

# Draft Use of Force Policy - Presented to Board of Public Safety on January 20, 2021

Tracked Changes as Compared to the Draft presented at the December 16, 2020 Board Meeting

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## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the necessary and reasonable use of force. Every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, necessary, reasonable, and ethical manner, as trained.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

~~**Deadly force** – Force that creates a substantial risk of serious bodily injury. (I.C. § 35-31.5-2-85). This is the highest level of force and is authorized only as a last resort.~~

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**De-escalation** – Actions to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation through the voluntary compliance of subjects, when feasible, and to reduce or eliminate the necessity of force.

~~**Minimal Force** – Physical interaction meant to separate, guide, or control that is reasonably unlikely to cause pain or injury.~~

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~~**Deadly force** – Force that creates a substantial risk of serious bodily injury. (I.C. § 35-31.5-2-85). This is the highest level of force and is authorized only as a last resort.~~

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**Force** – The application of physical techniques or tactics, chemical agents, or weapons by an officer to another person in performance of official duties, including the intentional pointing of a firearm at a person. Minimal force is excluded from this definition, such as when a person is searched, escorted, handcuffed, or restrained.

**Imminent** – Ready to take place; impending.

~~**Minimal Force** – Physical interaction meant to separate, guide, or control that is reasonably unlikely to cause pain or injury.~~

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**Necessary** – No reasonably effective alternative to the use of force appeared to exist based on the totality of the circumstances known to the officer at the time of the use of force, and the amount of force used was reasonable to effect the intended lawful purpose.

**Objective Reasonableness** – In accordance with *Graham v. Connor*, objective reasonableness is based on the totality of the circumstances known by the officer at the time of the event to accomplish a legitimate law enforcement purpose, which must be judged from the perspective of what a reasonable officer would use under the same or similar situation at the time of the incident.

**Proportional** – The reasonably appropriate level of force, including no usage of force, to overcome the level of resistance or threat that an officer encounters.

### 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. All officers of the South Bend Police Department (“SBPD”) shall

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uphold the Constitution of the United States and the State of Indiana and defend the civil rights and dignity of all individuals, while protecting human life and property and maintaining civil order.

Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use objectively reasonable force (*Graham v. Connor*), consistent with Department training, 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 the use of force while engaged in the performance of law enforcement duties. SBPD recognizes and respects the value of all human life and dignity without prejudice. SBPD acknowledges the responsibility behind vesting officers with the authority to use reasonable and necessary force and to protect the public welfare, which requires monitoring, evaluation, and a careful balancing of all interests.

It is the policy of the SBPD to accomplish its mission effectively, in cooperation with the public, and with minimal reliance on the use of physical force. The community expects, and SBPD requires, that officers use de-escalation techniques when safe and feasible and use force only ~~the force~~when necessary and reasonable to perform their duties and that all use of force is proportional to the level of threat or resistance by a subject under the totality of circumstances.

All officers are committed to respect, professionalism, and protection of all human life even when use of force is necessary. Officers who violate these values damage trust with the community and may expose SBPD and fellow officers to legal and physical hazards. Conversely, officers who fail to use timely, necessary and reasonable force may endanger themselves, the community, and fellow officers.

#### **300.2.1 DUTY TO INTERCEDE**

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable and necessary under the circumstances, or is in substantial violation of SBPD policy, has an affirmative duty to intercede and immediately shall intercede to prevent or stop the use of unreasonable, unnecessary, or excessive force. Failure to intercede when required will result in a violation of this policy and disciplinary action.

#### **300.2.2 DUTY TO REPORT VIOLATIONS**

Any officer who directly observes another employee use force that exceeds the degree of force permitted by law, training, or ethics, or any officer who has direct or indirect knowledge of a violation of this policy, shall report these observations or the knowledge of a violation to a supervisor as soon as practical. Failure to report as required will result in a violation of this policy and disciplinary action.

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

Officers shall only use that amount of force that is objectively reasonable, necessary, and proportional to bring an incident or person under control for a legitimate law enforcement purpose.

The objective reasonableness of a use of force is based on the totality of the circumstances known by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The use of force must be judged from the perspective of what a reasonable officer would use under the same or similar situation at the time of the incident (*Graham v. Connor*).

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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 is reasonably necessary and proportional to the threat 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 must rely on their training, experience, and assessment of the situation in determining the appropriate use of force in each incident.

De-escalation is important and takes priority when safe and feasible. Prior to using force, legitimate and reasonable de-escalation and/or conflict resolution measures shall be taken. See **300.3.1 – De-escalation**.

While de-escalation, conflict resolution, or other verbal deterrence or distancing measures should always be the first tools an officer uses, 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 officer shall make it a priority to call for assistance as soon as practicable.

