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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

AUG 12 2019 ✓

IN AND FOR THE COUNTY OF YAVAPAI

DONNA McQUALITY, Clerk
By: J. DEROIS

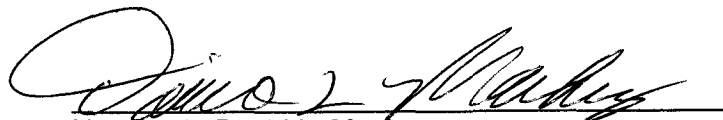
IN THE MATTER OF:)	
)	ADMINISTRATIVE ORDER
USE OF FORCE POLICY)	
)	
-BAILIFFS)	No. 2019-15
_____)	

The Presiding Judge of the Superior Court of Arizona in and for Yavapai County, hereby adopts a use of force policy for bailiffs acting in their official capacity under the authority of Supreme Court Administrative Order 2017-79 C2(j) that authorizes establishing court security policies and procedures that provide for a safe work environment for judicial employees, litigants and users of the court.

IT IS ORDERED this policy applies to all full-time, part-time and seasonal bailiffs in the Superior Court.

IT IS ORDERED this policy may apply to bailiffs in the Justice of the Peace, Magistrate and Municipal Courts if adopted by those courts.

DATED at Prescott, Arizona, the 12th day of August, 2019.



 Honorable David L. Mackey
 Presiding Judge

- Clk of Court (e)
- Chief Deputy (e)
- Court Bailiff (e)
- _____
- _____
- _____ () Other _____

USE OF FORCE POLICY – BAILIFFS

POLICY

The purpose of this policy is to establish use of force guidelines for Yavapai County Bailiffs. The mission of the Yavapai County Bailiff is to provide a safe and orderly courtroom environment for conducting judicial business.

The type and degree of force will be that which is reasonable and necessary based upon the totality of the circumstances and the information available.

STATUTORY AUTHORITY

12-231. Appointment and duties

Each judge of the superior court may appoint such bailiffs as necessary to insure orderly transaction of the business of the court. The appointing judge shall prescribe the duties of the bailiff.

13-105. Definitions

32. "Physical force" means force used upon or directed toward the body of another person and includes confinement but does not include deadly physical force.

14. "Deadly physical force" means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.

13-402. Justification; execution of public duty

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:

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.

13-1203. Assault; classification

A. A person commits assault by:

1. Intentionally, knowingly or recklessly causing any physical injury to another person; or
2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or
3. Knowingly touching another person with the intent to injure, insult or provoke such person.

13-1204. Aggravated assault; classification; definitions

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person causes serious physical injury to another.
2. If the person uses a deadly weapon or dangerous instrument.
3. If the person commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or a fracture of any body part.
4. If the person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired
7. If the person commits assault as prescribed by section 13-1203, subsection A, paragraph 1 or 3 and the person is in violation of an order of protection issued against the person pursuant to section 13-3602 or 13-3624.
8. If the person commits the assault knowing or having reason to know that the victim is any of the following:
 - (f) A prosecutor while engaged in the execution of any official duties or if the assault results from the execution of the prosecutor's official duties.
 - (i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.
 - (j) A judicial officer while engaged in the execution of any official duties or if the assault results from the execution of the judicial officer's official duties.
11. If the person uses a simulated deadly weapon.

13-1602. Criminal damage; classification

A. A person commits criminal damage by:

1. Recklessly defacing or damaging property of another person.
2. Recklessly tampering with property of another person so as substantially to impair its function or value.

13-2904. Disorderly conduct; classification

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior; or
2. Makes unreasonable noise; or
3. Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or
4. Makes any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or
5. Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, a hazard or any other emergency.

13-2810. Interfering with judicial proceedings; classification

A. A person commits interfering with judicial proceedings if such person knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority; or
2. Disobeys or resists the lawful order, process or other mandate of a court.

13-403. Justification; use of physical force

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 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 physical injury.

13-404. Justification; self-defense

A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or

2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

3. If the person provoked the other's use or attempted use of unlawful physical force, unless:

(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

(b) The other nevertheless continues or attempts to use unlawful physical force against the person.

13-405. Justification; use of deadly physical force

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.

13-406. Justification; defense of a third person

A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if, under the circumstances as a reasonable person would believe them to be, such person would be justified under section 13-404 or 13-405 in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect.

13-3889. Method of arrest by private person

A private person when making an arrest shall inform the person to be arrested of the intention to arrest him and the cause of the arrest, unless he is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the person making the arrest has opportunity so to inform him, or when the giving of such information will imperil the arrest.

PARAMETERS FOR USE OF FORCE

When use of force is needed, bailiffs should assess the incident as practical to determine, based on training and experience, which options are best to deescalate the situation and bring it under control in a safe and prudent manner.

A Yavapai County Bailiff may use force against another when and to the extent a reasonable person believes it is necessary to thwart a person's use or threatened use of unlawful physical force against another as defined in ARS 13-105 paragraph 32, use or attempted use of deadly physical force against another as defined in ARS 13-105 paragraph 14, or to stop the commission of Interfering with Judicial Proceedings as defined in ARS 13-2810 subsection A paragraphs 1 and 2 but only at the direction of the judge presiding over the courtroom, Disorderly Conduct as defined in ARS 13-2904 subsection A paragraphs 2-4 but only at the direction of a presiding judge and ARS 13-2904 subsection A paragraphs 1 and 5 when reasonable and necessary, Criminal Damage as defined in ARS 13-1602 subsection A paragraphs 1 and 2.

When reasonable and time permitting, a Yavapai County Bailiff who determines it is necessary to use justifiable force against another should summon the assistance of another bailiff and or security personnel to minimize injuries to those involved.

Any Yavapai County Bailiff who uses force against another shall immediately report the incident to Court Administration, Risk Management and shall make a police report as soon as practical.

DEFENDANTS ORDERED INTO CUSTODY

Defendants ordered into custody during a court hearing shall be taken into custody by a Yavapai County Sheriff's Office Detention Officer where available. A Yavapai County Bailiff may take a defendant into custody by order of the judge presiding over the courtroom when Yavapai County Detention Officers are not present or otherwise available.

RESTRAINT DEVICES

Restraining a person without justification under ARS Title 13 chapter 4 is unlawful.

13-1303. Unlawful imprisonment; classification; definition

A. A person commits unlawful imprisonment by knowingly restraining another person.

A Yavapai County Bailiff may physically restrain another when and to the extent a reasonable person would believe it is necessary to use force against another under the **PARAMETERS OF USE OF FORCE** section of this policy. A person shall only be restrained by a bailiff when justified by Arizona Revised Statute and this policy. A person restrained by a bailiff shall remain restrained for a reasonable time. A reasonable time is defined as the time it takes to summon and relinquish control of the detained person to law enforcement.

A Yavapai County Bailiff may carry and use a restraint device only after receiving training on the use and application of such device as set forth by Court Administration. Bailiff's choosing to carry a restraint device must keep a key to that device in their possession.

A fleeing person shall not be forcibly intercepted or restrained to reduce the likelihood of the person or bailiff being injured. A bailiff may follow and keep the person in sight if conditions allow. Security and law enforcement will be notified as soon as possible.

Bailiffs shall attend annual use of force and restraint training conducted by an authorized use of force instructor.