

Washtenaw County Sheriff's Office

Memorandum



Jerry L. Clayton, Sheriff

To:	Jerry L Clayton, Sheriff
From:	Kurt Schiappacasse, Lieutenant
Cc:	NA
Date:	6.5.20
Subject:	8cantwait Subject Control thresholds

1. Threshold One – Ban strangleholds and chokeholds

Allowing officers to choke or strangle civilians, in many cases where less lethal force could be used instead, results in the unnecessary death or serious injury of civilians.

From the Washtenaw County Sheriff's Office Subject Control Policy:

Deadly Force

Any use of force likely to cause death or serious physical injury, including the use of a firearm, neck hold, or strike to the head, neck, clavicle, or throat with a hard object.

Special Note:

The term 'neck hold' refers to one of the following: a carotid restraint hold, a lateral vascular neck constraint, or a hold with a knee or other object to a subject's neck for the purpose of restricting the flow of blood or oxygen to the brain. A neck hold is considered lethal force. Mere incidental contact does not constitute a neck hold.

Commentary:

The Washtenaw County Sheriff's Office understands the possible implications of applying neck restraints. Accordingly, the use of such a tactic for the purposes of restricting the flow of blood or oxygen to the brain is considered to be lethal force and is only procedurally permitted under the most dire of circumstances. Said differently, this is not a typical 'compliance' technique.

Sheriff's Office employees shall only use deadly force, such as a neck restraint, only as a last resort when reasonable alternatives have been exhausted or are not possible to protect the safety of the employee(s) or the public.

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2. Threshold Two – Require De-escalation

Require officers to de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force.

From the Washtenaw County Sheriff's Office Subject Control Policy:

DE-ESCALATION

Sheriff's Office employees shall employ de-escalation techniques throughout the encounter and provide repeated verbal warnings in order to decrease the likelihood of the need to use force and to increase the likelihood of voluntary compliance in situations where they can do so safely, without increasing risk to themselves or another person. Moreover, Sheriff's Office employees shall attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting attempts to gain compliance.

A subject may not be capable of understanding the situation because of:

- Environmental factors
- Medical condition(s) i.e. mental, physical, or hearing impairment
- Language barrier
- Drug interaction
- Emotional crisis
- Those who have no criminal intent

These situations may not make the subject any less dangerous but understanding a subject's condition may enable employees to calm the subject and to allow for the use of de-escalation techniques while maintaining the safety of the public and the employee(s). Employees who act to de-escalate an incident, which can reasonably delay taking a subject into custody, while keeping the public and employees safe, will not be found to have neglected their duty. This act helps to fulfill a service priority of the agency.

Employees shall strive to gain voluntary compliance and use the minimum amount of force necessary to accomplish their lawful purpose.

Special Note:

Employees shall continue to use de-escalation techniques after initiating, or being witness to, a use of force incident. The level of force shall be de-escalated

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immediately as the level of resistance encountered decreases, provided that the employee remains in control and as safety permits.

When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, employees shall use the following de-escalation tactics to reduce the need or degree of force. Accordingly:

- Gather as much information possible about the incident.
- Attempt to isolate and contain the subject.
- Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force.
- Request additional resources, such as Crisis Intervention Team (CIT) trained employees, or Crisis/Hostage Negotiation Team. Identify employees who may have a rapport with the subject.
- Designate an officer to establish rapport and engage in communication with the subject.
- Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety.
- Continue de-escalation techniques, such as advisements, warnings, verbal persuasion, other alternatives, and take as much time as reasonably necessary to resolve the incident, without having to use force if possible.
- Employees will assess each incident to determine, based on policy, training, and experience, which option is best to achieve a legal outcome and bring the situation under control in a safe and prudent manner.
- In general, once control of a combative subject is gained and there is no longer an objectively reasonable threat, further use of force is prohibited. A degree of force which may have been justified earlier in an encounter does not remain justified indefinitely. Force shall be de-escalated proportionately and immediately as resistance decreases.
- Other options, not listed above, may be available to assist in de-escalating the situation.

Special Note:

Supervisors who become aware of a situation where an employee is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene. Incidents where de-escalation techniques were attempted shall be documented in the employee's report, as applicable. Such a report will include a disposition of the incident, i.e. the officer/supervisor will indicate if the de-escalation techniques attempted were successful.

It should be noted that the use of de-escalation techniques may not be possible in encounters that where employing such tactics would increase the potential of risk to the employee or the public.

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ESTABLISH COMMUNICATION

Communication with non-compliant subjects is often most effective when Sheriff's Office employees attempt to establish rapport, use the proper voice intonation, ask questions, and provide advice to defuse conflict and achieve voluntary compliance before resorting to force-related subject control options.

3. **Threshold three – Require Warning Before Shooting**

Require officers to give a verbal warning, when possible, before shooting at a civilian.

From the Washtenaw County Sheriff's Office Subject Control Policy:

Sheriff's Office employees shall use deadly force only as a last resort when reasonable alternatives have been exhausted or are not possible to protect the safety of the employee(s) or the public. The use of firearms and the use of other deadly force options is the most serious decision an employee may ever make. When safe under the totality of circumstances, employees shall consider other objectively reasonable force options before discharging a firearm or using other deadly force options, so long as that process does not increase risk to an employee or another person.

