

# 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.

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 (RCW 9A.16.010).

**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 (RCW 10.120.010).

**Necessary** - means that, under the totality of the circumstances, a reasonably effective alternative to the use of force does not appear to exist, and the type and amount of 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.

**Imminent** - Ready to take place; impending. Imminent does not mean immediate or instantaneous.

**Totality of the circumstances** - All facts and circumstances known to the deputy leading up to, and at the time of, the use of force, and including the actions of the person against whom the deputy uses such force, and the actions of the deputy (RCW 10.120.010).

## 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 Kittitas 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.

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### **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 this 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.

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

#### **300.3.1 REASONABLENESS 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 deputy 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) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with deputy commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and the individual's ability to resist despite being restrained.

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- (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) The individual is visibly pregnant or claims to be pregnant.
- (s) The individual is a minor, appears to be a minor, or claims to be a minor.
- (t) The individual is known to be a vulnerable adult or appears to be a vulnerable adult as defined by RCW 74.34.020.
- (u) The individual has limited English proficiency.
- (v) The individual is in the presence of a child.
- (w) Any other exigent circumstances.

#### 300.3.2 DUTY OF REASONABLE CARE

A deputy shall use reasonable care when determining whether to use physical force or deadly force and when using any physical force or deadly force against another person. To that end, deputies shall:

- (a) Use all de-escalation tactics that are available and appropriate under the circumstances, before using physical force;
- (b) Use the least amount of physical force necessary to overcome resistance under the circumstances; and
- (c) Stop using physical force as soon as the necessity for such force ends.

Depending on the circumstances, "de-escalation tactics" may include, but are not limited to:

- (a) Using clear instructions and verbal persuasion;
- (b) Attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident;
- (c) Creating physical distance by employing tactical repositioning to maintain the benefit of time, distance and cover;
- (d) Designating one deputy to communicate in order to avoid competing commands;

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- (e) Using available support and resources, such as a crisis intervention team, a designated crisis responder or other behavioral health professional; and
- (f) Requesting additional deputies (RCW 10.120).

The Duty of Reasonable care applies exclusively to deputies and other Peace Officers as defined in RCW 10.120.010. Jail Deputies and other jail employees should consider the principles of the Duty of Reasonable Care in the exercise of their duties but are not bound by this law and policy.

#### 300.3.3 PHYSICAL FORCE

A deputy may use physical force upon another person 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;
- (b) Effect an arrest;
- (c) Prevent an escape as defined under chapter 9A.76 RCW;
- (d) Prevent a person from fleeing a lawful temporary investigative detention, or stop a person who is actively fleeing such a detention, provided the person has been given notice that he or she is being detained and is not free to leave;
- (e) Take a person into custody, transport a person for evaluation or treatment, or provide other assistance under RCW 71.05, 71.34, or 10.77;
- (f) Take a minor into protective custody when authorized or directed by statute;
- (g) Execute or enforce a court order authorizing or directing a peace officer to take a person into custody;
- (h) Execute a search warrant;
- (i) Execute or enforce an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a deputy to use physical force to execute or enforce the directive or order; or
- (j) Protect against an imminent threat of bodily injury to the deputy, another person, or the person against whom force is being used (RCW 10.120.020).

This exclusive list of the lawful uses of physical force applies exclusively to deputies and other Peace Officers as defined in RCW 10.120.010. Jail Deputies and other jail employees may use necessary and reasonable physical force in other circumstances.

#### 300.3.4 DEADLY FORCE

A deputy may use deadly force only when necessary to protect against an immediate threat of serious physical injury or death to the deputy or another person.

An immediate threat of serious physical injury or death exists when, 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 peace officer or another person (RCW 10.120.020).

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When available and appropriate under the circumstances, deputies should use less lethal alternatives before using deadly force.

When feasible, the deputy shall, prior to the use of deadly force, make efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the deputy has objectively reasonable grounds to believe the person is aware of those facts.

#### 300.3.5 MOVING VEHICLES

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective.

When feasible, deputies should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle or of deadly force other than the vehicle that is directed at the deputy or others (RCW 10.116.060).

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

#### 300.3.6 CHOKE-HOLDS AND NECK RESTRAINTS

A deputy may not use a chokehold or neck restraint on another person in the course of his or her duties.

"Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway.

"Neck restraint" refers to 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 (RCW 10.116.020).

#### 300.3.7 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 office-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 is able to 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.

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### **300.3.8 USE OF FORCE TO SEIZE EVIDENCE**

In general, deputies may use reasonable force to lawfully seize evidence and to prevent the criminal destruction of evidence. However, deputies are discouraged from using force solely to prevent a person from swallowing evidence or contraband.

### **300.4 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 the individual can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe (RCW 10.93.190).

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.

### **300.5 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to a reported application of force resulting in visible 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.

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- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived the individual's *Miranda* rights, the following shall apply:
  - 1. The content of the interview should not be summarized or included in any related criminal charges.
  - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
  - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) 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.
  - 1. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the individual may pursue civil litigation.
  - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance 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.

