



INTERIM ORDER

SUBJECT: USE OF OLEORESIN CAPSICUM PEPPER SPRAY DEVICES		
DATE ISSUED:	REFERENCE:	NUMBER:
05-31-16	**P.G. 221-07, *212-95, 204-09, 202-18 AND 202-25	40

1. In order to inform uniformed members of the service of circumstances under which Oleoresin Capsicum (O.C.) pepper spray may be intentionally discharged and to record instances where O.C. pepper spray has been discharged, intentionally or accidentally, the Department has established a new procedure.

2. Therefore, effective 0001 hours, June 1, 2016, when a uniformed member of the service intentionally or accidentally discharges O.C. pepper spray, the following new Patrol Guide procedure 221-07, "Use of Oleoresin Capsicum Pepper Spray Devices," will be complied with:

PURPOSE To inform uniformed members of the service of circumstances under which Oleoresin Capsicum (O.C.) pepper spray may be intentionally discharged and to record instances where O.C. pepper spray has been discharged, intentionally or accidentally.

SCOPE Use of O.C. pepper spray constitutes physical force under the New York State Penal Law. Use of O.C. pepper spray is proper when used in accordance with Article 35 of the Penal Law and Department procedures. O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force.

In many cases, O.C. pepper spray will reduce or eliminate the need for physical force to effect an arrest or gain custody. It will often reduce the potential for injuries to members and suspects that may result from physical restraint and it should be regarded as a possible alternative to such force and restraint, where practical.

DEFINITIONS PASSIVE RESISTANCE – Minimal physical action to prevent a member from performing their lawful duty. For example, a subject failing to comply with a lawful command and stands motionless and/or a subject going limp when being taken into custody.

ACTIVE RESISTING – Includes physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signalling an intention to avoid or prevent being taken into or retained in custody.

**DEFINITIONS
(continued)**

ACTIVE AGGRESSION – Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

PROCEDURE

When necessary to use O.C. pepper spray device:

NOTE

In an effort to gain voluntary compliance, members of the service should advise the offender that O.C. pepper spray will be used to handcuff/restrain him/her before applying such force, if feasible.

**UNIFORMED
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THE SERVICE**

1. Hold O.C. pepper spray in an upright position, aim and discharge O.C. pepper spray into a subject's eyes for maximum effectiveness, using two, one second bursts, at a minimum distance of three feet, and only in situations when the uniformed member of the service reasonably believes that it is necessary to:
 - a. Gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression
 - b. Prevent individuals from physically injuring themselves, members of the service, or other persons
 - c. Establish physical control of a subject attempting to flee from arrest or custody
 - d. Establish physical control of an emotionally disturbed person (EDP)
 - e. Control a dangerous animal, by deterring an attack, to prevent injury to persons or animals present.
2. Effect arrest of criminal suspect against whom O.C. pepper spray was used and charge with crime which initiated use of the O.C. pepper spray.
 - a. Add resisting arrest charge, when appropriate.
 - b. Comply with *P.G. 210-13, "Release Of Prisoners - General Procedure,"* if it is determined that arrested person did not commit the crime or that no crime was committed.
 - c. Comply with *P.G. 221-13, "Mentally Ill Or Emotionally Disturbed Persons,"* when appropriate.

NOTE

Do not use O.C. pepper spray on subjects who passively resist (e.g., going limp, offering no active physical resistance). If possible, avoid using O.C. pepper spray on persons who appear to be in frail health, young children, women believed to be pregnant, or persons with known respiratory conditions. Avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control. (Members who are specifically trained in the use of O.C. pepper spray for disorder control may use O.C. pepper spray in accordance with their training, and within Department guidelines, and as directed by supervisors.). In addition, avoid using O.C. pepper spray in small contained areas such as automobiles and closets.

3. Request response of Emergency Medical Service (EMS) once the situation is under control.
 - a. Advise person sprayed that EMS is responding.
4. Remove the subject from the contaminated area and expose to fresh air while awaiting the arrival of EMS, or transportation to hospital/stationhouse, if tactically feasible.

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THE SERVICE
(continued)**

- a. Determine whether the person sprayed is wearing contact lenses. (It is strongly recommended that contact lenses be removed as soon as possible after exposure to O.C. pepper spray.)
5. Position subject on his/her side or in a sitting position to promote free breathing.
 - a. The subject should never be maintained or transported in a face down position.
 - b. Avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject's chest or back, thereby reducing the subject's ability to breathe.
6. Provide assistance to subject as follows:
 - a. When consistent with member's safety, and provided a source of water is readily available, the uniformed member should flush the contaminated skin area of a subject with profuse amounts of water
 - b. Repeat flushing at short intervals, if necessary, until symptoms of distress subside
 - c. Continue flushing the contaminated skin of the subject in custody at the stationhouse, as needed
 - d. Commence the flushing of a subject's contaminated skin upon arrival at the stationhouse, if this has not already been done.

NOTE

Do not rub or touch skin of contaminated person, as the initial effect of O.C. pepper spray does not dissipate for 15-30 minutes. Also, do not use salves, creams, ointments, commercial eyewashes or bandages.

