

Chapter 15 USE OF FORCE

15.1 PURPOSE

This policy recognizes that the use of force by law enforcement officers requires constant evaluation. Even at its lowest level, the use of force by police is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force.

This policy consists of principles and values guiding the performance of a specific department activity. It is not a statement of what must be done in a particular situation; it is a statement of the guiding principles to be followed in activities directed toward attainment of the department's objectives of serving our community and keeping the peace.

15.2 PRINCIPLES OF THE USE OF FORCE

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 in numerous and varied encounters on a daily basis, and where warranted, may use force in carrying out the duties assigned to them.

Officers must have an understanding of and a true appreciation for the limitations on their authority, particularly with respect to overcoming resistance from those with whom they come in official contact. The Everett Police Department recognizes and respects the value and dignity of all human life without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interest.

Force may be "...necessarily used by a public officer in the performance of a legal duty..." [RCW 9A.16.020(1)]. "Necessary" force is defined as means that "no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended." [RCW 9A.16.010(1)]

The force used must be "objectively reasonable" under the *Graham v. Connor* standard [(1989) 490 U.S. 386, 109 S.Ct. 1865]. ~~Under this critical standard.~~ The *Graham* court states: "Determining whether the force used ... is 'reasonable' ... requires a careful balancing of the nature and quality of the intrusion ... against the countervailing governmental interests at stake." The test of reasonableness requires "... careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he [or she] is actively resisting arrest or attempting to evade arrest by flight." The reasonableness of a particular use of force "must be judged through from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and is evaluated in light of the totality of the facts and circumstances known to the officer at the time the force is used.

updated & uploaded
11/30/12

~~It is recognized that officers have no duty to retreat exists when one is feloniously assaulted or attacked in a place where he or she has a right to be. [State v. Allery, 101 Wn.2d 591 (1984); State v. Hiatt, 187 Wn.2d 226 (1936)] from resistance or threatened resistance, and are not considered the aggressors when lawfully attempting to overcome resistance in effecting an arrest. [Reed v. Hoy, 909 F.2d 324 (9th Cir. 1989)]~~

~~Force by officers can be said to have one of two purposes: The first is defense, the second is control. Officers may use force in self defense or in the defense of others. They may also use force to control the subject's actions, to affect arrest, overcome resistance, and/or prevent escape.~~

15.3 USE OF FORCE POLICY

~~It is the policy of the Everett ~~Police~~ Police Department that officers shall use only that amount and duration of force which is objectively reasonable and necessary to perform a lawful duty, given the facts and circumstances perceived by the officer at the time of the event, including whether a reasonably effective alternative to the use of force appeared to exist to effectively bring an incident under control. Nothing in this policy shall be construed as to permit, excuse or justify the use of unreasonable or excessive force.~~

~~Members of this department may use reasonable and necessary force in the performance of their duties if they objectively and reasonably believe any of the following conditions are met. Examples of "lawful duties" include:~~

- ~~□ In sSelf-defense,~~
- ~~□ In dDefense of others,~~
- ~~□ To pPrevention of the commission of a public offense,~~
- ~~□ To eEffecting a lawful arrest,~~
- ~~□ To oOvercomeing resistance,~~
- ~~□ To pPrevention of escape, or~~
- ~~□ To pProtecting a person from injuring him/herself~~

- Self-defense,
- Defense of others,
- Prevention of the commission of a public offense,
- Effecting a lawful arrest,
- Overcoming resistance,
- Prevention of escape, or
- Protecting a person from injuring him/herself

Formatted: No bullets or numbering

Formatted: List Paragraph

~~Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. [While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.]~~

As previously noted, any application of force by a member of this department must be judged by a standard of "objective reasonableness" at the moment force is used. When determining whether or not to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. The reasonableness analysis requires balancing the "nature and quality of the intrusion" on a person's liberty with the "countervailing governmental interests at stake" to determine whether the use of force was objectively reasonable under the circumstances [Smith v. City of Hemet, 894 F.3d 689 (9th Circuit 2015)].

Formatted: Superscript

Courts first consider the "nature and quality of the alleged intrusion." Courts then consider the governmental interests at stake by looking at (1) How severe the crime at issue is, (2) whether the subject posed an immediate threat to the safety of the officers or others, and (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight. [Mattos v. Agarano, 661 F.3d 433 (9th Circuit 2011)].

Formatted: Superscript

The above factors are not the only factors that will be considered by the court. The court examines the totality of the circumstances and considers whatever specific factors may be appropriate in a particular case. Those factors should include, but are not limited to:

- The reasonable perception by the officer of the conduct of the individual being confronted.
- Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects, etc.).
- Subject apparently under the influence of drugs/alcohol or emotionally disturbed (mental capacity and physical capabilities).
- Proximity of weapons to the subject.
- Availability of other options (what resources are reasonably available to the officer under the circumstances presented).
- Seriousness of the suspected offense(s) leading the officer to use force.
- Officer Training, training, and experience, skill level of the officer.
- Potential for injury to citizens, officers, and the suspect/subject(s).
- Risk of escape.
- Other exigent circumstances.

