

**MONTESANO POLICE DEPARTMENT
POLICY AND PROCEDURE**

**GENERAL OPERATIONS
USE OF FORCE**

EFFECTIVE DATE
July 25, 2021

APPROVED
Chief Brett Vance

POLICY #
04.010

Use of Force

PURPOSE AND SCOPE

It is the fundamental duty of law enforcement to preserve and protect all human life. 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 department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

DEFINITIONS : Definitions related to this policy include:

<u>DEADLY FORCE</u>	Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.
<u>PHYSICAL FORCE</u>	The application of physical techniques or tactics, chemical agents or weapons toward another person.
<u>LESS LETHAL ALTERNATIVES</u>	Include, but are not limited to, verbal warnings, de-escalation tactics, conducted energy weapons, devices that deploy oleoresin capicum, batons, and beanbag rounds.
<u>PROBABLE CAUSE</u>	Probable Cause is shown to exist when “the facts and circumstances within the arresting officer’s knowledge are sufficient to warrant a prudent person to believe that a suspect has committed, is committing, or is about to commit a crime.
<u>IMMINENT</u>	The threat must be immediate or about to happen. Is urgent and rapidly evolving.
<u>ESCAPE</u>	A person is guilty of escape if he or she knowingly escapes from custody or a detention facility
<u>CUSTODY</u>	means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a correctional facility work crew
<u>IMMINENT THREAT OF SERIOUS PHYSICAL INJURY OR DEATH</u>	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.

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. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers 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 Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers 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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DUTY TO INTERVENE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor. (

USE OF FORCE

A peace officer may use physical force against a person when necessary to: Protect against criminal conduct where there is **PROBABLE CAUSE** to make an arrest; effect an arrest; prevent an escape as defined under chapter 9A.76 RCW; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

A officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. When possible and feasible, the officer will attempt the following prior to a physical use of force:

- (a) If possible, exhaust all available and appropriate de-escalation tactics. Such as: creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance and cover.
- (b) When possible, call for additional resources such as a crisis intervention team or designated crisis responder.
- (c) When possible, call for back-up officers when encountering resistance.
- (d) If possible, taking as much time as necessary to gain compliance without using force.
- (e) Leave the area if there is no threat of imminent harm and a crime has not been committed or is not being committed.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. If possible, prior to the use of force, officers should consider certain circumstances and characteristics such as:

- (a) Whether the person is pregnant, appears pregnant, or states they are pregnant;
- (b) Is known to be a minor, appears to be a minor or states they are a minor;
- (c) Is known to be a vulnerable adult or appears to be a vulnerable adult as defined in RCW 74.34.020;
- (d) Displays signs of mental, behavioral, or physical impairments or disabilities;
- (e) Appears to be experiencing perceptual or cognitive impairments typically related to alcohol, narcotics, hallucinogens, or other drugs;
- (f) Is suicidal;

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- (g) Has a limited proficiency understanding the language used by the officer such as English;
- (h) Is in the presence of children.

The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident and the totality of the circumstances. Any evaluation of reasonableness must allow for the fact that officers 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.

"Totality of the circumstances" means all facts known to the officer leading up to and at the time of the use of force, and includes the actions of the person against whom the officer uses such force, and the actions of the officer.

Given that no policy can realistically predict every possible situation an officer might encounter, officers 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 officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers 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 an officer to retreat or be exposed to possible physical injury before applying reasonable force if the officer or the public are at imminent risk. The officer should terminate the use of physical force as soon as the necessity for such force ends.

USE OF FORCE TO EFFECT AN ARREST

An officer may use all means reasonably necessary to effect an arrest if, after notice of the intention to arrest the person, he/she either flees or forcibly resists (RCW 10.31.050).

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer 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 officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.

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- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects, and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers 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 person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

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

CAROTID CONTROL HOLD, CHOKE HOLDS OR NECK RESTRAINTS

A peace officer of this department may not use a Carotid Control Hold, choke hold or any kind of neck restraint upon another person in the course of his or her duties as a peace officer.

- a) "Chokehold" mean the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway.
- b) "Neck Restraint or Carotid Control Hold" 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.

