

3.1.00 USE OF FORCE

3-1-00

The Division recognizes and respects the value and special integrity of each human life. Therefore, it is the policy of the Division that all investigators act within the boundaries of legal guidelines, good judgment, and accepted practices whenever using force in the course of duty. Investigators shall carefully balance all human interests involved in each situation and use only that force which is objectively reasonable; that is, the force that a reasonably prudent peace officer would use under the same or similar circumstances.

3-1-00.01 De-Escalation and Alternative Tactics

1. De-escalation is generally considered: *“Any steps or course of action intended to reduce the likelihood of the need to engage in physical force to resolve a given situation”*. While it is understood that de-escalation is not possible in every situation, the use of skills to de-escalate should be considered beforehand in instances where an investigator knows they will be involved with a suspect and the circumstances of physical contact or conflict with a citizen are possible. It is further understood that the use of de-escalation has been found to lessen the possibility of officer injury as well.
2. It is the policy of the Utah Insurance Fraud Division that, when circumstances reasonably permit, investigators should use de-escalation strategies and techniques to decrease the intensity of a situation. These strategies include but are not limited to:
 - a. Communication with calm and moderate volume with the suspect. Attempting to use the suspect’s name while speaking.
 - b. Moving in a slow and non-threatening manner.
 - c. Be patient, time is generally on the side of the investigator while speaking with a suspect.
 - d. Remove distractions and limit the number of people speaking with the suspect.
 - e. If time permits, utilize other resources:
 - (i) Family members if appropriate.
 - (ii) Current counselors helping the suspect.
 - (iii) Local police or fire departments.

3-1-00.02 Scale of Force

- (1) If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest (§77-7-7. Utah Code Ann.). Deadly force may be used only as provided in Section 76-2-204, Utah Code Ann.
 - (2) The reasonableness of any use of force will be evaluated based on the law enforcement legal standard; which is, whether the member's actions are "objectively reasonable" in light of the facts and circumstances known by the investigator at the time (Graham v. Conner (490 U.S. 386 (1989))). Information gleaned after the use of force, however compelling, cannot be used as justification after the use of force has occurred.
- i) The following diagram shows a listing of force options which may be employed by investigators depending upon the circumstances of each incident. The diagram shows force options available which can be employed by investigators. The circular form represents the fluid and quick transitional nature of use of force situations. Investigators shall use good judgment in each situation and shall be accountable for the type of force used:



- (4) Duty to Intercede
 - (a) Any investigator observing another investigator using excessive force shall intercede to prevent such force and shall promptly report the incident to a supervisor.

3-1-00.03 Use of Less Lethal Force

- (1) Less lethal force means any use of force other than that which is considered deadly force. This includes any physical effort used to control or restrain another, or to overcome the resistance of another.
- (2) Where deadly force is not authorized or reasonable under the circumstances, investigators shall assess the incident to determine which less lethal technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
- (3) Any such use of a less lethal force technique or weapon shall be employed by the investigator in accordance with the procedures and qualification standards set forth in the Division policy with the procedures regarding less lethal weapons and restraints.
- (4) No investigator may use a less lethal weapon or technique for which he or she is not qualified or which is not authorized by the Division.

3-1-00.04 Use of Deadly Force

- (1) As used in this section the following mean:
 - a) "Deadly force" means force that creates or is likely to create, or that the individual using the force intends to create, a substantial likelihood of death or serious bodily injury to an individual.
 - b) "Officer" means an officer described in Section 53-13-102.
 - c) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

