

Use of Force

300.1 PURPOSE AND SCOPE

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

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or serious injury.

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 officer or another person.

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

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Supervisor – An officer who has been given the responsibility of directing or overseeing the day-to-day work activities of police officers.

De-escalation - Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

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

300.2 POLICY

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

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

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

300.2.1 DUTY TO INTERVENE AND REPORT

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent the use of unreasonable force.

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

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer 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

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

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

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

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

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

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to de-escalate 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 officer may use reasonable force to arrest a person (§ 46-6-104, MCA).

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with officer 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 officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.

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

300.3.4 LESS-LETHAL LEVELS OF FORCE

Low level:

- (a) Officer presence and verbal commands: When practical, verbal commands should be used in combination with other levels of force as a means to control the situation.
- (b) Restraints: Includes the use of handcuffs, flex cuffs, restraint strap, leg restraints and belly belt. This also includes actually placing hands on a person in a gentle to firm manner to gain control over the subject.

Intermediate Level:

- (a) Compliance techniques (Soft): Includes pressure points, takedowns, joint manipulation and body restraint system.
- (b) Chemical Agents: Includes oleoresin capsicum (OC), Ortho ChlorobenzalInnalonitrate (CS gas)
- (c) Temporary Incapacitation (Hard): Techniques include strikes with hands, elbows, feet, and knees; expandable or straight baton, flashlight, or weapon of necessity. Includes use of 12-gauge bean bag projectile, rubber baton, rubber bullet, other less lethal impact munitions, diversionary or distraction devices, Canine Contacts/Bites, Conducted Electrical Weapons (Taser).

300.3.5 LESS-LETHAL USE OF FORCE

Officers are authorized to use department approved less-lethal force techniques, issued equipment, or weapons of necessity or opportunity for resolution of incidents as follows:

- (a) To protect themselves or another from physical injury, or the threat thereof.
- (b) To restrain or subdue a non-compliant individual.
- (c) To bring an unlawful situation safely and effectively under control.
- (d) Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to an individual, the officer, or another person. In these situations, only the objectively reasonable amount of force necessary to control the situation shall be used.

300.3.6 AUTHORIZED LESS-LETHAL EQUIPMENT

Officers are only permitted to use department issued or authorized equipment when qualified in its use as determined by training procedures. Patrol Officers are required to carry at least two of the following less lethal equipment items:

- (a) OC spray
- (b) Baton (Asp)

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- (c) Flashlight (Available for use as a baton)
- (d) Taser

300.3.7 PAIN COMPLIANCE TECHNIQUES

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

- (a) The 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 officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

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

300.3.8 CAROTID CONTROL HOLD

A carotid control hold, also known as a stranglehold, is a technique designed to control an individual by temporarily restricting blood flow through the application of pressure to the side of the neck and, unlike a chokehold, does not restrict the airway. The use of the carotid control hold is limited to those circumstances where deadly force is authorized.

300.3.9 RESPIRATORY RESTRAINTS

The use of a respiratory restraint, also known as a chokehold, is limited to circumstances where deadly force is authorized.

300.3.10 USE OF FORCE TO SEIZE EVIDENCE

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

300.4 DEADLY FORCE APPLICATIONS

When reasonable, the officer 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 officer has objectively reasonable grounds to believe the person is aware of those facts.

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

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

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- (b) An officer may use deadly force to stop a fleeing subject when the officer reasonably believes that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer 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 officer believes the individual intends to do so.

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force.

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

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

300.4.2 WARNING SHOTS

The firing of warning shots is inherently dangerous and should not be fired except under the most compelling of circumstances. A warning shot may be fired in an effort to stop a person only when the officer is authorized to use lethal force, and if the officer reasonably believes a warning shot can be fired safely in light of all the circumstances of the encounter.

300.5 REPORTING THE USE OF FORCE

Any use of force option above low-level by a member of this department shall be documented promptly, completely, and accurately in an appropriate report. The officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.

A written Use of Force Report is required in the following circumstances:

- (a) Any use of force option above Low Level is utilized
- (b) When force is used while displaying or presenting a firearm or less-lethal tool towards a subject to gain compliance.
- (c) When lethal force is threatened or used.

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To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law.

300.5.1 NOTIFICATIONS TO SUPERVISORS

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

- (a) Any use of force option above Low Level is utilized.
- (b) When force is used while displaying or presenting a firearm or less-lethal tool towards a subject to gain compliance.
- (c) When lethal force is threatened or used.

The on-call command officer will be immediately notified and will direct the investigation in the following situations:

- (a) When a firearm is discharged during a use of force incident.
- (b) When any use of force results in death or serious injury.
- (c) When a subject complains that serious injury has been inflicted.
- (d) When misconduct surrounding use of force is alleged or suspected.

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 officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to

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pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away from the scene.

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. The supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) 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.
- (d) Ensure the identity of any witnesses not already included in related reports.
- (e) Evaluate the circumstances surrounding the incident and contact the appropriate member of the Command Staff if the level of injury is serious, or results in death, and/or the suspect alleges excessive use of force.

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 REVIEW AND INVESTIGATION

All use of force reports and related supplemental reports shall be reviewed by the chain of command to determine:

- (a) Whether departmental rules, policy and procedures were followed.
- (b) The relevant policy was clearly understandable and effective to cover the situation.
- (c) Departmental training is currently adequate.

300.8 TRAINING

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

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300.9 USE OF FORCE ANALYSIS

At least annually, the Patrol Division Commander should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, 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.