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USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Montesano Police Department or Washington State Criminal Justice Training Center for this specific purpose.

DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone.

For example, an imminent danger may exist if an officer reasonably believes any of the following:

- 1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- 2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer may not fire a weapon upon 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. For the purposes of this subsection, a vehicle is not considered a deadly weapon unless the operator is using the vehicle as a deadly weapon and no other reasonable means to avoid potential serious harm are immediately available to the officer.

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

REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should

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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 Department requires the completion of a Use of Force form and could require additional report forms, as specified in department policy, procedure or law.

The following incidents of use of force should be documented in a report and using the Department Use of Force Form by all officers, of this department whom were engaged in that use of force:

- (a) A fatality occurred in connection with the use of force;
- (b) Great bodily harm occurred in connection with the use of force;
- (c) Sustantial bodily harm occurred in connection with the use of force; or
- (d) An officer of this department:
 - (1) Discharged a firearm at or in the direction of a person;
 - (2) Pointed a firearm at a person;
 - (3) Use a chokehold or vascular neck restraint;
 - (4) Use an electronic control weapon including, but not limited to, a Taser, against a person;
 - (5) Use Oleoresin Capsicum spray against a person;
 - (6) Discharged a less than lethal shotgun or other impact munitions at or in the direction of a person;
 - (7) Struck a person using an impact weapon or instrument including, but not limited to, punching, kicking, slapping, or using closed fists or feet;
 - (8) Used a vehicle to intentionally strike a person or vehicle;
 - (9) Deployed a canine by releasing it from the physical control of the law enforcement officer or had under the officer's control a canine that bites a person.

NOTIFICATION 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 officer 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.
- (e) Any application of the TASER (TM) device 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.

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- (h) An individual was struck or kicked.
- (i) The individual subjected to the force requests or receives medical assistance.
- (j) An individual alleges any of the above has occurred.

NOTIFICATION TO INDIAN AFFAIRS

When the use of force by an officer 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 department 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 (Chapter 4 § 6, Laws of 2019).

MEDICAL CONSIDERATION

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the 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 officer 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 officer 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 officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons 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 officers to be brought under control, may be at an increased risk of sudden death. **Calls involving these persons should be considered medical emergencies.**

Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

SUPERVISOR RESPONSIBILITIES

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 officers. 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 subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her 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. 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 subject may pursue civil litigation.
 - 4. 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 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.

PATROL LIEUTENANT RESPONSIBILITY

The Patrol Lieutenant 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.

TRAINING

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

USE OF FORCE ANALYSIS

At least annually, the Patrol Lieutenant or his designee should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. Each law enforcement agency in the State of Washington is required to report each incident where an officer employed by the agency used force against another to the Washington State Attorney General's Office. Each report must include:

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- (a) The date and time of the incident;
- (b) The location of the incident;
- (c) The agency or agencies employing the law enforcement officers;
- (d) The type of force used by the officers;
- (e) The type of injury sustained by the officer(s), suspect(s), or others;
- (f) Whether the person against whom force was used was armed or unarmed;
- (g) Whether the person against whom force was used was believed to be armed;
- (h) The type of weapon if the person was armed
- (i) The age, gender, race and ethnicity of the person against whom force was used, if known;
- (j) The tribal affiliation of the person against whom force was used, if known;
- (k) Whether the person against whom force was used exhibited any signs associated with a potential mental health condition or use of a controlled substance or alcohol based on the observations of the officer;
- (l) The name, age, gender, race, and ethnicity of the officer, if known;
- (m) The officer's years of service;
- (n) The reason for the initial contact between the person against whom the force was used and the officer;
- (o) Whether any minors were present at the scene of the incident, if known;
- (p) The entity conducting the independent investigation of the incident, if applicable;
- (q) Whether dashboard or body worn camera footage was recorded of the incident;
- (r) The number of officers who were present when force was used;
- (s) The number of suspects who were present when force was used.

This information can be used by the Chief of Police for:

- The identification of any trends in the use of force by members.
- Training needs recommendations.
- Equipment needs recommendations.
- Policy revision recommendations.