Officers are not required to use the same type or amount of force as the subject. The more immediate the threat and the more likely the threat will result in death or serious bodily injury, the greater the level of force that may be required to counter it.

Officers shall reassess the appropriate level of force as the situation changes. When the threat, resistance, or incident is under control, the use of force must stop.

### **300.3.1 DE-ESCALATION**

Officers shall attempt to de-escalate situations and use de-escalation tactics to reduce the need for force when safe and feasible under the totality of circumstances. An objective of every law enforcement encounter is to avoid or minimize injury. Nothing in this policy requires an officer to be exposed to physical injury before applying reasonable and necessary force.

During any encounter, officers shall conduct a threat assessment continually to avoid placing themselves or others in undue jeopardy.

Officers shall use de-escalation techniques, when safe and feasible, according to their respective training and experience that may include, but are not limited to, the following reference examples of de-escalation:

- Evaluating safety conditions;
- Using communication to gain voluntary compliance through persuasion, advice, or instructions;
- Introducing themselves and offering assistance;
- Demonstrating active listening skills (i.e., summarizing the person's verbal communication);
- Identifying barriers for cover and concealment purposes and placing the barriers between uncooperative subjects and officers when safe and feasible;
- Creating distance to maximize tactical advantage or reaction time;

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- Removing distractions or disruptive people from the area;
- Providing verbal warning prior to necessary use of force when feasible;
- For instances where it is appropriate, utilizing methods laid out in SBPD Crisis Intervention Policy 410;
- Providing for sufficient avenues of tactical retreat or escape for officers should the situation become volatile; or
- ~~Provide~~Providing a reasonable amount of time to comply.

When a situation does not require the use of force, officers generally should not:

- Use stances or tactics that can be interpreted as overtly aggressive and are not trained-;
- Allow others to interrupt or engage the person- in a manner inconsistent with conflict resolution training and tactics;
- Argue, speak with a raised voice, or use threats to obtain compliance-; or
- Act in a manner that antagonizes, aggravates, or elevates the incident or situation.

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### **300.3.2 LEGITIMATE LAW ENFORCEMENT OBJECTIVES**

SBPD Officers shall only use reasonable force for legitimate law enforcement objectives (I.C. § 35-41-3-3), including:

- (a) Effect a lawful arrest-;
- (b) Prevent escape-;
- (c) Prevent physical assault or harm to others or oneself-; or
- (d) Accomplish any other law enforcement duty.

### **300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether to apply force and evaluating whether an officer has used reasonable and necessary force, a number of factors should be taken into consideration, as circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to others or officers-;
- (b) The conduct of the individual being confronted, as reasonably believed 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, or the number of officers available to assist)-;
- (d) The effects of drugs or alcohol-;
- (e) Individual's mental state or 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-;

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- (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 those involved or others--;
- (l) Whether the individual 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 individual or a prompt resolution of the situation in order to prevent further escalation, injury, or damage--;
- (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 individual or awareness of any propensity for violence--; or
- (q) Any other exigent circumstances, which must be clearly articulated in reporting.

#### **300.3.4 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 shall consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance--;
- (b) Whether the individual is able to comply with the direction or orders of the officer--; and
- (c) Whether the individual has been given sufficient opportunity to cooperate and comply.

The application of any pain compliance technique shall be discontinued once compliance has been achieved.

Officers shall not restrain subjects who are in custody and under control in a manner that restricts their ability to breathe.

#### **300.3.5 CAROTID ARTERY, AND/OR NECK RESTRAINTS (CHOKEHOLDS/STRANGLEHOLDS)**

Carotid artery or neck restraints (chokeholds or strangleholds) in any form are prohibited, and shall not be used by officers, except when deadly force is required to preserve the life of the officer or others. While chokeholds or strangleholds may not always be applications of deadly force, for purposes of this use of force policy, SBPD considers these types of restraints as deadly force, and they shall not be taught in defensive tactics. For SBPD, any use of deadly force is always a last resort option.

Carotid artery restraints, and neck restraints, or vascular neck holds (also known as chokeholds or strangleholds) create a high risk of injury or potential death when improperly applied. Any form of carotid artery, or neck, or vascular neck restraints, or any hold that blocks the airway is prohibited.

**Carotid Artery Restraint:** Any technique which is applied in an effort to control or disable a subject by applying pressure to the carotid artery, the jugular vein, or the sides of the neck with the purpose or

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intent or effect of controlling a subject's movement or rendering a subject unconscious by constricting the flow of blood to and from the brain by compressing the carotid sheaths on the side of the neck. A carotid restraint is an intentional, controlling force application.

