



LOS ANGELES POLICE DEPARTMENT USE OF FORCE-TACTICS DIRECTIVE

Directive No. 5.2

July 2018

OLEORESIN CAPSICUM

PURPOSE

The purpose of this Directive is to familiarize officers with the use, nomenclature, and operation procedures of Oleoresin Capsicum (OC).

PROTOCOL

Whenever practicable, officers shall exercise de-escalation techniques to resolve potential use of force incidents and seek voluntary compliance from suspects/subjects. The courts have held that Less-Lethal force options are “capable of inflicting significant pain and may cause serious injury.” Therefore, consistent with the Department’s Use of Force Policy, Less-Lethal force options are only permissible when:

An officer reasonably believes that a suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.

Less-Lethal force options shall not be used for a suspect or subject who is passively resisting or **merely failing to comply** with commands. Verbal threats of violence or **mere non-compliance** do not alone justify the use of Less-Lethal force.

An officer may use OC Spray as a reasonable force option to control a suspect when **the suspect poses an immediate threat to the safety of the officer or others.**

Officers shall also consider:

- The severity of the crime versus the governmental interest in the seizure; and,
- Whether the suspect was actively resisting arrest or attempting to evade arrest.

The following **do not** alone justify the use of OC Spray:

- Verbal threats of violence
- Mere non-compliance

Oleoresin Capsicum may be used in crowd control situations:

- To control a specific suspect (target specific), or
- On a crowd (non-target specific) when approved by a commander or above.

LEGAL PARAMETERS

Young v. County of Los Angeles (2011) established the legal standards governing when officers can deploy OC. The Young case stated that the use of OC is an “Intermediate Force Option” because like the baton, it can inflict significant pain and cause serious injury. The use of an “Intermediate Force Option” is “unreasonable when an officer has detained a suspect for minor infractions and the suspect clearly poses no threat to the officer or public safety.”

In considering the use of OC, a suspect’s verbal refusal to comply or solely being non-compliant is not a sufficient cause to justify its use. In evaluating the government’s interest in using force, the court will evaluate the following criteria:

- The severity of the crime versus the governmental interests in the seizure
- Whether the suspect posed an immediate threat to the safety of the officer or others
- Whether the suspect was actively resisting arrest or attempting to evade arrest

In evaluating reasonableness, the court deemed the most important factor to be whether the individual posed **an immediate threat to the safety of the officers or others**.

PROCEDURES

The OC canister should be held in the support hand, leaving the primary hand free to draw the firearm should the situation escalate to lethal force. Prior to spraying OC, officers should consider the wind direction and the location of officers who might be impacted by the OC.

When the OC is sprayed, it should be aimed at **the suspect’s face and sprayed in a single burst of about one second**. The ideal range of OC is three to 12 feet.

Tactical Considerations

- Ideal range of OC is three to 12 feet
- Have a backup plan in case OC is ineffective
- Secondary exposure of OC in confined spaces
- Age/size/strength of suspect

After the initial burst, officers should, if feasible, wait momentarily for the OC to take effect and assess its effectiveness unless the suspect’s actions require the officer to take other actions. Once the OC takes effect, officers should carefully approach and control the suspect. The suspect should be handcuffed and monitored for signs of medical distress.

Generally, there will be a burning sensation as well as redness of the eyes. The mucous membranes may swell, and cause uncontrollable coughing, gagging or gasping. Exposed areas of the skin may become inflamed causing an intense burning sensation and redness.

If officers encounter a self-mutilating or suicidal individual, the use of OC spray may be a reasonable force option (based on the tactical scenario) to stop his or her actions. This will allow the individual to receive the needed emergency medical treatment.

Use of Force Warning

An officer shall, when feasible, give a verbal warning prior to using OC Spray to control an individual. The warning is not required when an officer is attacked and must respond to the suspect's actions. Additionally, if a tactical plan requires the element of surprise to stabilize the situation, a warning is not required. Examples of this would be a hostage situation or a subject threatening suicide. However, officers are reminded that the surprise/tactical element must still be needed at the actual time the OC is sprayed.

The verbal warning should include a command and a warning of potential consequences of the use of force. The command should be similar to "drop the weapon" or "stop what you are doing" followed by a warning similar to "or we may use OC Spray, and that may cause you injury."

The use or non-use of the warning shall be documented. The Non-Categorical Use of Force Report, Form 01.67.05, Use of Force Summary heading shall include:

- The name of the officer giving the warning; and
- An explanation and appropriate justification for not using the warning.

Statements that the "element of surprise was needed" or "for officer safety" reasons will not justify non-use of the warning. The explanation for non-use must:

- Clearly articulate why the element of surprise was needed;
- Explain in detail any officer safety considerations; and
- List all pertinent reasons that justify why the warning was not provided.

The use of the warning, or the reasons for non-use of the warning will be factors considered in the determination whether the use of force was objectively reasonable.

Transportation

While the symptoms of OC last approximately 45 minutes, sprayed areas are usually clear of OC within 15 minutes through normal ventilation. Police vehicles used to transport a suspect who was sprayed with OC can be put back into service without having to be decontaminated. Upon arrival at the station, officers should advise any personnel who may come into contact with the suspect that the individual was exposed to OC.

Medical Treatment

Generally, medical treatment is not required for suspects who have been sprayed with OC. If a suspect who has been sprayed with OC experiences continued difficulty in breathing and/or vision impairment for an extended period, officers shall immediately request medical treatment.

Reporting

The use of OC is a reportable use of force when the spray makes contact with the suspect's clothing or skin. The involved employee(s) shall:

- Notify a supervisor without unreasonable delay;
- Report details of the use of force incident in related Department arrest or crime report; and,
- Use Employee's Report, Form 15.07.00, to report details when crime or arrest report is not required.

When OC is deployed and does not make contact with the suspect's clothing or skin, or is used on an animal, officers shall document the circumstances on an Employee's Report, Form 15.07.00

CONCLUSION

Oleoresin capsicum can be effective and may give officers an advantage when controlling a suspect. However, there are some individuals who may not be affected by OC (i.e., PCP suspects and violent persons with a mental illness). Therefore, when officers face a tactical situation that may involve the use of OC, they should consider alternatives in case OC fails to stop the individual's actions.

Important Reminder

Deviation from these basic concepts sometimes occurs due to the fluid and rapidly evolving nature of law enforcement encounters and the environment in which they occur. Deviations may range from minor, typically procedural or technical, to substantial deviations from Department tactical training. Any deviations are to be explained by the involved officer(s), and justification for substantial deviation from Department tactical training shall be articulated and must meet the objectively reasonable standard of the Department's Use of Force Policy.

AMENDMENTS

This version replaces Use of Force-Tactics Directive No. 5.1, Oleoresin Capsicum, October 2013.


MICHEL R. MOORE
Chief of Police

DISTRIBUTION "A"