

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 division 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 (UAC R728-507-3):

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very 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 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 - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

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.

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 Division 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 (UAC R728-507-5).

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300.2.1 DUTY TO INTERCEDE AND REPORT

Any investigator 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, intercede to prevent the use of unreasonable force (UAC R728-507-10).

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 (UAC R728-507-10).

300.2.2 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 (UAC R728-507-10).

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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 (UAC R728-507-5).

The reasonableness of force will be judged from the perspective of a reasonable investigator on the scene at the time of the incident. 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.

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 (UAC R728-507-5).

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 division. 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 (UAC R728-507-5).

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 (UAC R728-507-5).

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, investigators should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve

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communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion) (UAC R728-507-5).

300.3.2 USE OF FORCE TO EFFECT AN ARREST

An investigator may use reasonable force to effect arrest, to prevent escape, or to overcome resistance. An investigator who makes or attempts to make an arrest need not retreat or desist from the investigator's efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such investigator be deemed the aggressor or lose the investigator's right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Utah Code 77-7-7; UAC R728-507-5).

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating 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 (UAC R728-507-5; UAC R728-507-7):

- (a) Immediacy and severity of the threat to investigators or others.
- (b) The conduct of the individual being confronted, as reasonably perceived 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.
- (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 the individual's 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.

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- (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 division-approved training (UAC R728-507-7). 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 (UAC R728-507-7).

300.3.5 CAROTID CONTROL HOLD

A carotid control hold 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 proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is limited to those circumstances where deadly force is authorized and is subject to the following (UAC R728-507-7):

- (a) At all times during the application of the carotid control hold, the response of the individual should be monitored. The carotid control hold should be discontinued when circumstances indicate that the application no longer reasonably appears necessary.
- (b) Any individual who has had the carotid control hold applied, regardless of whether the individual was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until such examination occurs.
- (c) The investigator 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 control hold and whether the individual lost consciousness as a result.
- (d) Any investigator attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (e) The use or attempted use of the carotid control hold shall be thoroughly documented by the investigator in any related reports.

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300.3.6 RESPIRATORY RESTRAINTS

The use of a respiratory restraint, also known as a chokehold, is limited to circumstances where deadly force is authorized and if applied, is subject to the same guidelines and requirements as a carotid control hold (UAC R728-507-7).

300.3.7 USE OF FORCE TO SEIZE EVIDENCE

In general, 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 techniques and methods taught by the State of Utah Insurance Department Fraud Division for this specific purpose.

300.3.8 DEFENSIVE TACTICS

Investigators who have successfully completed division-approved training may apply defensive tactic techniques, including but not limited to focused strikes that involve the use of empty-hand techniques and contact control measures (UAC R728-507-8).

300.3.9 KNEE ON NECK RESTRAINT

An investigator shall not restrain a person by the application of a knee applying pressure to the neck or throat of a person (Utah Code 53-13-115).

300.4 DEADLY FORCE APPLICATIONS

When reasonable, the investigator shall, prior to the use of deadly force, make efforts to identify the investigator 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 (UAC R728-507-6).

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk (Utah Code 76-2-404; UAC R728-507-6):

- (a) An investigator may use deadly force to protect the investigator or an individual other than the suspect 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 an individual other than the suspect if the suspect 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 investigator reasonably believes that the suspect has a weapon or is

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attempting to access one and intends to use it against the investigator or an individual other than the suspect. An imminent danger may also exist if the suspect 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

Shots fired at or from a moving vehicle involve additional considerations and risks, such as the hazard of an uncontrolled vehicle, and are rarely effective (UAC R728-507-6).

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 (UAC R728-507-6).

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 imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the investigator or others (UAC R728-507-6).

Investigators should not shoot at any part of a vehicle in an attempt to disable the vehicle (UAC R728-507-6).

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this division 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 the investigator believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Division may require the completion of additional report forms, as specified in division policy, procedure, or law (UAC R728-507-7). See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 REPORTING THE THREAT OF FORCE

When an investigator points a firearm at an individual, the investigator shall report the incident in accordance with Utah Code 53-13-116 and UAC R728-507-12.

Reports shall be submitted within 48 hours of the incident and should include at a minimum (Utah Code 53-13-116; UAC R728-507-12):

- (a) A description of the incident.
- (b) The identification of the individuals involved in the incident.

300.5.2 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.

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- (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.

300.6 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 (UAC R728-507-7; UAC R728-507-11). 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 (UAC R728-507-11). 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 (UAC R728-507-11).

See the Medical Aid and Response Policy for additional guidelines.

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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 (UAC R728-507-12):

- (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 the individual's *Miranda* rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) 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 (UAC R728-507-10).

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 DEPUTY DIRECTOR RESPONSIBILITY

The Deputy Director shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

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300.8 TRAINING

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

Subject to available resources, investigators should receive periodic training on:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
- (b) De-escalation tactics, including alternatives to force.

300.9 USE OF FORCE ANALYSIS

At least annually, the Deputy Directors should prepare an analysis report on use of force incidents for investigators under their command. The report should be submitted to the Fraud Division 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.

300.10 USE OF FORCE TRACKING SYSTEM

The Division shall establish a system for tracking use of force incidents, and follow the Performance History Audits Policy for guidelines regarding monitoring and remediating use of force patterns for investigators.