

Schoharie County Law Enforcement Review Committee (LERC)

January 5, 2021

Attendees: please see attached roster

Meeting called to order at 5:08 pm.

Chairman Federice – tonight we will hear from the Rural Awakenings group.

Ms. Heary – thank you for the opportunity to come talk to you and thank you for all the hard work you have already put into this effort. My interest lays with this effort because I am a member of a bi-racial family.

Ms. Wilding – thank you. The last point in Executive Order 203 states “to promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.”

We do feel that the Sheriff’s Department does a great job with this through the LEAD (Law Enforcement Assisted Diversion) Program and the prescription drop off program. Use of Force Policy is really the crux of our mission as the language is extremely important. Our discussions with the Village of Cobleskill Police Department have considered the following: a County Citizen Advisory Board that can meet annually or as needed, tracking race during certain interactions with the public, include implicit bias and de-escalation training, expanding the LEAD Program to support high risk individuals before a crime is committed, a restorative justice program for alternatives to incarceration and identifying community problems and collaborate to solve them. In the county’s plan, we appreciate the recommendation that Law Enforcement have access to high quality mental health services. We believe that it very important.

Inv. Baker – about 3 months ago we adopted the expansion of the LEAD Program to include the higher risk individuals; a “pre-diversion diversion” if you will.

Ms. Wilding & Ms. Heary – thank you for that update. There are some changes to the draft policy that we would like you to consider.

(Copy of draft policy is attached to reference)

Section 300.2.1 ~ Duty to Intercede and Report - we would also like there to be a duty to report it to a supervisor. Currently it is recommended to report but not required. Last paragraph of this section would then read, "Any deputy who observes another law enforcement officer or a member use force that is beyond that which is objectively reasonable under the circumstances **shall** report these observations to a supervisor as soon as feasible."

Section 300.6 ~ Medical considerations to those in custody- currently it states that the injured person should be monitored, but we feel it is a requirement. It would then read "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 **shall** be continuously monitored until he/she can be medically assessed. Individuals should not be placed on their stomach for an extended period, as this could impair their ability to breathe."

Section 300.3 ~ Use of Force. Last paragraph states "nothing in this policy requires a deputy to retreat", but we feel this is too dangerous. We feel that less restrictive language results in less injuries and death. Campaign Zero Model Use of Force Policy (attached) has a section titled "Minimal Reliance on Force" recommendations that we would like you to consider.

Section 300.3.4 ~ Alternative Tactics – De-escalation. We feel that law enforcement shall use the least amount of force possible, therefore this section would read "Deputies regularly respond to tense or emotionally charged incidents. It is the mission of this office to bring these such situations to the most peaceful resolution possible. Research and experience have shown us that deputies are more likely to accomplish this goal if the individual(s) or situation can be de-escalated. De-escalation is always preferable to use of physical force and de-escalation techniques **shall** be employed whenever possible and practicable to help achieve compliance or to help resolve a situation. When circumstances reasonably permit, deputies **shall** 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). Deputies **shall** receive continuing training in these areas whenever practicable.

Section 300.3.2 ~ Factors Used to Determine the Reasonableness of Force – we recommend that you compare this to the Campaign Zero Model Use of Force Policy (attached) section titled “Reasonable, Proportional, and Necessary Force”.

Section 300.2.2 ~ Perspective. Would like it to say “When observing or reporting force used by a law enforcement officer, each deputy **shall** take into account the totality of the circumstances and the possibility that other law enforcement officers may have a different vantage point or additional information regarding the threat posed by the subject”. Every officer involved should be included in each report.

Chairman Federice – next steps. We will be meeting weekly for the month of January and we hope to begin drafting recommendations in February then prepare to hold Public Hearings. The recommendations need to be presented to the full Board of Supervisors no later than the March 2021 meeting for approval, then submitted to the state by April 1, 2021.

Meeting adjourned at 6:05 pm.