Officers are expected to make split-second decisions in tense, uncertain, and rapidly evolving situations, and the amount of time to evaluate and respond to unexpected changes may impact an officer's decision in the application and duration of force.

While various levels of force exist, each officer is expected to respond with that level and duration of force that reasonably appears appropriate under the circumstances at the time to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

15.4 USE OF DEADLY FORCE

Deadly Force – Definitions and Legal Standards - Reasonableness

Formatted: Font: 13 pt

Formatted: Font: 13 pt, Underline

"Deadly force" is defined as means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. [RCW 9A.16.010(2)] Everett Police officers shall utilize deadly force only when necessary and justified to effect lawful objectives.

An officer may employ deadly force only in those situations where the officer objectively and reasonably believes there is an imminent threat of death or serious physical injury to the officer or to another person, based on the totality of the circumstances known to the officer at the time.

Officers' use of force shall be consistent with RCW 9A.16.040, which states:
Deadly force may be employed:

(1) Homicide, or the use of deadly force is justifiable in the following cases:

a. When a public officer is acting in obedience to the judgment of a competent court;
or

b. When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.

c. When necessarily used by a peace officer or person acting under the officer's command in the officer's aid:

i. To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

ii. To prevent the escape of a person from a federal or state correctional facility or in retaking, ~~retake~~ a person who ~~escaped~~ escapes from a federal or state correctional such a facility;
or

iii. To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony, or

iv. To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) ~~When in~~ considering whether to use using deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace-officers must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

a. The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could be reasonably construed as threatening; or

b. There is probable cause to believe the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: List Paragraph, Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Font: Times CG ATT

Formatted: List Paragraph, Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Font: Times CG ATT

Formatted: List Paragraph, Indent: Left: 0"

Formatted: Font: Times CG ATT

Formatted: List Paragraph, Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

Formatted: Font: Times CG ATT

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1.5" + Indent at: 2"

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: Font: Times CG ATT

Formatted: No bullets or numbering

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

(4) This section shall not be construed as:

a. Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

Formatted: Font: Times CG ATT

b. Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

Formatted: Font: Times CG ATT

Formatted: Normal, Indent: Left: 0.25", No bullets or numbering

Formatted: Normal, No bullets or numbering

Formatted: Font: Times CG ATT

~~◆ A warning is given prior to the use of deadly force, if practicable.~~

Apprehension by deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. An officer using deadly force is not entitled to qualified immunity if the law was "clearly established" that the use of force violated the Fourth Amendment. As with all uses of force, the reasonableness of use of deadly force will be judged from the perspective of a reasonable officer on the scene. Whether the use of deadly force is reasonable is highly fact-specific, but the inquiry is an objective one. The question is whether officers' actions are objectively reasonable in light of the facts and circumstances confronting them. A reasonable use of deadly force encompasses a range of conduct.

Warning Shots

The Everett Police Department prohibits the use of Warning warning shots are prohibited.

Formatted: Font: 13 pt, Underline

Firing from or into a Moving Vehicle

Firing from a moving vehicle is generally prohibited, except where the officer reasonably believes that there is an imminent threat of death or serious physical injury to the officer or to a third party if the officer does not do so and that it is the only reasonable means of protecting the officer and/or a third party. Given that any officer's likelihood of successfully hitting a threatening subject is very low, aAn officer choosing to fire from a moving vehicle or at a fleeing vehicle must be fully prepared to justify this extreme action.

Formatted: Font: 13 pt, Underline

Firing into a Moving Vehicle

Firing into a moving vehicle is generally prohibited, except where the officer reasonably believes that there is an imminent threat of death or serious physical injury to the officer or to a third party if the officer does not do so and that it is the only reasonable means of protecting the officer and/or a third party. Given that any officer's likelihood of successfully preventing the escape of a subject in any moving motor vehicle is very low, aAn officer choosing to fire at a fleeing vehicle must be fully prepared to justify this extreme action.

Formatted: Font: 13 pt, Underline

Barricades/Roadblocks

Barricading a roadway or creating a roadblock is considered deadly force and is generally prohibited, except in extreme situations. Supervisory approval is required prior to barricading a

~~roadway or creating a roadblock. Roadblocks must only be employed as a last resort in circumstances where deadly force would otherwise be justified (See Policy 10.4 Vehicle Pursuits).~~

Formatted: Font: 13 pt, Underline

15.5 USE OF FORCE – MISCELLANEOUS PROVISIONS

Display/Brandishing of Weapon – LVNR – Weapons of Opportunity – Blow to Head
Officers shall not display or brandish any weapon in a threatening or intimidating fashion unless it is reasonably necessary to do so to effectively bring an incident under control.

