

STANDARD 2.8

USE OF FORCE AND RESTRAINTS

I. POLICY

For the purpose of these standards, force is defined as the physical actions necessary to overcome resistance, to gain control, contain, or restrain a detainee. The use of force is authorized only after all reasonable efforts to resolve a situation have failed. Officers shall use only the force necessary to gain control of the detainee; to protect and ensure the safety of detainees, staff, and others; to prevent serious property damage; and to ensure the security and orderly operation of the facility. Physical restraints shall be used to gain control of an apparently dangerous detainee only under specified conditions.

II. STANDARDS AND PROCEDURES

A. Principles Governing the Use of Force and Application of Restraints

1. Under no circumstances shall force be used to punish a detainee.
2. Staff shall attempt to gain the detainee's willing cooperation, in a language or manner that the detainee understands, before using force.
3. Staff shall use only that amount of force necessary to gain control of the detainee.
4. Immediate use of restraints is warranted to prevent the detainee from harming self or others, or from causing serious property damage. If, after the detainee is under control, the continued use of restraints appears necessary, facility administrator approval is required.
5. Additional restraints may be applied to a detainee who continues to resist after staff achieves physical control. If a restrained detainee refuses to move or cannot move because of the restraints, staff may lift and carry the detainee to the appropriate destination. Restraints shall not be used for lifting or carrying a detainee.
6. The following uses of restraint equipment or devices (e.g., handcuffs) are prohibited:
 - a. On a detainee's neck or face, or in any manner that restricts blood circulation or obstructs the detainee's airways (mouth, nose, neck, esophagus);
 - b. To cause physical pain or extreme discomfort.
7. Staff will monitor all detainees placed in restraints.

8. Medication shall not be used to subdue an uncooperative detainee for staff convenience. Medication must be prescribed and administered by licensed medical personnel, for medical purposes only.

B. Types of Force

When a detainee acts violently or appears on the verge of violent action(s), staff may use reasonable force and/or restraints to prevent him or her from harming self, others, and/or causing damage to property. ICE requires that all of use of force incidents be documented and the documentation forwarded to ICE/ERO for review.

1. Immediate Use of Force

An “immediate-use-of-force” situation is created when a detainee’s behavior constitutes a serious and immediate threat to self, staff, another detainee, property, or the security and orderly operation of the facility. In that situation, staff may respond without a supervisor’s direction or presence.

2. Calculated Use of Force

If a detainee is in an isolated location (e.g., a locked cell) where there is no immediate threat to the detainee or others, staff shall take the time to assess the possibility of resolving the situation without resorting to force. The calculated use of force is feasible in most cases.

a. Confrontation Avoidance

Before authorizing the calculated use of force, a supervisory detention official, a designated health professional, and others, as appropriate, shall assess the situation. This assessment shall take into account the detainee’s history and the circumstances of the immediate situation to determine the appropriateness of using force.

The conferring officials may consider, in their assessment, the detainee’s medical/mental history; recent incident reports involving the detainee, if any; and shocks or traumas that may be contributing to the detainee’s state of mind (e.g., a pending criminal prosecution or sentencing, a recent removal order, divorce, illness, death, etc.). Interviews with staff members familiar with the detainee might yield insight into the detainee’s current agitation, even pinpointing the immediate cause.

b. Use-of-Force Team Technique

When a detainee must be forcibly moved and/or restrained during a calculated use of force, the use-of-force team technique shall apply.

- 1) Calculated-use-of-force video recording will include the following:

- a) Introduction by Team Leader, stating facility name, location, time, date, etc.; describing the incident that led to the calculated use of force; naming each team member and showing his or her face briefly, as well as naming the video camera operator, and other staff present.
 - b) Faces of all team members briefly appear (helmets removed, heads uncovered).
 - c) Team Leader offering detainee last chance to cooperate before team action in a language or manner the detainee understands, outlining use-of-force procedures, engaging in confrontation avoidance, and issuing use-of-force order.
 - d) Entire Use-of-Force Team operation, unedited, until detainee is in restraints.
 - e) Close-ups of detainee's body during medical exam, focusing on the presence/absence of injuries; staff injuries, if any, described but not shown.
- 2) Use-of-force recordings shall be available for ICE/ERO incident reviews. They may also be used for training, e.g., after-action review training.

