

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.2 USE OF FORCE

SUBJECT: Use of Force		
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4.2.1 PURPOSE

This policy outlines the Department’s core principles and rules relating to the use of force. The Department recognizes that officers will at times face unique and challenging circumstances not specifically addressed in this policy. Officers are expected to apply these core principles and act reasonably in all situations.

Every Officer of the Department is sworn to uphold the Constitution and Laws of the United States and the State of Kansas. The Department respects the value of human life and recognizes the civil rights and dignity of all individuals while protecting the public welfare and maintaining civil order.

It is the policy of the Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with as little reliance upon the use of physical force as possible.

Each sworn employee is expected to treat others with respect and professionalism even when force is necessary.

Officers who violate these values by using unreasonable force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.

Conversely, officers who fail to use force, in both timeliness and amount, when it is necessary may endanger themselves, fellow officers, and the community.

4.2.2 POLICY <1.3.1>

It is the policy of the Topeka Police Department that officers use only the force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. The components of this policy serve to guide the officer’s decision making when confronted with resistance.

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Members of the Department are authorized to use only the amount of force reasonably necessary to accomplish lawful objectives. This authorization to use physical force ends when the resistance encountered from the subject ceases and/or the officer has accomplished the purpose necessitating the use of force.

All members of the Department shall abide by the following general requirements:

- A. Officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to physical force;
- B. Physical force shall be de-escalated as resistance from the subject decreases;
- C. Officer shall allow subjects time to submit to arrest or comply with orders before physical force is used wherever possible.

4.2.3 DEFINITIONS <1.3.2>

Deadly Force – the application of any physical force which is likely to cause death or great bodily harm to a person

Force – any or all of the following directed at or upon another person or thing: (A) words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another.

This term includes the discharge of a firearm or ECD, pointing of a firearm or ECD in the direction of a human being, use of chemical spray, taking of a subject to the ground or deployment of a canine. The term does not include escorting or the non-resistive handcuffing of a subject.

4.2.4 GRAHAM V. CONNOR SUPREME COURT CASE

- A. *Graham v. Connor*, 490 U.S. 386 (1989) and the Objectively Reasonable Standard.
 - 1. All officers shall use only the degree of force that is objectively reasonable under the totality of circumstances as established by *Graham v. Connor*, 490 U.S. 386 (1989). Factors when determining reasonableness must include at a minimum:
 - a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of officers or others; and
 - c. Whether the suspect is actively resisting arrest or attempting to evade

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arrest by flight.

2. The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer and the governmental interests involved against the rights of the individual, in light of the circumstances surrounding the event. For further guidance, see section 4.2.6.
3. The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary in a particular situation.
4. The reasonableness inquiry in a use of force case is an objective one: whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
5. It must also be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.
6. The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others. Reasonable force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.

4.2.5 DE-ESCALATION

- A. De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.
- B. It is recognized that the level of resistance or non-compliance by a suspect generally dictates the need for and type of force used by an officer to bring a situation under control. It is further recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force.
- C. However, when safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.
- D. When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 1. Medical conditions;
 2. Mental impairment;

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3. Developmental disability;
 4. Physical limitation;
 5. Language barrier;
 6. Drug interaction; and/or
 7. Behavioral crisis.
- E. An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.
- F. Mitigating the immediacy of threat gives officers time to utilize extra resources and increases time available to call more officers or specialty units.
- G. The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.
- H. De-escalation examples may include when possible:
1. Placing barriers between an uncooperative subject and an officer;
 2. Containing a threat;
 3. Moving from a position that exposes officers to potential threats to a safer position;
 4. Decreasing the exposure to potential threat by using distance, cover and concealment;
 5. Communication from a safe position intended to gain the subject's compliance, using verbal persuasion, advisements or warnings;
 6. Using verbal techniques to calm an agitated subject;
 7. Calling for extra resources or officers to assist, including CIT officers; and/or
 8. Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

4.2.6 USE OF FORCE - IN GENERAL

A. General Considerations

1. When and to the extent reasonably possible, officers shall attempt to use communication skills in a genuine attempt at verbal persuasion before resorting to physical control methods.
2. Officers shall not carry Department authorized weapons unless they have received Department training in the use of such weapons and demonstrated required levels of proficiency with them. <1.3.10>
3. Only Department authorized weapons and tactical equipment may be carried and used in exercising police powers. See policy on authorized Weapons.

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B. Officers may use reasonable force to:

1. Protect themselves from injury;
2. Protect others from injury;
3. Effect a lawful detention or arrest; or
4. Conduct a lawful search.

