

Bend Police Department Policies

<i>Subject</i> USE OF FORCE	<i>Effective Date</i> June 1, 2010 (Replaces September 9, 2005)	<i>Number</i> 5.01
<i>No. Pages</i> 6	Jeff Sale ✓ <i>Chief of Police</i>	

I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of deadly and non-deadly force.

II. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Because a police officer's duties often present situations in which the use of force, or even deadly force, may be necessary, the law and department policy authorize the use of such force in certain circumstances and require that the officer be armed while on regular duty. It is the policy of this department that use of force by its members be:

1. Justified under applicable state law;
2. Consistent with the more specific policies which follow;
3. Professionally accomplished according to approved training and with approved equipment;
4. In all cases employed to accomplish a legitimate tactical objective;
5. Limited to that degree and duration which the officer reasonably believes necessary to accomplish that objective; and
6. Applied by the officer and reviewed by the department based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, department policy, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision to use force.

Therefore, it is the policy of this department that police officers shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others.

III. DEFINITIONS

Deadly Force: Any use of force that is likely to cause death or serious bodily harm.

Non-Deadly Force: Any use of force other than that which is considered deadly force.

Continuum of Force: A description of the escalation and de-escalation of force used by police personnel in response to actions taken by a suspect or offender. It serves to describe the duty of an officer to use only reasonable force in response to the threat perceived by the officer.

IV. CONTINUUM OF FORCE

The Force Continuum is divided into six (6) specific component parts: 1) Threat Assessment, 2) Considerations of Force Escalation, 3) Levels of Resistance, 4) Levels of Force, 5) Justification, and 6) Control Techniques.

A. Threat Assessment

Every situation contains impact factors which define the threat assessment. The officer must continuously Assess, Plan, and Act. The term "threat" is used to describe any person capable of causing physical injury, serious physical injury or death. The threat must exhibit intent, means, and opportunity to justify the use of force.

B. Considerations of Force Escalation

The officer must select the most reasonable option relative to the situation, taking into account:

1. The totality of the circumstances.
2. Has the Threat had the opportunity to comply with your commands, if commands were possible and appropriate?
3. Is the current course of action achieving control or compliance?
4. Does the option selected warrant the risk of injury to yourself or the Threat?

C. Levels of Resistance

1. Static (passive). The Threat refused to comply with commands such as balking, becoming dead weight, or grasping a solid object.

2. Active. The Threat physically resists the officer's verbal commands and/or attempts to gain physical control by means such as pulling away, attempting to run, or powering through a control hold.
3. Ominous (assaultive). The Threat demonstrates the willingness to engage in combat through verbal challenge, threats and/or aggressive behavior.
4. Lethal. The Threat possesses both the intent and the means to inflict serious physical injury or death. The means can be with a weapon or empty handed. Example: The Threat uses a deadly weapon (handgun, knife, shank) or a dangerous weapon (lead pipe, broken bottle, tire iron) to inflict or attempt serious physical injury. Or, the Threat inflicts serious injury through superior size, strength or combative skill.

D. Levels of Force

An officer employing force against any person(s) may continue that application until the resistance or threat that caused the officer to take the action has been stopped or controlled.

The various levels of force and the circumstances under which they may be used, beginning with the least and elevating up the scale to deadly physical force, are illustrated in the following items.

1. Presence. The officer has an expectation that inappropriate behavior will stop as the officer properly identifies his police authority.
2. Verbal commands (tactical communications). The questioning of a subject, the attempt to persuade a subject, or giving a direct order to a subject.
3. Physical contact. Directing a subject by touch, use of physical restraints such as handcuffs, or controlling a subject with an escort hold.
4. Physical control. Use of chemical or organic weapons, pressure points and joint takedown techniques.
5. Serious physical control. Use of Taser or other electronic restraint device, focused blows and strikes, impact weapons, carotid restraint, or Police Canines.
6. Deadly force. Any force capable of causing serious physical injury or death.

