

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this office is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner. It is the fundamental duty of the Whatcom County Sheriff's Office to preserve and protect human life.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** – The intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

**De-escalation Tactics** – Actions used by a deputy that are intended to minimize the likelihood of the need to use force during an incident.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the deputy or another person.

**Physical Force** - Any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement. "Physical force" does not include pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury

**Necessary** – Necessary means that, under the totality of the circumstances, a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and that the type and amount of physical force or deadly force used is a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the deputy or others.

**Immediate Threat** – Immediate threat means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the deputy or another person.

**Totality of the circumstances** - All facts known to the peace officer leading up to, and at the time of, the use of force, and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer.

**Choke Hold** – The intentional application of direct pressure to a person’s trachea or windpipe for the purpose of restricting another person’s airway.

**Neck Restraint** – Any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

**Tear Gas** – means chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury, except “tear gas” does not include oleoresin capsicum (OC).

## **300.2 POLICY**

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Deputies are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Deputies must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Whatcom County Sheriff’s Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

### **300.2.1 DUTY TO INTERVENE AND REPORT**

Any identifiable on-duty deputy observing another general authority Washington law enforcement officer using or attempting to use excessive force (force that exceeds the force permitted by law or Whatcom County Sheriff’s Office policy) shall intervene to prevent or end the use of excessive force, when in a position to do so.

Regardless of whether an intercession occurred, a deputy is required to report these observations to a supervisor as soon as feasible.

A deputy shall not be disciplined for or retaliated against in any way for intervening in good faith or for reporting in good faith the unreasonable use of force by another law enforcement officer (see the Anti-Retaliation Policy).

### **300.2.2 PERSPECTIVE**

When determining whether to intercede, each deputy should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

### **300.3 USE OF FORCE**

Deputies shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation a deputy might encounter, deputies are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Office. Deputies may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose. Deputies may only use force tactics prohibited by this policy or law to protect their own life or the life of another person from imminent threat.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires a deputy to retreat or be exposed to possible physical injury before applying reasonable force.

#### **300.3.1 WHEN FORCE IS AUTHORIZED**

Deputies shall use reasonable care when determining whether to use and when using any physical force against another person. The least amount of physical force necessary shall be used to overcome resistance under the circumstances

A deputy may use force to the extent necessary to:

- (a) Protect against a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense, or
- (b) Effect and arrest, or
- (c) To prevent an escape as defined by RCW 9A.76, or
- (d) Prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention, provided that the person has been given notice that he or she is being detained and is not free to leave, or
- (e) To take a person into custody, transport a person for evaluation or treatment, or provide other assistance under RCW 10.77, RCW 71.05, or RCW 71.34, or
- (f) To take a person into protective custody when authorized or directed by statute, or
- (g) When executing or enforcing a court order authorizing or directing a peace officer to take a person into custody, or

# Whatcom County Sheriff's Office

## Whatcom County Sheriff's Office Law Enforcement Manual

- (h) When executing a search warrant, or
- (i) When executing or enforcing an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a peace officer to use physical force to execute or enforce the directive or order, or
- (j) To protect the deputy or another person from an imminent threat of bodily injury.

Deputies shall terminate the use of physical force as soon as the necessity for such force ends.

### 300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

When possible, deputies shall use all de-escalation tactics that are available and appropriate under the circumstances before using physical force.

### 300.3.2 EXERCISING REASONABLE CARE WHEN CONSIDERING THE USE OF FORCE

When determining whether to apply force and evaluating whether a deputy has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include but are not limited to:

- (a) Immediacy and severity of the threat to deputies or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the deputies at the time.
- (c) Deputy/subject factors (e.g. age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of deputies available vs. subjects).
- (d) Cognitive impairment as a result of suspected drug or alcohol use.
- (e) Signs of mental, behavioral, or physical impairments or disabilities.
- (f) The individual's ability to understand and comply with deputy commands, including lack of proficiency with the English language.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the deputy.
- (l) Potential for injury to deputies, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the deputy.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.

- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the deputy or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.
- (s) Age of the subject
- (t) The presence of children

### 300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Deputies may only apply those pain compliance techniques for which they have successfully completed agency-approved training. Deputies utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the deputy.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the deputy determines that compliance has been achieved.

### 300.3.4 CHOKE HOLDS AND NECK RESTRAINTS

The use of choke holds or neck restraints is prohibited.

