

# DISTRICT ATTORNEY ELIZABETH A. BALLARD

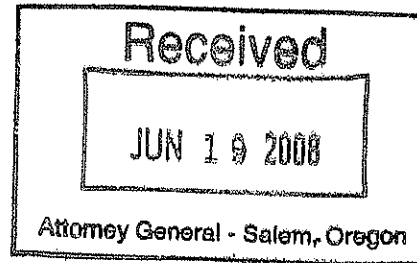
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June 16, 2008



Oregon Department of Justice  
Attorney General's Office  
Mr. Peter Shepherd  
1162 Court St. N.E.  
Salem, Oregon 97301  
Atten: Roz Finfrock

RE: DEADLY PHYSICAL FORCE PLAN

Mr. Shepherd:

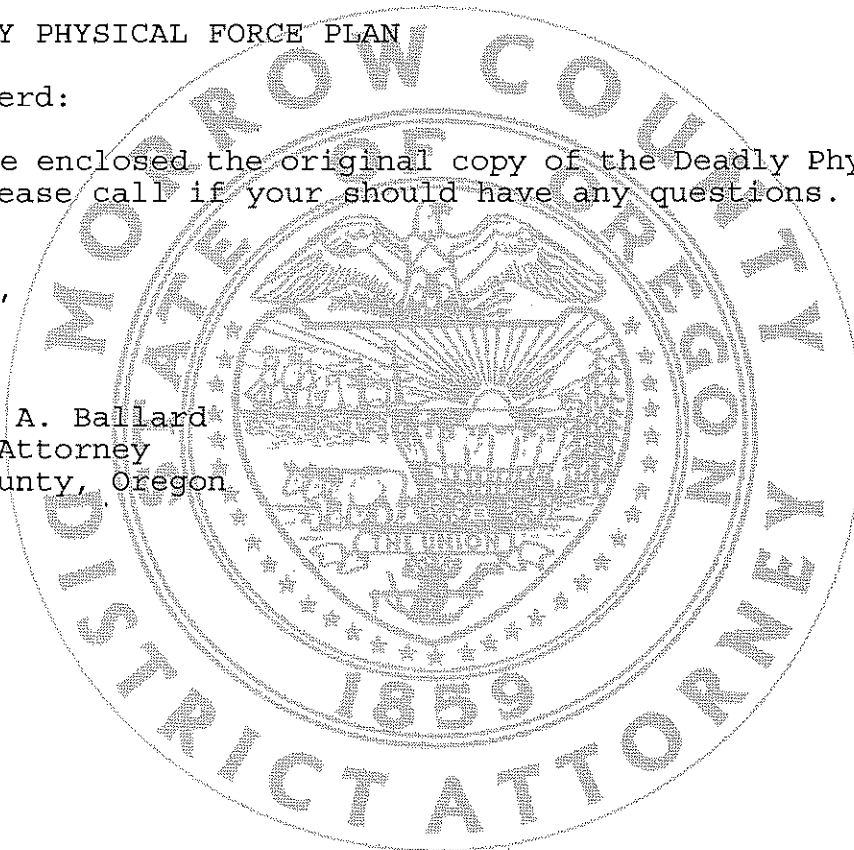
I have enclosed the original copy of the Deadly Physical Force Plan. Please call if you should have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "E.A. Ballard".

Elizabeth A. Ballard  
District Attorney  
Morrow County, Oregon

eab/vfw



## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide deputies of this department with 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, each deputy is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 PHILOSOPHY

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 human encounters and when warranted, may use force in carrying out their duties.

Deputies must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to deputies overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting deputies with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

### 300.2 POLICY

It is the policy of this department that 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 effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that sheriff's deputies are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

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

#### 300.2.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether or not to apply any level of force and evaluating whether a deputy has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the deputy at the time)

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- (b) Deputy/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of deputies vs. subjects)
- (c) Influence of drugs/alcohol (mental capacity)
- (d) Proximity of weapons
- (e) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the deputy under the circumstances)
- (f) Seriousness of the suspected offense or reason for contact with the individual
- (g) Training and experience of the deputy
- (h) Potential for injury to citizens, deputies and suspects
- (i) Risk of escape
- (j) Other exigent circumstances

It is recognized that deputies are expected to make split-second decisions and that the amount of a deputy's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each deputy is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

#### **300.2.2 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended under the circumstances to create a substantial likelihood of death or very serious injury shall be considered non-deadly force. Each deputy is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of deputies and the public. Non-deadly force applications may include but are not limited to leg restraints, control devices and Tasers described in Policy Manual §§ 306, 308 and 309 respectively.

#### **300.2.3 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Deputies may only apply those pain compliance techniques for which the deputy has received departmentally approved training and only when the deputy reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Deputies utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the deputy(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

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

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#### **300.2.4 CAROTID RESTRAINT**

The proper application of the carotid restraint hold by a trained deputy may be effective in quickly restraining a violent individual however due to the potential for injury, the carotid restraint hold may only be applied under the following conditions:

- (a) The deputy shall have received departmentally approved training in the use and application of the carotid restraint.
- (b) The carotid restraint may only be used when the deputy reasonably believes that such a hold appears necessary to prevent serious injury or death to a deputy or other person(s).
- (c) Any individual who has been rendered unconscious by the use of the carotid restraint shall be promptly examined by paramedics or other qualified medical personnel.
- (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 restraint and whether the subject lost consciousness as a result.
- (e) Any deputy applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.
- (f) The use or attempted use of the carotid restraint shall be thoroughly documented by the deputy in any related reports.

#### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the deputy reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or serious injury under the circumstances.

Use of deadly force is justified in the following circumstances:

- (a) A deputy may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) A deputy may use deadly force to stop a fleeing suspect when the deputy has probable cause to believe that the suspect 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 or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, and when feasible, a verbal warning should precede the use of deadly force.

#### **300.4 REPORTING THE USE OF FORCE**

Any use of physical 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 use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

##### **300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the following circumstances:

- (a) The application of force appears to have caused physical injury
- (b) The individual has expressed a complaint of pain

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- (c) Any application of a control device
- (d) The individual has been rendered unconscious

#### **300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of significant pain, or who has been rendered unconscious. If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another deputy and/or medical personnel. If an audio recording is made of contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain or who require a protracted physical encounter with multiple deputies to bring under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

#### **300.5 SUPERVISOR RESPONSIBILITY**

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 deputy(s)
- (b) Ensure that any injured parties are examined and treated
- (c) Separately interview the subject(s) upon whom force was applied
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
- (e) Identify any witnesses not already included in related reports
- (f) Review and approve all related reports

In the event that the supervisor believes that the incident may give rise to potential civil litigation, a separate potential claim form should be completed and routed to appropriate channels.

Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated.

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.

#### **300.6 ANNUAL REVIEW**

Each January the Patrol Sergeant will ensure that an annual review of all Use of Force Reports for the previous calendar year is conducted. The analysis will focus on the effectiveness and trends in the use of force that might suggest training or equipment needs, or policy modification. Specific detail including items such as officer names, case numbers, location of occurrence are not needed for this purpose and therefore will not be part of this process.

