

## Buncombe County Sheriff's Office

	<b>Policy Number:</b> 406	<b>Effective Date:</b> September 4 <sup>th</sup> , 2020
	<b>Subject/Title:</b> CONTROL DEVICES	
	<b>Rescinds:</b> Not Applicable; New Policy	
	<b>Approved:</b> Sheriff Quentin Miller	

### **406.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines to employees of the Buncombe County Sheriff's Office regarding control devices. This policy also addresses the issuance and use of control devices and related training.

Issues related to the use of force are addressed in the Use of Force policy.

### **406.2 POLICY STATEMENT**

The work of law enforcement officers in the United States and North Carolina, both in responding to calls for service and engaging in community policing and other enforcement and non-enforcement action, involves inherent risk. Unfortunately, the risks posed to deputies employed by the Buncombe County Sheriff's Office include the risk of personal harm and even death when BCSO employees encounter individuals who are or may be violent, and/or are well-armed. These same individuals also pose risks of serious harm to members of the public who may or may not have been involved in the incident giving rise to a law enforcement response.

The work of detention officers also involves inherent risk to these officers who are assigned to maintain order and provide care for individuals in a group detention setting. Many, though certainly not all, incarcerated individuals have prior histories of violence and at least some portion of these individuals continue to engage in violent behavior within the setting of the detention facility. These individuals also pose risks of harm up to and including death not only to detention personnel but to other inmates who are not engaged in violent behavior.

To lessen the risk of injury to BCSO personnel, to innocent bystanders, and to the individuals engaged in violent behavior themselves, the Buncombe County Sheriff's Office issues less-lethal and non-lethal control devices to employees. These control devices may be used by BCSO personnel subject to the guidelines in this policy, any relevant SOPs, and their device-specific training when reasonably necessary to counter, combat, or detain individuals engaged in violent or resistive behavior. Repeated

scientific studies demonstrate that while some less lethal and non-lethal control devices may pose a small risk of harm when used on some individuals, the use of control devices as a less-lethal or non-lethal weapon in volatile encounters has significantly lessened injuries to all involved parties.

### **406.3 CONTROL DEVICE ISSUANCE AND ACCESS**

Deputies and detention officers are authorized to carry and access control devices when all of the following are true:

1. The deputy or detention officer has successfully completed all Office-mandated certification and training for the specific control device.
2. The control device is an Office-approved and Office-issued device.
3. The deputy or detention officer has been authorized to carry and use the device by their Division Commander.

Deputies and detention officers must successfully maintain all Office-mandated certification and training to retain the authorization to carry control devices.

### **406.4 CONTROL DEVICE USE**

Deputies and detention officers may use control devices according to the Use of Force policy when they have been authorized to do so and when the use of a control device is reasonably necessary to arrest, restrain, or otherwise control an individual who is engaged in violent behavior or who is reasonably indicating an intent to engage in violent behavior.

Deputies and detention officers using control devices should, when reasonable, give a verbal warning to the individual before deploying the device.

#### **406.4.1 MAINTENANCE OF CONTROL DEVICES AND RELATED MATERIALS**

Unless packaged for an evidentiary purpose, deputies and detention officers who use control devices are responsible for delivering expended, expired, or damaged control devices and munitions to the Rangemaster or the primary instructor for each device if so designated by the Training Section Leader and approved by the Division Commander for repair, replacement, or disposal.

The Rangemaster, or the primary instructor for each control device if so designated, shall maintain the inventory for all control devices and shall ensure expended, expired, and damaged control devices are properly repaired, replaced, and disposed of. The Rangemaster, or the primary instructor for each device, shall also inspect and document the condition of all control devices no less frequently than twice per year. These inspections shall be conducted separate and apart from the annual audit inspection.

Normal maintenance, including cleaning and charging if necessary, remain the responsibility of the authorized user. Users who discover a control device is damaged,

inoperable, or expired shall report the information to their direct supervisor and to the Rangemaster or primary instructor for the device before the end of their shift.

