

Use of Force

300.1 VERSION

Review Date	Effective Date	Approving Authority
06/09/2022	07/09/18	Kelley Warner, Chief of Police

300.2 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.

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.

300.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

300.4 DEFINITIONS

Active Resistance - Where an individual's verbal and/or physical actions are intended to prevent an officer from taking lawful action, but are not intended to harm the officer.

Assaultive Behavior - includes physical actions/assaults against the officer or another person with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, grappling, etc.)

Deadly force - Force likely to cause death or serious physical injury.

Excessive Force - Force is excessive when its application is not reasonably necessary under the circumstances.

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 - Impending or about to occur.

Harrisonburg Police Department

Policy Manual

Use of Force

Less-Lethal Force - Force which is not intended to cause death or serious physical injury. If properly used, less-lethal weapons significantly reduce the probability of such outcomes compared to standard firearm service ammunition.

Passive Resistance - Where an individual poses no immediate threat to an officer, but is not complying with lawful orders and is taking minimal physical action to prevent an officer from taking lawful action. (an example would be the individual acting as "dead weight").

Reasonably Necessary - An action or response which is reasonable given the circumstances present at the time and which is necessary to accomplish a lawful objective.

Serious Physical Injury - An injury which creates a substantial risk of death, disfigurement, prolonged hospitalization, impairment of the functions of any bodily organ or limb, or any injury that medical personnel deem to be potentially life threatening.

300.5 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use sound judgment in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

The application of force includes a wide range of alternatives, some requiring the use of lethal or less than lethal weapons. To this end, the Department issues weapons and ammunition that the individual officer may call upon if the occasion arises. The officer's options include presence, verbal control, approved compliance techniques, chemical agents and Oleoresin Capsicum (OC), other issued defensive/offensive weapons, and deadly force. These weapons may be employed in response to the threat level recognized by the officer as deemed reasonably necessary to protect him or herself or another from physical harm, to restrain or subdue a resistant individual, or bring an unlawful situation safely and effectively under control. Officers shall modify their level of force in relation to the amount of resistance offered by the subject. **When reasonable force is required,**

Harrisonburg Police Department

Policy Manual

Use of Force

any officer that witnesses any other law enforcement officer using force that is beyond reasonable on any citizen is obligated to intervene to prevent any further unnecessary force. The sanctity of life is of the utmost importance in any use of force encounter.

Dangerous or potentially deadly techniques will not be deliberately used to **GAIN CONTROL** of a suspect. Those can include:

- (a) Gouges to the eyes
- (b) Closed fist strikes to the head or neck
- (c) Hard strikes to the spine
- (d) Choke holds
- (e) Upward strikes or kicks to the groin
- (f) Violent twisting of the head or neck

Warning shots are prohibited.

Shooting indiscriminately into a crowd is prohibited.

The ultimate objective of every law enforcement encounter is to avoid or minimize injury.

Nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.5.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

The U.S. Supreme Court case of *Graham v. Connor*, 490 U.S. 386 (1989) established "Objective Reasonableness" as the standard for all applications of force in United States. The court specified four factors which assist in determining reasonableness. Although not required, nor all inclusive, articulating these factors provides a good framework for justifying a particular Use of Force. The factors are:

- (a) Severity of the crime at issue
- (b) Whether the suspect poses an immediate threat to the safety of the officers or others
- (c) Whether he/she is actively resisting arrest
- (d) Whether he/she is attempting to evade arrest by flight or force

In addition, when determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) The risk and reasonably foreseeable consequences of escape
- (b) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (c) Prior contacts with the individual or awareness of any propensity for violence.

Harrisonburg Police Department

Policy Manual

Use of Force

- (d) The conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (e) Training and experience of the officer.
- (f) The availability of other reasonable and feasible options and their possible effectiveness.
- (g) 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).
- (h) The effects of suspected drug or alcohol use.
- (i) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (j) An individual's mental state or capacity.
- (k) The proximity of weapons or dangerous improvised devices.
- (l) The individual's ability to understand and comply with officer commands.
- (m) Potential for injury to officers, suspects, and others.
- (n) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) Any other exigent circumstances.

300.5.2 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use 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).

300.5.3 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 department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The ability of the officer to deescalate or escalate based on the levels of the resistance.
- (b) Whether the individual has been given sufficient opportunity to comply.
- (c) Whether the individual can comply with the direction or orders of the officer.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved, or is ineffective.

