

## Buncombe County Sheriff's Office

	<b>Policy Number:</b> 404	<b>Effective Date:</b> August 28 <sup>th</sup> , 2020
	<b>Subject/Title:</b> USE OF FORCE	
	<b>Rescinds:</b> Prior policy 3.18 having an effective date of October 20 <sup>th</sup> , 2007 and totaling 6 pages.	
	<b>Approved:</b> Sheriff Quentin Miller	

### 404.1 PURPOSE AND SCOPE

The type and amount of force reasonably deployed by any law enforcement officer in any given situation are highly fact-specific. Nonetheless, it is the intent of this policy to provide guidelines regarding the reasonable use of force when force is deployed by Buncombe County Sheriff's Office deputies. Each deputy in the Buncombe County Sheriff's Office is expected to use the guidelines in this policy to impartially respond to incidents in a lawful and reasonable manner.

Incidents in which a person consents to be searched, handcuffed, restrained, or escorted are not uses of force within the meaning of this policy and are separately addressed in the Searches, Handcuffing and Restraints, and Transporting policies, respectively.

#### 404.1.1 DEFINITIONS

Definitions for terms used in this policy include:

- Force: The application of physical tactics, techniques, or weapons, to another person.
- Deadly force: Force that is reasonably intended and expected to create a substantial likelihood of death or very serious injury.

### 404.2 POLICY

The Buncombe County Sheriff's Office respects the value of all human life without prejudice to any person.

The Buncombe County Sheriff's Office also recognizes that the use of force by law enforcement officers is an issue of critical concern to the Buncombe County community, both within and outside of the BCSO itself. Essential to maintaining this respect and the community's trust, is that deputies maintain an understanding of and respect for both their authority and the limitations of their authority. This maintenance is critical in situations where overcoming resistance becomes necessary while engaged in the performance of their duties.

The BCSO recognizes that one of the ultimate desires for every deputy encounter with a member of the public is to avoid or minimize injury, however, nothing in this policy mandates a deputy must retreat or be exposed to possible physical injury before using reasonable force. BCSO also recognizes its deputies are involved in a variety of different types of interactions with community members on a daily basis, some of which merit the use of reasonable force by deputies to carry out a deputy's law enforcement duties and to protect the public. Because of these factors and others, the BCSO recognizes that vesting deputies with the authority to use reasonable force and to protect the welfare of the public requires monitoring, evaluation, and a careful balancing of all involved interests. As such, the BCSO engages in a variety of training, monitoring, and outreach initiatives not fully described within this policy.

### **404.3 DUTY TO INTERCEDE**

If a deputy or a detention officer observes another deputy, detention officer, or employee using force clearly beyond that which is objectively reasonable under the circumstances existing at the time, the deputy or detention officer shall intercede to prevent the use of unreasonable force when in a position to do so. Intervention may initially be verbal but should progress to physical intervention when necessary to prevent physical harm. Thereafter the deputy or detention officer shall promptly report the incident to a supervisor as outlined in the Personnel Complaints policy.

If an employee, other than a deputy or detention officer, observes another employee including a deputy or detention officer, using force the employee reasonably believes to be excessive, the employee shall verbally intervene when in a position to do so and shall promptly report the incident to a deputy or detention officer who can respond to the scene. Thereafter the employee shall promptly report the incident to a supervisor as outlined in the Personnel Complaints policy. Deputies and detention officers responding to a scene at the request of an employee shall also report the incident as outlined in the Personnel Complaints policy.

### **404.4 EVALUATION OF REASONABLENESS**

The evaluation of whether the use of force by a deputy is or is not reasonable under any particular set of circumstances must take into account the situational realities facing deputies on the ground. More specifically, deputies are often required to make split-second decisions in rapidly evolving situations with limited information. These decisions can also be influenced by a lack of resources on scene necessitating situations where improvised methods and devices are also reasonable when utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

As a result of these factors, and others, situations resulting in the use of force are often not predictable by any policy, despite a policy's length or expertise in construction. For these reasons, deputies are trained to use and are expected to use well-reasoned discretion in determining the appropriate use of force, if any, for each particular incident.