C. Prohibited Use-of-Force Acts and Techniques

Facility staff shall only use force, restraints, and non-lethal weapons that are approved by facility policy in a manner consistent with policy, procedure, and training requirements.

The following acts and techniques are prohibited when using non-deadly force:

- 1. Canines shall not be used for force, control, or intimidation of detainees;
- 2. Choke holds, using a baton to apply choke or "come-along" holds to the neck area, and other neck restraints;
- 3. Intentional baton strikes to the head, face, groin, solar plexus, neck, kidneys, or spinal column;
- 4. Striking a detainee for failing to obey an order;
- 5. Striking a detainee, when grasping or pushing him or her would achieve the desired result; and
- 6. Using force against a detainee offering no resistance.

D. Use-of-Force Safeguards

1. Compliance with the Use-of-Force procedures can prevent injury and exposure to communicable disease.
2. Use-of-Force Team members and others participating in a calculated use of force shall wear appropriate protective gear.
3. Whenever possible, staff shall use protective devices when entering a cell or area where blood or other body fluids could be present.
4. The shift supervisor shall inspect areas of blood or other body-fluid spillage after an incident. Unless he or she determines that the spillage must be preserved as evidence, staff shall immediately sanitize those areas. Articles of clothing and use-of-force equipment contaminated with body fluids will be immediately disinfected or destroyed, as appropriate. The medical department shall provide guidance on appropriate cleaning solutions and usage.

E. Progressive and Ambulatory Restraints

Whenever possible, staff shall apply ambulatory restraints. If the detainee's behavior makes use of more restrictive or secure restraints necessary, the facility administrator shall decide on the appropriate restraint method. Such methods might include hard restraints with/without waist chain or belt; four-point soft restraints, with hard restraints securing the detainee to his or her bed; four-point hard restraints; etc.

In situations involving highly assaultive and aggressive detainees, progressive restraints may be used as an intermediate measure while placing the detainee into, or removing a detainee from, four-point restraints.

F. Use of Four- or Five-Point Restraints

Staff shall follow the specified procedures:

1. Provide the detainee with temperature-appropriate clothing and a bed, mattress, sheet and/or blanket.
2. Under no circumstance shall a detainee remain naked or without cover (sheet or blanket) unless determined necessary by qualified health personnel.
3. Check and record the detainee's condition at least every 15 minutes to ensure that the restraints are not hampering circulation and to monitor the general welfare of the detainee. If the detainee is confined by bed restraints, staff shall periodically rotate the detainee's position to prevent soreness or stiffness.

4. A health professional shall test the detainee's breathing, other vital signs, and physical and verbal responses and, if the detainee is bed-restrained, determine how he or she should be placed. Qualified health personnel ordinarily visit the detainee at least twice per eight-hour shift. When qualified health personnel are not immediately available, staff shall place the detainee in a "face-up" position until the medical evaluation.
5. Use of four-point restraints beyond eight hours requires medical supervision.
6. The shift supervisor shall review a detainee in four-point restraints every two hours. If the restraints have had a calming effect, they may be removed and, if appropriate, replaced by a less restrictive device. At every two-hour review, the detainee will be afforded the opportunity to use the toilet, unless the detainee actively resists or becomes combative when released from restraints for this purpose.
7. The facility must inform ICE/ERO when a detainee has been in restraints for more than eight hours. The facility will provide updates every eight hours until the restraints are removed.