## **Deadly Force Review**

### **302.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish a process to review the use of deadly force by employees of this department.

### **302.2 USE OF FORCE REVIEW**

The Morrow County Sheriff's Office is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department that the Undersheriff will investigate every incident of deadly force when the use of said deadly force by an employee results in injury or death to a person.

The Undersheriff will also investigate and review the circumstances surrounding every accidental or intentional discharge of a firearm, whether the employee is on or off duty, excluding range training, recreational use, or the humane destruction of severely injured or diseased animals.

The Sheriff may direct the Undersheriff to investigate the circumstances surrounding any use of force incident.

### **302.3 ANNUAL REVIEW**

An annual review will be conducted on all use of deadly force incidents in accordance with the Department Use of Force policy.

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## Shooting Policy

### 304.1 PURPOSE AND SCOPE

The purpose of the shooting policy is to establish procedures for the use and reporting of incidents involving the discharge of firearms. This policy is for internal use only and does not increase the Department's and/or a deputy's civil or criminal liability in any way. Violations of this policy can only form the basis for departmental administrative actions.

#### 304.1.1 POLICY

It is the policy of this department to resort to the use of a firearm, when it reasonably appears to be necessary, and generally:

- (a) A deputy may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) A deputy may use deadly force to stop a fleeing suspect when the deputy has probable cause to believe that the suspect 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 or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.
- (c) To stop a dangerous animal.
  - 1. In circumstances where deputies encounter an unexpected dangerous animal or are surprised by an animal which reasonably appears to pose an imminent threat to the safety of deputies or others, deputies are authorized to use deadly force to neutralize such a threat.
  - 2. In circumstances in which deputies have sufficient advanced notice that a potentially dangerous domestic animal (e.g. dog) may be encountered, such as in the serving of a search warrant, deputies should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g. fire extinguisher, Taser, OC Spray, animal control officer). Nothing in this policy shall prohibit any deputy from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.
- (d) With the approval of a supervisor, a deputy may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical.
- (e) For target practice at an approved range.

Where feasible, a warning should be given before a deputy resorts to deadly force as outlined (a) and (b) above. A specific warning that deadly force will be used is not required by this policy; only that a warning be given if feasible.

#### 304.1.2 WARNING SHOTS

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the deputy reasonably believes that they appear necessary, effective and reasonably safe.

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#### **304.1.3 REPORT OF WEAPON DISCHARGE**

Except during training or recreational use, any member who discharges a departmentally issued or owned weapon accidentally or intentionally, on or off-duty, shall make a verbal report to his/her supervisor as soon as circumstances permit. If on-duty at the time of the incident the member shall file a written report with his/her Sergeant prior to the end of shift unless otherwise directed. If off-duty, as directed by the supervisor but no later than the end of the next regularly scheduled shift.

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*Current policy soon to be replaced*

<i>Subject</i> <b>Use of Force</b>	<i>Effective Date</i>	<i>Number</i>
	<i>Review Date</i>	<i>Pages</i> 90 to 94
<i>Verlin Denton, Sheriff</i>		

## **I. PURPOSE**

The purpose of this policy is to provide deputies with guidelines on the use of deadly and non-deadly force.

## **II. POLICY**

This agency recognizes and respects the value and special integrity of each human life. In vesting deputies with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Because a police officer's duties often present situations in which the use of force, or even deadly force, may be necessary, the law and agency policy authorize the use of such force in certain circumstances and require that the officer be armed while on regular duty. It is the policy of this agency that use of force by its members be:

1. Justified under applicable state law;
2. Consistent with the more specific policies which follow;
3. Professionally accomplished according to approved training and with approved equipment;
4. In all cases employed to accomplish a legitimate tactical objective;
5. Limited to that degree and duration which the officer reasonable believes necessary to accomplish that objective; and
6. Applied by the officer and reviewed by the agency based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, agency policy, and approved training to those facts. Facts later discovered, but unknown to the deputy at the time, can neither justify nor condemn an officer's decision to use force.

Therefore, it is the policy of this agency that sheriff's deputies shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the deputy and others.

## **III. DEFINITIONS**

*Deadly force:* Any use of force that is likely to cause death or serious bodily harm.

*Non-deadly force:* Any use of force other than that which is considered deadly force.

*Continuum of Force:* A graphic description of the escalation and de-escalation of force used by police personnel in response to actions taken by a suspect or offender. It serves to illustrate the legal duty of an officer to use only reasonable force in response to the threat perceived by the officer.

## **IV. CONTINUUM OF FORCE**

The Force Continuum is divided into six specific component parts: 1) Threat Assessment, 2) Considerations of Force Escalation, 3) Levels of Resistance, 4) Levels of Force, 5) Justification, and 6) Control Techniques.

### **A. Threat Assessment.**

Every situation contains impact factor's which define the threat assessment. The officer must continuously Assess, Plan, and Act. The term "threat" is used to describe any person capable of causing physical injury, serious physical injury or death. The threat must exhibit intent, means, and opportunity to justify the use of force.

### **B. Considerations Of Force Escalation.**

The officer must select the most reasonable option relative to the situation, taking into account:

1. the totality of the circumstances.
2. has the threat had the opportunity to comply with your commands, if commands were possible and appropriate.
3. is the current course of action achieving control or compliance?
4. does the option selected warrant the risk of injury to yourself or the Threat?

### **C. Levels Of Resistance.**

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1. static. (passive). The Threat refused to comply with commands such as balking, becoming dead weight, or grasping a solid object.
2. active. The Threat physically resists the officer's verbal commands and/or attempts to gain physical control by means such as pulling away, attempting to run, or powering through a control hold.
3. ominous. (assaultive). The Threat demonstrates the willingness to engage in combat through verbal challenge, threats and/or aggressive behavior.
4. lethal. The Threat possesses both the intent and the means to inflict serious physical injury or death. The means can be with a weapon or empty handed. Example: The Threat uses a deadly weapon (handgun, knife, shank) or a dangerous weapon (lead pipe, broken bottle, tire iron) to inflict or attempt serious physical injury. The Threat inflicts serious injury through superior size, strength or combative skill.

### **D. Levels Of Force.**

An officer employing force against any person(s) may continue that application until the resistance or threat that caused the officer to take the action has been stopped or controlled.

The various levels of force and the circumstances under which they may be used, beginning with the least and elevating up the scale to deadly physical force, are illustrated on the charts which follow, and are discussed below.

1. presence. The officer has an expectation that inappropriate behavior will stop as the officer properly identifies his police authority.
2. verbal commands, (tactical communications). The questioning of a subject, the attempt to persuade a subject, or giving a direct order to a subject.
3. physical contact. Directing a subject by touch, use of physical restraints such as handcuffs or controlling a subject with an escort hold.
4. physical control holds. Use of chemical or organic weapons, pressure points, joint manipulation techniques, or physical control holds.

5. serious physical control. Use of electronic stun devices, focused blows, impact weapons, police canines and the carotid restraint.
6. deadly force. Any force capable of causing serious physical injury or death.