When damage to a device or related material indicates improper use, storage, or maintenance of a control device or related materials the Rangemaster, or the primary instructor if the primary instructor has been designated to perform inspections, shall notify the Division Commander.

## **406.5 CONTROL DEVICE TYPES AND RESTRICTIONS**

### **406.5.1 BATONS**

Uniformed personnel who are authorized to carry batons shall carry batons in the baton's authorized holder on their equipment belts. Non-field personnel, including but not limited to detention officers, and plainclothes deputies who are authorized to carry a baton should carry the baton in a manner authorized by their supervisor.

Authorized deputies and detention officers may use batons when they reasonably believe the need to immediately control a suspect outweighs the risk of causing serious injury to the individual with the baton. Deputies and detention officers should not generally use a baton if there is no need to immediately control an individual.

Deputies and detention officers should not intentionally target the head, neck, throat, spine, heart, kidneys, or groin of an individual unless the deputy or detention officer reasonably believes the individual poses an imminent threat of serious bodily injury to a third party or to the deputy or detention officer.

### **406.5.2 KINETIC ENERGY PROJECTILES**

Kinetic energy projectiles (KEPs) can be effective in de-escalating potentially deadly situations. Kinetic energy projectiles are also less likely to result in death or serious physical injury in certain situations when properly deployed. Examples of when kinetic energy projectile use may be appropriate include situations in which a suspect is armed with a weapon and has taken hostages, when a suspect is engaged in riot activities such as throwing dangerous items, and when a suspect is armed and making suicidal threats. However, deputies and detention officers are not required to use kinetic energy projectiles instead of using other reasonable tactics when kinetic energy projectiles cannot be deployed safely.

Authorized deputies and detention officers may use kinetic energy projectiles when the use of these devices appears reasonably necessary under the circumstances and the need to immediately incapacitate a suspect outweighs the risk of causing serious harm or death. Deputies and detention officers shall prioritize the safety of hostages, innocent persons, and law enforcement personnel over the safety of individuals engaging in criminal or suicidal behavior.

Deputies and detention officers should not intentionally target the head or neck of a suspect unless the deputy or detention officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the deputy, detention officer, or a third-party.

#### 406.5.2.1 KINETIC ENERGY PROJECTILE SAFETY

Shotguns used to deploy kinetic energy projectiles shall be obviously marked in a way that easily distinguishes them from other firearms and control device deployment systems. When not in use, KEP shotguns shall be securely stored in an unloaded manner.

Authorized deputies and detention officers deploying KEP shotguns shall visually inspect the kinetic energy projectile/s to ensure conventional ammunition is not loaded. Unless exigent circumstances exist, deputies and detention officers switching from conventional ammunition to kinetic energy projectiles will use the two-person rule for loading.

The Rangemaster and each authorized user in possession of shotguns used to deploy kinetic energy projectiles shall regularly inspect these devices and shall ensure they are not stored in or with standard ammunition, or in any other manner where reasonable confusion could occur.

#### 406.5.3 TEAR GAS AND OLEORESIN CAPSICUM DEVICES

Authorized deputies and detention officers may use tear gas (generally CS gas) and oleoresin capsicum delivery devices for crowd control and dispersal, against barricaded suspects, and to otherwise bring individuals or groups under control who are engaging in or are about to engage in violent behavior. These devices may not, however, be used against individuals or groups solely for failing to disperse when the individual or group does not otherwise reasonably appear to present a safety risk to law enforcement personnel or the public.

Authorized deputies and detention officers should not intentionally target a suspect's head, neck, spine, or groin using tear gas canisters or pepper projectiles unless the deputy or detention officer reasonably believes the suspect poses an imminent threat of serious bodily injury or death to the authorized user or to another person. Certain deployment systems, in particular those using compressed gas, can create sufficient force to cause serious injury when used as an impact weapon.