### 300.3.5 TEAR GAS

Tear gas shall only be deployed by trained tactical team members when necessary to alleviate a present risk of serious harm posed by a riot, barricaded subject, or hostage situation.

Prior to the deployment of tear gas, a supervisor or tactical team leader must determine that the circumstances warrant its use, and that available and appropriate alternatives to its use have been exhausted. In the case of a riot outside a correctional facility, authorization shall also be received from the highest elected official in the jurisdiction where the tear gas is to be deployed.

Before tear gas is deployed a warning shall be given and sufficient time will be provided for the subject(s) to comply with directives.

### 300.3.6 LESS LETHAL DEVICES

Department issued less lethal devices (kinetic energy projectile launchers, bolawrap, etc) shall only be deployed by members who have received agency required training on the device(s). The use of these devices shall be consistent with the associated training.

### **300.4 DEADLY FORCE APPLICATIONS**

The use of deadly force is authorized only when necessarily used to protect the deputy or another person from an immediate threat of serious bodily injury or death, where:

- (a) It is objectively reasonable to believe that the person upon which force is to be used has the apparent ability, opportunity, and intent to immediately cause death or serious bodily injury, and
- (b) When possible, available and appropriate less lethal alternatives have been considered, and
- (c) The amount of force used is a reasonable and proportional response to the threat posed.

#### **300.4.1 MOVING VEHICLES**

Deputies shall not fire a weapon at a moving vehicle unless necessary to protect against an imminent threat of serious physical harm resulting from the operator's or a passenger's use of a deadly weapon. Nothing in this section shall be construed to prohibit any deputy from using a firearm to stop a suspect from using a vehicle as a deadly weapon where no other reasonable means to avoid potential serious harm are immediately available to the officer.

### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this office shall generally be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The deputy should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

To collect data for purposes of training, resource allocation, analysis and related purposes, the Office may require the completion of additional report forms, as specified in office policy, procedure or law. See the Report Preparation Policy for additional circumstances that may require documentation.

It is recognized that members of this office have the same constitutional rights against self-incrimination as any other individual. Where the use of force by a deputy results in death, substantial bodily harm, or great bodily harm, no member shall be disciplined for failing to provide a statement or report required above unless such member is legally compelled to provide such statement, see Officer Involved Shooting and Deaths policy for additional guidance.

#### **300.5.1 NOTIFICATIONS TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable deputy to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.

# Whatcom County Sheriff's Office

## Whatcom County Sheriff's Office Law Enforcement Manual

- (e) Any application of the Conducted Energy Weapon (CEW) or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

### 300.5.2 NOTIFICATION TO INDIAN AFFAIRS

When the use of force by a deputy results in the death of a person who is an enrolled member of a federally recognized Indian tribe, notification shall be made to the Governor's Office of Indian Affairs within a reasonable period of time, but not more than 24 hours after the office has good reason to believe the person was an enrolled member. Notice shall include sufficient information for the Governor's Office of Indian Affairs to attempt to identify the deceased person and tribal affiliation (RCW 10.114.021).

### 300.5.3 NOTIFICATION TO CRIMINAL JUSTICE TRAINING COMMISSION (CJTC)

Notification shall be made to CJTC within 15 days of learning of the occurrence of any death or serious injury caused by the use of force by a deputy (RCW 43.101.135).

## 300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. If feasible, individuals should not be placed on their stomachs for an extended period as this could impair their ability to breathe.

Based upon the deputy's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another deputy and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling deputy shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the deputy reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple deputies to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

### **300.7 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to a reported application of force resulting in serious injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved deputies. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Evaluate the circumstances surrounding the incident and notify the Duty Staff Officer if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### **300.7.1 COMMAND STAFF RESPONSIBILITY**

The appropriate Chief Deputy, or their designee shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.



### **300.8 TRAINING**

Deputies will receive periodic training on this policy and demonstrate their knowledge and understanding.

Deputies shall receive periodic training on:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
- (b) De-escalation tactics, including alternatives to force and legal requirements.
- (c) Duty to intercede

### **300.9 USE OF FORCE ANALYSIS**

At least annually, the Chief Inspector should prepare an analysis report on use of force incidents. The report should be submitted to the Sheriff. The report should not contain the names of deputies, suspects, or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.