C. Additional factors to be considered in determining the objective reasonableness of force include, but are not limited to:

1. Immediacy and severity of the threat to officers or others;
2. The conduct of the individual being confronted, as reasonably perceived by the officer at the time;
3. 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);
4. The effects of drugs or alcohol;
5. Individual's mental state or capacity;
6. Proximity of weapons or dangerous improvised devices;
7. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained;
8. The availability of other options and their possible effectiveness;
9. Seriousness of the suspected offense or reason for contact with the individual;
10. Training and experience of the officer;
11. Potential for injury to officers, suspects and others;
12. Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer;
13. The risk and reasonably foreseeable consequences of escape;
14. The apparent need for immediate control of the individual or a prompt resolution of the situation;
15. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
16. Prior contacts with the individual or awareness of any propensity for violence; and
17. Any other exigent circumstances.

D. All officers shall be issued a copy of this Order. The Training Section shall give instruction on this Order before authorizing officers to carry and use lethal or less lethal weapons. The Training Section shall document the certification and recertification. <1.3.12>

4.2.7 NON-DEADLY FORCE-GENERAL <1.3.4>

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Non-deadly force is any use of force other than that which is considered likely to cause death or great bodily harm. Non-deadly force includes any physical effort used to control, restrain, or overcome that resistance of another.

- A. Flashlights or other similar instruments may only be used as an impact weapon when the officer has been trained in the use of baton and then must be used in a manner consistent with baton training. If the baton can be accessed and used without sacrifice of tactical advantage, it shall be used rather than an alternate impact weapon.
- B. The head, neck, throat, spine, heart, kidneys and groin shall not be intentionally targeted with impact weapons except when deadly force is authorized. Head strikes with impact weapons are prohibited except when deadly force is authorized.
- C. Other equipment not used and/or authorized by the Department as an approved weapon will not be used as a weapon unless exigent circumstances are present justifying the application.
- D. Except when articulable circumstances exist and the force is objectively reasonable, officers shall apply techniques authorized by the Department.

4.2.8 DEADLY FORCE <1.3.2>

- A. Under KSA 21-5221, deadly force means the application of any physical force which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, the display or production of a weapon, shall not constitute use of deadly force, so long as the officer's purpose is limited to creating an apprehension that the officer will, if necessary, use deadly force in defense of him or herself or another or to affect a lawful arrest.
- B. An officer is justified in using deadly force only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to the officer or another person.
- C. Deadly force may be used when an officer reasonably believes that deadly force is necessary to prevent an arrest from being defeated by resistance or escape and the officer has probable cause to believe that the person to be arrested:
 - 1. Has committed or attempted to commit a felony involving death or great bodily harm; or
 - 2. Is attempting to escape by the use of a deadly weapon; or

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3. Is otherwise indicating that such person will endanger human life or inflict great bodily harm unless arrested without delay. (Note: Simply fleeing in a vehicle, even at high speeds, does not implicate this subsection.)
- D. If deadly force is authorized and to be used against a fleeing suspect, the officer shall give the suspect some verbal warning, if feasible, before using deadly force.

4.2.9 FIREARMS

- A. Officers shall not discharge a firearm solely to disable a moving vehicle.
- B. Officers shall not discharge a firearm at a moving vehicle unless the occupant(s) of the vehicle is using deadly force against the officer or another person and the officer reasonably believes that no other option is reasonably available for self-defense or to protect another person. The exception to this for a fleeing felon is covered under the Deadly Force section (4.2.8) of this policy.
- C. Officers shall not intentionally place themselves in the path of a moving vehicle. Where possible the officer shall attempt to move out of the path of a moving vehicle rather than discharge their weapon to stop the vehicle. Officers shall not shoot at any part of a vehicle in an attempt to disable the vehicle.
- D. Warning shots or shots fired for the purpose of summoning aid are prohibited.
<1.3.3>
- E. Officers shall not use a firearm as an impact weapon, i.e. "pistol whip" a subject or using the firearm as a club, except in situations where deadly force would be authorized.
- F. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create an objectively reasonable belief that a situation may escalate to the point at which deadly force would be authorized. Once an officer determines that the potential for deadly force has passed, the officer shall re-holster the weapon.

4.2.10 MEDICAL ASSISTANCE <1.3.5>

- A. Pre-Incident Medical Response Request. When officers have reason to believe they are responding to a situation that will likely necessitate emergency medical services, they should make reasonable efforts to request such services in advance.

