

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION)	No. 2023 - <u>176</u>
§ 5-305: USE OF FORCE)	(Affecting Administrative
)	Order No. 2020-05)
)	

Pursuant to the Arizona Code of Judicial Administration (ACJA) § 1-201(E), the Chief Justice may adopt technical changes in existing administrative code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the amendments to ACJA § 5-305 as indicated on the attached document are adopted. All other provisions of § 5-305 remain unchanged and in effect.

Dated this 1st day of November, 2023.

ROBERT BRUTINEL
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 3: Court Security
Section: 5-305: Use of Force

A. Definitions. The following definitions apply to this section:

* * *

“Impact weapon” means an approved expandable baton or other authorized equipment, including a flashlight or other device, that is used to control a subject’s actions, to defend against an attack, or to deliver a stunning blow.

* * *

B. and C. [No change]

D. Use of Force.

~~1.~~ ~~Off~~Officers shall base use of force decisions upon the facts known to them at the time of the incident and whether, under the circumstances, the use and degree of force is reasonable. An officer is not obligated to use force in any situation that the officer determines to be unsafe. In the course of their duties, the permissible use of force by officers is limited to that force which is necessary and only to the degree required for:

a. through c. [No change]

2. [No change]

3. Levels of resistance by a subject include:

a. [No change]

b. Verbal non-compliance: verbal responses indicating the subject’s unwillingness to comply with directions; ~~¶~~This may include verbal threats.

(1) and (2) [No change]

c. Passive resistance: physical actions that do not directly prevent an officer’s attempt at control, usually in the form of a relaxed or “dead weight” posture intended to make the officer lift, pull, or otherwise move the subject to establish control.

d. through f. [No change]

4. [No change in text]

a. Justification; execution of public duty (A.R.S. § 13-402) provides:

- A. Unless inconsistent with the other sections of this chapter defining justifiable use of physical force or deadly physical force or with some other superseding provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.
- B. The justification afforded by subsection A also applies if:
 - 1. A reasonable person would believe such conduct is required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; or
 - 2. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

b. Justification; use of physical force (A.R.S. § 13-403) provides in part:

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

* * *

- 3. A person responsible for the maintenance of order in a place where others are assembled or on a common motor carrier of passengers, or a person acting under his direction, may use physical force if and to the extent that a reasonable person would believe it necessary to maintain order, but such person may use deadly physical force only if reasonably necessary to prevent death or serious bodily injury.

* * *

c. [No change]

d. Justification; use of deadly physical force (A.R.S. § 13-405) provides:

- A. A person is justified in threatening or using deadly physical force against another:
 - 1. If such person would be justified in threatening or using physical force against the other under §-section 13-404, and
 - 2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

- B. A person has no duty to retreat before threatening or using deadly physical force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.

e. [No change]

f. Justification; use of physical force in defense of property (A.R.S. § 13-408) provides:

A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in §§ sections 13-405, 13-406 and 13-411.

g. and h. [No change]

E. [No change]

F. Considerations for Use of CEWs. The CEW may be used in situations where officers encounter active aggression resistance as defined in this section. However, any use of the CEW shall be reasonable and based on the totality of the circumstances. While gaining control of a situation, a CEW should be un-holstered, activated, and pointed at a subject only when the officer has determined its use is warranted and is preparing to fire the weapon if the situation does not improve immediately. Certified officers may threaten use of the CEW as a show of force when the officer reasonably believes an aggressive or combative subject would escalate the incident or use of force, or when approaching an aggressive or combative subject is unsafe.

Before using a CEW, the officer should consider whether any of the following conditions exist that may create an undue hazard to the subject:

1. Women known to be pregnant;
2. Frail or elderly persons;
3. Juveniles;
4. Persons who are restrained in an elevated position or near water; and
5. Persons who are obviously under the influence of drugs or alcohol.

Prior to deploying a CEW on any of these subjects, the officer must be prepared to articulate why other reasonable options were unavailable. The CEW is not an option to thwart deadly force unless a secondary officer or law enforcement officer is present to deploy deadly force in the event the CEW is ineffective, unless it is the only viable option given the circumstances.

G. [No change]

H. [No change in text]

1. through 4. [No change]

5. The presiding judge may request an exception or extension of time from the director to submit this written report ~~from the director~~.

I. Review of Use of Force.

1. through 5. [No change]
6. [No change in text]
 - a. [No change]
 - b. The committee's determination of whether the amount of force used violated any departmental policy or the ~~ACJA~~ Arizona Code of Judicial Administration and was reasonable and justified;
 - c. and d. [No change]
7. [No change]
8. The presiding judge shall provide a copy of the use of force committee report to the director along with ~~of~~ any action taken.