



**SAN MATEO COUNTY
PROBATION DEPARTMENT
INSTITUTIONS SERVICES MANUAL**

**ARTICLE 5
Classification and Separation
§1357**

Topic Use of Force

Policy The purpose of this policy is to establish guidelines governing application of force, limitations on the use of force, supervisor's responsibilities, and reporting requirements for incidents involving the application of force (15 CCR 1357).

Institutions staff may use force as reasonably appears necessary in the performance of their duties, but excessive force shall not be used. Institutions staff must use only that amount of force that appears reasonably necessary under the circumstances in order to gain control of the youth; protect and ensure the safety of youth, staff, and others; prevent serious property damage; prevent escape; obtain compliance with facility rules and staff orders; or ensure the institution's security and good order, or for other lawful purposes.

The Department provides tools, and training on techniques to use when responding to resistance and violent encounters. While various degrees of force exist, each Institutions staff is expected to use only that degree of force that is reasonable under the circumstances to successfully accomplish the legitimate and lawful purpose in accordance with this policy.

Circumstances may arise in which sworn staff may reasonably believe it would be impractical or ineffective to use any of the standard tools, weapons, or methods provided by the Department. Institutions staff may find it more effective or practical to improvise their response to rapidly unfolding conditions, they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate government purpose.

In any review of an incident to determine whether a particular use of force conforms to this policy, the Department will evaluate the apparent need for an application of force, the relationship between that need and the amount of force used, the threat reasonably perceived, any efforts made to temper the severity of a forceful response, and the extent of any injury to the youth.

Prior to resorting to the use of force, sworn staff should, when practicable, attempt verbal persuasion, orders, or other tactics to avoid or mitigate the need for forceful action (15 CCR 1357).

Force shall never be used as punishment, retaliation, discipline, or treatment (15 CCR 1357).

Medical checks will be performed by a qualified health care professional on all youth who have been subjected to force as soon as practicable regardless of apparent injury. If no qualified health care professional is available, the youth shall be transported to the designated health care facility.

Institutions staff will fill out a Mental Health Memorandum and contact Mental Health staff to check in with the youth who have been subjected to force as soon as practicable regardless of apparent injury.

Nothing in this policy is intended to require that force options be used in a particular order. However, the force option used must be objectively reasonable under the circumstances to accomplish a lawful objective.

1357.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a Institutions staff 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) The apparent immediacy and severity of the threat to staff or others (Penal Code § 835a).
- b) The conduct is perceived as an immediate threat by the Institutions staff.
- c) Institution's staff/youth physical factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of Institutions staff available versus youth).
- d) The conduct of the staff involved. (Penal Code § 835a).
- e) The effects of drugs or alcohol on the youth.
- f) Youth's apparent mental state or capacity (Penal Code § 835a).
- g) The youth's apparent ability to understand and comply with Institutions staff commands (Penal Code § 835a).
- h) Proximity of weapons or dangerous improvised devices.
- i) The degree to which the youth has been effectively restrained and the youth's ability to resist despite being restrained.
- j) The availability of other reasonable and feasible methods to resolve the situation without using force, including de-escalation (Penal Code § 835a).
- k) The seriousness of the suspected offense or reason for contact with the youth.
- l) Training and experience of the Institutions staff.
- m) Potential for injury to Institutions staff, youth, and others.
- n) Whether the youth appear to be resisting or is attacking the staff or others.
- o) The risk and reasonably foreseeable consequences of escape.
- p) The apparent need for immediate control of the youth or a prompt resolution of the situation to maintain or restore order.
- q) Whether the conduct of the youth being confronted no longer reasonably appears to pose an imminent threat to the Institutions staff or others.
- r) Awareness of the youth's propensity for violence.
- s) The feasibility of giving the youth a warning prior to using force.
- t) Any environmental factors or property damage.

u) Any other exigent circumstances.

1357.2 DUTY TO INTERCEDE

Any Institutions staff present and observing another staff member using force that is clearly not within this policy is expected, when reasonable to do so, to intercede to prevent the use of such force as soon as practicable and in all cases report the use promptly to a supervisor (15 CCR1357).