### **E. Justification**

Levels of force that may be applied vary and in most situations may be affected by the officer's training, experience, and the information and circumstances known to the officer at the time. When dealing with suspects and offenders, officers should attempt to apply the Force Continuum, starting at the lowest appropriate level.

1. The mere presence of uniformed police personnel may be enough to control a suspect's actions. Should aggression or resistance escalate, officers should respond with the level of force appropriate to control the situation. If during a situation a suspect's resistance de-escalates, officers should decrease the level of force to an appropriate level to maintain control.
2. If control is lost, the officer may escalate to the level of force necessary to regain and maintain control, or consider disengaging as a tactical option. Some situations encountered may not be controllable with on-site assets. If further escalation of the force continuum would not be warranted, and continued contact may result in unacceptable risk to the officers or others, disengagement may be exercised as the most proper option until the situation can be properly addressed.
3. It is important to recognize that a situation may require an officer to start at the highest level, or to pass over levels due to suspect actions. By properly applying the Continuum of Force concept, officers will respond lawfully by using only the force necessary to control a situation.

### **F. Control Techniques**

1. Verbal Command: In the majority of situations requiring police intervention the officer's verbal command is the only force necessary. The officer's confidence, tone of voice and attitude, the clarity of directions, and choice of words are factors which bear on the effectiveness of a verbal command.

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2. **Hand Control:** If the use of a verbal command is not effective, or is not likely to be effective in controlling an individual, an officer may need to resort to the second level of force which is the use of hand control or an aerosol subject restraint. When using hands or aerosol subject restraint, the officer may only use that force necessary to control the individual. This force may range from a gentle but firm hold of a person's arm to the use of escort/control holds or a Kubotan-type devise. Once a person complies, the force used is reduced in proportion to the compliance and is maintained at a level necessary to maintain control. If an officer is unable (or if the officer believes he or she will be unable) to control a subject by use of hand controls, the officer is justified in using a higher level of force, or prior to making any physical contact, may opt to use an aerosol restraint prior to making actual physical contact where there is a likelihood of injury to the officer or any other person.
3. **Chemical Irritants as Subject Restraint:** The use of chemical irritants to subdue a person who is resisting arrest or is otherwise combative is authorized when resistance or threats of violence represents potential escalation of necessary force and officers fear potential injuries to the officers, the arrestee, or others present. The officer should consider that the officer utilizing chemical irritants may be affected to a greater degree than the person who is resisting.
4. **Impact Weapons:** The baton is a defensive weapon designed for blocking, jabbing, and striking. The use of the baton is proper to overcome force of resistance and to control.
5. **Carotid Control:** The carotid control hold is utilized to overcome aggressive resistance in which a lower level of force is ineffective or inappropriate under the circumstances.
6. **Deadly Physical Force:** No action on the part of a law enforcement officer can have more far-reaching consequences for the officer, Agency and community than the use of deadly physical force. Deadly physical force, therefore, can only be justified in the protection of the officer or another from serious physical injury or death or to prevent the escape of a fleeing felon whom the officer

has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

## V. USE OF REASONABLE PHYSICAL FORCE

Officers are permitted to use only that force which the officer reasonably believes is necessary to protect others or themselves from bodily harm or to effect any other lawful police action. The officers authority to use physical force is provided for under ORS 161.235 and this policy is intended to conform to the provisions of this statute.

### A. Non-Deadly Force:

Every use of force carries the risk that some injury or even death may result, even though the type of force used is not categorized as "deadly" force. The goal in every use of non-deadly force is to gain control over the action of the person in order to take and maintain custody, overcome resistance to arrest, prevent the immediate commission of dangerous or criminal acts, or a combination of those objectives. Once the goal is achieved, further use of physical force must be discontinued. Until that goal is achieved, the level and extent of force used must be limited to that which is reasonably believed necessary by the officer to achieve the goal.

### B. Deadly Force:

When circumstances justify the use of deadly force, the unavoidable risk is that someone will be killed or seriously injured. Although an officer has no specific intent or desire to kill the person, death may be the result. Circumstances justifying the use of deadly force often happen quickly in situations of great physical and mental stress. It is rarely possible for the officer to direct the use of deadly force to a nonfatal area of the threat. The goal in using deadly force is neither to kill nor to wound without killing; it is simply and exclusively to incapacitate the threat to produce voluntary surrender or render that person incapable of continuing the dangerous conduct which justified the use of deadly force in the first place. Where deadly force is justified, an officer may continue its use until satisfied that the goal has been achieved, and then must discontinue its use. Officer safety and the safety of persons other than the threat must be a continuing consideration to the officer using deadly force.

## **VI. GUIDELINES GOVERNING THE USE OF FORCE**

While the use of force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances.

### **A. Reasonableness:**

The unnecessary or excessive use of force against any person is prohibited. What may be reasonable force under one set of circumstances may be unreasonable force under a different, though similar, set of circumstances.

### **B. Medical Treatment:**

Appropriate medical treatment will be provided for any person injured as a result of an officer's use of force, by officers, ambulance or emergency medical staff, and/or hospital personnel:

- Persons subjected to chemical irritants such as oleo capsicum resin, shall have the affected areas flushed with water as soon as safe and practical, utilizing the eye wash and flush equipment furnished in the patrol cars, sheriff's office, or correctional facility.
- All physical injuries shall be promptly treated as soon as safe and practical by trained medical personnel. Any injuries other than minor bruises, cuts or abrasions shall be examined and treated as required at the hospital emergency room.
- Any person in custody alleging to have been injured by an officer shall be transported to the hospital for examination and/or treatment.
- If any loss of consciousness results from a use of force, that person will be examined by trained medical personnel.

## **VII. GUIDELINES GOVERNING THE USE OF DEADLY FORCE**

These guidelines re-state legal principles of justification for the use of force, which are represented by the Use of Force Continuum. Officers shall be directed by the following general guidelines:

### **Deadly Force Warning**

Whenever practical under the circumstances, an officer shall give some warning before using deadly force.

### **B. Use Of Deadly Force.**

Deadly force will be used only for the protection of life or the prevention of serious bodily injury or to prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

### **C. Exhaust Reasonable Means.**

Reasonable and practical attempts for protection or apprehension will be exhausted before using deadly force. Reasonableness and practicality are to be judged based upon the circumstances which actually exist and are perceived by the officer at the time and place that deadly force is used.

### **D. Safety Of Bystanders:**

The use of any weapon must be done with proper regard for the safety of bystanders or other people in the immediate area.

### **E. Officer Discretion:**

Even when an officer may be permitted to use deadly force, the officer may refrain from doing so if the officer believes the use of such force is inadvisable under the particular circumstances.

### **F. Decision To Display Firearms:**

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer should, as soon as practical, secure or holster the firearm. These judgments are matters committed to the discretion of the officer in each instance. The officer must decide what actions are necessary in order to maintain control.

### **G. Justification On The Use Of Deadly Force:**

An officer may not use deadly force simply to arrest or prevent the escape of persons committing a crime. The only exception is if any such felons present an immediate threat to the life of an officer or a citizen, should their immediate apprehension not be made.

