

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

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.

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.

Last Resort situations are those wherein certain immediate and drastic measures must be undertaken by an officer in order to protect human life or prevent great bodily harm. Force used in these situations may involve the use of techniques or weapons not covered by policy; however, they remain to be measured by objectively reasonable use of force standards.

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. Public Safety Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

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

300.2.1 DUTY TO INTERCEDE

Any public safety officer present and observing another public safety officer using force that is

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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. A public safety officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Public Safety Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the public safety 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 public safety officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that public safety 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.

Given that no policy can realistically predict every possible situation a public safety officer might encounter, public safety 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 public safety officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Public Safety 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 a public safety officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a public safety 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 public safety officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the public safety officer at the time.
- (c) Public Safety Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of public safety officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Individual's mental state or capacity.

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- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the public safety officer.
- (k) Potential for injury to public safety officers, suspects and others.
- (l) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the public safety officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the public safety officer or others.
- (p) Prior contacts with the individual or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

300.3.2 SUBJECT CONTROL CONTINUUM

A Michigan Commission on Law Enforcement Standards (COLES) approved subject control continuum will be the guide of non-lethal force utilized by the *Kalamazoo Department of Public Safety*. The subject control continuum defines the levels of subject resistance and the levels of control an officer may use.

(a) Officers shall recognize the following types of subject resistance.

1. Inactive Resistance: Resistance that may include psychological intimidation and/or verbal resistance (e.g., blank stare, clenching of fist(s), tightening of jaw muscles, etc.) The subject complies with verbal attempts at control, but displays visual and verbal cues that indicate potential physical resistance.
2. Passive Resistance: Any type of resistance whereby the subject does not attempt to defeat the officer's attempt to touch and control the subject, but still will not voluntarily comply with verbal and physical attempts of control (e.g., dead weight, does not react to verbal commands, etc.). The subject will not comply with verbal attempts at control and will not fully comply with physical attempts at control. Passive and inactive resistance are very close in description. The subtle difference is in non-compliance with verbal or physical attempts at control.

A typical situation is a sit-in protest. Subjects refuse to move or comply

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with verbal direction/commands. Verbal direction/commands and negotiation are basic tools for officers in these situations.

Generally, these situations are not as tense, uncertain, and rapidly evolving as many use of force situations can be, and there is time to plan a strategy for resolution. You have time to look at alternatives (e.g., simply monitor the situation, negotiations, use of stretchers, lift and carry, etc.).

At some point, it may become necessary to use force (e.g., soft empty hand techniques, i.e., pressure points, joint locks, etc.) to resolve the situation. The selection of a reasonable control method or compliance technique is crucial. The objective is to resolve the situation using a control or compliance technique that will be effective and has the least potential for injury to officers and subjects. Officers are not required to choose the least intrusive control method, only a reasonable one.

It is important to understand that officers should not escalate the amount of response force to a higher level simply because a technique does not work and there is no increased resistance by the subject (e.g., a pressure point is applied to the mandibular angle but it is in-effective in causing the subject to comply with officer commands). The subject's lack of response would not justify the use of an intermediate weapon (to be used as a striking weapon). An alternative technique that is reasonably equal should be used.

Officers may be faced with a situation where subjects have locked arms or chained themselves together. This starts to move subject action into the area of active resistance. There is now an attempt to defeat the officers' attempt at control. It is still the totality of the circumstances and the subject's action that govern officer response. Officers need to ask these questions: What is the severity of the crime? What is the threat to the safety of officers, subjects, and others? Officers must be very cautious in escalating control techniques to gain compliance where subject resistance remains constant.

3. Active Resistance: Any action by a subject that attempts to prevent an officer from gaining control of the subject (e.g., pulling/pushing away, blocking, etc.). There is an overt attempt to defeat the officer from gaining control (e.g., handcuffing). It is not an attack on the officer but a physical act (often accompanied by verbal statements) to prevent the officer from gaining control. Subjects actively resisting an officer can be very dangerous. They can suddenly escalate to active aggression as the officer escalates response techniques. The situation now becomes tense, uncertain, and rapidly evolving, and an appropriate, effective and immediate response is required. Individual officers may have a different response to the same situation based upon the totality of circumstances (e.g., relative size/stature of officer/subject, response controls available, and ability).

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4. Active Aggression: Physical actions/assaults against the officer or another person with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, wrestling, etc.). Subjects may also be actively aggressive towards a third party (e.g., another officer or civilian).

Subjects displaying aggressive behavior or assaulting officers are extremely dangerous. The reason for the aggression could range from facilitating an escape to the intent of inflicting great bodily injury or death to the officer.

There are differences in a subject's action within active aggression. A subject's degree of aggression challenging an officer is not as severe as one who is punching or kicking the officer. Even though the behaviors exhibited are classified as active aggression, the officer response may be entirely different.

5. Deadly Force Assault: Any force used against an officer and/or another person that may result in great bodily harm or the loss of human life. It is located at the narrow end of the continuum and highlighted by the dark color shading (appendix A). Injury potential to the officer or others is extremely high. A deadly force assault leaves little room for officer response options. An immediate response that will stop the assault and neutralize the threat is needed.

