



Office of the Insurance
Commissioner
Criminal Investigations Unit

Chapter 2: Use of Force

Section 2:1 Use of Force

Resource Contact: CIU Director

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References: RCW 10.93.020 - Definitions

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8/12/2019

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RCW 48.30A.070- Duty to investigate, enforce, and prosecute violations

WASPC Accreditation Standard 3.1 - Use of Force/Deadly Force

WASPC Accreditation Standard 3.2 - Warning Shots

WASPC Accreditation Standard 3.3 – Non-Lethal Weapons

WASPC Accreditation Standard 3.5 - Reporting Use of Force

WASPC Accreditation Standard 3.6 - Investigations of Deadly Force

WASPC Accreditation Standard 4.3 - Review of Pursuits, Use of Force, Internal investigations, Biased Based Policing

PURPOSE

- A. The purpose of this policy is to provide guidelines for Detectives of the Office of the Insurance Commissioner's Criminal Investigations Unit in the use of force and to require that all Detectives must be thoroughly trained in its content prior to being authorized to use force and carry firearms and other weapons.
- B. The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. This agency recognizes and respects the value of each human life. Investing Detectives with the lawful authority to use force, a careful balancing of all human interests is required. It is the policy of this agency that Detectives use an amount of force necessary to effectively keep an investigation under control while protecting the lives of the Detectives or others.
- C. This agency recognizes that each Detective must be entrusted with discretion in determining the appropriate force response in each investigation. It is the ultimate objective during every law enforcement encounter to minimize injury to everyone involved; however, nothing in this policy requires a Detective to sustain physical injury before responding with reasonable force.

DEFINITIONS

- A. Carry (firearm and handcuffs)
To have firearm and handcuffs in the Detective's personal possession.

- B. OC Agent
Oleoresin Capsicum (OC) is a non-lethal agent commonly referred to as "pepper spray."
- C. Handcuffs
Restraints used to secure an individual's wrists. Metal handcuffs are considered standard duty carry. Plastic or nylon restraints may be carried in addition to metal handcuffs.
- D. Firearm
An OIC approved weapon from which a projectile is forcibly ejected by an explosive.
- E. Taser
An OIC approved weapon from which barbs attached by wires to batteries is fired causing temporary incapacitation.
- F. Use of Force Oversight Team
Team members appointed by the Director and having oversight responsibility for the OIC's use of force policies, procedures and related training.
- G. Force
Action taken by a Detective to assist or facilitate in the control of a situation or another individual's behavior.
- H. Serious Bodily Injury
A physical injury that creates a substantial risk of death, causes death, disfigurement, or extended impairment of the function of any body limb, organ, or mental faculty.
- I. Necessary Force
Necessary force means that no reasonably effective alternative to the use of force appeared to exist at the moment and that the amount of force used was reasonable to affect the lawful purpose intended.
- J. Excessive Force
The use of force is excessive when its application exceeds the standard of "objective reasonableness" at the moment of the force response.
- K. Lethal Force
The application of force through the use of any means likely to cause death or serious bodily injury.
- L. Self Defense/Defense of Others
The act of defending oneself or others, when necessary to preserve one's life, or the life of another, against what is reasonably believed to be an imminent threat of death or serious bodily injury.
- M. Less Lethal Force
Any use of force other than lethal force.
- N. Objectively Reasonable

Facts or circumstances the Detective knows or should know before the application of force, which would cause a reasonable person to act or think in a similar way under similar circumstances.

- O. Detective
A Washington State Office of the Insurance Commissioner Criminal Investigations Unit Detective, Detective Sergeant or Director who is issued a firearm and handcuffs.
- P. Warning Shot
The discharge of a firearm with the intent to warn and not strike a subject.

POLICY

- A. If an encounter between the Detective and an individual escalates, the Detective may need to employ a variety of techniques to control the situation. Responding with force must be "objectively reasonable" under the *Graham v. Connor* [490 U.S. 386, 109S.Ct. 1865 (1989)] standard. Under this critical standard, the force used by the Detective is evaluated in light of the totality of the facts and circumstances known to the Detective at the time the force was used. At a minimum, factors considered are the severity of the crime, whether the suspect poses an immediate threat, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

- B. Limited Authority

RCW 10.93.020(5) states that the Office of the Insurance Commissioner is a "limited authority Washington law enforcement agency." Detectives of the OIC are "limited authority Washington peace officers" as defined in RCW 10.93.020(6). Detectives are authorized to use reasonable force in executing the duties set forth in RCW 48.30A.070 and as prescribed by OIC policy.

