

Use of Force

404.1 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 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.

404.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

De-Escalation Tactics - Actions used by a police officer that are intended to minimize the likelihood of the need to use force during an incident. (RCW 10.120.010)

Excessive Force - Force that exceeds the force permitted by law or policy of the witnessing officer's agency (RCW 10.93.190).

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.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched or escorted.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous. The term "imminent" in this context does not apply to the section Deadly Force Applications.

Immediate Threat of serious physical 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 injury to the officer or another person. (RCW 10.120.020)

Less-Lethal Alternatives - Include, but are not limited to, verbal warnings, de-escalation tactics, conducted energy weapons, devices that deploy OC, batons and beanbag rounds.

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Necessary - Based on 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 was a reasonable and proportional response to effect the legal purpose intended or to protect against the threat posed to the officer and others. (RCW 10.120.020)

Physical Force - means 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.

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 10.120.020)

Wrongdoing - Conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de-minimis or technical in nature (RCW 10.93.190).

404.2 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.

The Tumwater Police 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.

404.2.1 DUTY TO INTERCEDE AND REPORT

Any on-duty officer who witnesses another officer engaging or attempting to engage in the use of excessive force against another person shall intervene when in a position to do so to end the use of, attempted use of, or to prevent the further use of excessive force. An officer shall also render 1st aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force.

Any on-duty officer who witnesses any wrongdoing committed by another officer, or has a good faith reasonable belief that another officer committed wrongdoing, shall report such wrongdoing to their supervisor or other supervisory officer.

A member of the Department shall not discipline or retaliate in any way against an officer for intervening in good faith or for reporting wrongdoing in good faith as required by this section.

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The Department shall send notice to CJTC of any disciplinary decision resulting from an officers failure to intervene or failure to report as required by this section to determine whether the officer's conduct may be grounds for suspension or revocation of certification under RCW 43.101.105.

404.2.2 LEGISLATIVE INTENT

The legislature addresses excessive force and discriminatory policing by establishing a requirement for law enforcement officers to act with reasonable care when carrying out their duties, including using de-escalation tactics and alternatives to deadly force. Further, the legislature addresses public safety concerns by limiting the use of deadly force to very narrow circumstances where there is an imminent threat of serious physical injury or death. When practicable, officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.

It is the fundamental duty of law enforcement to preserve and protect all human life.

404.3 USE OF FORCE

An officer may use physical force against a person to the extent necessary to (RCW 10.120.020):

- a. Protect against 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 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;
- e. Take a person into custody, transport a person for evaluation or treatment, or provide other assistance under RCW 10.77, 71.05, or 71.34;
- f. Take a minor into protective custody when authorized or directed by statute;
- g. Execute or enforce a court order authorizing or directing an 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 authorized an officer to use physical force to execute or enforce the directive or order; or
- j. Protect against an imminent threat of bodily injury to the officer, another person, or the person against whom force is being used.

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

An officer shall use reasonable care when determining whether to use physical force or deadly force and when using physical force or deadly force against another person. To that end, officers shall:

- a. When possible, use all de-escalation tactics that are available and appropriate under the circumstances before using physical force, such as:
 - Using clear instructions and verbal persuasion;
 - Attempting to slow down or stabilize the situation so that more time, options, and resources are available to resolve the incident;
 - Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;
 - When there are multiple officers, designating one officer to communicate in order to avoid competing commands;
 - Requesting and using available support and resources such as a crisis intervention team, a behavioral health professional, or back-up officers; and,
 - Taking as much time as necessary, without using physical force or weapons.
- b. When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances. This includes consideration of the characteristics and conditions of a person for the purposes of determining whether to use force against that person, and, if force is necessary, determining the appropriate and least amount of force possible to effect a lawful purpose. Such characteristics and conditions may include, for example, whether the person:
 - Is visibly pregnant, or states that they are pregnant;
 - Is known to be a minor, objectively appears to be a minor, or states that they are a minor;
 - Is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020;
 - Displays signs of mental, behavioral, or physical impairments or disabilities;
 - Is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs;
 - Has limited English proficiency; or,
 - Is in the presence of children.
- c. Terminate the use of physical force as soon as the necessity for such force ends.

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- d. When possible, use less lethal alternatives that are available and appropriate under the circumstances before using deadly force.
- e. Make less lethal alternatives reasonably available for their use.

Officers may not use any force tactics prohibited by applicable department policy or otherwise by law, except to protect his or her life or the life of another person from an imminent threat.

Nothing in this section:

- a. Limits or restricts an officer's authority or responsibility to perform lifesaving measures or perform community caretaking functions to ensure health and safety, including, but not limited to, rendering medical assistance, performing welfare checks, or assisting other first responders and medical professionals;
- b. Prevents an officer from responding to requests for assistance or service from first responders, medical professionals, behavioral health professionals, social service providers, designated crisis responders, shelter or housing providers, or any member of the public; or
- c. Permits an officer to use physical force or deadly force in a manner or under such circumstances that would violate the U.S. Constitution or state Constitution.

404.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

In addition to the factors listed above, 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 (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 drugs or alcohol use (RCW 10.120.020).
- e. The individual's mental state or capacity (RCW 10.120.020).
- f. The individual's ability to understand and comply with officer commands.
- g. Proximity of weapons or dangerous improvised devices.
- h. The degree to which the subject has been effectively restrained and the individual's ability to resist despite being restrained.
- i. The availability of other options and their possible effectiveness.
- j. Seriousness of the suspected offense or reason for contact with the individual.

