

Use of Force

302.1 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 office is expected to use these guidelines to make such decisions in a professional, lawful, impartial and reasonable manner.

302.1.1 DEFINITIONS

Definitions related to this policy include:

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

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.

302.2 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. Deputies are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Deputies 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 Montgomery County Sheriff's Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

302.2.1 DUTY TO INTERCEDE

Any deputy present and observing another deputy 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. A deputy who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

302.3 USE OF FORCE

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 accomplish a legitimate law enforcement purpose.

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The reasonableness of force will be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the type and 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 a deputy might encounter, deputies are trained and 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 deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this office. Deputies 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 a deputy to retreat or be exposed to possible physical injury before applying reasonable force.

302.3.1 USE OF FORCE IN SELF-DEFENSE, DEFENSE OF OTHERS, OR TO AFFECT AN ARREST

A deputy may:

- (a) Use reasonable force when he/she reasonably believes it is necessary to:
 1. Prevent the escape from custody or to effect an arrest of a person who he/she reasonably believes has committed a criminal offense, unless he/she knows that the arrest is unauthorized.
 2. Defend him/herself or a third person from what he/she reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.
- (b) Request assistance from a private person when effecting an arrest or preventing an escape. In such cases, the person summoned to assist has the same authority as the deputy.

302.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a deputy 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 deputies or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the deputy at the time.
- (c) Deputy/subject factors (i.e., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of deputies available vs. number of subjects).
- (d) The effects of drugs or alcohol.

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

302.3.3 PHYSICAL PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Deputies may only apply those pain compliance techniques for which they have successfully completed office-approved training. Deputies 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 deputy.
- (c) Whether the individual has been given sufficient opportunity to comply.

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

302.3.4 AVOIDANCE OF AIRWAY OBSTRUCTION OR PROXIMAL ASPHYXIATION

Personnel should attempt to prevent the occlusion of someone's airway while using force to effect an arrest or control an inmate. There should also be care after the person is taken into custody to prevent, within the employee's ability proximal asphyxiation.

- (a) Personnel should not deliberately cover someone's mouth and or nose to prevent them from breathing or deliberately choke, strangle or inflict forced trauma to the throat.

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- (b) Once arrest or control has been effected and situational safety of those on the scene has been established, the arrestee or inmate should be positioned in a manner to be seated upright or laying on their side so they may breathe without interference from external weight or forces of their own body weight decreasing their ability to breath.

302.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) A deputy may use deadly force when it is or appears reasonably necessary to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) A deputy may use deadly force when it is or appears reasonably necessary to stop a fleeing subject when the deputy 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 deputy 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 a deputy reasonably believes any of the following:

- (a) The individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the deputy or another.
- (b) The individual is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the individual intends to do so.
- (c) It is necessary to effect an arrest or to prevent the escape from custody of a person who he/she reasonably believes is attempting to escape by means of a deadly weapon, or who by the individual's conduct or any other means indicates that he/ she presents an imminent threat of death or serious physical injury to others unless apprehended without delay.

Use of a deadly weapon or deadly force to resist arrest (N.C.G.S. 15A-401(f)):

- A person is not justified in using a deadly weapon or deadly force to resist an arrest by a deputy using reasonable force, when the person knows or has reason to know that the deputy is a law-enforcement officer and that the deputy is effecting or attempting to effect an arrest.
- The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.

Neither of the two items above shall be construed to excuse or justify the unreasonable or excessive force by a deputy in effecting an arrest.

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302.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. If reasonably possible, deputies should move out of the path of an approaching vehicle instead of discharging their firearms at the vehicle or any of its occupants. A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the deputy or others.

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

302.5 REPORTING THE USE OF FORCE

Any use of force by a member of this office shall be documented promptly, completely and accurately in an appropriate incident report, depending on the nature of the incident. The deputy 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, this Office requires the completion of additional report forms to include statements from all deputies who were witness to the specified use of force incident. This shall be done and submitted with the incident report before the end of the shift of the day of the incident.

302.5.1 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 deputy 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 OC spray, TASER, etc. or control device.
- (f) Any application of a restraint device other than office-approved restraints.
- (g) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (h) The individual subjected to the force was rendered unconscious.
- (i) An individual was struck, kicked or subjected to a strike to the head.
- (j) An individual was provided medical assistance by hospital or emergency medical services.
- (k) An individual alleges any of the above has occurred.

302.6 MEDICAL CONSIDERATION

Before presentation to a magistrate for booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

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Based upon the deputy'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 clinic. 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 deputy 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 not available, the primary handling deputy 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 deputy 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 (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple deputies to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies 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).

Upon presentation to a medical provider, the deputy should not sign or verbally acknowledge the agency will be responsible for the costs of any provided medical care.

302.7 SUPERVISOR RESPONSIBILITIES

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 deputies. 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.
 1. These photographs should be retained with the report in RMS of Incident file.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Determine if there is any indication that the individual may pursue civil litigation, whether there is physical injury requiring hospitalization or whether a death results.
 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.

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- (g) 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, including notification of the State Bureau of Investigation, may be appropriate. The supervisor will complete a written report illustrating and documenting their findings.

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.

302.7.1 SHIFT SUPERVISOR RESPONSIBILITY

The shift supervisor 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.

302.8 ADDITIONAL CONSIDERATIONS

Should a death or life threatening injuries result from a use of force, a criminal investigation by the SBI should be requested and the Sheriff is to be notified

302.9 TRAINING

Deputies will receive annual training on this policy and demonstrate their knowledge and understanding.