The use of tear gas or pepper projectile systems (as opposed to OC spray only) requires authorization from the Shift Supervisor, the SRT Commander, or the Incident Commander. These individuals shall only authorize the use of tear gas or pepper projectile systems after determining the use of these devices reasonably appears necessary based on a review of all known conditions at the time. Authorizing individuals are also responsible for ensuring notification is made to fire and/or emergency medical

services before the use of these devices and that sufficient clean water is available at the scene for decontamination when it is practicable to do so.

Uniformed personnel who are authorized to carry OC spray shall carry it in the authorized holder on their equipment belts. Non-field personnel, including but not limited to detention officers, and plainclothes deputies who are authorized to carry OC spray should carry the spray in a manner authorized by their supervisor.

#### 406.5.3.1 DECONTAMINATION

Deputies and detention officers deploying OC should provide individuals with clean water for purposes of decontamination as soon as is reasonably practicable and should ensure these individuals are continuously monitored for at least 30 minutes before release from custody. In the case of arrest, deputies shall notify the detention facility when they know an individual was exposed to OC spray or tear gas.

Medical aid should otherwise be sought and/or administered per the Medical Aid policy. If an individual refuses medical attention, deputies and detention officers shall document that refusal in all related reports, including interview reports and recordings, where present. Refusals should also be witnessed by medical personnel and/or by another deputy or law enforcement officer when practicable.

Deputies and detention officers deploying tear gas or OC in an enclosed area including but not limited to a residence or vehicle shall provide notice to the legal owner or occupant that residue may remain and could cause injury if proper cleaning procedures are not followed. Information regarding the method of notice and to whom it was provided should be documented in all relevant reports.

### 406.6 SUPERVISOR NOTIFICATION AND REPORTING

The deployment and/or application of a control device is considered a use of force and supervisors should respond to all incidents as described in the Use of Force policy. Supervisors should ensure, where applicable, that witnesses are interviewed and any relevant photographs are taken, i.e., of the scene and any potential injuries. Supervisors should also ensure, where applicable, that the control device and related materials are preserved for evidentiary purposes as appropriate. Supervisors may seek assistance from the Range Master or the primary instructor for each control device in completing this task. The supervisor shall also ensure that all notifications and reports are completed as required by the Use of Force Policy.

Unintentional discharges shall be reported to a supervisor and documented by way of an incident report before an individual's end of shift.

### 406.7 TRAINING

The Training Section Leader shall ensure that all members authorized to carry a control device have been properly trained and certified, if applicable, to carry the specific

control device. The Training Section Leader shall also ensure that all authorized members are retrained and/or recertified as necessary.

All training and proficiency testing shall be conducted according to certifying commission guidelines if existing, and shall be monitored and documented in the trainee's training file by an instructor appropriately certified or authorized to provide device-specific training.

BCSO employees who are unable to demonstrate proficiency with a required control device or who are unable to demonstrate sufficient knowledge of the use of the control device in compliance with the Use of Force policy should be provided with remedial training offered as soon as is practicable. If the employee cannot demonstrate proficiency with a control device or sufficient knowledge of the Use of Force policy after this remedial training, the member shall be restricted from carrying the control device and the restriction shall be reported to the Office of Professional Standards.

#### **406.7.1 ANNUAL AUDIT AND REAUTHORIZATION**

The Section Leader over Training shall conduct, in coordination with the Rangemaster and the primary instructor for each device if so designated, an annual audit identifying each deputy and detention officer authorized to carry and/or access control devices. The audit shall also specify which deputies and detention officers have been authorized to carry and access which control devices, which deputies and detention officers have been issued control devices and the status of each individual's training. Control devices shall also be examined as part of the annual audit to confirm the devices remain in good working order. This examination should be separate and apart from routine inspections (see the Equipment and Inventory policy and the Inspections policy) and shall specify the status of each device, any necessary repairs, and any supplies anticipated for the following year.

The audit shall be delivered to the Sheriff on or before the third Monday in August. Training needs identified in the audit shall also be placed into the Annual Training Plan for the following year by the Training Section Leader (see also the Training policy.)

**END OF POLICY DOCUMENT**