1. An officer is authorized to employ deadly force whenever it appears to the officer that there is no reasonable alternative under the following circumstances:
  - a. **The officer reasonably believes that the use of deadly force is necessary to**

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protect the officer or any other person from the use or threatened imminent use of deadly physical force;

- b. The officer reasonably believes that the use of deadly physical force is necessary to protect the officer or any other person from death or serious physical injury;
- c. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

## **VIII. REPORTING THE USE OF FORCE**

Whenever a deputy must employ an amount of force capable of causing injury, a case number will be established and assigned in regard to the incident. If that force is employed in the course of effecting an arrest, overcoming resistance, or controlling a dangerous situation (assault, etc.), appropriate criminal allegations should be charged immediately.

### **A. Involved Officers.**

The officers involved in the use of force and any other officer notified by a supervisor shall report the use of force in the narrative section of a written report when:

- 1. Any injury is apparent or alleged to either an officer or citizen;
- 2. Medical treatment is required or requested;
- 3. When a non-lethal weapon is used on a person.
- 4. The force used relates to a criminal charge, irrespective of whether or not the incident results in an arrest.

The incident narrative shall describe the force used. The narrative shall also articulate the facts observed by the officer and the beliefs held by the officer that lead the officer to decide that the level of force used was justified. Weapons used, injuries, medical care received, and details of the altercation shall be reported in detail. Witnesses shall be listed. If possible, a copy of medical records shall be attached.

The written report should be submitted by the end of the shift. The officer's immediate supervisor shall complete a "Supervisor's Review" and submit it along with a copy of the written report flagged "Use of Force Review" to the Undersheriff for administrative review.

### **B. Incident Review.**

- 1. Determinations will be made whether or not all agency guidelines were met. The Undersheriff will recommend actions in regard to those officers involved in the use of force incident.
- 2. The Sheriff, based on the Use of Force Review, may convene an Administrative Board to examine the use of force incident and may take appropriate action. The Use of Force Review process will be completed as expeditiously as possible.
- 3. The Agency Review shall be based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, agency policy and procedures, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.
- 4. The Sheriff may order a review conducted of all use of force incidents which resulted in a "Supervisor's Review". The purpose of the review will be to examine use of force incidents which may be useful in identifying agency policy and/or training needs.

## **WARNING**

This directive is for agency use only and does not apply in any criminal or civil proceeding. The agency policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for agency administrative sanctions.

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<i>Subject</i> <b>Use of Force, Specific Instrumentality</b>	<i>Effective Date</i>	<i>Number</i>
	<i>Review Date</i>	<i>Pages</i> 95 to
<i>Verlin Denton, Sheriff</i>		

## I. PURPOSE

The purpose of this policy is to provide sheriff's deputies with guidelines on the use of specific forms of deadly and non-deadly force.

## II. DEFINITIONS

**Deadly force:** Any use of force that is likely to cause death or serious bodily harm.

**Non-deadly force:** Any use of force other than that which is considered deadly force.

**Carotid Restraint:** A carotid restraint is any physical hold applied to the neck of another person that is intended to inhibit blood flow through the carotid arteries of the neck by exerting pressure, to one or both sides of the neck through the member's use of hands, arms, or any other instrument

**Chemical Irritants:** Substances, either natural or man-made, the design and use of which is to temporarily incapacitate a suspect.

**Electronic Restraint Device:** A device designed to stun, restrain or incapacitate a suspect temporarily by way of delivering an electronic shock.

**Firearm:** Any weapon, the design of which is to propel a projectile or projectiles by the use of a chemical explosion, and capable of causing serious physical injury or death.

**Impact Weapon:** Police baton, side-handle baton, collapsible baton, or any other such instrument or device designed or used to block, jab, strike, or temporarily restrain or control a suspect by way of physical impact or extending the officer's ability to use control holds.

**Less-Lethal Projectiles:** Fired from a firearm or similar device, less-lethal projectiles are designed to stun or incapacitate a suspect temporarily without causing serious physical injury or death.

**Patrol Canine:** A canine trained for and employed by law enforcement officers, the use of which includes,

but may not be limited to, handler protection and the location and apprehension of suspects.

**Restraints/Handcuffs:** Handcuffs, flex-cuffs, hobbles, belly chains, and all such devices the design or use of which is to temporarily restrain a person for the purpose of officer safety or to prevent injury to the person or another.

**Vehicular Use of Force:** Deployment of a motor vehicle as a use of force to stop or control a suspect or vehicle beyond that of a traffic stop or normal vehicular operation.

## III. WARNING OF USE

Officers should issue a warning of the impending use of force except where impractical or tactically disadvantageous, such as in situations where the warning would endanger the officer or another, alert the suspect to escape or allow actions to be taken which aid or abet a crime.

## IV. USE OF FORCE RELATED INJURIES

Once a person is in police custody, it is the responsibility of the officers to render or obtain any medical aid required. With any use of physical force where an injury has occurred or is alleged to have occurred, the officer should observe and evaluate, treat or obtain medical aid, document, and report.

### A. Observe and Evaluate

If an injury is apparent to a person in custody, the officer should observe and evaluate the injury to assure that the proper level of care is provided. If a person in custody alleges an injury and none is apparent, the officer will summon appropriate trained medical response for an evaluation.

### B. Treat or Obtain Medical Aid

Appropriate medical treatment shall be provided any person injured or alleged injured as a result of a use of force. This may include, but is not limited to:

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1. Flushing the eyes and skin of a person subjected to oleoresin capsicum or other chemical irritant, and monitoring the person for complications.
2. Washing and bandaging minor cuts or abrasions resulting from the application of physical force during an arrest.
3. Obtaining trained medical attention and ambulance transport to medical facilities for persons with more serious injuries.

## C. Documentation

Officers should take all practical measures to fully document the injuries:

1. Note carefully location, extent, and appearance of the injury for reporting purposes.
2. Photograph the injury as soon as possible if at all possible.
3. Obtain witness names and statements from medical personnel or others at the scene.
4. Obtain all medical records possible if the subject is treated by emergency medical personnel or at a hospital facility.
5. Note carefully any statements made by the suspect.
6. Report all use of force injuries.

## V. CAROTID RESTRAINTS

Carotid restraint constitutes "serious physical control" level of force.

### A. Agency Policy on the Carotid Restraint

A carotid hold will not be applied to any person except in the protection of life, for the prevention of serious bodily injury, or in the apprehension of a person who the officer reasonably believes poses a serious danger to the officer or the public.

### B. Training

Only those officers instructed in the use of the "carotid hold" in authorized and documented training and whose skills are current may use such a hold. Such officers shall also be currently certified in the use of cardiopulmonary resuscitation (CPR).

Documentation of training and current proficiency shall be contained in the officer's training file.

### C. Use of the Carotid Restraint

The Carotid Restraint may be used as a controlling maneuver when all other control techniques have failed and it is clear the person or officer may be harmed in an effort to gain control.

Medical attention by qualified medical personnel shall be sought and administered following an unconscious state which is the result of the application.

## VI. CHEMICAL IRRITANTS

Chemical Irritants are considered a "physical control hold" level of force and shall be employed in a manner consistent with this agency's use-of-force policy.

