

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this agency 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 Techniques and Conducted Energy Device policies.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Bodily Injury** - Means physical pain, illness, or any impairment of physical or mental condition.

**BlueTeam report** - A web application that is used to report use of force and show of force incidents from field offices. All employees have access to BlueTeam and shall enter incidents into the system.

**Chemical restraints** - The intentional use of any medications to subdue, sedate, or restrain an individual.

**Choke holds** - 18-1-707(2.5)(b)(i)As used in this subsection (2.5), "chokehold" means a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air.- 18-1-707(2.5)(b)(II) "Chokehold" also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

**Deadly physical force** - Force, the intended, natural, and probable consequence of which is to produce death and which does, in fact, produce death.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the investigator or another person.

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**Imminent** - About to happen or likely to occur at any moment.

## *Use of Force*

---

**Less than Lethal/nondeadly force** - Means the level of force required to gain compliance which may cause bodily harm but is not known or intended to cause death.

**Objective reasonableness** -The legal standard by which the appropriateness of a police officer's actions are judged based upon the circumstances that faced the officer at the time they acted.

**Physical force** - Is contact with a subject through the member's application of bodily force or object, beyond mere verbal commands. It may be applied in self-defense, defense of a third party, or may be utilized to affect an arrest or other law enforcement objective, when necessary to overcome a subject's physical resistance to the exertion of authority. "A person cooperating with handcuffing is not physical force"

**Pressure Points** - A pain compliance technique taught during arrest control training (HFRG) utilized to overcome resistance and/or gain control.

**Serious bodily injury** - Bodily injury,that, either at the time of the actual injury or at a later time, involves a substantial risk of death; a substantial risk of serious permanent disfigurement; a substantial risk of protracted loss or impairment of the function of any part of organ of the body; or breaks, fractures, a penetrating knife or penetrating gunshot wound, or burns of the second or third degree (CRS §18-1-901)

**Show of force** - The display of a firearm or intermediate weapon (less-lethal device - expandable baton, taser, or chemical agent) to gain compliance and control.

**Strike** - The use of hands, knees, or feet to cause distraction or motor dysfunction of a person.

**Totality of the circumstances** - All facts and circumstances known to the investigator at the time, taken as a whole, including the conduct of the investigator and the subject leading up to the use of force.

**Use of force** - All arrest control measures other than non-violent soft empty hand controls used on a suspect to gain control and compliance.

### **300.2 POLICY**

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

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

The Colorado Department of Revenue recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting investigators with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

## *Use of Force*

---

### 300.2.1 DUTY TO INTERVENE AND REPORT

A peace officer who, in pursuance of such officer's law enforcement duties, witnesses another peace officer, in pursuance of such other peace officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, use physical force which exceeds the degree of physical force permitted pursuant to section 18-1-707 must report such use of force to such officer's immediate supervisor (CRS §18-8-802(1)(a)).

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

### 300.2.2 INTERVENTION AND REPORTING

An investigator shall also intervene to prevent or stop another peace officer from using physical force that exceeds the degree of force permitted by CRS § 18-1-707.

An on-duty investigator who witnesses another peace officer using force in excess of that permitted by CRS § 18-1-707 shall report such use of force in writing to the investigator's immediate supervisor. Such report shall be within 10 days of the occurrence and include the date, time, and place of the occurrence; the identities, if known, and description of the participants; a description of the events and the force used; and must be included with all other reports of the incident (CRS § 18-8-802).

An investigator shall intervene to prevent or stop another peace officer from using or directing the use of ketamine to effect an arrest, detention, restraint, transport, or punishment; to prevent the escape from custody; or to facilitate ease and convenience in the law enforcement encounter and report the intervention as required by CRS § 18-8-805 and 4 CCR 901-1:17.

### 300.2.3 PERSPECTIVE

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

## **300.3 USE OF FORCE**

Investigators shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the investigator 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 investigator on the scene at the time of the incident, based on the totality of the circumstances. Any evaluation of reasonableness must allow for the fact that investigators 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.

## *Use of Force*

---

Given that no policy can realistically predict every possible situation an investigator might encounter, investigators are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

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

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an investigator to retreat or be exposed to possible physical injury before applying reasonable force.

### 300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION AND NON-VIOLENT MEANS

When circumstances reasonably permit, investigators should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

### 300.3.2 USE OF FORCE TO EFFECT AN ARREST

An investigator should apply nonviolent means, when possible, and may use physical force only if nonviolent means would be ineffective to effect an arrest, prevent an escape, or prevent an imminent threat of injury to investigators or others (CRS § 18-1-707).