G. Medical Attention in Use-of-Force and Application-of-Restraints Incidents

1. In immediate use-of-force situations, staff shall seek the assistance of mental health or other medical personnel immediately upon gaining physical control of the detainee.
2. In all calculated uses of force, the use-of-force team leader shall seek the guidance of qualified health personnel (based on a review of the detainee's medical record) to identify physical or mental health concerns. If the medical or mental health professional determines that the detainee requires continuing care, he or she shall make the necessary arrangements. Continuing care may involve such measures as admission to a hospital.
3. After any use of force or application of restraints, medical personnel shall examine the detainee, immediately treating any injuries. The medical services provided shall be documented.
4. Medical staff shall immediately examine any staff member involved in a use-of-force incident who reports an injury and, if necessary, provide initial emergency treatment.

H. Use of Non-Lethal Weapons

The facility may authorize the use of non-lethal weapons if a detainee:

1. Is armed and/or barricaded; or
2. Cannot be approached without danger to self or others; and

3. A delay in controlling the situation would seriously endanger the detainee or others, or would result in a major disturbance or serious property damage.

Staff shall consult medical staff before using oleoresin capsicum (OC) spray or other non-lethal weapon(s) unless escalating tension make such action unavoidable. When possible, medical staff will review the detainee's medical file for any disease or condition that a non-lethal weapon could seriously exacerbate, including, but not limited to, asthma, emphysema, bronchitis, tuberculosis, obstructive pulmonary disease, angina pectoris, cardiac myopathy, or congestive heart failure.

I. Use of Force in Special Circumstances

Occasionally, after the failure or impracticability of confrontation-avoidance techniques, staff must make a judgment call as to whether to use force. In such cases, if the incident involves a detainee at high risk for injury to self or others, such as a pregnant detainee or an aggressive detainee with open cuts, sores, or lesions, staff shall consult with the on-site medical authority before deciding the situation is grave enough to warrant the use of physical force.

1. Special Needs

If a situation arises involving a detainee with special needs, the appropriate medical or mental health staff shall be consulted prior to the calculated use of force. A detainee with "special needs" is a detainee whose mental and/or physical condition requires different accommodations or arrangements than a detainee who does not have special needs would receive. Special needs detainees include, but are not limited to, those detainees who are chronically ill or infirm, those with disabilities, and those who are addicted to or in withdrawal from drugs or alcohol.

Pregnant and Post-Delivery Detainees

A pregnant woman or a woman in post-delivery recuperation shall not be restrained absent truly extraordinary circumstances that render restraints absolutely necessary, as documented by a supervisor and directed by the on-site medical authority. This general prohibition on restraints applies to all pregnant women in the custody of ICE, whether during transport, in a detention facility, or at an outside medical facility. Restraints are never permitted on women who are in active labor or delivery.

Restraints should not be considered as an option for these populations, except under the following extraordinary circumstances:

- a. A medical officer has directed the use of restraints for medical reasons;
- b. Credible, reasonable grounds exist to believe the detainee presents an immediate and serious threat of hurting herself, staff, or others; or

- c. Reasonable grounds exist to believe the detainee presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method.

In the rare event that one of the above situations applies, medical staff shall determine the safest method and duration for the use of restraints and the least restrictive restraints necessary shall be used.

Even in the extraordinary circumstance when restraints are deemed necessary, handcuffing in front should be used whenever possible to enable a pregnant detainee to break her fall, and no detainee known to be pregnant shall be restrained in a face-down position with four-point restraints, on her back, or in a restraint belt that constricts the area of the pregnancy. All attempts will be made to ensure that the detainee is placed on her left side if she is immobilized.

The use of restraints requires documented approval and guidance from the on-site medical authority. Record-keeping and reporting requirements regarding the medical approval to use restraints shall be consistent with other provisions within these standards, including documentation in the detainee's detention and medical file.

2. Detainees with Wounds or Cuts

Staff shall wear protective gear when restraining aggressive detainees with open cuts or wounds. If use of force is deemed necessary, this gear will include a full-body shield.