Formatted: Font: 13 pt, Underline

The use of any neck holds, to include those such as the Lateral Vascular Neck Restraint (LVNR), is generally prohibited, except in certain extreme situations of self defense or defense of others. An officer using a neck hold must be prepared to justify this extreme action. Whenever an officer uses a neck hold, a supervisor will be notified. The supervisor will immediately cause the person that received the neck hold to be examined by medical personnel.

A police officer may use weapons of opportunity when the officer's ability to deploy Department authorized tools (weapons) is not available. ~~The level of force used must be necessary and reasonable in accordance with Department policy. The officer(s) will be required to follow Department guidelines regarding targeting and regarding levels of force applied.~~

The use by an officer of any hard object to intentionally strike a blow to a person's head is generally prohibited, except in certain extreme situations of self defense or defense of others. An officer applying a blow to a person's head must be prepared to justify this extreme action. Whenever an officer applies a blow to a person's head, a supervisor will be notified. The supervisor will immediately cause the person receiving the blow to be examined by medical personnel.

Officer Use of Vehicle

Formatted: Font: 13 pt, Underline

The use of a vehicle to make contact with a person or another vehicle in order to stop a fleeing offender is generally prohibited, except in extreme situations. Supervisory approval is generally required prior to performing intentional vehicle intervention. An officer that opts to use vehicle intervention must be fully prepared to justify this extreme action. (See Policy 10.4 Vehicle Pursuits)

~~Baricading a roadway or creating a roadblock is considered deadly force and is generally prohibited, except in extreme situations. Supervisor approval is required prior to baricading a roadway or creating a roadblock. Roadblocks must only be employed as a last resort in circumstances where deadly force would otherwise be justified (See Policy 10.4 Vehicle Pursuits).~~

Animals

Formatted: Font: 13 pt, Underline

Use of force toward animals may be used only when it is objectively reasonable and necessary to defend an officer or a third party against a threat of significant physical injury, or to save a badly injured animal from suffering. Whenever an animal is intentionally injured or dispatched by an officer an Incident Report will be written. If the animal was injured or dispatched in the course

of defending an officer or third party, a copy of the report will be forwarded and reviewed through the chain of command and filed in the Office of Professional Standards. Humanitarian dispatch requires permission of a supervisor whenever possible, and animals must be dispatched safely and out of the view of the public if possible (see Procedures Manual Section 3.04).

Use of Force by Off-Duty Officers

Formatted: Font: 13 pt, Underline

Off-duty officers are discouraged from taking forcible police action except in circumstances that seriously threatens life or when requested to assist by on-duty personnel. Often the most appropriate police action is to immediately report the incident to on-duty officers or the appropriate jurisdiction. Officers should carefully consider the risks to themselves and to others when taking police action while off-duty.

Use of Force by Off-Duty Officers Working on Off-Duty Detail

Formatted: Font: 13 pt

Off-duty officers or officers working any off-duty detail or assignment approved by the Chief of Police or designee involved in any reportable use of force incident shall be subject to the same use of force and reporting requirements which apply on-duty.

Injury – Medical Attention

Formatted: Font: 13 pt, Not Bold, Underline

~~Any person injured or who complains of injury after an application of force by an officer will be provided immediate and proper medical attention. This may include the response by emergency medical personnel and or treatment at a hospital emergency room. This may also include the flushing of eyes following OC applications. The officer shall immediately notify an available supervisor of the situation. The supervisor shall respond to the scene and ensure that the provisions of this policy are carried out. In no event shall apparently necessary medical attention be unreasonably delayed in order to gain guidance from a supervisor.~~

Medical assistance shall be obtained as soon as is practicable for subjects who have sustained injury, express any complaints of injury, been rendered unconscious, or the officers suspects has been injured. In the event a subject is injured, officers should provide or obtain appropriate medical treatment while the subject is in Police custody (see also Section 16.1, "Reportable use of Force."

15.6 TASERELECTRONIC CONTROL DEVICE (ECD)

Use of the Taser ECD is subject to Section 15.3 "Use of Force Policy." In addition, the following should be noted:

Deployment – General

Formatted: Font: Times CG ATT, Underline

Taser ECD's will only be used by authorized, trained personnel within the guidelines of Department policies and procedures covering Use of Force in general and use of Taser ECD's specifically. Taser ECD's are not intended to replace firearms.

Formatted: Indent: First line: 0.25"

Formatted: Indent: Left: 0.25"

It is the policy of the Everett Police Department that officers, whenever possible under the circumstances, give a verbal warning to the subject before applying the Taser ECD.

