of force equipment (firearms, batons, pepper spray, handcuffs) when the subject of the capias warrant voluntarily cooperates in the execution of the capias and no actions are needed beyond the service of the warrant and the consensual actions of the subject as a result of the execution.

I. PEPPER SPRAY

1. Authorization for carrying pepper spray is required. Only state marshals who have completed a POSTC-approved Less than Lethal (OC) training course under the supervision of a Connecticut POST certified law enforcement instructor within the preceding three years and have a certificate on file with the State Marshal Commission are authorized to carry pepper spray during their official duties as a state marshal.
2. Purpose of pepper spray. Pepper spray is intended to restrain and control a hostile subject with minimum physical contact between the state marshal and the subject. The speed and effectiveness of the pepper spray reduces the need for an escalation to the use of traumatic weapons.

3. State marshals may only use authorized pepper spray. State marshals may utilize Oleoresin Capsicum Aerosol Spray (OC or pepper spray) consistent with that utilized by the POST certified law enforcement instructor at the required training course.
4. When to use pepper spray.
 - a. Pepper spray may be used whenever a subject is combative, assumes a fight stance, or indicates aggressive intent by other means.
 - b. Other factors to be considered when using pepper spray are:
 - i. The potential injury to state marshal and/or subject;
 - ii. The area where the pepper spray shall be employed;
 - iii. The potential exposure or impact on uninvolved persons; and
 - iv. The presence of a physical condition, medical condition or apparent psychiatric condition known to the state marshal utilizing the pepper spray which may contraindicate its use (e.g., heart or respiratory condition, cationic state, panic disorder, or irregular breathing).
5. After using pepper spray.
 - a. The state marshal should alleviate any anxiety the subject may have by assuring him or her that the effects of the spray are temporary and symptoms should disappear within 15-45 minutes. If significant symptoms last longer than 45 minutes, especially in the eyes or respiratory system, the state marshal must seek prompt medical attention for the subject.
 - b. The state marshal should, whenever possible, remove the subject promptly from the contaminated area
 - c. The state marshal must monitor the subject's physical condition by asking the subject whether he or she has a respiratory condition such as asthma, bronchitis or emphysema.
 - d. The state marshal must summon emergency medical assistance immediately if a person appears to have significant difficulty breathing, appears unconscious, or requests medical attention following the administration of pepper spray.
 - e. If the person will be detained by an authorized Capias Unit state marshal under a civil capias warrant, the marshal should do the following after using pepper spray:
 - i. Immobilize the subject by handcuffing;
 - ii. If the subject is wet from spraying, allow a few minutes for the spray to dry before transporting, whenever possible;
 - iii. If possible, allow the subject to wash with soap and water as soon as is practical; and
 - iv. Inform any monitoring personnel, if applicable, that the subject has been sprayed.

J. BATONS

1. Authorization for carrying a baton is required. Only state marshals who have completed a POSTC-approved Less Than Lethal Force (Baton) training course under the supervision of a Connecticut POST certified law enforcement instructor within the preceding three years and have a certificate on file with the State Marshal Commission are authorized to carry and utilize batons during their official duties as a state marshal.

K. HANDCUFFS

1. Authorization for carrying handcuffs is required. Only state marshals who are on the Capias Unit are authorized to carry and utilize handcuffs during their official duties as a state marshal. Such marshals are only permitted to utilize handcuffs while making an arrest under a civil capias warrant.
2. Use of handcuffs.
 - a. State marshals shall handcuff all suspects behind their backs, if possible.
 - b. Persons with known medical conditions, or whose physical stature prevents them from being handcuffed behind their backs without unreasonably inflicting severe pain or injury may, at the discretion of the state marshal, be handcuffed in front.