Law/Radio/Law Review Meeting January 5, 2021 (Board Chambers)

	<u>NAME</u>	<u>PHONE NUMBER</u>	<u>AGENCY/DEPT/VISITOR</u>
1	Bill Federice	607-353-2110	Chairman of the Board
2	Dick Lape	518-231-3084	Chair of Law Committee
3	Bruce Baker	518-295-2266	Sheriff's Dept.
4	C.J. Smith	518-295-8300	BOS
5	Carl Walthers		SchoPeg
6	Duane Tilipaugh, Undersheriff	518-295-2230	Sheriff's Dept.
7	Harold Vroman	607-397-8187	BOS
8	John Leavitt	518-429-8365	BOS
9	Pastor Ray Richards	518-234-2120	Committee member
10	Patsy Nicosia	518-705-5695	Times Journal
11	Peggy Hait	607-652-7223	BOS
12	Peter Harrison	917-449-4512	Rural Awakenings
13	Roberta Wilding	518-708-3875	Rural Awakenings
14	Scott Haverly/Jordan	518-295-8465	I.T. Director
15	Sheriff Ron Stevens	518-295-2207	Sheriff's Dept.
16	Steve Weinhofer	518-295-8300	BOS
17	Steve Wilson	518-295-8303	County Administrator
18	Susan Mallory	518-295-2272	DA
19	Suzanne Graulich	518-295-8740	LDI
20	Theresa Heary	518-872-2548	Rural Awakenings
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Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. Every member of this office is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Executive Law § 840).

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 Conducted Energy Device policies.

300.1.1 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. This includes force that, under the circumstances, is readily capable of causing death or serious physical injury (Executive Law § 840).

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 deputy 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 deputy at the time, taken as a whole, including the conduct of the deputy and the subject leading up to the use of force.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Deputies are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Deputies 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 Schoharie County Sheriff's Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

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300.2.1 DUTY TO INTERCEDE AND REPORT

It is imperative to this office that our reputation and legitimacy in the community be safeguarded. There is no greater detriment to the public trust than use of excessive force. It is the duty of every member of this office to defend our reputation and legitimacy by aggressively combating use of excessive force.

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

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each deputy **should** take into account the totality of the circumstances and the possibility that other law enforcement officers may have a different vantage point or additional information regarding the threat posed by the subject.

300.3 USE OF FORCE

Deputies shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the deputy 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 deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation a deputy might encounter, deputies 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 deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this office. Deputies 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 a deputy to retreat** or be exposed to possible physical injury before applying reasonable force.

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300.3.1 USE OF FORCE TO EFFECT AN ARREST

A police officer or a peace officer may use reasonable physical force to effect an arrest, prevent escape of a person from custody, or in defense of self or others from imminent physical force (Penal Law § 35.30).

Force shall not be used by an deputy to (Executive Law § 840):

- (a) Extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
- (b) Coerce a confession from a subject in custody.
- (c) Obtain blood, saliva, urine, or other bodily fluid or cells from an individual for scientific testing in lieu of a court order where required.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a deputy 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 deputies or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the deputy at the time.
- (c) Deputy/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of deputies 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 deputy 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 deputy.
- (l) Potential for injury to deputies, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the deputy.
- (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.

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- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the deputy or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Deputies may only apply those pain compliance techniques for which they have successfully completed office-approved training. Deputies 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 deputy.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the deputy determines that compliance has been achieved.

300.3.4 ALTERNATIVE TACTICS - DE-ESCALATION

Deputies regularly respond to tense or emotionally charged incidents. It is the mission of this office to bring these such situations to the most peaceful resolution possible. Research and experience have shown us that Deputies are more likely to accomplish this goal if the individual(s) or situation can be de-escalated. De-escalation is always preferable to use of physical force and de-escalation techniques **should** be employed whenever possible and practicable to help achieve compliance or to help resolve a situation. When circumstances reasonably permit, deputies **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). Deputies **should** receive continuing training in these areas whenever practicable.

300.3.5 CAROTID CONTROL HOLD

A carotid control hold is a technique designed to control an individual by temporarily restricting blood flow through the application of pressure to the side of the neck and, unlike a chokehold, does not restrict the airway. The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is limited to those circumstances where deadly force is authorized and is subject to the following:

- (a) A carotid control hold may only be utilized by office members trained to properly do so.
- (b) At all times during the application of the carotid control hold, the response of the individual should be monitored. The carotid control hold should be discontinued when circumstances indicate that the application no longer reasonably appears necessary.

