

Use of Force

300.1 PURPOSE AND SCOPE

Best Practice WASPC-2020 - 3.1

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.

300.1.1 DEFINITIONS

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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.

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, escorted, handcuffed, or restrained.

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

Totality of the circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

Duty to Intercede - Law enforcement officials have a legal duty to intervene on behalf of a citizen whose rights are being violated.

300.2 POLICY AND PRINCIPLES

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The use of force by law enforcement personnel is a matter of critical concern, both to the public and 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.

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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 Algona Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

Force may be "...necessarily used by a public officer in the performance of a legal duty..." [RCW 9A.16.020(1)]. "Necessary" force means that "no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended." [RCW 9A.16.010(1)]

The force used must be "objectively reasonable" under the *Graham v. Connor* standard [(1989) 490 U.S. 386, 109 S.Ct. 1865]. The court states: "Determining whether the force used ... is 'reasonable' ... requires a careful balancing of the nature and quality of the intrusion ... against the countervailing governmental interests at stake." The test of reasonableness requires "...careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he [or she] is actively resisting arrest or attempting to evade arrest by flight." The reasonableness of a particular use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Officers need to take into consideration a person's mental state, medical condition, emotions, and potential state of intoxication before using force, whenever feasible. When safe, under the totality of the circumstances, and when time and circumstances permit, officers should attempt de-escalation tactics to decrease the likelihood of the need for force. Attempts at de-escalation should be documented in their reports.

It is recognized that no duty to retreat exists when one is feloniously assaulted or attacked in a place where he or she has a right to be. [State v. Allery, 101 Wn.2d 591 (1984); State v. Hiatt, 187 Wn.2d 226 (1936)]

300.2.1 DUTY TO INTERCEDE AND REPORT

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Law enforcement officials have a legal duty to intervene on behalf of a citizen whose rights are being violated.

In cases where law enforcement officials do not intercede with their fellow officers to ensure citizens' rights are being protected, they are liable under [Section 1983](#) of the Civil Rights Act of 1871. According to "[Section 1983 Litigation](#)", Section 1983 applies to situations such as unjustifiable arrests, excessive force by a fellow officer, and any constitutional violation by a law enforcement official.

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

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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.

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 another supervisory peace officer in accordance with the witnessing peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

Any officer present and observing another law enforcement officer or a member 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.

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

5 Stages of Intervention:

– See the Problem

While some situations are obvious, others might be more subtle. It is important to know that even the most subtle of behaviors require early intervention to mitigate escalation.

– Determine Whether Action Is Required

Some problematic situations might simply require acknowledgment, but many will necessitate intervention. Determining that action is needed is often based on the situation and should be clearly delineated by the agency.

– Decide to Take Personal Responsibility to Act

As someone sworn to protect the community, taking on personal responsibility to act is not only expected, it is one of the many duties of the role. Departmental Duty to Intervene policies should also be considered when deciding to act.

– Determine How to Intervene

Although intervention actions depend on the specific situation, officers can actively intervene when a colleague is engaging in misconduct by using one or more of the

"3 D's":

* - Distract – Redirect the individual's attention.

Example(s): redirecting the conversation; using tactics to de-escalate the situation.

* - Direct – Address the misconduct directly and step in to intervene; depending on the relative rank of the officer engaging in misconduct, this may include giving them direct commands to cease the behavior.

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Example(s): Professionally confront peers, physically step in to stop use-of-force or misconduct, call

out problematic statements, request a supervisor of greater rank than the officer-involved respond to the scene, and give orders to cease behavior (when appropriate).

* - Delegate – Appoint someone else to take an action.

Example(s): Tell another officer present to help the officer hold the suspect in a better way; tell another officer present to call for medical back-up if the suspect appears to need medical assistance, instruct another officer to request that a supervisor of greater rank than the officer-involved respond to the scene.

– Take Action

Sometimes a situation clearly requires action and it is your obligation to do so.

How to intervene with a superior:

* - Present solutions, not problems: Suggest an alternative way of succeeding.

* - Support the department's mission, vision, and professionalism: Connect your concerns back to supporting the department's success. It shows a commitment to the profession and to the community.

* - Have their back: Let them know when something might reflect poorly on them and demonstrate that you are interested in supporting their career as well as your own.

An Officer of the Algona Police service 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.

300.2.2 PERSPECTIVE

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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.

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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.

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.

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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.

As previously noted, any application of force by a member of this department must be judged by a standard of “objective reasonableness” at the moment force is used. The reasonableness analysis requires balancing the “nature and quality of the intrusion” on a person’s liberty with the “countervailing governmental interests at stake” to determine whether the use of force was objectively reasonable under the circumstances [Smith v. City of Hemet, 894 F.3d 689 (9th Circuit 2005)].