**Neck Restraint:** Any technique involving the use of an arm or other firm object to attempt to control or disable a subject by applying pressure against the windpipe, or the frontal area of the neck with the purpose or intent or effect of controlling a subject's movement or rendering a subject unconscious by blocking the passage of air through the windpipe. A neck restraint is an intentional, controlling force application.

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### **300.4 DEADLY FORCE**

Use of deadly force is prohibited, except as a last resort in the following circumstances when an officer reasonably believes the use of deadly force is necessary:

(a) To protect against an imminent threat of death or serious bodily injury to the officer or another person; ~~or~~

(b) To stop a fleeing subject, as a last resort, when the officer:

1. 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
2. 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 and that the use of deadly force does not increase substantial risks to innocent persons.

(c) Under such circumstances, a verbal warning shall precede the use of deadly force, where feasible (I.C. § 35-41-3-3). Officers shall identify themselves as an officer and provide a verbal warning that deadly force may be used prior to the use of deadly force, whenever feasible.

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, given the totality of the circumstance(s), any of the following (any and all of which must be articulated in reporting):

1. 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 officer or another; ~~or~~
2. The individual is ~~capable of causing~~ ~~attempting to cause~~ serious bodily injury or death without a weapon and ~~is attempting to do~~ ~~has an objectively reasonable capacity of doing~~ so.

#### **300.4.1 SHOOTING AT OR FROM MOVING VEHICLES**

Except in extreme circumstance(s), shooting at or from a moving vehicle or its occupants is prohibited. Officers shall move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer shall only discharge a firearm at a moving vehicle or its occupants when there are no other reasonable means available to avert the imminent threat of the

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vehicle or its occupants. Any shooting at or from a moving vehicle shall be examined closely on a case-by-case basis. Officers shall expect strict scrutiny and shall report clearly articulated reasons for any deviation from this prohibition.

### **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 an appropriate report. The officer shall articulate in his/her report:

- (a) The factors perceived and known;
- (b) What steps, if any, the officer took prior to the use of force; and
- (c) Why he/she believed the use of force was reasonable and necessary under the circumstances.

To collect data for purposes of training, internal affairs, resource allocation, analysis and related purposes, the Department requires the completion of an additional Use of Force form, as specified in orders, department policy, procedure, or law.

#### **300.5.1 NOTIFICATIONS TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of force, including the intentional pointing of a firearm at an individual, but excluding minimal force, and under any of the following circumstances:

- (a) The application caused a visible injury~~;~~
- (b) The individual subjected to the force complained of injury or continuing pain~~;~~
- (c) The individual indicates intent to pursue litigation~~;~~
- (d) Any application of the Conducted Energy Weapon System or control device~~;~~
- (e) Any application of a restraint device other than handcuffs or belly chains~~;~~
- (f) The individual subjected to the force was rendered unconscious~~;~~
- (g) An individual was struck or kicked~~;~~ or
- (h) An individual alleges any of the above has occurred.

### **300.6 MEDICAL CONSIDERATIONS**

Following a use of force, when safe and feasible, officers shall evaluate any injuries from the use of force, request or seek emergency medical services as needed, and provide aid as trained. When safe and feasible, officers have a duty to monitor individuals for potential medical intervention after a use of force.

Prior to booking or release, 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 not

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be left alone and 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 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, influence of alcohol or controlled substance, controlled substance ingestion, etc.).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to 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 shall be considered medical emergencies. Officers who reasonably suspect a medical emergency shall request or seek medical assistance as soon as practicable and have medical personnel stage away (see the Medical Aid and Response Policy 429).

### **300.7 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 officers~~;~~
- (b) Ensure that any injured parties are examined and treated promptly~~;~~
- (c) Ensure all appropriate reports and forms are completed~~;~~ and
- (d) 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 may be appropriate. 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 or to ensure that the items are completed and forwarded to Internal Affairs immediately upon completion.

#### **300.7.1 SHIFT SUPERVISOR RESPONSIBILITY**

The Shift Supervisor~~,~~ or the authorized designee~~,~~ shall review each use of force by any personnel within his/her command to ensure immediate compliance with this policy and to address any training, policy, or behavioral issues. Every use of force shall be immediately forwarded to IA/OPS.

### **300.8 TRAINING**



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Officers will receive mandated training on this policy at least biannually, must regularly review this policy at least quarterly, and must demonstrate their knowledge and understanding of this policy.

All use of force training must be documented and reflect current standards, established by statutory and case law, as well as state, county, and departmental policies, directives, and guidelines.

Training will include de-escalation tactics and their importance to reducing the need for physical force, simulate actual situations and conditions for de-escalation and use of force (scenario-based), and enhance officers' ability to make split-second decisions in accordance with all policies and directives.