Discharge of a firearm and other uses of deadly force:

An employee may discharge a firearm or use other deadly force techniques in any of the following circumstances:

In self-defense when the employee has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury.

In defense of another person when the employee has reasonable cause to believe that another person is in immediate danger of death or serious bodily injury. However, an employee may not discharge a firearm at, or use deadly force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or any other person.

To kill an animal posing an immediate threat.

To apprehend a person when both of the following circumstances exist:

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- (a) The employee has probable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force;

AND

- (b) The employee has probable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to the employee or others if the person's apprehension is delayed.

Special Note:

The above circumstances apply to each discharge of a firearm or application of deadly force. Employees shall reassess the situation, when safe, to determine whether the subject continues to pose an active threat.

If doing so would not increase the danger to the employee or another innocent person, an employee shall give a verbal warning to submit to the authority of the Sheriff's Office before discharging a firearm or using other deadly force.

4. **Threshold 4 – Exhaust All Other Means Before Shooting**

Require officers to exhaust all other reasonable means before resorting to deadly force.

From the Washtenaw County Sheriff's Office Subject Control Policy:

Sheriff's Office employees shall use deadly force only as a last resort when reasonable alternatives have been exhausted or are not possible to protect the safety of the employee(s) or the public. The use of firearms and the use of other deadly force options is the most serious decision an employee may ever make. When safe under the totality of circumstances, employees shall consider other objectively reasonable force options before discharging a firearm or using other deadly force options, so long as that process does not increase risk to an employee or another person.

5. **Threshold 5 – Duty To Intervene**

Require officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor.

From the Washtenaw County Sheriff's Office Subject Control Policy:

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Duty to intervene and provide aid

Except in extraordinary circumstances, Sheriff's Office employees shall intervene on a person's behalf when they know or have reason know, that another law enforcement officer is about to use, or is using, force that is excessive or is otherwise in violation of this policy.

This duty prevails regardless of rank or agency affiliation. Employees shall report any use of unnecessary force and the efforts made to intervene to a supervisor as soon as practical. If the witnessing employee is a supervisor, s/he will issue a direct order to stop the violation. Further, employees have the duty to provide aid to the victim

6. **Threshold 6 – Ban shooting at moving vehicles**

Restrict officers from shooting at moving vehicles, which is regarded as a particularly dangerous and ineffective tactic.

From the Washtenaw County Sheriff's Office Subject Control Policy:

An employee shall not discharge a firearm at the operator or occupant of a moving vehicle, vessel, or other means of similar mechanical conveyance unless the operator or occupant poses an immediate threat of death or serious bodily injury to employee or another person.

Employees are prohibited from discharging a firearm from a moving vehicle, vessel, or other means of similar mechanical conveyance unless the operator, after considering the totality of circumstances, reasonably believes that the subject(s) pose an immediate threat to the employee or another person.

7. **Threshold 7 – Require Use Of Force Continuum**

Develop a Force Continuum that limits the types of force and/or weapons that can be used to respond to specific types of resistance.

From the Washtenaw County Sheriff's Office Subject Control Policy:

Deployment tactics utilizing a layer of force measures. The layered response can range from employees' presence to lethal force. Force options may be used as a team response where employees are working in concert with one another through various force measures. This style of deployment allows the options to fluidly escalate and deescalate the force response.

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The lowest level of force within the range of objectively reasonable force that is necessary to affect an arrest or achieve a lawful objective without increasing the risk to others.

When determining the appropriate level of force, employees shall balance the severity of the offense committed and the level of resistance encountered based on the totality of the circumstances known to, or perceived by, the employee at the time. It is particularly important that employees apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm, i.e. an edged weapon or a weapon of opportunity.

When force is necessary and objectively reasonable, employees must strive to use the minimum amount of force necessary in the available range of objectively reasonable options.

While deploying a particular force option, employees should continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objectives.

It should be noted that subjects can enter the below continuum at any level. Additionally, a subject's level of resistance can escalate and de-escalate at any time during an encounter. While deploying a particular force option, employees shall continually evaluate whether the force option may be discontinued while still achieving the arrest or lawful objective. See appendix 1, 'Resistance v. Control Chart' for information regarding levels of resistance encountered versus the level of control that may be used to achieve lawful objectives.

8. **Threshold 8 – Require Comprehensive Reporting**

Require officers to report each time they use force or threaten to use force against civilians.

From the Washtenaw County Sheriff's Office Subject Control Policy:

Reportable use of force

Employees shall report any use of force technique(s) used to overcome subject resistance in order to gain compliance.

Notification of use of force:

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An employee shall notify his/her supervisor immediately or as soon as practical of any reportable use of force.

Use of force evaluation:

A supervisor shall conduct a use of force evaluation in all cases involving a reportable use of force.

Claims of excessive force:

Every allegation of excessive force shall be subject to the reporting and investigative requirements of this policy and applicable policies.

Special Note:

Incidents where de-escalation techniques were attempted shall also be reported. Such a report will include a disposition of the incident, i.e. the officer/supervisor will indicate if the de-escalation techniques attempted and whether they were successful.

Commentary:

The Sheriff's Office voluntarily reports use of force involving the use of a firearm, use of force which results in great bodily injury and use of force which results in death to the National Use of Force Database through the FBI.