- (2) Statutory Guidelines. Pursuant to Utah Code Ann. § [76-2-404](#), The defense of justification applies to the use of deadly force by an officer or an individual acting by the officer's command in providing aid and assistance, when:
- (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection [77-18-5.5](#), [\(2\)](#), or [\(3\) \(4\)](#);
 - (b) effecting an arrest or preventing an escape from custody following an arrest if:
 - (i) the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - (ii) The officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
 - (c) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to an individual other than the suspect if apprehension is delayed; or
 - (d) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.
 - (e) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under subsections (c) and (d).
- (3) Justification. Justification for the use of deadly force must be limited to what reasonably appears to be the facts known or perceived by an investigator at the time he or she decides to use such force. Facts unknown to an investigator, no matter how compelling cannot be considered at a later time to justify the use of such force.
- (4) Pursuant to a Warrant. The use of force by an investigator making an arrest under the authority of a warrant shall be in accordance with the provisions set forth in this Section. The possession of a warrant of arrest does not provide the investigator any greater rights that contained herein. Thus, the warrant is for the arrest of one who has committed a forcible felony, the right to use deadly force to affect an

arrest or prevent the escape shall be in accordance with this Section.

3-1-00.05 Judgment

The following factors may be relevant in assessing whether an investigator's judgment meets the required deadly force standard.

(1) ALTERNATIVES TO USE OF DEADLY FORCE

There may be alternatives to deadly force available in a given situation. Such alternatives may include; use of non-deadly force, possible surrender of a suspect after eliminating possibility of escape, rapid response of other peace officer and/or civilian assistance, and the identification of the suspect(s) and likelihood of capture. Of course, the investigator must also consider the effect of delaying immediate action in cases of protection of self or others and Act as such circumstances immediately require.

(2) Minors

Law does not limit the age of a suspect against whom deadly force can be used. Investigators may consider the apparent age of the suspect, along with any knowledge of the minor's identity, criminal record, the nature and seriousness of the offense, and the differing motivations, culpability, and court dispositions when making deadly force decisions.

(3) Comparative Risks to Public

Comparative risks to the public and other peace officers must be evaluated. It is not possible to list all possibilities of risk, but the following are illustrative:

- (i) Danger to hostages or uninvolved persons.
- (ii) Deflection or ricocheting of gunfire.
- (iii) Loss of control of vehicles, machinery, or other devices resulting from directing deadly force at suspects.
- (iv) Effect of weather or light conditions on gunfire accuracy.
- (v) Effects of physical exertion, such as pursuit, and positioning on gunfire accuracy.
- (vi) Characteristics of the firearm, bullet, ballistics or other weapon used.

3-1-00.06 Reporting Use of Force

- (1) Division employees will report all incidents involving the use of force, including handcuffing of a compliant subject. Reportable incidents involving the use of force include, but are not limited to the following:
 - (a) forcibly subduing or restraining a suspect;
 - (b) breaking windows or doors or destruction of property;
 - (c) the drawing and pointing of a firearm at a person;
 - (d) the discharge of a firearm;
 - (e) the aiming of a conducted energy device at a person
 - (f) the use of any chemical agent.

- (2) All Use of Force under this policy shall be reported on the Fraud Division's Use of Force Report Form and provided to the Director through the chain of command. Reports will in turn be forwarded to the Department of Public Safety on the 15th of every month should a use of force report be filed. Compliance with reporting to DPS will begin with the stand up of that reporting system.

3-1-00.07. Officer use of force Investigations.

- (1) As used in this section:
 - (a) "Dangerous weapon" means a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person.
 - (b) "Deadly force" means a force that creates or is likely to create, or that the person using the force intends to create, a substantial likelihood of death or serious bodily injury to a person.
 - (c) "In custody" means in the legal custody of a state prison, county jail, or other correctional facility, including custody that results from:
 - (i) a detention to secure attendance as a witness in a criminal case;
 - (ii) an arrest for or charging with a crime and committing for trial;
 - (iii) committing for contempt, upon civil process, or by other authority of law; or
 - (iv) sentencing to imprisonment on conviction of a crime.
 - (d) "Investigating agency" means a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.
 - (e) "Officer" means an officer described in Section 53-13-102.
 - (f) "Officer-involved critical incident" means any of the following:
 - (i) an officer's use of deadly force;
 - (ii) an officer's use of a dangerous weapon against a person

which causes injury to any person;
(iii) death or serious bodily injury to any person, other than the officer, resulting from an officer's:
 (A) use of a motor vehicle while the officer is on duty;
 or
 (B) use of a government vehicle while the officer is off duty;
(iv) the death of a person who is in custody, but excluding a death that is the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death; or
(v) the death of or serious bodily injury to a person not in custody, other than an officer, resulting from an officer's attempt to prevent a person's escape from custody, to make an arrest, or otherwise to gain physical control of a person.
(g) "Serious bodily injury" means the same as that term is defined in Section [76-1-601](#).

