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 department shall 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 policy (303), and the Conducted Energy Weapon policy (304).

300.1.1 DEFINITIONS

Definitions related to this policy include:

Choke hold - A physical maneuver that restricts an individual's ability to breathe or blood flow for the purpose of incapacitation.

Deadly force - Force which a person uses with the intent of causing, or which he/she knows creates a substantial risk of causing, death or serious bodily injury (NDCC § 12.1-05-12).

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 officer 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 themselves to be searched, escorted, handcuffed or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs (NDCC § 12.1-01-04).

Totality of the Circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer 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. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

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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 Fargo Police 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 INTERVENE AND REPORT

Any officer 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, intervene to prevent the use of unreasonable force.

An officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances shall report these observations to a supervisor as soon as feasible.

300.3 USE OF FORCE

Officers shall use only 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 this 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.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

A law enforcement officer may use reasonable force to effect an arrest if, after notice of intention to arrest the person, the person either flees or forcibly resists (N.D.C.C. § 29-06-13).

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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 (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers 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 officer commands.

(g) Proximity of weapons or dangerous improvised devices.

(h) The degree to which the individual has been effectively restrained and his/her 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 officer.

(l) Potential for injury to officers, suspects, and others.

(m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(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.

(p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(q) Prior contacts with the individual or awareness of any propensity for violence.

(r) Any other exigent circumstances.

300.3.3 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and generate voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

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300.3.4 RESPIRATORY RESTRAINTS

The use of a respiratory restraint, also known as a choke hold, is limited to circumstances where deadly force is authorized.

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

Generally, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers 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.

300.3.6 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers should only apply 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 individual can comply with the direction or orders of the officer.

(c) Whether the individual 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 APPLICATIONS

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify themself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

(a) An officer may use deadly force to protect themself or others from what the officer reasonably believes is 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 individual 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 individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

However, an officer should not use deadly force against a person whose actions are a threat solely to themselves or property.

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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 that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force.

When feasible, officers should take reasonable steps to move out of the path of a vehicle presenting an imminent threat of death or serious bodily injury 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 the vehicle is being operated in a manner that threatens to cause imminent death or serious bodily injury to the officer or others, or if deadly force other than the vehicle is directed at the officer or others by occupants of the vehicle.

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

300.4.2 INTENTIONAL FIREARM DISCHARGE

The intentional discharge of a firearm by an officer at or towards any person shall be interpreted as the use of deadly force. Officers are prohibited from utilizing a “warning shot” from a firearm to gain compliance or otherwise overcome any resistance they encounter in the performance of their duties.

Deadly force may be directed at any animal (wild or domestic) that poses an immediate threat to an officer or other person, or when the animal is otherwise deemed to be a threat to public safety. Deadly force may also be directed at an injured animal for humanitarian reasons. When feasible and prior to the use of deadly force in situations involving injured animals, dispatch should be notified, as well as an on-duty supervisor in order to approve the use of deadly force.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in the appropriate report(s), depending on the nature of the incident. The officer 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, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy (322) for additional circumstances that may require documentation.

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300.5.1 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 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 conducted energy device (CED), oleoresin capsicum (OC), canine, impact weapon, control or restraint device.

(f) The individual subjected to the force was rendered unconscious.

(g) An individual was struck or kicked.

(h) An individual alleges unreasonable force was used or any of the above has occurred.

Supervisors are assigned to each department division and are expected to carry out the duties required in this policy relative to their assigned personnel unless they are unavailable, in which case a supervisor from another division shall assume the duties.

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. Any individual exhibiting signs of physical distress after an encounter should be treated to the member(s) trained level of care and 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 officer'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 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).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to

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pain, 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 practicable, members should provide immediate treatment to their trained level of care until medical personnel can assess the individual.

See the Medical Aid and Response Policy for additional guidelines.

300.7 SUPERVISOR RESPONSIBILITY

A supervisor shall respond to an incident in which there has been a reported application of force that resulted in any evident or claimed injury to any person and the injury is attributable to the officer's actions, or where a CED, impact weapon, or oleoresin capsicum has been deployed. The supervisor shall do the following as soon as it is practical to do so:

(a) Obtain the basic facts from the involved officers.

(b) Ensure that any injured parties are examined and treated.

(c) When possible, interview the subject upon whom force was applied. Advise the subject that he/she is conducting an administrative interview regarding the use of force and not questioning that person regarding criminal activity. The following shall apply to the interview:

1. The content of the interview should not be summarized or included in any related criminal charges.
2. If a recorded interview was obtained it should be documented in the Use of Force Report and kept for use in an administrative review.
3. The recording of the interview should be kept for use in an administrative review if applicable and retained in compliance with the Records Maintenance and Release policy (804).

(d) When possible, photograph any evident or claimed areas of injury on the person who force was used upon, including those areas on the person impacted by an officer's use of a CED, OC, police canine, defensive device, object of convenience, strike, kick, punch, etc.

(e) Identify any witnesses not already included in related case reports.

(f) Review and approve all related case reports.

(g) If there is an indication of potential civil litigation, the supervisor shall note this in the use of force report narrative. The Professional Accountability Unit, upon review, shall notify the City Attorney's Office and/or forward a copy as requested.

(h) Regardless of division assignment and in addition to any other required notifications, notify the Neighborhood Services Division Shift Commander to ensure department situational awareness.

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300.7.1 PROFESSIONAL ACCOUNTABILITY UNIT (PAU) RESPONSIBILITY
PAU shall review each use of force by any member to ensure compliance with this policy, initiate appropriate personnel complaints, and/or to address any training issues in accordance with the Use of Force Review policy (301).

300.8 TRAINING

Officers shall receive annual training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, officers should receive periodic training on guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.

300.8.1 TRAINING REQUIREMENTS
Required annual training shall include:

(a) Legal updates.

(b) De-escalation tactics, including alternatives to force.

(c) The duty to intervene.

(d) The duty to request and/or render medical aid.

(e) Warning shots (see the Firearms Policy).

(f) All other subjects covered in this policy (e.g., use of deadly force, chokeholds and carotid holds, discharge of a firearm at or from a moving vehicle, verbal warnings).

300.9 REVISION DATE 10/01/2024

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