Courts first consider the “nature and quality of the alleged intrusion.” Courts then consider the governmental interests at stake by looking at (1) How severe the crime at issue is, (2) whether the subject posed an immediate threat to the safety of the officers or others, and (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight. [Mattos v. Agarano, 661 F.3d 433 (9th Circuit 2011)].

300.3.1 PERMISSIBLE USE OF FORCE

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An Officer with the Algona Police Service 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). As well as other permissible uses of force defined in RCW 10.120.020:

Protect against a criminal offense when there is probable cause that the person has committed, is committing, or is about to commit the offense;

Effect an arrest;

Prevent an escape as defined under RCW chapter 9a. 76

Take a person into custody, transport a person for evaluation or treatment, or provide other assistance under RCW chapters 10.77, 71.05 or 71.34

Take a minor into protective custody when authorized or directed by statute;

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Execute or enforce a court order authorizing or directing a peace officer to take a person into custody;

Execute a search warrant;

Execute or enforce an oral directive issued by a judicial officer in the courtroom or a written order where the court expressly authorizes a peace officer to use physical force to execute or enforce the directive or order; or

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;

Take a person into custody when authorized or directed by statute; or

Protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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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 drug or alcohol use.
- (e) The individual's mental state or capacity.
- (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 individual has been effectively restrained and his/her 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.

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- (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) Any other exigent circumstances.

While officers are entrusted with the authority to use “necessary force” during the course of their lawful duties, special consideration must be given to subjects suffering a Mental Health Crises.

Courts across the United States have ruled that when police encounter subjects suffering from a Mental Health Crisis the police must take that person’s mental state into consideration and attempt to de-escalate situations before “forcing” an encounter

Courts have also ruled that if, “a seizure’s sole justification is preventing harm to the subject of the seizure, the government has little interest in using force to effect that seizure. Further that, “using force likely to harm the subject is manifestly contrary to the government’s interest in initiating that seizure.”[Armstrong v. Vill. Of Pinehurst, 810 F.3d 892 (4th Cir. 2016)].

300.3.3 PAIN COMPLIANCE TECHNIQUES

Best Practice

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.

300.3.4 USE OF CHOKE HOLDS AND NECK RESTRAINTS

Best Practice **MODIFIED**

An officer may not use a chokehold or neck restraint on another person in the course of their duties as a peace officer. "Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway. "Neck restraint" refers

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to any vascular neck restraint or similar restraint, hold, or other tactics in which pressure is applied to the neck for the purpose of constricting blood flow.

Nothing in this section negates the officer from self-defense or the defense of others as defined in RCW [9A.16.040](#).

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

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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 should 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 Algona Police Department for this specific purpose.

300.3.6 ALTERNATIVE TACTICS - DE-ESCALATION

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When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion). See section 347 DE-Escalation for further guidance.

300.3.7 RESPIRATORY RESTRAINTS

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The use of a respiratory restraint, also known as a chokehold, is banned.

300.4 DEADLY FORCE APPLICATIONS

Federal

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

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is 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 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 imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under

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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 that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 USE OF FIREARMS AND MOVING VEHICLES

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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. The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. 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 policy, 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.

300.5 REPORTING THE USE OF FORCE

Best Practice **WASPC-2020 - 3.5**

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

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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_deputy] 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.

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- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the [EMDTdeviceTM] 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.

Any incident involving the application of force will be logged into the significant incident log by the supervisor, and notification will be made to the Chief as soon as it is feasible.

300.5.2 NOTIFICATION TO INDIAN AFFAIRS

State

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).

300.6 MEDICAL CONSIDERATIONS

Best Practice

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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 he/she can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

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).

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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.

See the Medical Aid and Response Policy for additional guidelines.

300.7 SUPERVISOR RESPONSIBILITIES

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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 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.
 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.

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- (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.
- (i) Any application of force shall be placed into the Significant Incident log by the supervisor and the Chief of Police shall be notified when feasible.

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.

300.7.1 COMMAND STAFF RESPONSIBILITY

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The Police Chief or Sergeant 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.

As part of our commitment to continuous improvement, each use of force situation will be discussed with the involved officer in order to review alternative options that may have been available, additional training that may be beneficial, tactics that were not effective or less effective than expected, and other options for safer, more effective uses of force in the future.

This review is intended to be an opportunity for officers, the Sergeant, and or Use of force instructors to discuss various techniques that may have been attempted or that were not attempted but that might have been an option.

This discussion is not intended to replace the department's responsibility to review the use of force situations for compliance with policy, rather it is a follow up to that finding to assist officers in continuous improvement.

300.8 TRAINING

Best Practice **MODIFIED**

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

Subject to available resources, officers should receive annual training on:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
- (b) De-escalation tactics, including alternatives to force and legal requirements
- (c) Duty to Intercede

300.9 USE OF FORCE ANALYSIS

Discretionary **WASPC-2020 - 3.5, 4.3**

At least annually, the 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:

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- (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.