(2) When an officer-involved critical incident occurs:

(a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and
(b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:

(i) jointly designate an investigating agency for the officer-involved critical incident; and
(ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

(3) The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.

(4) This section does not preclude the law enforcement agency employing an officer alleged to have caused or contributed to the officer-involved critical incident from conducting an internal administrative investigation.

(5) Each law enforcement agency that is part of or administered by the state or any of the state's political subdivisions shall adopt and post on the agency's publicly accessible website:

(a) the policies and procedures the agency has adopted to select the investigating

agency if an officer-involved critical incident occurs in the agency's jurisdiction and one of the agency's officers is alleged to have caused or contributed to the officer-involved incident; and (b) the protocols the agency has adopted to ensure that any investigation of officer-involved incidents occurring in the agency's jurisdiction are conducted professionally, thoroughly, and impartially.

3-1-00.08 Prohibited Force Options and Tools

- (1) The use of carotid control holds, restraints, or techniques are not authorized, and Investigators shall not attempt to render an individual unconscious through the use of bi-lateral carotid artery restriction. Investigators are strictly prohibited from applying choke-holds or restricting or constricting force to the mouth, neck, or throat that will intentionally compress the airway or restrict an individual's ability to breathe unless the officer reasonably believes that the use of deadly force is necessary to prevent serious bodily injury or death to the officer or other person(s).
- (2) The use of Sap Gloves or Impact weaponry is expressly forbidden.

3-1-00.09 Other Force Considerations

- (1) Emotionally Disturbed Persons. Though uncommon for investigators, there is a possibility of interacting with persons who through their dealings with the Division may become upset to a degree that they become emotionally disturbed. Care should be taken when dealing with these people to avoid exacerbation of the situation. This may be accomplished through use of de-escalation techniques as described above.
- (2) Persons with Diminished Mental Capacity: There may be circumstance when an investigator will deal with a person who has a diminished mental capacity. It should be recognized that these persons might deal with authority figures in ways that are not expected with the situation in which they find themselves. This is especially true with those on the autism spectrum. It should also be noted that generally these persons have some difficulty with eye to eye contact.
- (3) Excited Delirium Syndrome: Excited delirium (ExDS) is broadly defined as a state of agitation, excitability, paranoia, aggression, and apparent immunity to pain, often associated with stimulant use and certain psychiatric disorders. It should be noted that

the above definition is now accepted by physicians as a medical condition. Below are indicators investigators should be aware of concerning Excited Delirium.

(a) Characteristics of ExDS: Extreme agitation, immunity to significant pain stimulus, rapid breathing, not tiring after significant exertion, not responding to police verbal commands, constant or near constant physical activity, profuse sweating, hot to the touch, continued struggle despite overwhelming odds, grunting or animal like noises.

(b) Approach Considerations: Approach should be done with great caution, keeping officer safety in mind and with an eye toward avenues of escape should that be necessary. and with a calm firm voice, keeping officer safety in mind.

(i) In speaking with a person believed to be having an ExDS episode speak directly with a calm firm voice along with trying to reduce the stimulus from the surrounding environment. However, this may be ineffective.

(ii) Pain compliance generally does not work.

(iii) Wrestling or fighting with its side effect of physical exertion has been shown to have a negative effect on the suspect and may contribute to a risk of cardiac arrest.

(iv) The use of conducted electrical weapons is usually considered preferable to a long physical struggle. CEW along with quick restraint, lessens the potential of injury to the suspect and investigators.