When an incident results in death, serious bodily harm, or great bodily harm, the supervisor shall immediately contact the Office of Independent Investigations pursuant to the procedures established by the Office of Independent Investigation (RCW 43.102.120).

### **300.6 REPORTING THE USE OF FORCE**

Any use of physical force by a member of this office shall be documented accurately and thoroughly in the appropriate incident report. The deputy should articulate the factors perceived and why he/she believed physical 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.

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#### 300.6.1 REPORTABLE USES OF FORCE

When a Use of Force includes any of the following circumstances, a supervisor should be notified as soon as feasible.

Each Deputy who uses or attempts to use force in any of these circumstances or any of these manners shall complete a Use of Force Report form and submit it to a supervisor before the end of shift.

- (a) Firearm discharged.
- (b) Firearm aimed at a person.
- (c) Taser probes deployed.
- (d) Taser used in 'drive/stun' mode.
- (e) Less lethal munitions discharged.
- (f) An impact weapon (baton or other) used to strike a person.
- (g) A Vascular Neck Restraint or choke-hold used on a person.
- (h) A vehicle was used to ram or intentionally strike a vehicle or person.
- (i) Canine bite on a person.
- (j) Canine deployed off-leash.
- (k) OC spray or CS gas deployed.
- (l) Blows or strikes with personal weapons (hands, feet or other body parts).
- (m) Forcible takedown (subject tackled, tripped or forced to the ground against active resistance).
- (n) Precision Immobilization Technique (PIT) Maneuver utilized.
- (o) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (p) Use of force caused a visible injury.
- (q) Use of force would lead a reasonable deputy to conclude that the individual may have experienced more than momentary pain.
- (r) The individual subjected to force complained of injury or continuing pain.
- (s) The individual indicates intent to pursue litigation.
- (t) The individual subjected to force was rendered unconscious.

The Use of Force Report form exists to collect state-mandated data and enable the systematic documentation and tracking of why, how, and how often office members use force. It is not an allegation of wrongdoing.

#### 300.6.2 USE OF FORCE REVIEW PROCESS

1) A supervisor who receives a Use of Force Report form will review the portion completed by the deputy for completeness and accuracy, then forward the form to their Division Chief. The Division Chief will assign a Reviewer for the incident and provide a tracking number.

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2) The assigned Reviewer assesses three questions:

1. Was the Use of Force lawful?
2. Was the Use of Force within policy?
3. Was the Use of Force consistent with office training?

The review may draw on any appropriate and relevant evidence including but not limited to:

- (a) Deputy report(s)
- (b) Interview with the subject on whom force was used
- (c) Witness interview(s)
- (d) Other agency report(s)
- (e) Bodycam, Dashboard, or other video
- (f) Medical records
- (g) Photos of deputies and subject(s)
- (h) Independent review by a qualified Use of Force Instructor

If the Reviewer finds evidence that the Use of Force was unlawful or outside policy, they shall immediately notify command staff of the possible need for Administrative Investigation. Training issues may be handled in the reviewer's Summary Report.

The Reviewer produces a Summary Report for inclusion in the review file describing their review process and conclusions, together with the evidence used in the review.

3) If the review concludes that the Use of Force was lawful and within policy, the review file is forwarded to the Sergeant of the deputy using force. The Sergeant may return it to the Reviewer for further work or forward it to the Division Chief with their recommendation.

4) The Division Chief reviews the file and, if approved, forwards it to the Sheriff for final review of the Use of Force report, the review file, and the Use of Force itself.

#### 300.6.3 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).

#### 300.6.4 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).

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#### **300.6.5 REPORTING TO WASHINGTON STATEWIDE USE OF FORCE DATA PROGRAM**

The Office shall submit reports regarding use of force incidents as provided by RCW 10.118.030 to the Washington statewide use of force data program in the format and time frame established by the program (RCW 10.118.030).

#### **300.7 DUTY TO INTERCEDE AND REPORT**

Any deputy present and observing another member or other law enforcement officer or using force that is excessive according to law or this policy shall, when in a position to do so, intercede to prevent the use of unreasonable force (RCW 10.93.190).

Any deputy who observes another member or other law enforcement officer use force that is potentially excessive according to the law or this policy shall report these observations to a supervisor as soon as feasible (RCW 10.93.190).

##### **300.7.1 PERSPECTIVE WHEN INTERCEDING AND REPORTING**

When observing or reporting force used by a law enforcement officer, 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.

##### **300.7.2 NO RETALIATION FOR MANDATORY INTERCEDING OR REPORTING**

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 (RCW 10.93.190) (see Anti-Retaliation Policy).

#### **300.8 TRAINING**

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

Deputies shall receive training and subsequent periodic training on (RCW 43.101.450; RCW 43.101.495; RCW 10.120.020):

- (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 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.

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- (d) Policy revision recommendations.