

Use of Force

300.1 PURPOSE AND SCOPE

This policy is intended to provide clarity to officers and promote safety for all by ensuring that all available and appropriate de-escalation techniques are used when possible, force is used appropriately only when necessary, and the amount of force used is proportional to the threat or resistance the officer encounters as well as the seriousness of the law enforcement objective that is being served.

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every officer of this department 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.

This policy incorporates the Washington State Office of the Attorney General Model Use of Force Policy.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Chokehold - The intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway (RCW 10.116.020).

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).

De-escalation tactics - Actions used by a peace officer that are intended to minimize the likelihood of the need to use force during an incident (RCW 10.120.010). Using force is not a de-escalation tactic.

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 officer or another person.

Flight - An act or instance of running away in an effort to leave and intentionally evade law enforcement.

Immediate threat of serious bodily injury or death - 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 body injury to the peace officer or another person (RCW 10.120.020).

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Use of Force

Necessary - Under the totality of the circumstances, a reasonably effective alternative to the use of force or deadly force does not appear to exist, and the type and amount of 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 officer or others (RCW 10.120.010).

Neck restraint - Any vascular compression 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).

Physical force (referred to as "force" in this policy) - 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).

Totality of the circumstances - 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 (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. 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.

It is the fundamental duty of law enforcement to preserve and protect all human life (RCW 10.120.010). Officers shall respect and uphold the dignity of all persons and use their authority in a bias-free manner.

The proper use of force is essential to ensure impartial policing and build trust in the community. While there are circumstances where individuals will not comply with the law unless compelled or controlled by officers through the use of force, officers must remain mindful that they derive their authority from the community and that unreasonable force degrades the legitimacy of that authority (Washington State Office of the Attorney General Model Use of Force Policy).

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.

Nothing in this policy limits or restricts an officer's authority or responsibility to perform lifesaving measures or community caretaking functions or prevents an officer from responding to requests for assistance or service (RCW 10.120.020).

300.2.1 DUTY TO INTERVENE AND REPORT

Any officer present and observing another law enforcement officer or a member attempting to use or using force that is clearly beyond that which is objectively reasonable under the circumstances

Brewster Police Department

Policy Manual

Use of Force

shall, when in a position to do so, intervene to prevent the use of unreasonable force (RCW 10.93.190).

Any officer who observes another law enforcement officer or a member attempting to use or using force that is potentially beyond that which is objectively reasonable under the circumstances shall report these observations to a supervisor as soon as feasible (RCW 10.93.190).

300.2.2 PERSPECTIVE

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

300.2.3 ADDITIONAL STATE REQUIREMENTS ON THE DUTY TO INTERVENE AND REPORT

An officer 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 the Anti-Retaliation Policy).

300.2.4 CRITICAL DECISION MAKING

Use of critical decision making can help officers achieve the expectations outlined in this manual. When safe and feasible, when making or considering whether to make contact with a member of the public, officers shall (Washington State Office of the Attorney General Model Use of Force Policy):

- (a) Begin assessment and planning with available facts before arriving at the scene.
- (b) Request available resources, as needed, such as a crisis intervention team or other appropriate specialty unit or professionals.
- (c) Collect information when on scene.
- (d) Assess situations, threats, and risks.
- (e) Identify options for conflict resolution.
- (f) Determine a reasonable course of action.
- (g) Review and re-assess the situation as it evolves.

Nothing in this policy precludes officers from taking quick action when faced with a life-threatening situation, such as an active shooter. When safe and feasible, officers shall not unnecessarily jeopardize their own safety or the safety of others through tactical decisions that unreasonably place themselves or others at risk including but not limited to (Washington State Office of the Attorney General Model Use of Force Policy):

- (a) Immediately approaching a person without proper evaluation of the situation.
- (b) Leaving insufficient space between an officer and the person.
- (c) Not providing time for a person to comply with commands.
- (d) Unnecessarily escalating a situation.

Use of Force

300.3 USE OF FORCE

Officers shall use only the least 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. Officers shall use reasonable care when determining whether to use and when using any physical force or deadly force against another person (RCW 10.120.020).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. 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.