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- k. Training and experience of the officer.
- l. Potential for injury to officers, suspects and others.
- m. Whether the person 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 subject 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 subject or awareness of any propensity for violence.
- r. The individual is visibly pregnant or claims to be pregnant (RCW 10.120.020).
- s. The individual is a minor, appears to be a minor, or claims to be a minor (RCW 10.120.020).
- t. The individual is known to be a vulnerable adult or appears to be a vulnerable adult as defined by RCW 74.34.020 (RCW 10.120.020).
- u. The individual has limited English proficiency (RCW 10.120.020).
- v. The individual is in the presence of a child (RCW 10.120.020).
- w. Any other exigent circumstances.

404.3.2 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 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.

404.3.3 NECK RESTRAINTS

All neck restraint and chokehold techniques are prohibited.

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404.4 DEADLY FORCE APPLICATIONS

An officer may use deadly force against another person only when necessary to protect against an immediate threat of serious physical injury or death to the officer or another person (RCW 10.120.020).

The officer, if feasible, will 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,.

404.4.1 MOVING VEHICLES

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

Officers may not fire a weapon upon a moving vehicle unless necessary to protect against an immediate threat of serious physical harm 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 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.

404.5 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.

404.5.1 WASHINGTON STATE REPORTING

Each law enforcement agency in Washington is required to report each incident where a law enforcement officer employed by the agency used force and:

- a. A fatality occurred in connection with the use of force;
- b. Great bodily harm occurred in conjunction with the use of force (RCW 9A.04.110);
- c. Substantial bodily harm occurred in conjunction with the use of force (RCW 9A.04.110);
- d. An officer:
 1. Discharged a firearm at or in the direction of a person;
 2. Pointed a firearm at a person;

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3. Used a chokehold or vascular neck restraint;
4. Used an electronic control weapon including, but not limited to, a Taser, against a person;
5. Used OC spray against a person;
6. Discharged a less-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, a club, baton, or flashlight;
8. Used any part of their body to physically strike a person including, but not limited to, punching, kicking, slapping, or using closed fists or feet;
9. Used a vehicle to intentionally strike a person or vehicle;
10. Deployed a K9 by releasing it from the physical control of the handler or had under the handler's control and the K9 bites a person.

Each use of force event report must include the following information:

- a. The date and time of the incident;
- b. The location of the incident;
- c. The agency or agencies employing the officers;
- d. The type of force used by the officer;
- e. The type of injury to the person against whom force was used, if any;
- f. The type of injury to the officer, if any;
- g. Whether the person against whom force was used was armed or unarmed;
- h. Whether the person against whom force was used was believed to be armed;
- i. The type of weapon the person against whom force was used was armed with, if any;
- j. The age, gender, race, and ethnicity of the person against whom force was used, if known;
- k. The tribal affiliation of the person against whom force was used, if applicable and known;
- l. 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 observation of the LE officer;
- m. The name, age, gender, race, and ethnicity of the LE officer, if known;
- n. The LE officer's years of service;
- o. The reason for the initial contact between the person against whom force was used and the LE officer;

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- p. Whether any minors were present at the scene of the incident, if known;
- q. The entity conducting the independent investigation of the incident, if applicable;
- r. Whether dashboard or body-worn camera footage was recorded for an incident;
- s. The number of officers who were present when force was used; and,
- t. The number of suspects who were present when force was used.

404.5.2 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® 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.
- h. An individual was struck or kicked.
- i. An individual alleges unreasonable force was used or that any of the above has occurred.
- j. An individual was forced to the ground.

404.5.3 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).

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404.5.4 OFFICER REPORT WRITING FOR USE OF FORCE INCIDENTS

The use of force factors outlined in this policy and in current case law should guide the reporting of every use of force incident. Officer reports should answer these questions:

- Who did you perceive you were dealing with? (juvenile, adult, under the influence of intoxicants/drugs, criminal suspect or emotionally disturbed person (EDP), etc.)
- Could you de-escalate the situation? Specify all attempts and techniques used. If unable, provide the reasons why.
- What did you believe to be the severity of the crime? Why?
- Did the suspect or EDP pose an immediate threat? To Whom?
- Was the suspect or EDP attempting to flee or forcefully resist?
- What specific verbal warnings were given before force was applied?

404.5.5 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).

404.6 MEDICAL CONSIDERATIONS

Officers shall render aid at the earliest safe opportunity in accordance with RCW 36.28A.445, to any person injured as a result of the use of force (RCW 10.93.190).

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.

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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 (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.

See the Medical Aid and Response Policy (494) for additional guidelines.

404.7 SUPERVISOR RESPONSIBILITY

A supervisor should respond to a reported application of force, 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, obtain a recorded interview with the individual upon whom force was applied.
- 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. 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.

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) and Policy 410.

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404.7.1 COMMANDER RESPONSIBILITY

The Commander shall review each use of force to ensure compliance with this policy and to address any training issues.

404.8 TRAINING

Officers will receive periodic training, at least annually, on this policy and demonstrate their knowledge and understanding through a combination of classroom and scenario-based learning.

Officers shall receive training and subsequent periodic training on RCW 43.101.450; RCW 43.101.495; RCW 10.120.010; and 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.

404.9 USE OF FORCE ANALYSIS

At least annually, the Commander 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.
- d. Policy revision recommendations.