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- (c) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until such examination occurs.
- (d) The deputy shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the individual lost consciousness as a result.
- (e) Any deputy attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (f) The use or attempted use of the carotid control hold shall be thoroughly documented by the deputy in any related reports.

300.3.6 STATE RESTRICTIONS ON THE USE OF OTHER RESTRAINTS

Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing or reduce intake of air is strictly prohibited unless deadly physical force is authorized (Exec. Law § 840).

300.3.7 USE OF FORCE TO SEIZE EVIDENCE

In general, deputies may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used, deputies 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.

300.4 DEADLY FORCE APPLICATIONS

When reasonable and practicable, the deputy shall, prior to the use of deadly force, make efforts to identify him/herself as a peace or police officer and to warn that deadly force may be used, unless the deputy 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) A deputy 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) A deputy may use deadly force to stop a fleeing subject when the deputy 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 deputy 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 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 a deputy reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the deputy or another person. An imminent danger may

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also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the deputy believes the individual intends to do so.

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle involve additional considerations and risks.

When feasible, deputies 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.

A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the deputy or others.

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this office shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The deputy 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 Office may require the completion of additional report forms, as specified in office policy, procedure, or law (Executive Law § 840).

See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The individual subjected to the force complained of injury or continuing pain.
- (c) Any application of the TASER (TM) or control device.
- (d) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (e) The individual subjected to the force was rendered unconscious.
- (f) An individual was struck or kicked.

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.

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Based upon the deputy'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 deputy 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 deputy 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 deputy 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 deputies to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies 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.

300.6.1 ADDITIONAL STATE REQUIREMENTS

A deputy should take steps to obtain medical attention for a person who reasonably appears to be mentally ill and is behaving in a manner that is likely to result in serious harm to the person or to others.

Deputies should document requests for medical or mental health treatment as well as efforts to arrange for such treatment.

300.7 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to (Executive Law § 840):

- (a) Obtain the basic facts from the involved deputies. 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) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs and/or videos have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs and/or video of uninjured areas.

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1. These photographs and/or video should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports, including any deputies present at the incident.
- (e) Review and approve all related reports.
 1. Supervisors should require that deputies who engaged in the use of force submit the appropriate reports and forms.
- (f) 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.
 1. Disciplinary actions will be consistent with any applicable disciplinary guidelines and collective bargaining agreements.

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 SHIFT SUPERVISOR RESPONSIBILITIES

The Shift Supervisor shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to identify any training needs.

300.7.2 ADDITIONAL SHIFT SUPERVISOR RESPONSIBILITIES

The Shift Supervisor should ensure that the Records Clerk is provided with enough information to meet the use of force reporting requirements for the DCJS (Executive Law § 837-t; 9 NYCRR 6058.3). See the Records Division Policy for additional guidelines.

300.8 TRAINING

Deputies will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, deputies should receive periodic 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.
- (c) Applications of use of force and conflict strategies as required by the state Use of Force Model Policy (Executive Law § 840).

300.9 POLICY AVAILABILITY

This policy shall be readily available to the public upon request and shall be posted on the office website (Executive Law § 840).

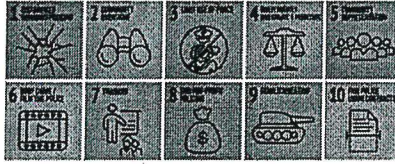
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300.10 USE OF FORCE ANALYSIS

Office Use of Force reporting forms should be periodically reviewed to identify any use of force trends that exist within the agency and/or to identify potential training needs.

CAMPAIGN ZERO



MODEL USE OF FORCE POLICY

I. GENERAL

This policy sets forth criteria governing the use of force for the [Insert Jurisdiction] to prevent unnecessary force, ensure accountability and transparency, and ensure the community's trust and confidence in the [Insert Jurisdiction] ability to protect and serve.

MISSION. It shall be the utmost priority and mission of [Insert Jurisdiction] Police Department to protect and serve all individuals of [Insert Jurisdiction] and to respect the inherent life, liberty, dignity, and worth of all individuals by preserving human life, and minimizing physical harm and the reliance on use of force, and by conducting their duties without prejudice.

OFFICER'S RESPONSIBILITY AND COMPLIANCE.