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 this 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.

300.3.1 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 (RCW 10.120.020):

- (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 (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual displays signs of mental, behavioral, intellectual, developmental, or physical impairments or disabilities, including individuals who reasonably appear suicidal.
- (f) The individual's ability to understand and comply with officer commands.
- (g) Proximity of weapons or dangerous improvised devices.

Use of Force

- (h) The degree to which the individual has been effectively restrained and the individual's 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 officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (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 officer 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 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. 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 individual can comply with the direction or orders of the officer.
- (c) Whether the individual 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.

300.3.3 ALTERNATIVE TACTICS - DE-ESCALATION

When possible, officers shall use all reasonably available and appropriate de-escalation tactics prior to using force (RCW 10.120.020).

Use of Force

Depending on the circumstances, officers have a number of de-escalation tactics to choose from which include but are not limited to (Washington State Office of the Attorney General Model Use of Force Policy):

- (a) Employing tactical positioning and repositioning to maintain the benefit of distance and cover, such as backing away from the person to re-assess and determine which tactics to use.
- (b) Placing barriers or using existing structures to provide a shield or other protection between officers and a person.
- (c) Attempting to slow down or stabilize the situation to allow for the consideration and arrival of additional resources that may increase the likelihood of a safe resolution.
- (d) Requesting and using available support and resources, such as a crisis intervention team, a designated crisis responder, other behavioral health providers, or back-up officers, including more experienced officers or supervisors.
- (e) Using clear instructions and verbal persuasion.
- (f) Employing verbal and non-verbal communication techniques to calm a person (e.g., speaking slowly, regulating tone and body language, uncrossing one's arms, minimizing hand gestures, reducing bright, flashing lights and sirens).
- (g) Attempting to communicate in non-verbal ways when verbal instructions would be inadequate (e.g., when the person and officer speak different languages, the person is unable to hear or understand instructions).
- (h) Communicating in a way that demonstrates respect for people's dignity (e.g., clearly explaining the officer's actions and expectations, listening to the person's questions and concerns and responding respectfully, being neutral and fair when making decisions).
- (i) When there are multiple officers, designating one officer to communicate in order to avoid competing or confusing commands.
- (j) Exhibiting patience while using all available and appropriate tactics and resources to provide as much time as needed to resolve the incident without using force.

300.3.4 PERMISSIBLE USES OF FORCE

An officer may use force upon another person to the extent necessary under these circumstances to (RCW 10.120.020):

- (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) 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.
- (e) Take a minor into protective custody when authorized or directed by statute.

Brewster Police Department

Policy Manual

Use of Force

- (f) Execute or enforce a court order authorizing or directing an officer to take a person into custody.
- (g) Execute a search warrant.
- (h) Execute or enforce an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes an officer to use force to execute or enforce the directive or order.
- (i) 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 the person is being detained and is not free to leave.
- (j) Take a person into custody when authorized or directed by statute.
- (k) Protect against an imminent threat of bodily injury to the officer, another person, or the person against whom force is being used.

Officers shall terminate the use of force as soon as the necessity for such force ends (RCW 10.120.020).

300.3.5 IDENTIFICATION, WARNING, AND OPPORTUNITY TO COMPLY PRIOR TO THE USE OF FORCE

When safe and feasible, prior to the use of force, officers shall (Washington State Office of the Attorney General Model Use of Force Policy):

- (a) Identify themselves as law enforcement officers.
 - 1. Identification is unnecessary when the officer has objectively reasonable grounds to believe the person is aware of this fact.
- (b) Attempt to determine whether the person has a special need, mental condition, physical limitation, developmental disability, language barrier, or other factor that may impact the person's ability to understand and comply with officer commands.
- (c) Provide clear instructions and warnings.
- (d) Warn a person that force will be used unless the person's resistance ceases.
- (e) Give the person a reasonable opportunity to comply with the warning that force may be used.