300.5.4 USE OF FORCE TO SEIZE EVIDENCE

Force will not be used to extract drugs or evidence from a suspect's mouth. Suspects who have ingested drugs or evidence will be provided medical treatment using the guidelines set forth in the Search and Seizure policy.

Harrisonburg Police Department

Policy Manual

Use of Force

300.5.5 NECK RESTRAINTS

A neck restraint, also known as a chokehold, includes the use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea, with the purpose, intent, or effect of controlling or restricting the person's movement or breathing (Va. Code § 19.2-83.4). The use of a neck restraint is limited to circumstances where deadly force is authorized.

300.6 LESS-LETHAL FORCE

Less-Lethal force may be used by officers when that force is reasonably necessary. The following options may be available when considering Less-Lethal use of force:

- (a) Control Devices such as Baton, Chemical munitions and projectiles, Oleoresin Capsicum (OC) spray, Kinetic Energy projectiles; **Refer to Control Devices Policy**
- (b) Conducted Energy Weapon (CEW), **Refer to Conducted Energy Weapon Policy**
- (c) K9; **Refer to Canines Policy**

300.7 DEADLY FORCE APPLICATIONS

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

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.
- (c) Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes 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 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.

300.7.1 MOVING VEHICLES

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

Harrisonburg Police Department

Policy Manual

Use of Force

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer 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 officer or others.

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

300.7.2 STATE LIMITATIONS TO DEADLY FORCE APPLICATIONS

Prior to using deadly force, the officer should exhaust all other reasonable options under the circumstances and, if feasible, provide a warning that deadly force may be used (Va. Code § 19.2-83.5).

In circumstances where deadly force is authorized, the necessity to protect others does not extend to the subject of the use of deadly force (Va. Code § 19.2-83.5).

300.8 REPORTING THE USE OF FORCE

Any use of force by an employee of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.8.1 NOTIFICATIONS TO SUPERVISORS

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

- (a) Any force that compelled compliance and was not voluntary.
- (b) The application caused a visible injury.
- (c) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (d) The individual subjected to the force complained of injury or continuing pain.
- (e) Any application of the controlled energy device or other control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or waist restraints.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.
- (j) Anytime an officer points a firearm/TASER at a citizen during the course of his/her official duty.

Harrisonburg Police Department

Policy Manual

Use of Force

Any officer present and observing another officer 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, and promptly report these observations to a supervisor.

300.9 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:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his/her *Miranda* rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Take photos of officers and suspects whether or not there are visible injuries
- (e) 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.
- (f) Identify any witnesses not already included in related reports.
- (g) Review and approve all related reports.
- (h) 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.
- (i) 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 circumstances permit.

Harrisonburg Police Department

Policy Manual

Use of Force

It is the responsibility of the responding supervisor to determine the seriousness of the injury incurred by a suspect as a result of the use of force. The primary consideration is receiving medical care for the subject who is injured. After that, the supervisor must advise the appropriate Division Commander and, if the injury requires hospitalization, that supervisor shall notify the Chief of Police or his/her designee to determine if, to call out Professional Standards Unit personnel to conduct the Administrative Investigation, as required.

In addition to the listed responsibilities of the initial supervisor as stated in policy, the on-duty supervisor shall document the Use of Force in the designated tracking software as with any other Use of Force incident.

If a person is injured or dies as a result of the use of deadly force by an officer, or when a person dies in police custody, the Major Crimes Commander will assign the Force Investigation Team (FIT) to conduct a thorough, fair, and impartial investigation.

300.9.1 COMMANDER RESPONSIBILITY

The 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.

300.10 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.

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

Harrisonburg Police Department

Policy Manual

Use of Force

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.

300.11 USE OF FORCE REVIEWS

A team of employees selected by the Chief of Police will review the Department's Use of Force reports. Those selected may be instructors or experts in the areas of Use of Force, conducted energy weapon, Baton/ASP, Gas/Chemical deployment and Firearms. Their purpose will be solely for the review and recommendations of best practices, training needs and policy reform.

Refer to the Use of Force Review Board policy for further guidelines.

300.12 TRAINING

Officers will receive initial and annual training on this policy to include duty to intervene and demonstrate their knowledge and understanding.

Subject to available resources, this may be included in our annual training:

- (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.