E. Justification

Levels of force that may be applied vary and in most situations may be affected by the officer's training, experience, and the information and circumstances known to the officer at the time. When dealing with suspects and offenders, officers should attempt to

apply the Force Continuum, starting at the lowest appropriate level.

1. The mere presence of uniformed police personnel may be enough to control a suspect's actions. Should aggression or resistance escalate, officers should respond with the level of force appropriate to control the situation. If, during a situation, a suspect's resistance de-escalates, officers should decrease the level of force to an appropriate level to maintain control.
2. If control is lost, the officer may escalate to the level of force necessary to regain and maintain control, or consider disengaging as a tactical option. Some situations encountered may not be controllable with on-site assets. If further escalation of the Force Continuum would not be warranted, and continued contact may result in unacceptable risk to the officers or others, disengagement may be exercised as the most proper option until the situation can be properly addressed.
3. It is important to recognize that a situation may require an officer to start at the highest level, or to pass over levels due to suspect actions. By properly applying the Continuum of Force concept, officers will respond lawfully by using only the force necessary to control a situation.

F. Control Techniques

1. Verbal Command: In the majority of situations requiring police intervention, the officer's verbal command is the only force necessary. The officer's confidence, tone of voice and attitude, the clarity of directions, and choice of words are factors which bear on the effectiveness of a verbal command.
2. Hand Control: If the use of a verbal command is not effective or is not likely to be effective in controlling an individual, an officer may need to resort to the second level of force which is the use of hand control or an aerosol subject restraint. When using hands or aerosol subject restraint, the officer may use only that force necessary to control the individual. This force may range from a gentle but firm hold of a person's arm to the use of escort/control holds. Once a person complies, the force used is reduced in proportion to the compliance and is maintained at a level necessary to maintain control. If an officer is unable (or if the officer reasonably believes he will be unable) to control a subject by use of hand controls, the officer is justified in using a higher level of force; or, prior to making any physical contact, may opt to use an aerosol restraint where

there is reasonable likelihood of injury to the officer or any other person.

3. Chemical Irritants as Subject Restraint: The use of chemical irritants to subdue a person who is actively resisting arrest or is otherwise combative is authorized when resistance or threats of violence represents potential escalation of necessary force and officers reasonably fear potential injuries to the officers, the arrestee, or others present. The officer should consider that the officer utilizing chemical irritants may be affected to a greater degree than the person who is resisting.
4. Taser as a Subject Restraint: The use of Taser electronic restraint devices to subdue a person who is ominously resisting arrest or is otherwise combative is authorized when resistance or threats of violence represent potential escalation of necessary force and officers reasonably fear potential injuries to the officers, the arrestee, or others present.

The objective facts must indicate that the suspect poses an immediate threat to the officer or a member of the public.
5. Focused Blows and Strikes: The use of focused blows and strikes is proper to overcome force of resistance and to protect an officer or other against menacing behavior, or assault (bites, pushes, strikes, etc.), or attempts to assault.
6. Impact Weapons: The baton or asp is a defensive weapon designed for blocking, jabbing, and striking. The use of the baton or asp is proper to overcome force of resistance and to control.
7. Less –Lethal Weapon: Less-lethal weapons are used in situations where a serious physical control or higher level of force is justified and other means have not been effective or not practical.

Less-lethal projectiles are fired from a firearm or similar device. Less-lethal projectiles are designed to stun or incapacitate the body without causing serious physical injury or death. Less Lethal projectiles fired from a department issued weapon may be used when distance from the suspect is a safety consideration.
8. A carotid hold will not be applied to any person except in the protection of life, for the prevention of serious bodily injury, or in the apprehension of a person who the officer reasonably believes poses a serious danger to the officer or the public.
9. Deadly Physical Force: No action on the part of a law enforcement officer can have more

far-reaching consequences for the officer, department and community than the use of deadly physical force. Deadly physical force, therefore, can only be justified in the protection of the officer or another from serious physical injury or death, or to prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

V. USE OF REASONABLE PHYSICAL FORCE

Officers are permitted to use only that force which the officer reasonably believes is necessary to protect others or themselves from bodily harm or to affect any other lawful police action. The officer's authority to use physical force is provided for under ORS 161.235, and this policy is intended to conform to the provisions of this statute.