(b) Type of Officer Response

1. Officer Presence/Verbal Direction: Identification of authority (i.e., uniformed presence or identification as a police officer), verbal direction (e.g., for arrest or to control subject's movements), use of restraint devices (i.e., compliant handcuffing). Generally, most subjects comply with verbal direction and the officer's presence. Most officer/subject arrests/confrontations occur at the lower (wider) end of the continuum. Even though injury potential is low and the arrest/contact may seem "routine", officers must remain alert and ready for any sudden change in escalation of resistance.

Interpersonal skills can be an important factor in gaining control of a subject or situation. Fair, cool-headed officer behavior can significantly reduce danger and de-escalate a situation; whereas arrogant, insensitive officer behavior invites hostility and danger and can escalate a situation. However, officers should take control and assert authority.

2. Compliance Controls: Soft empty hand techniques (e.g., joint lock, pressure points, etc.), compliance control devices (e.g., baton or aerosol subject restraint spray, when used as a compliance control device). Applications of compliance controls inflict pain and are used for the purpose of gaining control of a subject. They are used when verbal directions/commands are not effective and there is non-compliance with

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lawful orders. They have application where the subject's actions include passive resistance.

There could be an application where the subject's action is inactive resistance. For example, a subject is reluctantly complying with verbal direction. He has clenched his fist, tightened his jaw muscles, and give you that "if looks could kill" stare. He really hasn't done anything to thwart your attempt at control (handcuffing) but you know he could explode at any time. A joint lock could be appropriate to assist in securing the handcuffs.

3. Physical Controls: Hard empty hand techniques (e.g., strikes, take downs, etc.).
 - i. Physical controls have application where the subject's action includes active resistance. Depending on the totality of circumstances and the severity of the resistance, the officer may deploy any department authorized technique that is a reasonable response.
 - ii. As with any officer response to a subject's action, verbal direction/commands should be used when feasible. Even though hard empty hand techniques could be appropriate, a joint lock with verbal commands may suffice.
 - iii. As subject action increases in severity, officers have the entire spectrum of response controls available to them. The officer must make the determination which one to use based upon the circumstances, controls available, and ability. As the situation deteriorates, many options may be available, but there may be only one reasonable and appropriate response that will protect the officer and control the subject.
4. Oleoresin Capsicum (OC) Spray: OC spray has application where the subject's actions constitute active resistance or active aggression, or when the officer reasonably believes lower forms of empty hand controls will be inadequate.
5. Intermediate Controls: (i.e., impact weapons) are justified when lower forms of empty hand control have failed, or when the officer believes that his/her skill in empty hand control will be insufficient. Examples of intermediate weapon use justification:
 - i. To control active aggression or an assault on an officer or another.
 - ii. To control active resistance when previous forms of empty hand control techniques or ASR spray have failed, or when the officer/subject variables would clearly demonstrate that using empty hand control techniques would be dangerous to the officer and potentially escalate subject resistance.

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- iii. The use of an intermediate weapon when used as a striking instrument is prohibited against subjects in inactive or passive resistance.
6. **Deadly Force:** Any force used by an officer that may result in great bodily harm or the loss of human life. Officers must have working knowledge of department policy regarding the use of force, especially in the use of deadly force.

300.3.3 USE OF FORCE NEAR HEAD/NECK

In the instance when force is used, public safety 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. .

300.3.4 USE OF FORCE TO SEIZE EVIDENCE

In general, public safety officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, public safety officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband.

300.4 PAIN COMPLIANCE/WEAPONLESS SUBJECT CONTROL TECHNIQUES

Pain compliance techniques and weaponless subject control techniques, may be effective in controlling a physically or actively resisting individual. Public Safety Officers may only apply those pain compliance and weaponless subject control techniques for which they have successfully completed department-approved training. Public Safety 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 public safety officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique or weaponless subject control technique shall be discontinued once the public safety officer determines that compliance has been achieved.

300.5 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) A public safety officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) A public safety officer may use deadly force to stop a fleeing subject when the public safety 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 public safety 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 such circumstances, a verbal warning should

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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 public safety officer reasonably believes any of the following:

1. The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the public safety officer or another person.
2. The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.

300.5.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Public Safety Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants, if feasible. A public safety officer should only discharge a firearm at a moving vehicle or its occupants when the public safety officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the public safety officer or others.

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

300.5.2 WEAPON DISPLAY

Officers shall draw and display their weapons only:

- a. When an ordinary prudent officer would reasonably fear for his or her safety or the safety of others.
- b. When an officer is authorized to use the weapon to affect an arrest as established by this procedure.
- c. For the purposes of destroying an animal, ballistics examination, training, or cleaning as provided by departmental policy.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The public safety officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. In addition, the officer that utilized force shall complete the KDPS Use of Force report and submit the report to their supervisor for review. Use of Force reports shall be completed in the following situations:

- (a) Officer uses Soft-Empty hand controls (PPCT, Pressure points, takedowns etc.)
- (b) Officer uses Hard-Empty Hand techniques
- (c) OC Spray
- (d) Taser Deployment

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- (e) Baton
- (f) Deadly Force
- (g) Firearm Display for compliance only
- (h) Anytime an officer's use of force results in an injury or an immediate claim of injury
- (i) Any force beyond routine handcuffing
- (j) Upon direction of a supervisor

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 application would lead a reasonable public safety officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the Conducted Energy Weapon (CEW) 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 any of the above has occurred.