### Agency Issued Chemical Irritants

Officers will carry only Agency issued Chemical Irritants. These fall into two categories: personal issue and tactically deployed.

1. Personal issue: Officers whose normal duties/assignments may require them to make arrests or supervise arrestees while on duty may carry agency authorized oleoresin capsicum aerosol restraint spray.
2. Tactically deployed: The Agency may deploy by various means Chemical Irritants such as oleoresin capsicum, CN, and CS during riot or emergency situations. The use of these agents will be determined and controlled by the Undersheriff or Sheriff based on training, situation and tactical needs.

### B. Training

Only officers who have completed the prescribed course of instruction on the use of OC are authorized to carry the device.

1. Officers will be instructed in the agencies use of force policy and applicable laws prior to being issued a chemical irritant.
2. Officers will receive orientation and training regarding the use of oleoresin capsicum, its affects, ingredients, means of delivery and first aid to be administered which will be included in the officer's training file, prior to being issued OC.
3. Officers will receive training, on the proper use of chemical irritants, and will demonstrate a proficient knowledge of their use. This proficiency will be documented in the officer's training file.

### C. Use of Chemical Irritants

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1. Oleoresin capsicum may be used when:
  - a. verbal dialogue has failed to bring about the subject's compliance, and
  - b. the subject has signaled his intention to actively resist the officer's efforts to make the arrest.
  - c. Oleoresin Capsicum may be used on animals as a deterrent to aggressive behavior when an officer reasonably believes that such aggression may cause injury to the officer or any other person who is present.
2. The effects of OC vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed. Officers should also be prepared to employ other means to control the suspect—to include, if necessary, other force options consistent with agency policy—if the suspect does not respond sufficiently to the spray and cannot otherwise be subdued.
3. An officer may use deadly force to protect himself from the use or threatened use of OC when the officer reasonably believes that deadly force will be used against him if he becomes incapacitated.
4. Once a suspect is incapacitated or restrained, use of OC is no longer justified unless the officer reasonably believes the suspect is a continuing threat because of the tactical situation or some other articulatable reason.

### **D. Additional considerations**

Within several seconds of being sprayed by OC, a person will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought processes.

Consistent with Agency training in the use of Oleoresin capsicum, the officer using the chemical irritant should be aware of additional considerations including, but not limited to:

1. Collateral effects:
  - a. Whenever possible, officers should be upwind from the suspect before using OC and should avoid entering the spray area.

- b. An officer should maintain a safe distance from the suspect of between two and 10 feet.
  - c. Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.
  - d. Assistance shall be offered to any individuals accidentally exposed to OC spray who feel the effects of the agent.
2. Treatment of affected persons:
    - a. Once the suspect has been restrained, officers shall assist him by rinsing with clean water and drying the exposed area.
    - b. Any vehicles or interiors of buildings should be ventilated.
    - c. Suspects that have been sprayed shall be monitored continuously for indications of medical problems and shall not be left alone while in police custody.
    - d. Immediately after spraying a suspect, officers shall be alert to any indications that the individual needs medical care.
    - e. Upon observing any medical problems or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid.

### **E. Maintenance**

1. All OC spray devices shall be maintained in an operational and charged state.
2. Replacements of OC spray canisters shall occur when the unit has been discharged in any significant amount.
3. OC canisters shall be inspected periodically by the officer it is issued to, and turned in for replacement when expired, damaged, inoperable or depleted.

## **VII. ELECTRONIC RESTRAINT AND INCAPACITATION DEVICES**

This agency presently uses electronic restraint and incapacitation devices (Tasers). As such, the use of these electronic devices by members will only be by those members properly trained and authorized to employ the devices.

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## **A. Electronic Incapacitation Devices (Taser's):**

**The Taser is a Conducted Energy Weapon; an electronic incapacitation device. It is a defensive weapon, which is listed in the force continuum at the same level as O.C. Spray. It functions in two ways:**

1. It uses compressed nitrogen to project two probes a maximum of 21 feet. An electrical signal is then sent to the probes, via small wires, which disrupts the body's ability to communicate messages from brain to the muscles and causes motor skill dysfunction.
2. Acts as a touch stun system when brought into immediate contact with a person's body.

The decision to use the Taser is based on the same criteria a deputy uses when selecting to deploy O.C. spray, or a baton. The decision must be made dependent on the actions of the subject(s) or threatening the deputy(s) resulting in serious or potential deadly injury to the offender, officer, or others present.

The Taser is not meant to be used in deadly force situations. The Taser should not be used without a firearm back up in those situations where there is a substantial threat towards the officer(s) or others present.

The Taser provides a force option in which the officer does not have to get dangerously close to a threat before deploying the tool. Using the Taser may greatly reduce the need for other types of physical force by the officer(s) resulting in serious or potential deadly injury to the offender, officer, or others present.

Any use of an electronic incapacitation device contrary to the direction of this policy can result in the revocation of the deputy(s) right to use such product and may subject the deputy to disciplinary action.

## **B. Issuing of the Taser**

Agency personnel shall only carry and use Taser's or electrical incapacitation devices approved by the Sheriff. Members may only use agency issued Taser cartridges. A record of cartridge serial numbers provided with each weapon will be maintained in a logbook. The logbook will be audited at least once a year by an agency supervisor and/or agency Taser instructor.

Agency issued Taser's may be assigned to patrol supervisors or specialty units.

Members of the agency may have a Taser assigned to them as deemed necessary by the Undersheriff or Sheriff.

The shift supervisor should have a Taser in their assigned vehicles at all times.

A record will be kept of all Taser's and their serial numbers, and what deputy they have been issued to. In the event that a Taser is returned for repairs or no longer remains the property of the sheriff's office, the use history of that particular Taser will be down loaded using the data port access and appropriate software. The user history will be maintained for a period of five years from the date the Taser was taken out of issue service.

Use histories will be run on each Taser once each six (6) months. Any indications of misuse of the device may result in disciplinary action or revocation of the users certification.

## **C. Training and Certification**

All members who carry and/or use a Taser must first successfully complete a 4 hour Taser familiarization program, to include written and practical tests. A mandatory re-certification program will be completed annually. The re-certification will be a minimum of two hours.

## **D. Use of a Advanced Taser on Vicious Animals.**

The full effect of a Taser on animals is not yet proven. However, field deployments have shown positive results and the Taser has been effective tool against vicious animals. Animals have also shown the ability to quickly recover from the effects of the Taser. As soon as the Taser temporarily disables the animal, officers should be prepared to act quickly with control devices or restraints. Using the Taser against vicious animals may reduce the need for greater, more injurious force against such animals. Personnel should deploy a Taser on an animal when other conventional means to control the animal have been exhausted, or may be unreasonable. The use of a Taser on an animal should be based on the intent to provide a safer, more humane and less traumatic conclusion to the incident.

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A Taser may be deployed on an animal when:

1. A vicious animal is threatening or is attacking a citizen, an officer, or other animal and the use of other force is not reasonable, or may not be desired given the situation.
2. A vicious animal has threatened or attacked a citizen, an officer, another animal, or has caused a continuing public nuisance and the vicious animal needs to be controlled for reason of public peace or safety, preservation of property, or other legitimate purpose, and the animal poses an active threat to officers in their efforts to perform their duty. The Taser will be used in an effort to safely facilitate the application of more conventional animal control methods in these situations.