All officers are responsible for knowing and complying with this policy and conducting themselves in a manner aligned with this mission. Any violation of this policy will subject the officer to disciplinary action, including and up to termination and criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

II. USE OF FORCE

It shall be the policy of [Insert Jurisdiction] that all law enforcement officers must respect and preserve human life at all times and in all situations.

MINIMAL RELIANCE ON FORCE. Law enforcement officers of [Insert Jurisdiction] Police Department shall only use physical force when no other viable option is available and when all non-physical options are exhausted. (See section, "Alternatives to Use of Force). In all cases where force is used, only the minimum degree of force which is necessary shall be employed. The minimum degree of force is the lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective. [Model Policy: [Buffalo PD Policy](#) , [San Francisco PD Policy](#)]

To further the aim of minimal reliance on force, all law enforcement officers must carry on their person at all times at least one less-lethal weapon. [Seattle PD policy]

ALTERNATIVES TO USE OF FORCE. The following is a list of options that may be used instead of physical, non-deadly force [Seattle PD Policy]:

- De-escalation
- Placing barriers between an uncooperative subject and a law enforcement officer

- Containing a threat
- Moving from a position that exposes law enforcement officers to potential threats to a safer position
- Decreasing the exposure to potential threat by using
 - Distance
 - Cover
 - Concealment
- Communication from a safe position intended to gain the subject's compliance, using:
 - Verbal persuasion
 - Advisements
 - Warnings
- Avoidance of physical confrontation, unless immediately necessary (for example, to protect bystander or witness, or stop dangerous behavior)
- Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) Training, to calm an agitated subject and promote rational decision making
- Calling extra resources to assist or law enforcement officers to assist
 - More law enforcement officers
 - CIT law enforcement officers
 - Law enforcement officers equipped with less-lethal tools
 - Crisis Intervention Team, mental health and other health care professionals
- Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject through less-lethal means

Comparable to 300.3.2 **REASONABLE, PROPORTIONAL, AND NECESSARY FORCE.** Law enforcement officers shall use physical force only when it is objectively reasonable, necessary, and proportional to effectively and safely resolve a conflict. Force may only be used if and only if doing so is aligned with the Department's mission of preserving life and minimizing physical harm.

In furtherance of these principles, law enforcement officers may use reasonable, proportional force necessary to:

- Lawfully arrest, detain, or search an individual;
- Overcome active physical resistance;
- Prevent escape of an individual who the law enforcement officer has probable cause to believe has committed a serious crime;
- Defend oneself or others from active and actual physical danger;
- To prevent an individual from engaging in acts of self-harm.

Whether a law enforcement officer's use of force is reasonable will be evaluated based on its conformity with the principles and values outlined in this policy. All law enforcement officers must use the least amount of physical force necessary to achieve one or more of the objectives listed above. While recognizing that this is a higher standard than provided by the controlling U.S. law articulated by the Supreme Court, *Graham v. Connor*, 490 U.S. 386 (1989), this policy recognizes that there are situations whereby the use of force – up to and including deadly force – may be considered legally permissible, but not reasonable or necessary given the range of reasonable alternatives available to the law enforcement officer. In doing so, this policy complies with international law and standards and best upholds a commitment to protect and preserve human life. **Compliance with these principles and values will also help to ensure the safety and protection of law enforcement officers by reducing the need for, and reliance on, unnecessary physical force.**

FACTORS TO CONSIDER IN USE OF FORCE. The following factors may be used to determine whether the law enforcement officer used the appropriate level of force [LAPD Policy]:

- *The seriousness of the crime or suspected offense.* It will be presumptively unreasonable for a law enforcement officer to use serious physical force against an individual who the law enforcement officer believes or has reason to believe committed a traffic or ordinance violation, misdemeanor, or non-violent felony. That presumption may be rebutted with evidence that the use of force was justified in light of other factors listed here, among others.
- *The level of threat or resistance presented by the individual.* It will be presumptively unreasonable to use serious physical force against an individual that does not pose a current, active, and immediate threat of death or serious bodily injury¹ to the law enforcement officer or bystanders, or to use force against an individual that is engaged in passive resistance only.
- *The risk of escape.* It will be presumptively unreasonable to use physical force against an individual who the law enforcement officer believes or has reason to believe committed a traffic or ordinance violation, misdemeanor, or non-violent felony.
- *The conduct of the individual being confronted by the law enforcement officer.* Serious physical force may only be used if the individual acts in a manner than poses a current, active, and immediate threat of death or serious bodily injury to the law enforcement officer or bystanders. Under no circumstances may serious physical force be used to apprehend an individual engaged in passive resistance only.
- *Whether the officer is using force against an individual who appears to be having a behavioral or mental health crisis, a person with a mental illness, or a person who is otherwise in distress.*
- *The time available to a law enforcement officer to evaluate the situation and decide on a course of action.*
- *The availability of other feasible, less intrusive force options;*
- *The ability of the officer to provide a meaningful warning before using force.*
- *Whether the law enforcement officer believes the individual to be in close proximity to a deadly weapon, or a weapon that can inflict serious bodily injury on the law enforcement officer or bystanders.*
- *The tactical conduct and decisions made by the law enforcement officer preceding the use of force.*

LEVELS OF THREAT FROM SUBJECTS.

- *Compliant.* Subject offers no resistance.
- *Passive Resistance.* Does not respond to verbal commands but also offers no physical form of resistance. Expressing an intent to resist is not considered resistance.
- *Active Resistance.* Physically evasive movements to defeat, avoid, or prevent an officer's attempt at apprehension. Expressing an intent to resist an officer's attempt at control is not considered active resistance.
- *Assaultive.* Aggressive or combative; actively attempting to assault the officer or another person. Expressing an intent to assault an officer or another person is not considered assaultive under this policy.

¹ "Serious bodily injury" means bodily injury that involves (1) a substantial risk of death; (2) protracted and obvious disfigurement; or (3) protracted loss or impairment of the function of a body part, organ, or mental faculty.

- *Life-threatening.* Any action likely to result in serious bodily injury or death of the officer or another person. [SEPD Policy].

LEVELS OF FORCE. Officers shall strive to use the minimum amount of force necessary to accomplish a lawful purpose, including levels of force lower than the level of threat. **Officers shall not, under any circumstances, use a level of force higher than the level of threat.**

- **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive resistance or active resistance. This level of force has a low probability of causing injury and includes physical controls such as control holds and other weaponless techniques.
- **Intermediate Force.** This level of force poses a foreseeable risk of significant injury or harm, but is unlikely to cause death. Intermediate force will only be authorized when officers are confronted with active or assaultive aggression and an immediate threat to the safety of officers or others. Certain force options such as OC spray, impact projectiles, and baton strikes are intermediate force likely to result in significant injury.
- **Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle.

[SEPD Policy]

DE-ESCALATION. Prior to using physical, non-deadly and/or deadly force, all law enforcement officers must use proper de-escalation techniques to decrease the likelihood that law enforcement officers will resort to force and to increase the likelihood of cooperation between law enforcement officers and members of the public. [SEPD Policy, NOPD Policy]

Law enforcement officers shall employ effective communication techniques to engage with individuals who are not compliant with orders by establishing rapport, using the appropriate voice intonation, asking questions and providing advice to defuse conflict and achieve voluntary compliance before resorting to force options. [SEPD Policy]

Where feasible, all law enforcement officers must determine whether an individual's failure to comply with an order is the result of one of the following factors [Seattle PD Policy]:

- Medical conditions;
- Mental impairment;
- Developmental disability;
- Physical limitation;
- Language barrier;
- Drug interaction;
- Behavioral crisis; and
- Other factors beyond the individual's control

After evaluating whether the individual's failure to comply with an order is based on one of the factor's listed above, the law enforcement officer must then determine whether physical force,

and what level of physical force, is necessary and appropriate to resolve the situation in a safe manner.