7. Transport prisoner immediately to the emergency room of the nearest hospital if he/she is demonstrating difficulty breathing, or exhibiting signs of severe stress, hyperventilation, etc.
 - a. Windows of transport vehicle should be kept open.
 - b. Members who come in contact with persons who have been exposed to O.C. pepper spray must thoroughly wash their hands afterward and avoid having any contaminated clothing make contact with their face.
 - c. Advise hospital staff that O.C. pepper spray has been used on prisoner/EDP.
8. Prepare **ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD 244-159)** and **MEDICAL TREATMENT OF PRISONER (PD 244-150)** in arrest situations.
9. Complete the **AIDED REPORT WORKSHEET (PD 304-152b)** in non-arrest situations (e.g., EDP) and:
 - a. Check box "O.C. Spray Used"
 - b. List the time, doctor's name, and diagnosis under "Details" caption, when applicable.
10. Notify immediate supervisor regarding the use of O.C. pepper spray.
11. Perform duties of the "immediate supervisor" as per *P.G. 221-03, "Reporting and Investigation of Force Incident or Injury to Persons During Police Action."*

**IMMEDIATE
SUPERVISOR**

- DESK OFFICER**
12. Ensure prisoners who have been sprayed with O.C. pepper spray receive appropriate first aid, if needed, upon arrival at stationhouse.
 13. Ensure prisoners who have been sprayed with O.C. pepper spray are properly observed throughout the arrest process, and that they receive prompt medical attention if they need or request it.
 14. Make Command Log entry stating whether the prisoner has had his/her skin flushed with water, been examined by EMS, or been transported to the hospital.

- COMMANDING OFFICER, FIREARMS AND TACTICS SECTION**
15. Analyze situations where O.C. pepper spray was utilized to evaluate its effectiveness.
 - a. As appropriate, modify existing training/tactics relative to the use of O.C. pepper spray.
 16. Compile a list of O.C. pepper spray usage on a monthly basis and forward a report on usage to the First Deputy Commissioner (through channels).
 17. Incorporate relevant information into tactical training.

ADDITIONAL DATA *The only O.C. pepper spray authorized for use is the type issued to all uniformed members through the Firearms and Tactics Section.*

Current authorized O.C. pepper spray uses technology where the O.C. pepper spray solution is contained in a bag within the metal canister. This allows it to be sprayed at any angle and it is no longer necessary to shake the O.C. pepper spray to mix the solution. O.C. pepper spray contains approximately ten one-second bursts and should be replaced when half empty or after five one-second bursts have been used.

O.C. pepper spray will not automatically stop all subjects, and even when it does incapacitate, the effects are temporary. Members should therefore be ready to use other appropriate force options and tactics.

When performing duty in uniform, the O.C. pepper spray shall be carried in its holster attached to the non-shooting side of the gun belt. When performing enforcement duty in civilian clothes the O.C. pepper spray must be carried in the holster attached either to a belt or in another appropriate manner. Undercover members may opt not to carry the O.C. pepper spray.

Members of the service may carry the O.C. pepper spray device during off duty hours.

RELATED PROCEDURES

- Lost or Damaged Uniform (P.G. 204-07)*
- Prisoner Requiring Medical/Psychiatric Treatment (P.G. 210-04)*
- Release of Prisoners - General Procedure (P.G. 210-13)*
- Hazardous Material (P.G. 212-37)*
- Hostage/Barricaded Person(s) (P.G. 221-14)*
- Aided Cases - General Procedure (P.G. 216-01)*
- Preparation of Aided Report Worksheet (P.G. 216-02)*
- Mentally Ill or Emotionally Disturbed Persons (P.G. 221-13)*
- Loss or Theft of Department Property (P.G. 219-20)*

**FORMS AND
REPORTS**

**MEDICAL TREATMENT OF PRISONER (PD 244-150)
ON LINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)
AIDED REPORT WORKSHEET (PD304-152b)**

3. Effective 0001 hours, June 1, 2016, Patrol Guide 204-09, "Required Firearms/Equipment" is amend as follows:

- a. **REVISE** "ADDITIONAL DATA" statement, on page "5" to read:

**"ADDITIONAL
DATA"**

Uniformed members of the service below the rank of captain who are assigned to enforcement duties must carry a sufficient amount of summonses.

Uniformed members of the service assigned to civilian clothed enforcement duties are required to have their service 9MM semi-automatic pistol and one extra fully loaded magazine or their service .38 caliber revolver with twelve extra cartridges, handcuffs with key and the 'color of the day' head/arm band on their persons. In addition, O.C. pepper spray device and holder will be carried by such members as specified in P.G. 221-07, 'Use of Oleoresin Capsicum Pepper Spray Devices'.

Commanding officers have the authority to allow members of their respective commands to be armed with an authorized off duty weapon, if they believe it is more suitable for a particular assignment."

4. Effective 0001 hours, June 1, 2016, **REVISE** references to "pepper spray," in Patrol Guide 204-09, 202-18, 202-25, and wherever they appear in the Department Manual to read:

"Oleoresin Capsicum pepper spray"

5. Effective 0001 hours, June 1, 2016, Patrol Guide 212-95, "Use of Pepper Spray Devices" is OBSOLETE and hereby **REVOKED**.

6. Effective 0001 hours, June 1, 2016, **REVISE** references to Patrol Guide 212-95, "Use of Pepper Spray Devices" in Patrol Guide 204-09, "Required Firearms/Equipment" and wherever it appears in the Department Manual to read:

"Patrol Guide 221-07, 'Use of Oleoresin Capsicum Pepper Spray Devices' "

7. Effective 0001 hours, June 1, 2016, this Interim Order will be incorporated into the On-Line Patrol Guide.

8. Any provisions of the Department Manual or any other Department directive in conflict with the contents of this Order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

**DISTRIBUTION
All Commands**

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