HEALTH CARE

The Superintendent should include the Medical Director in developing policies and procedures related to the use of force.

A youth who has been the subject of a use of force should be seen by medical and mental health staff, even in cases where no emergency care appears necessary (15 CCR 1357).

LIMITATIONS

Any immediate means of overcoming resistance and controlling the threat of imminent harm to any person including the youth should only be applied when deemed reasonable and necessary (15 CCR 1302; 15 CCR 1357).

A pregnant youth in labor, during delivery, or in recovery after delivery, shall not be restrained by the wrists, ankles, or both, unless deemed necessary for the safety and security of the youth, the staff, or the public.

Penal Code Section 6030(f) and Welfare and Institutions Code Section 222.

1357.3 IMMEDIATE AND CALCULATED USE OF FORCE

An immediate use of force occurs when force is used to respond without delay to a situation or circumstance that constitutes an imminent threat to security or safety. For example, an immediate use of force by Institutions staff may be necessary to stop a youth from inflicting life-threatening self-injuries or to stop an assault on any other person. The destruction of government property may require the immediate use of force by Institutions staff in some circumstances.

A verbal warning should be given before an immediate use of force unless the circumstances preclude it.

If there is no need for immediate action, Institutions staff should attempt to resolve the situation through voluntary compliance or, if it reasonably appears necessary, the calculated use of force. A calculated use of force is called for when a youth's presence or conduct poses a threat to safety or security and the youth is in an area that can be controlled or isolated, or when time and circumstances permit advance planning, staffing, and organization.

The assistance of available non-sworn staff (e.g., psychologists, Mental Health counselors) should be considered when attempting to resolve a situation without confrontation.

Whenever possible, an Institutions Services Manager (ISM) or the On-Duty Officer of the day (OD) should be present in any situation involving the calculated use of force. The staff shall notify the ISM/OD for approval and consultation prior to any calculated use of force action.

1357.4 CONFRONTATION AVOIDANCE PROCEDURES

Prior to any calculated use of force, Institutions staff shall confer with the appropriate persons to gather pertinent information about the youth and the immediate situation. Based on the available information, the ISM/OD should direct Institutions staff to attempt to obtain the youth's voluntary cooperation and consider other available options before determining whether force is necessary.

The ISM/OD should consider including the following persons and resources in the process:

- a) Mental health specialist
- b) Qualified health care professional
- c) Chaplain
- d) Unit logbook and youth's juvenile hall file
- e) Assigned Deputy Probation Officer
- f) Any other relevant resources

Regardless of whether discussions with any of the above resources are accomplished by telephone or in person, the purpose is to gather information to assist in developing a plan of action, such as the youth's medical/mental history (e.g., asthma or other breathing related illness, hypoglycemia, diabetes), any recent incident reports, informational or situations that may be contributing to the youth's present condition (e.g., pending criminal prosecution or sentencing, recent death of a loved one, divorce). The assessment should include discussions with staff who are familiar with the youth's background, criminal charges, and present status. This may provide insight into the cause of the youth's immediate agitation. It also may identify other staff who have a rapport with the youth and could possibly resolve the incident peacefully, without the use of force.

If force is determined to be necessary and other means of gaining control of a youth are deemed inappropriate or ineffective, then the appropriate use of force technique should be used to control the youth and to apply restraints, if required.

Consideration should also be given to preventing exposure to communicable diseases in calculated use of force situations, and to ensuring that medical services personnel are available.

1357.5 REPORTING THE USE OF FORCE

Every use of force is an incident that shall be reported on the appropriate report form (15 CCR 1362). Any Institutions staff who uses force and any staff directly observing the incident shall make a verbal report to a supervisor as soon as practicable and shall submit the appropriate documentation prior to going off-duty, unless directed otherwise by an ISM/OD

The documentation will reflect the actions and responses of each staff participating in the incident, as witnessed by the reporting staff member.