Under no circumstances may a law enforcement officer use force on an individual for insolence, or for running away where the individual does not pose a current, active, and immediate threat to the safety of bystanders, other law enforcement officers, or the primary law enforcement officer. [Settlement Agreement between the U.S. DOJ and Cleveland PD]

CRISIS INTERVENTION TEAM. When feasible, a Crisis Intervention Team (CIT) consisting of both mental health providers and CIT trained law enforcement officers shall respond to calls for service involving individuals known or suspected to have mental illness or who appear to be in mental or behavioral health crisis. [SFPD_policy]

SUBJECT ARMED WITH A WEAPON - NOTIFICATION AND COMMAND. In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

- Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.
- When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible:
 - Notify DEM, monitor radio communications, respond to the incident (e.g., "3X100, Fin monitoring the incident and responding.);
 - Notify responding officers, while en-route, to protect life, isolate and contain the subject, maintain distance, find cover, build rapport, engage in communication without time constraint, and call for appropriate resources;
 - Upon arrival, where appropriate, the supervisor shall assume command, and ensure appropriate resources are on-scene or are responding.
 - Officers and supervisors shall factor into their approach the possibility that a subject suspected of being armed with a weapon is, in fact, unarmed or carrying an object other than a weapon.

[SFPD Policy]

III. USE OF DEADLY FORCE

The most serious act in which a police officer can engage during the course of their official duties is the use of deadly force. The authority to carry and use firearms in the course of public service is an immense power, which comes with great responsibility. It shall be the policy of the [Insert Jurisdiction] Police Department that law enforcement officers shall NOT use deadly force against another person unless ALL of the following conditions are met:

- The law enforcement officer has an objectively reasonable belief that deadly force is necessary to protect themselves or another person from a subject who is posing a current, active, and immediate threat of death AND;
- The law enforcement officer has exhausted all reasonable alternatives to the use of deadly force, including de-escalation, other reasonable means of apprehending the suspect, defending themselves or others AND;
- The law enforcement officer objectively reasonably believes that using deadly force would not unnecessarily endanger innocent people;

The above circumstances apply to each discharge of a firearm or application of deadly force. Law enforcement officers shall reassess the situation, when feasible, to determine whether the subject continues to pose a current and active threat. A law enforcement officer is not justified in using deadly force at any point in time when there is no longer an objectively

reasonable belief that the suspect currently and actively poses an immediate threat of death, even if deadly force would have been justified at an earlier point in time. [St. Petersburg PD Policy, SFPD Policy, and Philadelphia PD Policy]

TACTICS PRECEDING THE USE OF DEADLY FORCE. Law enforcement officers shall not contribute to precipitating the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to de-escalate, withdraw, take cover or reposition, rather than the immediate use of force. The evaluation of an officer's use of deadly force will include consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. [Philadelphia PD Policy, LAPD Policy]

VERBAL WARNING. The law enforcement officer shall issue a verbal warning, when feasible, and have a reasonable basis for believing that the warning was heard and understood by the individual to whom the warning is directed prior to using deadly force against the individual.

PAST CONDUCT. A law enforcement officer shall not use deadly force where the only basis for using the deadly force is that the individual posed a threat of committing, or committed, a serious, violent crime prior to the encounter with police. Law enforcement officers are only authorized to use deadly force against a person who *currently and actively* poses an immediate threat of death to other persons and/or the law enforcement officer.

NO DEADLY FORCE IN CASES OF SELF-HARM ONLY. Under no circumstances may a law enforcement officer use deadly force to prevent an individual from self-harm where the individual does not currently and actively pose an immediate threat of either death to the others or to the law enforcement officer. [SFPD Policy]

MOVING VEHICLES.

- Officers shall not discharge a firearm at or into a moving vehicle unless the occupants of the vehicle are using deadly force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and shall attempt to move out of the path of a moving vehicle.
- Moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, SHALL NOT be justification for discharging a firearm at the vehicle or any of its occupants. An officer in the path of an approaching vehicle shall attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants of the vehicle. [Philadelphia PD Policy]
- Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm from his or her moving vehicle. Shooting accurately from a moving vehicle is extremely difficult and therefore, unlikely to successfully stop a threat of another person.

[SFPD Policy]

NECK HOLDS PROHIBITED. Law enforcement officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, chest compressions, or any other tactics that restrict oxygen or blood flow to the head or neck.

OTHER PROHIBITIONS ON THE USE OF DEADLY FORCE.

- Law enforcement officers shall not discharge their firearms in defense of property.
- Law enforcement officers shall not use a firearm as a club.