J. Documentation of Use of Force and Application of Restraints Incidents

ICE/ERO requires that all use of force incidents involving detainees be documented and the documentation forwarded to ICE/ERO for review. Facility staff shall likewise document the use of restraints on a detainee who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the detainee's detention file or be maintained in and retrievable electronic format. A report is not necessary for the general unresisted use of restraints (for example, the routine movement or transfer of detainees).

All personnel who either use force or observe the use of force shall document their actions and observations in a written report before leaving shift. Supervisors who are present during a force incident shall document in a written report their observations and any orders given directing the use of force.

1. Report of Incident

Facility staff shall prepare a use of force report for each use of force incident. Each staff member who witnesses the use of force shall complete a memorandum for the record, to be attached to the use of force report. The facility administrator or designee will review all completed reports and memoranda for sufficiency and corrective action as necessary.

2. 4- or 5-Point Restraints Report

Facilities shall document all 15-minute checks of detainees in four- or five-point restraints and report to ICE/ERO any detainee restrained for over eight hours, with additional reports every eight hours thereafter.

3. Recordings of Use-of-Force Incidents

Staff shall immediately obtain and record with a video camera any use-of-force incident, unless such a delay in bringing the situation under control would constitute a serious hazard to the detainee, staff, or others, or would result in a major disturbance or serious property damage. Calculated use of force shall be video recorded as specified in part B.2.b. of this standard, “Use-of-Force Team Technique.” Release of use-of-force audiovisual recordings to the news media may occur only if authorized by the Director of Enforcement and Removal Operations, in accordance with ICE/ERO procedures and rules of accountability.

4. Record Keeping

Facilities shall maintain all written use-of-force documentation for a minimum of six years.

Video, audio, and other recordings shall be catalogued and preserved until no longer needed, but for no less than 30 months after their last documented use. In the event of litigation, the facility will retain the recording for a minimum of six months after the conclusion/resolution of the litigation.

5. Report Completion

The facility review team shall complete and submit its report to the facility administrator within five working days of the incident or the detainee’s release from restraints. The facility administrator shall review and sign the report, acknowledging its finding that the use of force was appropriate or inappropriate.

The review team shall determine whether the incident requires further investigation or referral to law enforcement. The facility shall forward a copy of the After-Action Report to the local ICE/ERO Field Office Director within seven days of completion.

K. After-Action Review of Use of Force and Application of Restraints Incidents

Written procedures shall govern the mandatory after-action review for use-of-force incidents (whether calculated or immediate), and for the application of restraints. The purpose of the review is, among other things, to assess the reasonableness of the actions taken (i.e., the proportionality of the force used to the detainee’s actions).

No officer involved in the use of force shall be part of the review team.

1. The After-Action Review shall examine all relevant materials for facility staff's compliance with facility policy and these standards. For calculated use of force incidents, and incidents where video is available, recordings will be reviewed to examine, among other things:
 - a. Application of only as much force as necessary to subdue the detainee. This includes responding appropriately to a subdued or cooperative detainee, i.e., one who discontinues his or her violent behavior;
 - b. Protective gear worn inside cell/area until end of operation;
 - c. Appropriate use of chemical agents, Oleoresin Capsicum (OC) spray, mace, etc., in accordance with written procedures;
 - d. A medical professional promptly examines the detainee, with the findings reported on the recording;
 - e. Continuous coverage from the time the camera starts recording until the incident is over. The review will investigate any breaks or sequences apparently missing from the recording.

L. Training

Staff shall be trained in approved methods of self-defense, crisis intervention, conflict de-escalation, use of force techniques, recognizing signs and symptoms of mental illness, and reporting requirements. Staff will be made aware of prohibited use-of-force acts and techniques.

Specialized training shall be required for certain non-lethal equipment, e.g., OC spray and electronic devices. Training in the use of chemical agents shall include treatment of individuals exposed to them. Each officer must have been specifically certified to use a given device.