Formatted: Font: Times CG ATT, Underline

Classification as "Intermediate, Significant Force"

Formatted: List Paragraph, Indent: Left: 0.25"

The courts classify "dart mode" application of the Taser ECD as "an intermediate, significant use of force." The courts have not stated a similar standard for "drive stun mode." The

classification of dart mode applications of TaserECD as "intermediate, significant force" means that those applications are considered a greater intrusion than other non-lethal methods of force, and the reviewing court will look for a governmental interest that compels the use of such force.

Multiple/Extended Applications

Multiple applications of five-second cycles may be required to bring a subject under control. The TaserECD will only be used for the number of applications and duration of time that is necessary to bring a subject under control. The justification for an extended application or for multiple applications of the TaserECD must be separately articulated in the report.

Formatted: Font: Times CG ATT, Underline

Formatted: Indent: Left: 0", First line: 0.25"

Formatted: Font: Times New Roman, No underline

When determining justification for an extended application or for multiple applications of the TaserECD, officers should:

- Determine that the initial use of TaserECD is justified, using the use of force factors set forth in Department policies.
- If the circumstances that justified the initial TaserECD use change, re-evaluate the necessity for continued application. For example, if the initial use were justified because the officer was alone with a subject who posed an immediate threat to the safety of others and was ignoring commands to stop, arrival of another officer to provide backup for the arrest will require re-evaluation of the need for TaserECD to bring the subject under control.
- Be cognizant of whether a subject who is has been exposed to an being TaserECDed is unable rather than unwilling to comply with commands given by officers. Involuntary actions (such as a reflex action) will not be considered active resistance. The focus should be on whether a subject who is has been exposed to an being TaserECDed is reacting to the shock of the TaserECD or is continuing to intentionally resist arrest.
- The subject must be given an opportunity to comply with commands or demonstrate compliance before additional applications or before application of a continuous cycle. For example, the time period between multiple TaserECD applications must be sufficient to give the subject the opportunity to comply with commands.

Prohibited Use

Prohibited Use

Use of the TaserECD is prohibited when:

- It is known that there are flammable liquids nearby, in known or suspected meth labs, or in other hazardous environments where flammable liquids or fumes are suspected.
- The incapacitation of the subject would result in the subject falling from an elevation sufficient to cause significant injury to the subject, or into any hazardous environment apparently capable of causing secondary injury to the subject.
- The risk of muscle contraction due to TaserECD application could result in injury to the subject or others, such as when the subject is aiming a firearm at himself/herself or at another person.
- The application is punitive; or

Formatted: Underline

Formatted: Normal, Indent: Left: 0.25", No bullets or numbering

Formatted: Indent: Left: 0"

- The application is intended to induce or coerce a response from the subject where the subject's conduct does not otherwise justify the use of force [see Policy 15.3].

Formatted: Normal, No bullets or numbering

Use of the Taser/ECD is generally prohibited when:

Formatted: Indent: Left: 0.25"

- The subject is an obviously pregnant female;
- The subject is obviously disabled, frail or infirm;
- The subject is a child under the age of 13;
- The subject is handcuffed or secured (unless the prisoner demonstrates overtly assaultive behavior that cannot be dealt with in another less intrusive manner);
- The subject is in physical control of a motor vehicle that is in motion or running; or
- The officer is in a moving vehicle

Formatted: Normal, No bullets or numbering

Certain circumstances may dictate the use of the Taser/ECD in these "generally prohibited" situations after consideration of alternative measures has been made and the Taser/ECD has been determined to be the force application most appropriate for the situation. In every case, the use of the Taser/ECD must be in accordance with EPD Use of Force Policies.

Formatted: Normal, No bullets or numbering

Response to Scene by Supervisor, Medical Personnel

Formatted: Left, Indent: Left: 0.25", No bullets or numbering

Response to Scene by Supervisor, Medical Personnel

A supervisor should respond to the scene of every Taser/ECD application and the Everett Fire Department will be called to every Taser/ECD application for a medical evaluation. The EPD supervisor will ensure that all requirements of Procedure Manual Section 32.03 (Taser/ECD – Post Application Procedures) are met.

Formatted: Font color: Black

Taser/ECD Use by Officers Working Off Duty

Formatted: List Paragraph, Left, Indent: Left: 0.25"

Taser/ECD's may be carried by authorized personnel while working off duty in a law enforcement capacity. Taser/ECD's are not intended in any way to replace firearms or any lethal force option.

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Normal, No bullets or numbering

15.5-7 SUMMARY

The decision to use force rests with each officer. While there is no way to specify the exact duration or type of reasonable and necessary force to be applied in any situation, each officer is expected to use these guideline to make force decisions in a professional, impartial, and safe manner that is consistent with Department policy.