Center mass of the animal should be targeted. Care should be taken to ensure the head, and other sensitive areas on the animal are not targeted. It is understood that deployments against vicious animals may be very dynamic in nature and the probes may impact unintentional areas. It is generally understood that as long as personnel acted appropriately, the animals owner will be responsible for any medical attention needed by the animal. Disputes regarding veterinary care should be referred to a supervisor or the county attorney.

### **Use of the Taser on Persons**

The Taser is not a substitute for deadly force and should not be used in those situations. Deployment of the Taser should be backed up with the availability of lethal force.

1. A subject is threatening himself, an officer, or another person with physical force and other means of controlling the subject are unreasonable or could cause injury to the officer(s), the subject(s), and others.
2. In cases where Officer / Subject factors indicate the officer(s), offender(s), or others would be endangered by the use of physical force.
3. Other means of lesser or equal force have been ineffective and the threat still exists to the officer(s), subject(s), and others.

4. Center mass of the body should be the target area when firing a Taser, particularly the center mass of the back, as clothing tends to be tighter on this part of the body. Personnel encountering subjects wearing heavy or loose clothing on the upper body should consider targeting the legs. The head and face should not be targeted unless the appropriate level of force can be justified.

The Taser will never be used punitively or for purposes of coercion. It is to be used as a way of averting a potentially injurious or dangerous situation. The Taser has an effective range of 13 feet with a 15 foot cartridge and 19 feet with a 21 foot cartridge. Ranges under 3 feet may not provide adequate distribution of the probes to allow the unit to function to its full effectiveness. Firing the Taser at a subject at a range closer than 3 feet is not dangerous to the subject, however.

Prior to the deployment of a Taser the person deploying has the responsibility to visually and physically confirm that the tool selected is in fact a Taser and not a firearm. The deploying person should loudly notify any on scene, assisting officers that they intend to deploy the Taser. Immediately prior to the deploying of the Taser the deploying person should announce, if feasible, "TASER! TASER! TASER!". The announcement should be made only if it would not endanger any civilians, officers, or the suspect.

The Taser has the ability to ignite flammable liquids. It will not be deployed at subjects who have come in contact with flammables, or in environments where flammables are obviously present. Personnel should be especially aware of this when in known meth lab environments.

Proper consideration and care should be taken when deploying the Taser on subjects who are in an elevated position or in other circumstances where a fall may cause substantial injury or death. Officers must be prepared to justify such a deployment.

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## **Duties after Deployment**

Immediate action should be taken to care for the injured, to apprehend any suspects, and to protect the scene.

Once the subject is restrained or has complied, the Taser should be turned off.

A Taser will not be left unattended except in exigent circumstances as when an officer is forced to act alone in taking custody of an immediate threat.

Medical personnel will be summoned to the scene to assess the subject. If the exam or other circumstances dictate the subject needs further medical treatment, the subject will be transported to the nearest medical facility. The officer will immediately cause a supervisor to be notified that a subject is being taken for additional medical treatment. Medical treatment will not be refused for anyone who requests it.

Medical personnel will remove probes located in sensitive areas such as the face, neck, groin, or breast.

Removal of probes in other areas may be done by officers. Officers will provide first aid following removal of the probes by applying iodine or alcohol wipes, and band aids to the probe sites as needed. Officers will inspect the probes after removal to ensure that the entire probe and probe barb has been removed. In the event that a probe, or probe barb has broken off and it is still embedded in a subjects skin, the subject will be provided appropriate medical attention to facilitate the removal of the object. A supervisor will be notified of the additional medical attention.

Photographs will be taken of probe impact sites and any other related injuries as soon as practical.

Probes that have been removed from skin will be treated as **biohazards** sharps and placed in a sharps container.

Involved personnel will attempt to locate, identify and interview any witnesses to the incident.

Officers shall refrain from discussing the incident until they have spoke with a supervisor. The involved personnel will brief the supervisor of the circumstances surrounding the incident and what action has taken place. The deploying officer(s) will complete a Taser Deployment Report. (see attached).

Book the offender into jail or take other appropriate action. Jail personnel shall be informed the subject was controlled by use of a Taser. Subjects controlled by use of a Taser will not be transported face down.

## **Supervisor Responsibilities**

The supervisor should ensure that the proper care is given to injured officers and/or citizens. He/she should ensure all responsibilities of the officer have been carried out regarding care for the injured, apprehension of the suspects and protection of the scene.

The supervisor will notify the Undersheriff of the incident. The Undersheriff will determine if further investigation is necessary. The Undersheriff will be responsible to see that the Sheriff is notified in a timely manner.

A Taser Deployment Report and all written reports associated with the incident shall also be completed before the end of the shift and forwarded to the Undersheriff or Sheriff as appropriate.

## **VIII. FIREARMS**

Use of firearms constitutes a "deadly force" level of force, and shall be used only in situations where the use of deadly force is justified.

### **A. Agency Issued Firearms**

Officers will carry only agency issued firearms, or those specifically authorized in the agency firearms policy. Ammunition will likewise conform to that authorized in the Agency firearms policy.

**Handgun:** The agency issues the .40 caliber, 9mm caliber, and 38/357 mag. Caliber handguns.

**Shotgun:** The agency issues the **12 guage pump action shotgun**. Barrel lengths and magazine capacity may vary according to assignment.

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**Rifle:** The agency issues the .223 Ruger Mini 14 semi automatic rifle.

**Other firearms:** The agency may issue those other firearms necessary to the purposes of law enforcement as authorized by the Sheriff including but not limited to those whose specific purpose or design is delivery of chemical irritants, full automatic firing capability, or precision long range shot placement.

## **B. Training**

Officers may carry and use only those firearms that they have received training and demonstrated proficiency in the use of. This may include personally owned firearms.

1. Officers will be instructed in all applicable laws on the use of deadly force and agency use of force policy prior to being issued or allowed to carry any firearm.
2. Officers will successfully complete the Basic Police Academy course on firearms instruction or its accepted equivalent prior to being authorized to carry a firearm.
3. Officers will receive firearms training at least four times yearly. They will demonstrate an acceptable level of proficiency with each firearm they are authorized to carry.
4. Levels of proficiency and frequency of qualifications with each weapon will be set by the agency Rangemaster and the officer's performance will be documented in the officer's training file.

## **C. Use of Firearms**

Use of firearms by law enforcement officers in the performance of their duties constitutes one of the most closely scrutinized aspects of the profession. Officers are authorized to use firearms when necessary:

1. To protect the officer or another from serious physical injury or death.
2. To prevent the escape of a fleeing felon whom the officer has probable cause to believe poses a significant and immediate threat to human life should escape occur.
3. To destroy or deter a dangerous animal or, with permission from a supervisor, to destroy a badly injured animal to prevent further suffering.
4. At a firing range pursuant to all safety rules and regulations.