The report should include (15 CCR 1357):

- a) A clear, detailed description of the incident, including date and time any application of weapons or restraints.
- b) The identity of all individuals involved in the incident (e.g., youth, staff, others) to include any individuals consulted.
- c) The youth's Deputy Probation Officer.
- d) The specific reasons for the application of force.
- e) The threat as perceived by the staff involved.
- f) Efforts made to temper the severity of a forceful response, and if there were none, the reasons why.
- g) Description of any injuries to anyone involved in the incident, including the result of any medical checks that show the presence or absence of injury.
- h) Documentation regarding the use of force including chemical agents (e.g., type of chemical agents deployed, decontamination procedures, notification to medical staff and parents/guardians) (15 CCR 1357).
- i) A notation of Behavioral Health Recovery Services (BHRS) Mental Health referrals made to assist the youth with problem issues. A notation of youth being seen and cleared by Medical.
- j) A notation of parent/guardian notification.
- k) Debrief of incident with the staff and youth.

A video recording is required for all calculated use of force incidents and should include the introduction of all staff participating in the process. The recording and documentation will be part of the investigation package as required and approved by the Deputy Chief of Administration or authorized designee. The ISM/OD should ensure the recording is properly processed for retention and a copy is forwarded with the incident report to the Deputy Chief of Administration or authorized designee.

The ISM/OD responsible for gathering the reports may allow a reasonable delay in preparation of a report in consideration of the immediate psychological and/or physical condition of the involved Institutions staff.

Absent ISM/OD approval, written reports on the use of force should be submitted by the end of the shift (15 CCR 1362).

ISM/OD should ensure that a written report of all use of force incidents that resulted in an injury, a serious threat of injury, or death is prepared and submitted to the Superintendent by the end of the shift (15 CCR 1362).

In addition to the notification of medical and mental health staff, the ISM/OD should ensure the parent or legal guardian of the youth is informed of any use of force.

1357.6 Institution Services Manager/Officer of the Day (ISM/OD) RESPONSIBILITY

When an ISM/OD is able to respond to an incident in which there has been a reported use of force, the ISM/OD is expected to (15 CCR 1357):

- a) Obtain the basic facts from the involved staff. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b) In cases involving the use of deadly force or when serious injury has resulted, obtain an oral statement from the staff. The statement should be restricted to concerns of anything that may present an ongoing threat to the security of the facility or public safety.
- c) Take appropriate measures to address safety concerns, document the oral statement into the Incident Report, review and download any video recording of the incident, and submit all documentation to the Superintendent and the Deputy Chief of Administration or authorized designee.
- d) Ensure that the appropriate investigative authority is notified, if required.
- e) Ensure that any youth involved in a use of force situation are examined by medical staff, regardless of whether any injuries are reported or detectable, and afforded medical treatment as appropriate. Ensure all staff injuries are reported via Worker's Compensation procedures.
- f) Contact mental health
- g) Attempt to notify Parent/Legal Guardian.
- h) Separately obtain an interview with all youth upon whom force was used. If this interview is conducted without the person having voluntarily waived Miranda rights, the ISM/OD should ensure the following in the event a report is submitted to a prosecuting authority:
 - a. The fact that an interview was conducted by an ISM/OD and retained for the use of force review should be clearly documented.
 - b. The content of the interview should not be summarized or included in any related reports submitted to the prosecuting authority.
- i) All interviews should be attached to the Incident Report.
- j) Once any initial medical assessment or first aid has been completed, 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 into the youth Probation Information Management System (PIMS) file.

- k) Identify any witnesses not already included in related report.
- l) Review and approve all related reports.

If the ISM/OD determines that any application of force was not within policy, the ISM/OD should detail those findings in a separate report and forward the report to the Superintendent and the Deputy Chief of Administration or authorized designee. If there is an injury or complaint of an injury, the assigned supervisor should also prepare a risk management report and should submit all reports to the Superintendent.

