

## Use of Force

### 300.1 PURPOSE AND SCOPE

The Duluth Police Department values and respects the sanctity of every life and identifies our role as a lifesaving organization. When officers are engaged in law enforcement activities, there is an immense responsibility that comes with the authority to use reasonable force, including deadly force, in overcoming resistance and/or protecting the public. The Duluth Police Department emphasizes the use of de-escalation and less lethal options in use of force encounters and trains our officers to be adept at using these tools when appropriate. As such, we have policies, procedures, and training which encourage tactics and strategies to generate voluntary compliance. It is the Duluth Police Department's expectation officers will make tactically sound, reasonable use of force decisions which demonstrate our value of every life.

#### 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 great bodily harm.

**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.

**Chokehold/Stranglehold** - 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. Choke hold 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 carotid arteries.

### 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.

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 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 INTERCEDE

Any officer present, regardless of tenure or rank, and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a

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position to do so, intercede verbally and physically to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

#### **300.3 USE OF FORCE**

The Duluth Police Department's use of force is governed by an objective reasonable standard. Our force deployment is determined by the level of resistance and circumstances presented to us. An officer adapts their use of force response to overcome resistance and generate compliance with what tools and tactics are reasonable and appropriate. In using any tools and tactics in the list of options an officer has; officer presence, verbal commands, soft empty hand controls, hard empty hand controls, pressure points, chemical aerosol, Taser, less lethal, deadly force, tactical disengagement, an officer may go from one to the other as the situations unfolds being governed by the objectively reasonable standard. An officer can start with and end with any tool or tactic as long as it is objectively reasonable.

Officers shall only use 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 the 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. The only time a chokehold or stranglehold is authorized would be in situations that warrant deadly force.

Nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. **However, this policy does recognize that a tactical retreat may be reasonable given the totality of the circumstances.**

#### **300.3.1 USE OF FORCE TO EFFECT AN ARREST**

An officer may use reasonable force (Minn. Stat. § 609.06 and Minn. Stat. § 629.33):

- (a) In effecting a lawful arrest.
- (b) In self-defense or defense of another.

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- (c) In restraining a person with a mental illness or a person with a developmental disability from self-injury or injury to another.
- (d) In preventing the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime.
- (e) In executing any other duty imposed by law.
- (f) In enforcing an order of the court.
- (g) In the execution of a legal process.

An officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

#### 300.3.2 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 (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject 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 officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.

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

#### **300.3.3 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 person can comply with the direction or orders of the officer.
- (c) Whether the person 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.

#### **300.4 DEADLY FORCE**

Deadly force should only be used if no other options are reasonably available to address a situation. The Duluth Police Department will, when reasonable, use lesser force than deadly force in situations that can be resolved with a lesser use of force. When practical officers shall give warning before use of their firearm. Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person 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 subject 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 any of the following:

- (a) The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.
- (b) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.

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#### 300.4.1 LIMITATIONS OF THE USE OF CERTAIN RESTRAINTS

1. Except in cases where deadly force is authorized as articulated in Minnesota § 609.066 to protect the peace officer or another from death or great bodily harm, officers are prohibited from using:
  - (a) Chokeholds;
  - (b) Tying all of a person's limbs together behind the person's back to render the person immobile; or
  - (c) Securing a person in any way that results in transporting the person face down in a vehicle.
2. Less than lethal measures must be considered by the officer prior to applying these measures.

#### 300.4.2 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should 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 threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

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

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

Any use of force greater than handcuffing a cooperative person by a member of this department shall be documented promptly, completely and accurately by an appropriate narrative report, and Subject Resistance Report. This includes the pointing of aerosol spray, Taser, less lethal or firearm.

The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. The purpose for the Subject Resistance Report is to collect data for training, resource allocation, analysis and other related purposes.

#### 300.5.1 NOTIFICATION 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 officer 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 a TASER (TM) device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.

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- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

### **300.6 MEDICAL CONSIDERATION**

Prior to 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.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the 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).

Persons 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 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 if appropriate.

### **300.7 SUPERVISOR RESPONSIBILITY**

Supervisors should respond to a scene where the use of force is likely.

When a supervisor is notified of an application of force in accordance with section 300.5.1, 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) Ensure all injuries are documented and/or photographed.
- (d) Ensure witnesses not already included in related reports are identified.

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- (e) Review and approve all related reports.
- (f) Evaluate the circumstances surrounding the incident and notify the Watch Commander.

### **300.7.1 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander 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.

### **300.8 TRAINING**

Officers will receive training on this policy, including the learning objectives as provided by POST, at least annually (Minn. Stat. § 626.8452, Subd. 3).