The above notifications do not relieve an officer of their duty to summon medical assistance for any suspect that needs immediate medical attention whether or not such an injury is visible or not.

300.5.2 DIVISIONAL COMMANDER RESPONSIBILITIES

The Divisional Commander, or their designee, should conduct an administrative investigation/ meaningful review of all use of force incidents. The administrative investigation/ meaningful review process looks to minimize and mitigate further risks by reviewing whether policy changes are necessary, whether training is needed, whether equipment should be changed/altered and whether discipline is indicated. Any recommendations from the administrative investigation shall be taken into review for implementation by the Chief of Public Safety.

300.6 MEDICAL CONSIDERATIONS

Prior to booking or release, 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. The Shift Commander shall be advised of all situations described above relating to injuries or complaint of injuries to prisoners in the custody of Public Safety.

Based upon the Shift Commander's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services

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provider or medical personnel at a hospital or jail. This does not preclude any officer from summoning emergency medical assistance if the prisoner exhibits signs requiring immediate medical attention.

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 public safety 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 public safety 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 public safety 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 public safety officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Public Safety 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).

300.7 SUPERVISOR RESPONSIBILITIES

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 public safety 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 an officer’s use of force results in an injury to a suspect or prisoner that requires medical attention at the hospital or upon the direction of the shift commander, a supervisor shall separately obtain a recorded interview with the individual upon whom force was applied (*Note: This is not required if the hospital treatment is solely for medical clearance for lodging). The supervisor should utilize his Body-Worn Camera (BWC) to record this interview. If the supervisor does not have a BWC then he or she shall utilize a digital recorder to record the interview.
- (d) When an officer does not use force, but a suspect or prisoner receives an injury while in police custody requiring medical attention at the hospital, unless the hospital treatment is solely for medical clearance for lodging, a supervisor shall separately obtain a recorded interview with the individual. The supervisor should utilize his Body-Worn Camera (BWC) to record this interview. If the supervisor does not have a BWC then he or she shall utilize a digital recorder to record the interview.

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- (e) If this interview is conducted without the individual having voluntarily waived his/her *Miranda* rights, the following shall apply:
 - 1. A supervisor not involved in the criminal investigation shall conduct the interview.
 - 2. The interview is being conducted as part of an internal investigation into the use of force/prisoner injury and shall not be included in any criminal incident report. The content of the interview should not be summarized or included in any related criminal charges.
 - 3. The fact that a recorded interview was conducted and the content of the interview should be documented in a memo and attached to the Blue Team report. If a Blue Team report is not required, the memo shall be routed through chain of command to the Office of Professional Standards.
 - 4. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
 - 5. Whenever an interview is completed by a supervisor without a valid *Miranda* waiver, the Divisional Captain shall review all aspects of the use of force packet to include the use of force (Blue Team) report, all related memos, the related police reports and all other pertinent information prior to delivering it the Office of Professional Standards.
- (f) 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.
- (g) Identify any witnesses not already included in related reports.
- (h) Review all relevant officer body camera and in-car camera video.
- (i) Review and approve all related reports.
- (j) 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.
- (k) 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.

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 soon as circumstances permit.

300.7.1 SHIFT COMMANDER RESPONSIBILITY

The Shift Commander 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. Any violations of this policy shall immediately be brought to the attention of the Operations Division Captain and the Office of Professional Standards

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300.8 TRAINING

Public Safety Officers will receive annual training on this policy and demonstrate their knowledge and understanding. Additionally, the Training Division Commander shall ensure that all members of the department receive weaponless subject control tactics training refresher at a minimum of once every two years.

300.9 USE OF FORCE ANALYSIS

At least annually, the Office of Professional Standards shall prepare a documented summary and an analysis report of all use of force incidents in the aggregate. The report should be submitted to the Chief of Public Safety. The report should not contain the names of public safety officers, suspects or case numbers, but should include:

- (a) An evaluation of the amount of and type of force used by members of the department.
- (b) The identification of any trends in the use of force by members.
- (c) Training needs recommendations.
- (d) Equipment needs recommendations.
- (e) Policy revision recommendations.

300.10 RELIEF FROM DUTY

When the direct actions or use of force of an employee acting in an official capacity results in the death or serious physical injury of another, the employee shall be removed from line-duty assignment and/or placed on administrative leave by the Chief of Public Safety or the Office of Professional Standards pending a documented meaningful review or investigation of the incident. This action is not considered discipline. The Chief of Public Safety may approve an officer to return to limited or full duty prior the completion of the internal and/or criminal investigations based upon the circumstances surrounding the incident. The decision to return or not to return an officer to work rests solely with the Chief of Public Safety. Prior to returning to limited or full duty any officer involved in an use of force incident that leads to death or injury to another person should be evaluated by a licensed clinical psychologist.