300.4 DEADLY FORCE APPLICATIONS

When reasonable, officers shall, prior to the use of deadly force, make efforts to identify themselves as peace officers and to warn that deadly force may be used, unless an officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (RCW 10.120.020):

- (a) An officer may use deadly force to protect the officer or others from what the officer reasonably believes is an immediate threat of serious physical injury or death.

Use of Force

- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual 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 immediate threat of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

300.4.1 MOVING VEHICLES

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

An officer may not fire a weapon upon a moving vehicle unless necessary to protect against an imminent threat of serious bodily injury resulting from the operator's or a passenger's use of a deadly weapon. 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. (RCW 10.116.060).

When feasible, officers shall attempt to move out of the path of a moving vehicle rather than discharge their weapon at the operator.

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

An officer shall not discharge a firearm from a moving vehicle, unless a person is immediately threatening the officer or another person with deadly force.

300.4.2 DRAWING AND POINTING A FIREARM

- (a) An officer should only draw a firearm in the low-ready position (i.e., unholstered but out of the officer's visual field) when the officer makes reasonable observations based on the totality of the circumstances that the situation may evolve to the point where deadly force would be justified.
- (b) An officer should only point a firearm at a person when deadly force is justified.
- (c) When it is determined that the use of deadly force is not necessary, the officer should, as soon as safe and feasible, lower, holster, or secure the firearm.
- (d) Pointing a firearm at a person is a reportable use of force and its justification and circumstances shall be documented in accordance with procedures set by the statewide use of force data collection program (RCW 10.118.030).

300.4.3 RESTRICTED USE

Officers shall not use a firearm in the following circumstances (Washington State Office of the Attorney General Model Use of Force Policy):

- (a) As an impact weapon except when deadly force is justified.
- (b) When it appears likely that an innocent person may be injured by the officer discharging the firearm in the direction of an innocent person.

Use of Force

- (c) When discharging or pointing a firearm at a person who presents a danger only to themselves and does not have the apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the officer or another person.
- (d) When discharging or pointing a firearm at a person who presents a danger only to property and does not have the apparent opportunity or intent to immediately cause death or serious bodily injury to the officer or another person.

300.4.4 DISCHARGE OF FIREARMS

Officers are only permitted to discharge a firearm at a person in situations where deadly force is justified. Each discharge of the firearm must be justified. When feasible, officers shall give a verbal warning that a firearm will be discharged. Prior to the decision to use a firearm, officers should consider field of fire, backdrop, bystanders, potential for ricochet, and other risks of life (Washington State Office of the Attorney General Model Use of Force Policy).

300.5 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 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 may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

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 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 Conducted Energy Device (CED) 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.

Use of Force

300.5.2 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 (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 an officer (RCW 43.101.135).

300.5.4 REPORTING TO WASHINGTON STATEWIDE USE OF FORCE DATA PROGRAM

The Department 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).

300.6 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 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 officer'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 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).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain, 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

Use of Force

considered medical emergencies. Officers 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 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 officers. 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) 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.

Use of Force

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).

300.7.1 SUPERVISOR RESPONSIBILITY

The Supervisor 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

All officers and supervisors shall receive training consistent with this policy and related use of force policies at least annually. Training should (Washington State Office of the Attorney General Model Use of Force Policy):

- Be a combination of classroom and scenario-based learning.
- Include community partners, when relevant and feasible.
- Incorporate cultural competency to understand disproportionately impacted communities, and how racialized experiences of policing and the criminal justice system may impact interactions with police.

This policy should be incorporated into defensive tactics curricula.

Officers shall receive training and subsequent periodic training on (RCW 43.101.450; RCW 43.101.495; RCW 10.120.010; 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 reasonably effective alternatives to force including applicable legal requirements.
- (c) Duty to intervene.
- (d) Exercising reasonable care in determining when to use force.
- (e) Evaluation of whether certain applications of force are reasonable and proportional to the threat or resistance.
- (f) The Washington State Office of the Attorney General Model Use of Force Policy.

300.9 USE OF FORCE ANALYSIS

At least annually, the Patrol Chief of Police should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, 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.

Brewster Police Department

Policy Manual

Use of Force

- (d) Policy revision recommendations.