- Law enforcement officers shall not fire warning shots under any circumstances.
- Law enforcement officers shall not discharge their firearms to subdue a fleeing individual who does not currently or actively pose an immediate threat of death to the officers or another person.

Failure to comply with this prohibition is punishable in various ways, including departmental disciplinary action and up to termination and/or criminal prosecution.

DRAWING AND POINTING FIREARMS.

- Law enforcement officers are only authorized to draw their firearms when they reasonably believe there is a current and active immediate threat of death to themselves or another person.
- The pointing of a firearm at a person is a seizure and requires legal justification. No officer shall point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to justify deadly force. If an officer points a firearm at a person, the officer shall, if feasible, safe and when appropriate, advise the subject the reason why the officer(s) pointed the firearm.
- When an officer points any firearm at a person, it shall be considered a reportable use of force. Such use of force must be reasonable under the objective facts and circumstances. [SFPD Policy]

IV. OTHER DUTIES

DUTY TO RENDER MEDICAL ASSISTANCE. All law enforcement officers are required to render and, if necessary, call for medical assistance and other aid to anyone in police custody who the law enforcement officer knows, or has reason to know, is injured, and to anyone who complains of injury. [Baltimore PD Policy]

DUTY TO INTERVENE AND REPORT. All law enforcement officers must intervene when they reasonably believe that a law enforcement officer is using or is about to use unnecessary or excessive force in violation of this mission, and must report the incident to a supervisor. Failure to report incidents involving the use of unnecessary or excessive force will result in disciplinary action. [SFPD Policy]

DUTY TO PREVENT THROUGH EARLY INTERVENTION. The [Insert Jurisdiction] Police Department recognizes that through early intervention it may be possible to avoid the use of excessive force and prevent harm to the community. In this effort, the Department will implement early intervention systems to identify law enforcement officers who are at risk for engaging in the use of excessive force and to provide those law enforcement officers with re-training and appropriate behavioral interventions, re-assignments or other appropriate consequences to eliminate that risk.

V. USE OF FORCE REPORTING AND INVESTIGATIONS

REPORTABLE USES OF FORCE. To promote transparency and accountability of actions involving the use of force against civilians, law enforcement officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers

shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ECWs (i.e. Tasers), vehicle interventions, K-9 bites, and firearms. Additionally, officers shall report the pointing of firearms or ECWs (i.e. Tasers) at a subject.

NOTIFICATION OF USE OF FORCE. An officer shall notify his or her supervisor immediately or as soon as practical of any reportable use of force. A supervisor shall be notified if an officer receives an allegation of excessive force.

EVALUATION OF USE OF FORCE. A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.

EXCESSIVE USE OF FORCE. Every allegation of excessive force shall be subject to the reporting and investigative requirements of this policy, [Insert Jurisdiction] Police Department disciplinary policies, and the [Insert Civilian Oversight Structure].

PROCEDURE:

OFFICER'S RESPONSIBILITY. Any reportable use of force shall be documented in detail in an incident report, supplemental incident report, or statement form. Officers shall complete use of force reports fully and truthfully. Descriptions shall be in clear, precise and plain language and shall be as specific as possible. When the officer using force is preparing the incident report, the officer shall include the following information:

- The subject's action allegedly necessitating the use of force, including any threat presented by the subject;
- Efforts to de-escalate prior to the use of force; and if not, why not;
- Any warning given and if not, why not;
- The type of force used;
- Injury sustained by the subject;
- Injury sustained by the officer or another person;
- Information regarding medical assessment or evaluation, including whether the subject refused;
- The supervisor's name, rank, star number and the time notified.

Each law enforcement officer must submit a report without coaching or assistance from other law enforcement officers present during the incident.

SUPERVISOR'S RESPONSIBILITY. When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears necessary and within the provisions of this policy. The supervisor shall:

- Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
- Ensure the scene is secure and observe injured subjects or officers;
- Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
- Ensure photographs of injuries are taken and all other evidence is booked;
- Remain available to review the officer's incident report, supplemental incident report and

written statement at the direction of the [Insert Next Rank Officer]. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth above;

- If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
- Supervisors shall complete and submit an evaluation form indicating whether the force used appears reasonable, necessary, and proportional, by the end of shift;
- No supervisor who used, participated in, or ordered reportable force, will conduct the supervisory evaluation of the incident, unless it is impractical under the circumstances. When a supervisor uses, participates in, or orders reportable force, a [Insert Next Rank Officer] shall determine who will conduct the investigation.