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

The following factors should be considered in determining whether a deputy has used force in a reasonable manner.

1. The apparent need to obtain immediate physical control of the individual or to effect an immediate resolution of the situation, as reasonably perceived by the deputy at the time.
2. The behavior of the individual being engaged or confronted, as reasonably perceived by the deputy at the time, including but not limited to,
  - a. The nature and severity of any threat posed to others or to the deputies themselves, including but not limited to the seriousness of the suspected offense and/or the reason for contact with the individual.
  - b. Whether the individual is actively attempting to evade arrest, is fleeing, is attacking deputies or others, or is otherwise resisting the deputy or other law enforcement officers.
  - c. Knowledge of the individual from past encounters, including the individual's propensity for violence and/or flight, as reasonably known to the deputy at the time.
  - d. The effects of drugs or alcohol, if known or reasonably suspected by the deputy.
  - e. The individual's apparent mental state and mental capacity, as reasonably perceived by the deputy at the time.
  - f. The individual's ability to resist despite being restrained, and any degree to which the individual has already been effectively restrained, as reasonably perceived by the deputy at the time.
3. Subject factors, such as the deputy's reasonable perception of the individual's age, size, relative strength, injuries sustained, skill level, level of exhaustion or fatigue, weaponry, and the like.
4. Deputy factors, such as age, size, relative strength, injuries sustained, skill level, level of exhaustion or fatigue, weaponry, training, and experience level.
5. The number of deputies present, as reasonably perceived by the deputy at the time.
6. The number of suspects present, as reasonably perceived by the deputy at the time.
7. The number of bystanders or other suspects present who may be incidentally injured and/or who may attempt to engage the deputy, as reasonably perceived by the deputy at the time.
8. The availability and proximity of weapons including dangerous devices which may be used as weapons, as reasonably perceived by the deputy at the time.
9. The risk and reasonably foreseeable consequences of the individual's escape, as reasonably perceived by the deputy at the time.
10. The availability of other options including their potential or possible effectiveness, as reasonably perceived by the deputy at the time.
11. Any other exigent circumstances or relevant circumstances, as reasonably perceived by the deputy at the time.

## **404.5 USE OF FORCE GENERALLY**

Deputies and detention officers are authorized to use reasonable force when:

1. They reasonably perceive the use of force is necessary to accomplish a legitimate law enforcement purpose, for example, effecting an arrest or preventing an escape; and,

2. They limit the amount of force used to that which reasonably appears necessary given the facts and circumstances known to them at the time.

In determining whether force was reasonable, deputy and detention officer actions will also be judged from the objective perspective, i.e., what would a reasonable law enforcement officer similarly situated on the scene at the time of the incident have judged to be reasonable.

#### **404.5.1 USE OF FORCE IN DEFENSE OF OTHERS, DEFENSE OF SELF**

Deputies and detention officers may also use reasonable force when they are engaged in a law enforcement function and reasonably believe it is necessary:

1. To protect a third-party from what the deputy reasonably believes is the use or imminent use of physical force.
2. To protect themselves from what the deputy reasonably believes is the use or imminent use of physical force against themselves.

#### **404.5.2 PAIN COMPLIANCE TECHNIQUES**

Deputies and detention officers may use pain compliance techniques when the deputy reasonably perceives the following are true:

1. The individual has been given sufficient opportunity to comply, or giving the individual the opportunity to comply is impractical due to an immediate need to gain control of the individual.
2. The technique is one that is known to be effective in controlling an actively resisting individual in a similar situation.
3. The individual has the ability to comply with the orders given by the deputy.
4. The deputy has the ability to control the level of pain inflicted in the given situation.
5. The deputy has the ability to discontinue the use of the technique once compliance has been achieved.
6. The deputy has been trained in the proper use of the technique and has successfully completed any Office required training.

Carotid control holds and respiratory holds should not be used by deputies unless the use of deadly force is authorized.

#### **404.5.3 SUMMONING ASSISTANCE FROM PRIVATE PERSONS**

Deputies may seek assistance from private persons when it appears reasonably necessary to the deputy to effect an arrest or to prevent an escape from custody.

If a deputy summons a private citizen for assistance, the private citizen gains the same authority to act as the deputy.