- C. Subject Behavior/Detectives Options

The use of force by Detectives must be in compliance with this policy and the training standards established by the OIC. Only objectively reasonable and necessary force will be used by Detectives to lawfully and safely neutralize a threat against the Detectives or others, to overcome resistance by a suspect being taken into custody, or to affect a lawful arrest.

Legislative Intent

The legislature intends to address 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 intends to address 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. It is the intent of the legislature that when practicable, peace officers will use the least amount of physical force necessary to overcome actual resistance under the circumstances.

De-escalation

1. Pursuant to ESHB 2037, force may be used to protect against criminal conduct where there is probable cause to make an arrest; effect an arrest; prevent an escape as defined under chapter RCW 9A.76; prevent a person from fleeing or stop a person who is actively fleeing a lawful temporary investigative detention; or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.
2. A Detective shall use reasonable care when determining whether to use physical force and when using any physical force against another person. A Detective shall;
 - (a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as:
 - 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 Detectives, designating one Detective to communicate in order to avoid competing commands;
 - Calling for additional resources such as a crisis intervention team or mental health professional when possible;
 - Calling for back-up officers or resources from other law enforcement agencies when encountering resistance;
 - Taking as much time as necessary, without using physical force or weapons; and
 - Leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed.
 - (b) When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances. This includes a 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 they are a minor;
 - Is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 3074.34.020;
 - 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;
 - Is suicidal;
 - Has limited English proficiency; or
 - Is in the presence of children

A Detective may use physical force in order to overcome resistance and control a situation. Detectives will defend themselves or others when necessary to preserve their life or the life of another, against what is reasonably believed to be an imminent threat of death or serious bodily injury.

All individuals taken into custody, even those who are cooperative and compliant will be handcuffed and searched as soon as possible.

The areas below identify physical force and non-physical force categories that a detective may use individually or collectively:

1. Physical Presence

In dealing with people, each Detective must reasonably attempt to make the contact that inspires respect and generates cooperation.

2. Verbal Commands – Oral Dialogue

The manner and form in which a Detective speaks to the individual(s) can be an effective means of controlling a situation. Oral dialogue may be in the form of warnings, advice, and persuasion. Volume, inflection, and tone control may be progressive in nature depending upon the circumstances and are effective means of utilizing reasonable and necessary verbal persuasion which may avoid the need for other use of force options.

3. Escorting – Touching

If a situation can no longer be controlled with oral dialogue or verbal control alone, compliance measures may be used. Some form of physical maneuvering may be required to escort or control the individual.

4. Control Holds

Occasionally, Detectives will be faced with an uncooperative individual or an individual who refuses to be placed into custody. Detectives may use sufficient escalating physical force to gain control of a situation or to make the lawful arrest. The object of this force is to gain compliance and control while minimizing the risk of injury to the Detectives or others.

5. OC Agents

If during an attempt to control a situation or make a lawful arrest a subject actively resists, Detectives may use the OC Agent. Detectives should consider innocent bystanders, wind, ventilation, etc. The objective of this level of force is to gain compliance and control while minimizing the risk of injury to the Detectives or others.

6. Taser

One Taser is assigned to the unit for use during search warrant service. If during an attempt to control a situation or make a lawful arrest a subject actively resists, Detectives may use the Taser. Detectives should consider innocent bystanders. The objective of this level of force is to gain compliance and control while minimizing the risk of injury to the Detectives or others.

7. Personal Weapons / Weapons of Opportunity

Detectives may use defensive tactics. For example: hand, elbow, foot, and knee) or improvised impact weapons to defend themselves or others against

assaults when lethal force is not necessary and other verbal and physical force alternatives would be or have been ineffective. Detective's application of this type of force must be justified and appropriate.

Any form of neck restraint and chokehold technique is prohibited (HB 1054)

8. Lethal Force

The use of a firearm or other lethal force is authorized when a Detective must defend themselves or others against lethal force. A Detective uses lethal force when it is necessary to preserve his or her life or to defend another from what the Detective reasonably believes to be an immediate threat of death or serious bodily injury.

Justification for the use of lethal force must be limited to what reasonably appears to be the facts and circumstances known and perceived by a Detective at the time they decide to use such force. Facts unknown to a Detective, no matter how compelling, cannot later be considered in determining whether the use of lethal force was justified.

Lethal force may be used to prevent the escape of a violent, fleeing felon when the Detective believes the following:

- a. The individual has used, or threatened to use, lethal force;
- b. All other means of capture have been exhausted; and
- c. There is risk of death or serious bodily injury to others.