## **D. Unauthorized firearms Uses**

1. Officers are prohibited from discharging firearms from a moving vehicle.
2. Discharging a firearm is not authorized as a signal, warning, or communication method.
3. Any accidental discharge of a firearm by an officer occurring during a law enforcement related function will be immediately reported to the on duty supervisor. An incident report will be generated, and copies forwarded to the Rangemaster and Sheriff.
4. Officers will not display their weapons for casual civilian observation.
5. Firearms shall not be used to threaten or intimidate persons.

## **E. Maintenance**

Any firearm authorized by this agency to be carried by an officer will be maintained in a clean and operational condition. They are subject to unannounced inspections by a supervisor or member of the firearms team at any time.

Firearms will be inspected as part of each scheduled firearms range training sessions.

## **IX. IMPACT WEAPONS**

Use of impact weapons to extend a control hold may range upward from a "physical control hold" level of force. Use of impact weapons to block, jab, or strike constitutes a "serious physical control" level of force.

### **A. Agency Issued Impact Weapons:**

Officers will carry only approved impact weapons.

1. Collapsible baton/night stick: The agency issues, for standard deployment, a night stick which will be in the officer's possession when assigned to the patrol, traffic or investigations functions. An approved collapsible baton maybe substituted for the night stick at the members expense.
2. Riot baton: The agency may issue, during times of civil unrest or emergency, a riot baton for use with units assigned to riot and crowd control functions.
3. Impromptu impact weapons: Nothing in this section precludes an officer from using an impromptu impact weapon (such as the police issue flashlight) if the officer is justified in its

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use to protect himself or another from serious physical injury or death.

## B. Training

Only officers who have received training and have demonstrated proficiency in the use of impact weapons may carry and use them.

1. Officers will be instructed in the agency use of force policy and applicable laws prior to being issued an impact weapon.
2. Officers will receive training in the proper use of impact weapons prior to the weapon being deployed with the officer. This will be documented in the officer's training file.
3. Officers will receive additional training in the proper use of impact weapons as necessary, and will demonstrate proficiency in their use. This will be documented in the officer's training file.

## C. Use of Impact Weapons

Only that amount of force reasonably believed necessary to protect persons from bodily harm or to effect a lawful police action may be used.

1. Impact weapons may be used as an extension of an officer's ability to apply a control hold to overcome "static" or higher levels of resistance. This includes, but is not limited to leverage applications, wrist or other joint locks, arm bars, come along holds, and take-downs.
2. Impact weapons may be used as a blocking, jabbing, or striking weapon to overcome "active" or higher levels of resistance. This includes, but is not limited to jabs and rakes intended to stun or gain compliance, strikes to major muscle groups for the same purpose, or strikes to areas such as wrists or shins designed to disarm or incapacitate.
3. Impact weapons may be used on targets identified as potentially lethal, such as the head or groin, only in situations where the use of deadly force is justified.

## D. Unauthorized use

1. Impact weapons shall not be used to threaten, intimidate or punish any person.  
Impact weapons shall not be used for other than law enforcement purposes.

3. Officers should exercise restraint and consideration before demonstrating or displaying their impact weapons. They should not normally be subject to casual civilian observation.

## E. Maintenance

Agency issued impact weapons will be kept in a clean, operational condition at all times.

## X. LESS-LETHAL PROJECTILES

Use of less-lethal projectiles constitutes a "serious physical control" level of force.

### A. Agency Authorized Less-Lethal Projectiles

At this time the agency does not have or use less than lethal projectiles. Therefore the possession and use of these projectiles is not authorized.

## XI. RESTRAINTS/HANDCUFFS

Use of restraints such as handcuffs, leg irons, flex cuffs, or hobbles constitute a "physical contact" level of force.

### A. Agency Authorized Restraints

Officers will carry only agency issued or authorized restraints.

1. Handcuffs: The agency issues handcuffs to officers whose normal duties/assignments may require them to make arrests or supervise arrestees. Officers may carry additional personally owned sets of handcuffs so long as they are of a similar design and quality to those issued.
2. Other restraints: The agency equips each police vehicle which may be used by officers to make arrests and prisoner transports with:
  - a. **Belly chains, for the purpose of further restraining the arms of prisoners that are unusually flexible, violent, or dangerous.**
3. Flex-cuffs: Flex-cuffs may be used by officers as a temporary means to secure additional suspects. Officers should be aware of the danger of a suspect cutting, burning, or slipping out of flex cuffs and exercise additional caution, checking the flex-cuffs frequently.

### B. Training

Officers shall train annually during defensive tactics in-service training on the proper use of restraints.

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1. The training shall include instruction in the agency use of force policy.
2. The training shall be documented in the officer's training file.

## **C. Use of Restraints**

Every person taken into custody shall be handcuffed with their hands behind the back, unless such handcuffing is impossible (e.g., an amputee) or impractical. In such an event, an officer shall use appropriate safeguards to secure the person. Additional restraints shall be used, as needed, if the officer reasonably believes they are necessary because:

- a. The prisoner is violent and constitutes a continuing threat to the officer even though handcuffed.
- b. The prisoner constitutes an escape risk unless further restrained.
- c. The prisoner damages or attempts to damage property even though restrained.
- d. The prisoner acts in a manner that is likely to injure himself or others.
- e. The prisoner is accused of crimes of a serious nature that merit additional security.
- f. The prisoner has a past record of violent behavior or escapes.

## **D. Unauthorized Uses of Restraints**

Restraints shall not be used as punishment, or to humiliate or degrade any person.

## **E. Maintenance**

All restraints carried by or in the care of officers shall be maintained in a clean and operational condition.

## **XII. CANINE AS A USE OF FORCE**

Police canines are not normally deployed as a "use of force". When they are utilized as such, they are considered to be a "serious physical control" level of force.

## **XIII. VEHICULAR USES OF FORCE**

Vehicles are not designed as, nor are they normally deployed as a "use of force". When they are utilized as such, they are considered a "deadly force" level of force.

Vehicular uses of force are located in the use of vehicles section of this chapter. (Refer to S.O.P., "Vehicular Use of Force")

## **Deadly Force Review**

### **302.1 PURPOSE AND SCOPE**

The purpose of this policy is to establish a process to review the use of deadly force by employees of this department.

### **302.2 REVIEW BOARD**

The Boardman Police Department is charged with the important responsibility of objectively evaluating the use of deadly force. It is the policy of this department to convene a Use of Deadly Force Review Board when the use of deadly force by an employee results in injury or death to a person.

The Use of Deadly Force Review Board will also investigate and review the circumstances surrounding every accidental or intentional discharge of a firearm, whether the employee is on or off duty, excluding range training or recreational use.

The Chief of Police may convene the Use of Deadly Force Review Board to investigate the circumstances surrounding any use of force incident.

### **302.21 COMPOSITION OF THE BOARD**

The Use of Deadly Force Review Board normally would be comprised of the following persons:

- Command representative
- Training Officer
- Non-administrative supervisor

The Chief of Police will designate a member of the Board to serve as chairperson.

The chairperson will convene the Use of Deadly Force Review Board as necessary. It will be the responsibility of the section or unit commander of the involved employee(s) to notify the appropriate division commander of any incidents requiring board review. The section or unit commander will also ensure that all relevant reports, documents, and materials are available for consideration and review by the Board.