The supervisor shall notify the [Insert Next Rank Officer] and [Insert Civilian Oversight Structure of Jurisdiction] if the supervisor determines that an officer's use of force is:

- Unnecessary, unreasonable, or disproportionate OR;
- Otherwise appears to violate [Insert Jurisdiction] policy OR;
- Results in serious bodily injury or death

POLICE AND CIVILIAN OVERSIGHT INVESTIGATIONS. When notified, the [Insert Next Rank Officer], [Insert Force Investigation Team, if applicable], and an independent investigator from the [Insert Civilian Oversight Structure of Jurisdiction] shall respond to the scene, secure the evidence, initiate on-going investigations into the use of force, and prepare reports to the [Insert Force Review Board and Civilian Oversight Structure] that contain preliminary findings, whether or not the use of force appears to comply with [Insert Jurisdiction] policy, and recommendations.

PROMPT INTERROGATION OF OFFICER(S) INVOLVED

Where an officer's use of force is determined to meet one or more of the conditions specified above, the supervisor will transport the involved officer, if not incapacitated, directly to [Insert Jurisdiction's Internal Affairs Office or Civilian Oversight Structure] for an investigatory interview.

- Officers involved shall be transported separately and shall not be allowed to converse with one another prior to the interview. If additional vehicles are needed; additional supervisors will be summoned to provide transportation.
- At the request of the officer involved, questioning shall be delayed for **no longer than two hours** in order to give the officer an opportunity to consult with a Union representative. [DC Metropolitan Police Policy]
- Officers involved shall not be permitted to review evidence related to or audio/video content depicting the use of force prior to an interrogation. [Oakland PD Policy]

INDEPENDENT CRIMINAL INVESTIGATIONS. Criminal investigations shall be initiated into all uses of force resulting in serious bodily injury or death. In addition, if information is obtained at any stage of the process which suggests criminal conduct involving any other use of force, the [Insert Police Chief or Civilian Oversight Structure] shall initiate a criminal investigation into this conduct. This includes criminal conduct while on duty, or while off-duty if the officer purports to act under the color of law, or commits the offense while using police property, equipment, or weapons. To ensure independence and legitimacy, [Insert Jurisdiction] shall include at least two investigators from [Insert Preferred State, Federal, or Neighboring Law Enforcement Agency or Civilian Oversight Structure, as appropriate] in all criminal investigations of [Insert Jurisdiction] law enforcement officers.

PUBLIC RELEASE OF INFORMATION FOLLOWING POLICE USE OF DEADLY FORCE. A press conference and/or an official press statement will be released by the Police Commissioner

or designee within 72 hours of an incident in which an individual was killed or wounded as a result of a use of force by an officer of [Insert Jurisdiction]. The information will include officer's name, years of service, assignment and duty status.

- The release will contain a preliminary summary stating the circumstances of the incident known at the time and based on the facts collected and confirmed by the investigators. The release will provide a brief synopsis of the incident, condition (injuries) of the individual and the proceeding steps of the investigation.
- Names of the individual subject and the officer will be released.
- No information regarding the subject's potential criminal record shall be released unless the officer's disciplinary record is also released simultaneously with this information.
- A preliminary summary based on the facts collected and confirmed by the investigators will be placed on the [Insert Jurisdiction] website.

[Philadelphia PD Policy]

DATA COLLECTION AND ANALYSIS. The Department will collect and analyze information on use of force in its database and Early Intervention System. The Use of Force statistics and analysis will include at a minimum:

- The type of force
- The types and degree of injury to suspect and officer
- Date and time
- Location of the incident
- Officer's unit
- District station where the use of force occurred
- Officer's assignment
- Number of officers using force in the incident
- Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
- Subject's activity allegedly requiring the officer to use force
- Officer's demographics (age, gender, race/ethnicity, rank, number of years with [Insert Jurisdiction], number of years as a police officer)
- Subject demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.
- Outcome of any investigation regarding the use of force including any disciplinary actions that were taken as a result.

[SFPD Policy]