Before using a firearm, Detectives must, whenever feasible, identify themselves.

9. Warning Shots

The discharge of warning shots by agency personnel is prohibited.

10. Moving Vehicles

A Detective 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 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 (HB1054)

D. Factors of Objective Reasonableness

As noted, any force response by a Detective must be judged by a standard of "objective reasonableness" at the time of the force response. When determining whether or not to respond with any level of force and in evaluating whether a Detective has responded with objectively reasonable force, a number of factors should be taken into consideration. Those factors may include, but are not limited to:

1. The Detective's reasonable perception of the conduct of the individual being confronted;
2. Detective/subject factors (age, size, relative strength, skill level, injury or exhaustion of the Detective, number of detectives vs. subjects, etc.);
3. Influence of drugs/alcohol (mental capacity and physical capabilities) of the subject;
4. Proximity of weapons to the subject;
5. Seriousness of the suspected offense(s) leading the Detective to respond with force;
6. Training and experience level of the detective;
7. Potential for injury to the public, Detective(s), and the suspect(s);
8. Risk of escape; or
9. Any other exigent circumstances.

E. Duty to intercede and report

Although not specifically required as a limited authority agency under RCW 10.93.190 or SB5066, the following will be the policy of OIC/CIU as a "best practice".

Any identifiable on-duty peace officer who witnesses another peace 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 excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A peace officer shall also 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.

"Excessive force" means force that exceeds the force permitted by law or policy of the witnessing officer's agency.

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

"Wrongdoing" means conduct that is contrary to law or contrary to the policies of OIC, provided that the conduct is not de-minimis or technical in nature.

A member of a law enforcement agency shall not discipline or retaliate in any way against a peace officer for intervening in good faith or for reporting wrongdoing in good faith as required.

SUPERVISOR/DETECTIVE RESPONSIBILITIES

Each Detective using force upon any person and any other Detective who witnesses such use of force must notify their supervisor as soon as is practical, (but always before the Detective leaves the scene.) The supervisor will complete a Supervisor Use of Force Review Form (Policy 2.5). The supervisor shall:

1. Interview all Detectives involved, or any witnesses and the recipient of the use of force, if appropriate.
2. Ensure that interviews of OIC employees will be conducted in accordance with the CBA.
3. Ensure that when any injuries are known, suspected, or alleged that:
 - a. Medical treatment is provided.
 - b. Photographs are taken.
4. Examine the involved Detective's service equipment, if warranted, and photograph any item of positive or negative evidentiary value.
5. The supervisor shall attach a copy of the case report to the Supervisor Use of Force Review Form (Policy 2.5), which will be used to detail the incident.

USE OF LETHAL FORCE INVESTIGATION AND INTERNAL REVIEW

The purpose of this section is for the OIC to have in place an internal review process to:

- Protect and support Detectives who have operated within the scope of their authority;
- Protect the community's interests when Detectives have exceeded the scope of their authority;
- Allow time for the completion of appropriate investigations; and
- Ensure that Detectives are physically, emotionally, and mentally capable of continuing their duties when firearms are discharged or any weapon is used to administer lethal force.

A. Investigation of Lethal Force Incident Involving Injury or Death

In the event a Detective is involved in a shooting/deadly force incident, the Director or their designee will ensure an independent law enforcement agency with primary jurisdiction of where the incident occurred leads the comprehensive independent criminal investigation of the incident. This investigation shall comply with all requirements and protocols of I 940, and any current legislative mandates, including investigations conducted by the Washington State Office of Independent Investigations, per HB 1267.

Whenever lethal force is used, the agency will place the Detective(s) involved on paid or administrative leave following the CBA. Detective(s) may return to regular duties subsequent to a review of the findings of the investigations(s).

REVIEW OF USE OF FORCE

Each incident involving any use of force shall be reported through a case report and a Supervisor Use of Force Review Form.

Incidents involving the use of lethal force or any discharge of a firearm shall be reviewed by an internal administrative investigation to determine conformance to agency policy.

Throughout the year, the Director will conduct a first level review and analysis of use of force events. At the end of the year, the Director will write an analysis of the agency's use of force events and forward that analysis to the Chief Deputy Commissioner should any use of force occur. The Chief Deputy Commissioner will review the annual analysis from a command perspective. This process is designed to be used as an early warning system for high profile events and to address policy, procedure, training and/or personnel issues that are identified during this process.