In the event that the ISM/OD believes the incident may give rise to civil litigation, a separate claim form should be completed and routed to the Superintendent and the Deputy Chief of Administration or their authorized designee.

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

If a youth has made an allegation of an unnecessary or excessive use of force, the interview shall be documented on the appropriate report form and forwarded to the Superintendent and the Deputy Chief of Administration or authorized designee.

1357.7 GRIEVANCES

ISM/OD responding to, or reviewing, a reported use of force should provide the involved youth a grievance form and explain the process as needed (15 CCR 1357). Grievances alleging excessive force should be referred to the Superintendent and the Deputy Chief of Administration or authorized designee.

1357.8 USE OF DEADLY FORCE

If an objectively reasonable Institutions staff would consider it safe and feasible to do so under the totality of the circumstances, Institutions staff Supervisors should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force (Penal Code § 835a).

An Institutions staff may use deadly force to protect the staff, youth, or others from what the Institutions staff reasonably believes is an imminent threat of death or serious bodily injury to the staff, youth, or another person. (Penal Code § 835a).

Institutions staff shall not use deadly force against a youth based on the danger that the youth pose to themselves, if an objectively reasonable Institutions staff would believe the youth does not pose an imminent threat of death or serious bodily injury to the Institutions staff or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable Institution staff in the same situation would believe that a

youth has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the staff, youth, or another person. An imminent threat is one that from appearances is reasonably believed to require instant response. (Penal Code § 835a).

Institutions staff who intentionally or accidentally uses deadly force, whether on- or off-duty, shall ensure that an ISM/OD is notified of the incident without delay.

The ISM/OD shall ensure that the chain of command is notified and all necessary health and safety, medical, and security measures are initiated.

The ISM/OD shall promptly notify the Superintendent of any incident involving an Institutions staff employing deadly force, or any incident where a death or serious bodily injury may have been caused by a Institutions staff member.

1357.9 USE OF FORCE REVIEW

The ISM/OD shall review all related reports of use of force incidents occurring during their shift. The review is to determine whether the use of force complied with policy, procedure, and applicable law, and to determine if follow-up action or investigation is necessary. The ISM/OD should also ensure that a review packet containing a copy of all pertinent reports and materials is prepared and forwarded for Administrative review (15 CCR 1357).

The ISM/OD should also make recommendations for mitigating the effects of trauma that may have been experienced by staff and/or youth involved as appropriate (15 CCR 1357).

1357.10 TRAINING

The Superintendent shall work with the Training Manager to ensure legal and facility training mandates are met. This training shall include the following (15 CCR 1322; 15 CCR 1357):

- (a) Use of force
- (b) Arrest and Control for Institutions
- (c) Self-defense
- (d) Confrontation avoidance procedures:
 - 1. Communication techniques
 - 2. De-escalation techniques
 - 3. Communicating and interacting with individuals with mental health issues
 - 4. Interacting with youth
 - 5. Application of restraints
- (e) Room removal techniques
- (f) Use of force team techniques
- (g) General restraint training (soft and hard restraints)
- (h) Reporting procedures and chain of command
- (i) Any additional state-mandated training (e.g., medical conditions that would affect the application of force, instruction on constitutional limitations) (15 CCR 1357)

- (j) Options when a particular use of force is ineffective
- (k) Specific use of force options that may or may not be used in the facility
- (l) Training also includes scenarios for team development, use of specialized equipment, documentation procedures, and review of policies and procedures.

1357.10.1 TRAINING FOR CONTROL TECHNIQUES

The certified instructors shall ensure that all Institutions staff who are authorized to use control techniques have been properly trained to carry out the specific control techniques and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified control- technique tactics instructor.
- (b) All training and proficiency for control techniques will be documented in the Institutions staff training file.
- (c) Institutions staff who fail to demonstrate proficiency with the control techniques or knowledge of this facility's Use of Force Policy will be retrained until demonstrating proficiency. If a Institutions staff cannot demonstrate proficiency and knowledge of this facility's Use of Force Policy after remedial training, the Institutions staff may be subject to discipline.

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