A. Non-Deadly Force

Every use of force carries the risk that some injury or even death may result, even though the type of force used is not categorized as "deadly" force. The goal in every use of non-deadly force is to gain control over the action of the person in order to take and maintain custody, overcome resistance to arrest, prevent the immediate commission of dangerous or criminal acts, or a combination of those objectives. Once the goal is achieved, further use of physical force must be discontinued. Until that goal is achieved, the level and extent of force used must be limited to that which is reasonably believed necessary by the officer to achieve the goal.

B. Deadly Force

When circumstances justify the use of deadly force, the unavoidable risk is that someone will be killed or seriously injured. Although an officer has no specific intent or desire to kill the person, death may be the result. Circumstances justifying the use of deadly force often happen quickly in situations of great physical and mental stress. It is rarely possible for the officer to direct the use of deadly force to a non-fatal area of the threat. The goal in using deadly force is neither to kill nor to wound without killing; it is simply and exclusively to incapacitate the threat to produce voluntary surrender or render that person incapable of continuing the dangerous conduct which justified the use of deadly force in the first place. Where deadly force is justified, an officer may continue its use until satisfied that the goal has been achieved, and then must discontinue its use. Officer safety and the safety of persons other than the Threat must be a continuing consideration to the officer using deadly force.

VI. GUIDELINES GOVERNING THE USE OF FORCE

While the use of force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances.

A. Reasonableness

The unnecessary or excessive use of force against any person is prohibited. What may be reasonable force under one set of circumstances may be unreasonable force under a different, though similar, set of circumstances.

B. Medical Treatment

Appropriate medical treatment will be provided by officers, emergency medical technicians, emergency medical staff and/or hospital personnel for any person injured as a result of an officer's use of force. The officer should observe and evaluate the injury to assure that the proper level of care is provided. Policy and procedures for treatment of Use of Force related injuries are further detailed in policy 5.02 V (B).

VII. GUIDELINES GOVERNING THE USE OF DEADLY FORCE

These guidelines re-state legal principles of justification for the use of force, which are represented by the Use of Force Continuum. Officers shall be directed by the following general guidelines:

A. Deadly Force Warning

Wherever practical under the circumstances, an officer shall give some warning before using deadly force.

B. Use of Deadly Force

Deadly force will be used only for the protection of life, the prevention of serious bodily injury, or to prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

C. Exhaust Reasonable Means

Reasonable and practical attempts for protection or apprehension will be exhausted before using deadly force. Reasonableness and practicality are to be judged based upon the circumstances which actually exist and are perceived by the officer at the time and place that deadly force is used.

D. Bystander Safety

The use of any weapon must be with proper regard for the safety of bystanders or other people in the immediate area.

E. Officer Discretion

Even when an officer may be permitted to use deadly force, the officer may refrain from doing so if the officer believes the use of such force is inadvisable under the particular circumstances.

F. Decision to Display Firearms

Any time an officer displays a firearm, and the circumstances are not thoroughly documented in the police report, the officer shall submit a memo outlining the circumstances to the Chief of Police via the Division Commander.

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer should, as soon as practical, secure or holster the firearm. These judgments are matters committed to the discretion of the officer in each instance. The officer must decide what actions are necessary in order to maintain control.

G. Justification on the Use of Deadly Force

An officer may not use deadly force simply to arrest or prevent the escape of persons committing a crime. The only exception is if any such felons present an immediate threat to the life of an officer or a citizen should their immediate apprehension not be made.