Investigators should only use that degree of force consistent with the minimization of injury to others (CRS § 18-1-707).

Investigators shall not apply force in excess of the force permitted by CRS § 18-1-707 to a person who has been rendered incapable of resisting arrest (CRS § 18-8-803).

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

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

- (a) Immediacy and severity of the threat to investigators or others.
- (b) The conduct of the individual being confronted, as based on objective reasonableness by the investigator at the time.
- (c) Investigator/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of investigators available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.

## *Use of Force*

---

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

### 300.3.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Investigators may only apply those pain compliance techniques for which they have successfully completed Department-approved training. Investigators utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the investigator.
- (c) Whether the individual has been given sufficient opportunity to comply.

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

The application of pain compliance techniques and strikes are identified use of force and require mandatory reporting.

### 300.3.5 PROHIBITION ON CHOKEHOLDS

An investigator is prohibited from using a chokehold upon another person. A chokehold is defined as a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible. It also includes pressure to stop the flow of blood to the brain via the carotid arteries (CRS § 18-1-707).

## *Use of Force*

---

### 300.3.6 USE OF FORCE TO SEIZE EVIDENCE

Investigators may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, investigators are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, investigators should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Investigators are encouraged to use arrest control techniques when reasonable and appropriate.

### **300.4 DEADLY FORCE APPLICATIONS**

When reasonable, the investigator shall, prior to the use of deadly force, make efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the investigator has objectively reasonable grounds to believe the person is aware of those facts or that doing so would unduly place investigators or other persons at risk of injury or death (CRS § 18-1-707).

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) An investigator may use deadly force to protect themselves or others from what the investigator reasonably believes is an imminent threat of death or serious bodily injury.
- (b) An investigator may use deadly force to stop a fleeing subject when the investigator 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 investigator 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.

However, an investigator should not use deadly force against a person whose actions are a threat solely to themselves or property.

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 investigator reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the investigator or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the investigator believes the individual intends to do so.

### 300.4.1 MOVING VEHICLES

Discharging a firearm at or from a moving vehicle is likely to be ineffective and may cause additional risk to public safety.

When feasible, investigators 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 investigator should only discharge a firearm at a moving vehicle or its occupants when the investigator reasonably believes there are no other reasonable means available to avert the

## *Use of Force*

---

imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the investigator or others.

Investigators shall not discharge a firearm at any part of a vehicle in an attempt to disable the vehicle unless it is being used as a weapon of mass destruction..

### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this agency shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The investigator 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 Agency may require the completion of additional report forms, as specified in agency policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

#### **300.5.1 NOTIFICATIONS TO SUPERVISORS**

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

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable investigator to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the conducted energy device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

#### **300.5.2 REPORTING TO COLORADO DIVISION OF CRIMINAL JUSTICE**

Statistical data regarding all qualifying incidents shall be reported to the Colorado Division of Criminal Justice as required by CRS § 24-31-903 (see the Records Section Procedures Policy). For the purposes of this section, a qualifying incident means any (CRS § 24-31-903):

- (a) Incident involving the use of force by an investigator that results in death or serious bodily injury.
- (b) Incident involving the use of force by an investigator that involved the use of a weapon.
- (c) Contact with the public conducted by investigators, including entries into a residence.
- (d) Instance of unannounced entry into a residence.

## *Use of Force*

---

### **300.6 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual 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 investigator'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 investigator 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 investigator 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 investigator 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, or who require a protracted physical encounter with multiple investigators to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Investigators who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

### **300.7 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 investigators. 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:



## *Use of Force*

---

1. The content of the interview should not be summarized or included in any related criminal charges.
  2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
1. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the individual may pursue civil litigation.
1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### 300.7.1 SUPERVISORY INVESTIGATOR RESPONSIBILITY

The Supervisory Investigator shall review each use of force by any personnel within his/her command to ensure compliance with this policy.

## **300.8 TRAINING**

Investigators shall receive annual training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, investigators should receive periodic training on guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.

### 300.8.1 TRAINING REQUIREMENTS

Required annual training shall include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intervene.

## *Use of Force*

---

- (d) The duty to request and/or render medical aid.
- (e) Warning shots (see the Firearms Policy).
- (f) All other subjects covered in this policy (e.g., use of deadly force, chokeholds, discharge of a firearm at or from a moving vehicle, verbal warnings).

### **300.9 USE OF FORCE ANALYSIS**

At least annually, the division Executive Director or their designee should prepare an analysis report on use of force incidents. The report should be submitted to the Executive Director. The report should not contain the names of investigators, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.