

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the permissible use of force by law enforcement officers. While there is no way to specify the exact amount or type of force to be applied in any situation, every member of the Bellingham Police Department is expected to use these guidelines to act with reasonable care when carrying out their duties.

In addition to those methods, techniques, and tools set forth below, the guidelines for the permissible use 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

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.

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

Excessive force - force that exceeds the force permitted by law or policy.

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.

Less lethal alternatives - Include but are not limited to, verbal warnings, de-escalation tactics, conducted energy weapons, devices that deploy oleoresin capsicum (OC) or pelargonylvanillylamide (PAVA), batons, and specialty impact munitions.

Imminent threat of serious physical injury or death (in deadly force situations) - based upon the totality of circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

Necessary (in deadly force situations) - under the totality of circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others.

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

Totality of circumstances (in deadly force situations) - all facts known to the peace officer leading up to and at the time of the use of force, and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer.

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

### **300.2 POLICY**

The Bellingham Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone.

It is the policy of this department that officers may use force when necessary under the totality of circumstances and is employed in the performance of a legal duty, using reasonable care when determining whether to use force against another person.

Any officer determinations regarding the use of force that is necessary in a particular situation can allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying force.

#### **300.2.1 DUTY TO INTERVENE, RENDER AID, AND REPORT**

Any identifiable on-duty 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.

Any identifiable on-duty 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 in accordance with the witnessing peace officer's employing agency's policies and procedures for reporting such acts committed by a peace officer.

This agency shall send notice to the Criminal Justice Training Commission of any disciplinary decision resulting from a peace officer's 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.

#### **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.

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### 300.2.3 ADDITIONAL STATE REQUIREMENTS ON THE DUTY TO INTERCEDE AND REPORT

An officer shall not be disciplined for or retaliated against in any way for intervening in good faith or for reporting wrongdoing in good faith as required by this policy. (Chapter 321 § 1, 2021 Laws) (see the Anti-Retaliation Policy).

### 300.3 USE OF FORCE

Officers may use physical force against a person when necessary to:

- (a) protect against criminal conduct where there is probable cause to make an arrest;
- (b) effect an arrest;
- (c) prevent an escape as defined under RCW 9A.76;
- (d) or protect against an imminent threat of bodily injury to the peace officer, another person, or the person against whom force is being used.

A peace officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer shall:

- (a) when possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as:
  - 1. creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;
  - 2. when there are multiple officers, designating one officer to communicate in order to avoid competing commands;
  - 3. calling for additional resources such as a crisis intervention team or mental health professional when possible;
  - 4. calling for back-up officers when encountering resistance;
  - 5. taking as much time as necessary, without using physical force or weapons;
  - 6. 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 force necessary to overcome resistance under the circumstances;
  - 1. 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 (see factors section hereafter)
- (c) terminate the use of physical force as soon as the necessity for such force ends;
- (d) when possible, use available and appropriate less lethal alternatives before using deadly force; and
- (e) make less lethal alternatives issued to the officer reasonably available for their use

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

### 300.3.1 FORCE FACTORS

When determining whether to use force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) Imminence 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 individual is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs (Chapter 324 § 3, 2021 Laws);
- (e) The individual displays signs of mental, behavioral, or physical impairments or disabilities (Chapter 324 § 3, 2021 Laws);
- (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;
- (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 states they are pregnant (Chapter 324 § 3, 2021 Laws);

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- (s) The individual is known to be a minor, objectively appears to be a minor, or states that they are a minor; (Chapter 324 § 3, 2021 Laws);
- (t) The individual is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined by RCW 74.34.020 (Chapter 324 § 3, 2021 Laws);
- (u) The individual has limited English proficiency (Chapter 324 § 3, 2021 Laws);
- (v) The individual is in the presence of children (Chapter 324 § 3, 2021 Laws);
- (w) The individual is suicidal (Chapter 324 § 3, 2021 Laws);
- (x) 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 may only apply those pain compliance techniques for which they have successfully completed Bellingham Police 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.

### **300.3.3 RESTRICTIONS ON RESPIRATORY RESTRAINTS**

Officers of this [departmentoffice] may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer (Chapter 320 § 3, 2021 Laws).

### **300.4 DEADLY FORCE APPLICATIONS**

If feasible, 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.

A peace officer may use deadly force against another person only when necessary to protect against an imminent threat of serious physical injury or death to the officer or another person (Chapter 324 § 3, 2021 Laws).

"Imminent threat of serious physical injury or death" in deadly force situations means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person.

"Necessary" in deadly force situations means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount

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of force used was a reasonable and proportional response to the threat posed to the officer and others.

### 300.4.1 MOVING VEHICLES

A peace 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.

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**

Any use of force by a member of this [departmentoffice] 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 necessary under the circumstances.

Officers are required to report as a use of force (RTT yes) when they use any force capable of injuring a person.

In addition, this agency is required to provide the following use of force information to the appropriate state reporting system ("required state reporting"):

- (a) a fatality occurred in connection with the use of force;
- (b) great bodily harm occurred in connection with the use of force;
- (c) substantial bodily harm occurred in connection with the use of force; or
- (d) an officer:
  - 1. discharged a firearm at or in the direction of a person;
  - 2. pointed a firearm at a person;
  - 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 oleoresin capsicum (OC) or pelargonylvanillylamide (PAVA) against a person;
  - 6. discharged a less lethal weapon system or other specialty 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;

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10. deployed a canine by releasing it from the physical control of the law enforcement officer or had under the law enforcement officer's control a canine that bites a person

To collect data for purposes of training, resource allocation, analysis, and related purposes, the Bellingham Police Department may require the completion of additional report forms, as specified in Bellingham Police 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 instances that are "required state reporting" as listed above, or under the following circumstances:

- (a) The application of any force caused a visible injury.
- (b) The application of any force would lead a reasonable to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to any force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) The individual subjected to any force was rendered unconscious.
- (f) An individual alleges unreasonable force was used or that any of the above has occurred.

### **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 Bellingham Police 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.

## **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 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 (Chapter 321 § 1, 2021 Laws).

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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 (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 USE OF FORCE REPORT REVIEW/ANALYSIS**

All required use of force reporting will be sent to the Chief of Police via the chain of command. The reports will be reviewed to ensure that policy, training and disciplinary issues are addressed.

The Lieutenant tasked with use of force data will conduct an annual review of the use of force reports. The annual review shall be utilized to reveal patterns or trends that could indicate training needs and/or policy modification. The annual review shall be provided to the Chief of Police, Command Staff, and Training Staff.

### **300.8 SUPERVISOR RESPONSIBILITIES**

A supervisor shall respond to any of the listed "required state reporting" incidents or listed circumstances in the notification section. When a supervisor responds to any of these incidents,, 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.

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- (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.
- (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) Obtain relevant information and complete the Supervisor On Scene Use of Force Checklist form for the "required state reporting" incidents.

### 300.9 TRAINING

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

Officers shall receive training and subsequent periodic training on (RCW 43.101.450; Chapter 321 § 2, 2021 Laws; Chapter 324 § 3, 2021 Laws):

- (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 intervene, report and render aid.