### **302.22 RESPONSIBILITIES OF THE BOARD**

The Use of Deadly Force Review Board is empowered to conduct an administrative investigation into the circumstances of an incident. The Board membership may request further investigation, call persons to present information, and may request that the involved employees appear before the Board. The involved employees will be notified of the meeting of the Board and may be represented by legal counsel and/or other representation through all phases of the review process.

Absent an expressed waiver from the employee, no more than two members of the Board may ask questions of the involved employee.

The review shall be based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy and procedures, and approved training, to those facts. Facts later discovered but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.

# Boardman Police Department

## *Deadly Force Review*

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If it appears that the actions of the employee(s) may result in criminal charges or disciplinary action by the Department, the Board will conduct the interviews in accordance with department disciplinary procedures. The Board does not have the authority to recommend discipline. The Board shall make a finding and such finding will be limited to one of the following:

- (a) The employee's actions were within department policy and procedures.
- (b) The employee's actions were in violation of department policy and procedure.

A finding will be the consensus of the Board. After the board has concluded, the board chairman will submit written findings of the board to the Chief of Police. After review by the Chief of Police, a copy of the findings will be forwarded to the involved employee's Lieutenant for review and appropriate action.

At the conclusion of the review process, a copy of all relevant reports and information will be filed with the Chief of Police.

Once the Board has reached its specific finding, the Training Officer may convene the separate training committee to address training needs and recommendations for this department without specific reference to the facts of the incident considered by the Board.

### **302.3 ANNUAL REVIEW**

An annual review will be conducted on all use of force incidents which resulted in a "Supervisor's Review" and an incident report being forwarded through the chain of command. The purpose of the review will be to examine use of force incidents which may be useful in identifying department policy and/or training needs.

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## **Officer-Involved Shooting**

### **310.1 PURPOSE AND SCOPE**

To establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

Nothing in this policy is intended to increase, modify, or in any way affect the current legal standards nor shall any deviation from these guidelines be considered a breach of any legal standard.

### **310.2 TYPES OF INVESTIGATIONS**

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency or interagency team with the approval of the Chief of Police or a Lieutenant
- (b) A criminal investigation of the involved officers conducted by an outside agency or interagency team
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

### **310.3 JURISDICTION**

Jurisdiction is determined by the location of the shooting and the agency employing the involved officers. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings:

#### **310.31 BOARDMAN POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION**

The Boardman Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation. The criminal investigation of the officer-involved shooting will be conducted by this agency in conjunction with the District Attorney's Office.

#### **310.32 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION**

The Boardman Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by this agency in conjunction with the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

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### 310.33 BOARDMAN POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Boardman Police Department will conduct timely civil and/or administrative investigations.

### 310.34 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of officer-involved shootings:

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Civil Investigation	Administrative Investigation
<b>Boardman Police Department Officer in this Jurisdiction</b>	Boardman Police Department	District Attorney's Office	Boardman Police Department Civil Liability Team	Boardman Police Department Lieutenant
<b>Allied Agency's Officer in this Jurisdiction</b>	Boardman Police Department	District Attorney's Office	Involved Officer's Department	Involved Officer's Department
<b>An officer From this department in Another Jurisdiction</b>	Agency where incident occurred	Dictated by county where incident occurred	Boardman Police Department Civil Liability Team	Boardman Police Department Lieutenant

### 310.4 THE INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting.

#### 310.41 DUTIES OF INITIAL ON SCENE SUPERVISOR

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s)
  1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects
  1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information

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- (e) Provide all available information to the Patrol Lieutenant and Morrow County Communications. If feasible, sensitive information should be communicated over secure networks
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction
  - 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
  - 2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

### **310.42 PATROL LIEUTENANT DUTIES**

Upon learning of an officer-involved shooting, the Patrol Lieutenant shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police.

### **310.43 NOTIFICATIONS**

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Detective Sergeant
- Lieutenant
- District Attorney
- Civil Liability Response Team
- Psychological/Peer support personnel
- Medical Examiner (if necessary)
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Patrol Lieutenant.

### **310.44 MEDIA RELATIONS**

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Patrol Lieutenant, Detective Sergeant and Chief in the event of inquiries from the media.

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Lieutenant.

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

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### **310.45 INVOLVED OFFICERS**

Once involved officer(s) have arrived at the station, the Patrol Lieutenant should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated.
- (b) Discussions with licensed attorneys will be considered privileged as attorney client communications.
- (c) Discussions with departmental (e.g., association) representatives will be privileged only as to the discussion of non-criminal information.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any officer upon request.
  1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
- (e) Communications with peer counselors are confidential and may not be disclosed by any person participating in the peer support counseling session (Oregon Revised Statutes 181.860). To be considered confidential communications under the statute, the peer counselor must:
  1. Have been designated by a law enforcement agency or employee assistance program to act as a peer counselor, and
  2. Have received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

Care should be taken to preserve the integrity of any physical evidence present on the officer, equipment or clothing (e.g., blood, fingerprints, etc.) until investigators or lab personnel can properly retrieve it.

Detectives shall make reasonable accommodations to the officer's physical and emotional needs.

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. Officers who use deadly physical force that results in the death of a person shall not be returned to regular duty until at least 72 hours immediately following the incident. It shall be the responsibility of the Patrol Lieutenant to make schedule adjustments to accommodate such leave.

### **310.5 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION**

#### **310.51 DETECTIVE PERSONNEL**

Once notified of an officer-involved shooting, it shall be the responsibility of the Det. Sergeant supervisor to assign appropriate detective personnel to handle the investigation of related crimes in conjunction with the District Attorney's Office. Detectives will be assigned to work with the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated under the direction of the District Attorney's Office.

All related departmental reports except administrative and/or privileged reports will be forwarded to the designated detective supervisor for approval. Privileged reports shall be

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maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Lieutenant.

### **310.52 CRIMINAL INVESTIGATION**

It shall be the policy of this department to utilize the District Attorney's Office to provide guidance in a criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, detective personnel from this department may be assigned to "partner" with investigators from the interagency investigative team so as to not duplicate efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and Lieutenant personnel should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry
- (b) If requested, any involved officer will be afforded the opportunity to consult with a representative of his or her choosing or an attorney, prior to speaking with criminal investigators
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators

### **310.53 REPORTS BY INVOLVED OFFICERS**

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures, but should also be included for reference in the investigation of the officer-involved shooting.

### **310.6 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted under the supervision of the Lieutenant and will be considered a confidential peace officer personnel file.

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- (a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
  - 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s).
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, or if there are additional issues that were not covered in the criminal investigation, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
  - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview.
  - 3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview).
  - 4. The officer shall be informed of all constitutional "Miranda" rights and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions. The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (The Garrity admonishment).
  - 5. The administrative interview shall be considered part of the officer's confidential personnel file.
  - 6. The Lieutenant shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
  - 7. The completed administrative investigation shall be submitted to the Use of Deadly Force Review Board, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy .
  - 8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.