1. An officer is authorized to employ deadly force whenever it appears to the officer that there is no reasonable alternative under the following circumstances:
 - a. The officer reasonably believes that the use of deadly force is necessary to protect the officer or any other person from the use or threatened imminent use of deadly physical force;
 - b. The officer reasonably believes that the use of deadly physical force is necessary to protect the officer or any other person from death or serious physical injury; and
 - c. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life, should escape occur.

VIII. REPORTING THE USE OF FORCE

Whenever an officer must employ an amount of force capable of causing injury, a case number will be established and assigned in regard to the incident. If that force is employed in the course of affecting an arrest, overcoming resistance, or controlling a dangerous situation (assault), appropriate criminal allegations should be charged immediately.

A. Involved Officers

The officers involved in the use of force shall report the use of force in the narrative section of a written incident report and on the Bend Police Department "Use of Force Report" (see *Attachment 501 (1)*).

1. When medical treatment is required or requested;
2. Any time that physical control or greater is used as defined by the Department's Level of Force Continuum; or,
3. When an officer is directed to do so by a supervisor.

(The exception to the above will be any officer directly involved in a traumatic incident shall not write a report.)

The written incident report narrative shall describe the force used. The narrative shall also articulate the facts observed by the officer and the beliefs held by the officer that lead the officer to decide that the level of force used was justified. Weapons used, injuries, medical care received and details of the altercation shall be reported in detail. Witnesses shall be listed. If possible, a copy of medical records shall be attached.

The written incident report and the use of force report (*Attachment 501 (1)*) should be submitted by the end of the shift. The officer's supervisor shall review the reports and make any training or other recommendations on the back of the use of force report. The officer's supervisor shall make a copy of the written incident report and will attach it to the original use of force report. These will then be submitted to the Division Commander for review.

The Division Commander will then review the written incident report and the use of force report and will make any training or other recommendations on the back of the use of force report. The Division Commander will then submit these reports to the Chief of Police.

The Chief of Police will review the written incident report and the use of force report and make any training or other recommendations on the back of the use of force report. The Chief of Police, or designee, will collect the information from the use of force reports into a system where the information is available to designated Bend Police Department personnel. All training recommendations will be forwarded to the Training Division Commander.

B. Incident Review

1. Determinations will be made at each level of the chain of command, whether or not all departmental guidelines were met. Each level in the chain of command will recommend actions in regard to those officers involved in the use of force incident on the use of force

report or by attaching a separate memorandum.

2. The Chief of Police, based on the use of force report, may convene an investigation to examine the use of force incident and may take further action. The use of force review process will be completed as expeditiously as possible.
3. The Departmental Review shall be based upon those facts that are reasonably believed by the officer at the time, applying legal requirements, department policy and procedures, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.
4. An annual review will be conducted of all use of force incidents that resulted in a use of force report and an incident report forwarded through the chain of command. The purpose of the review will be to examine use of force incidents which may be useful in identifying department policy and/or training needs.

IX. WEAPONS AUTHORITY

The legal authority for the use and carry of weapons in the performance of duties for members of this department is derived from the Oregon Revised Statutes.

1. Dangerous weapons are those as defined by ORS 161.015, 1.
2. Deadly weapons are those defined by ORS 161.015, 2.
3. Peace Officer is defined by ORS 133.005, 3.
4. Arrest by a peace officer; procedure is defined in ORS 133.235.
5. Use of physical force in making an arrest or preventing an escape is defined in ORS 161.235.
6. Use of deadly physical force making an arrest or preventing an escape is defined in ORS 161.239.
7. "Reasonable belief" described; status of unlawful arrest is defined in ORS 161.245.
8. Carrying of concealed weapons is defined in ORS 166.240.
9. Unlawful possession of firearms is defined in ORS 166.250.
10. Persons not affected by ORS 166.250 as defined in ORS 166.260.
11. Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school is defined in ORS 166.370.

WARNING

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.

Policy Attachments: 501 (1) Use of Force Report

Approved by: _____	
Police _____	Chief of _____
Date _____	
Effective Date: _____	
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