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- B. Emergency medical services shall be contacted if a subject is reasonably perceived to:
1. Exhibit signs of medical distress;
 2. Lose consciousness or become unresponsive;
 3. Suffer an obvious injury;
 4. Complain of pain;
 5. Not appear to recover properly and promptly after force-involved incident;
or
 6. Exhibit signs of extreme uncontrolled agitation or hyperactivity prior to the use of force.
- C. Subjects shall be transported to a medical facility by officer or ambulance when:
- 1 The individual has suffered potentially serious injuries prior to the arrival of law enforcement personnel;
 - 2 The application of force by an officer causes more than a superficial injury which cannot be treated at the scene by AMR personnel;
 - 3 The arrestee suffers a severe injury from a police canine bite(s);
 - 4 There is a reasonable risk of internal injuries that may not be visibly apparent;
 - 5 The officer is advised by AMR personnel that the arrestee should be examined at a medical facility;
 - 6 The arrestee has a wound which is the result of a gunshot or other use of potentially deadly force;
 - 7 If a subject is exposed to more than one cycle of the ECD (probe deployment or drive stun);
 - 8 A subject complains of internal injuries not noticeable or trouble breathing; or
 - 9 When there is any doubt about an arrestee's physical condition.
- D. After contacting medical aid, officers will take appropriate measures as they are trained, equipped, and certified to take. These actions may include:
1. Increased observation of the subject for obvious changes in condition.
 2. Apply first aid as they are trained, equipped, and certified to apply; and
 3. Secure the scene to reasonably protect the subject from further injury.
- E. Officers will not refuse medical treatment to anyone who requests it as long as the scene is safe for the officer(s) to enter.
- F. If safety circumstances reasonably dictate moving the subject to another location, officers may arrange to have emergency medical personnel meet the officers and the subject at another location to assess the subject and render care.
- G. If emergency medical care or transport is not reasonably available, or if the perceived response delay appears excessive, then the subject may be transported by the officers for medical evaluation (when practical and possible avoiding face-down (i.e. prone) transport).

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H. If a subject refuses additional medical attention; that refusal should be documented.

4.2.11 REPORTING REQUIREMENTS <1.3.6>

Officers and supervisors shall refer to department policy, 4.3 Use of Force Reporting and Review Team for more detailed information on completion of required reports.

4.2.12 PROHIBITED USES OF FORCE

- A. Officers shall not use force to attempt to effect compliance with an order or command that is clearly unlawful.
- B. Officers shall not use physical force against an individual who only verbally confronts them unless the vocalization impedes a legitimate law enforcement purpose.
- C. Officers shall not use force on restrained subjects except when the subject's actions must be immediately stopped to prevent injury, escape, or destruction of property.
- D. Officers shall follow all relevant federal and state laws regarding the use of force and any applicable judicial decisions interpreting these provisions or constitutional limitations. Relevant state statutes are found at KSA 21-5220 through 21-5231.
- E. Officers shall not use any type of neck restraint or chokehold, unless deadly force would be authorized.
- F. Binding the hands and legs together followed by bending the legs up and securing them to the hands or "Hog-tying" is prohibited.

4.2.13 DUTY TO INTERVENE

- A. Officers are expected to use independent articulable objectively reasonable force when making decisions regarding the need and appropriateness of the force to be used.
- B. Any officer present and observing another officer using force that is illegal or clearly beyond that which is objectively reasonable under the circumstances shall safely intercede to prevent the use of such force. The action required by the officer will depend on the circumstances of the incident. Appropriate action may include, but is not limited to:

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1. Verbal or physical intervention;
2. Immediate notification to a supervisor; and/or
3. A direct order by a supervisor to cease the use of force.

4.2.14 DANGEROUS ANIMALS

- A. During encounters with animals, officers are authorized to use only the degree of force that reasonably appears necessary to protect themselves or others from bodily harm.
- B. Force Prevention.
 1. Officers should be aware of the possible presence of canines during routine calls for service, particularly those at residences.
 2. Information on the presence of canines may be obtained via:
 - a. Information collected from the caller by the dispatcher;
 - b. Visual sighting or audible barking on the premises; and
 - c. Observation of posted warning signs; fenced yards with water and feeding bowls; dog houses and/or chains; and worn paths along the perimeter of fencing.
 3. Where fences must be entered to approach a residence or commercial establishment, when possible rattling a chain fence or knocking on a wooden fence may bring a canine out in the open that may not otherwise be visible.
 4. When unattended, unsecured canines on the property may appear aggressive, and officers may remain in their vehicle and contact the residence by phone, or request such contact by the dispatcher in order to direct the owner or occupant to secure the pet.
 5. Animal control officers may be summoned to assist in containing or controlling a canine when necessary.
 6. Before entering a residence, officers may ask if a canine is present and, if so, request that the animal be secured prior to entering.
- C. Officers are authorized to use firearms to stop an animal in circumstances in which the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.
- D. Officers must be cognizant of the surroundings when shooting at an animal and ensure there is no risk to people in the area. Under circumstances in which officers have sufficient advance notice that a potentially dangerous animal may be encountered, officers should develop reasonable contingency plans for dealing with the animal (e.g., OC spray, baton, ECD, animal control officer, etc.).
- E. Nothing in this policy shall prohibit any officer from shooting a dangerous

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animal if circumstances reasonably dictate that a contingency plan has failed or becomes impractical.