### **404.6 USE OF DEADLY FORCE**

#### **404.6.1 USE OF DEADLY FORCE TO PROTECT SELF OR OTHERS**

Deputies are justified in using deadly force when the use of deadly force appears reasonably necessary to the deputy to:

1. Protect the deputy from what the deputy reasonably believes would be an imminent threat of serious bodily injury or death.
2. Protect another person from what the deputy reasonably believes would be an imminent threat of serious bodily injury or death.

#### **404.6.2 USE OF DEADLY FORCE TO PREVENT IMMINENT SERIOUS INJURY OR DEATH**

Deputies are also justified in using deadly force to stop a fleeing suspect when it appears reasonably necessary to the deputy to do so and both of the following are true:

1. The deputy has probable cause to believe the subject has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death;
2. The deputy reasonably believes there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended.

When feasible, deputies should provide a verbal warning prior to the use of deadly force.

#### **404.6.3 FACTORS FOR DETERMINING “IMMINENT”**

The term imminent can be difficult to accurately define and quantify. Nonetheless, it is clear that imminent does not mean the same thing as the term instantaneous, nor does imminent mean the same thing as the term immediate. In fact, as opposed to the terms immediate and instantaneous, an imminent danger within the meaning of that term may nonetheless exist even when a suspect is not at a particular moment pointing a weapon at another person or at a deputy. The following factors are offered as an aid for determining when an imminent danger may exist.

An imminent danger may exist if a deputy reasonably believes any one or more of the following is occurring:

1. An individual possesses a weapon and it is reasonable to believe the individual intends to use that weapon against another person or against the deputy.
2. An individual is attempting to access a weapon and it is reasonable to believe the individual intends to use a weapon against another person or the deputy.
3. The individual is capable of causing serious physical injury or death without the use of a weapon and it is reasonable to believe the individual intends to do so.
4. An individual is attempting to escape from custody by use of a deadly weapon, and the use of deadly force is necessary to prevent the individual's escape.
5. An individual is attempting to escape arrest by a law enforcement officer and by means of a deadly weapon.
6. An individual's statements or conduct indicates the individual presents an imminent threat of death or serious physical injury to others or to the deputy unless the individual is apprehended without delay.

#### **404.6.4 MOVING VEHICLES**

Deputies may discharge a firearm at a moving vehicle only when a deputy reasonably believes:

1. The driver of the vehicle is using the vehicle as a weapon against the deputy or others, and the risk of serious bodily injury or death to the deputy or to others exists and is imminent.
2. Deadly force, other than the vehicle, is being directed at the deputy or at others, and the risk of serious bodily injury or death to the deputy or to others exists and is imminent.
3. No other option is available to the deputy to stop an imminent threat of death or serious bodily injury to the deputy or to another person.

When reasonably possible, deputies should move out of the path of a vehicle rather than discharging their firearms at a vehicle, into a vehicle, or at any of a vehicle's occupants. Shots fired at or into moving vehicles are seldom effective in stopping vehicles.

Deputies should not attempt to disable a vehicle by shooting at any part of a vehicle.

#### **404.7 USE OF FORCE REPORTING**

##### **404.7.1 NOTIFICATION TO SUPERVISORS**

All deputies on the scene of a use of force incident are responsible for ensuring a supervisor is notified as soon as is practicable when:

1. The incident involved the use of an electronic control device (Taser), OC spray, or any other type of control device, e.g., a baton.
2. The incident involved the application of a restraint device other than handcuffs, shackles, or belly chains.
3. The incident involved the use of an improvised device, technique, or restraint device.
4. The incident resulted in visible injury, including loss of consciousness even if regained.
5. The incident involved striking or kicking or involved any strike to the head.
6. The individual/s involved complains of injury or continuing pain.
7. The incident otherwise would lead a reasonable deputy to believe the individual involved may have experienced more than momentary discomfort.
8. Any individual was provided with medical assistance by way of hospital transport or EMS consult.
9. Any individual known to any deputy on the scene alleges that any of the above has occurred.
10. The individual involved indicates a desire to pursue litigation.

##### **404.7.2 INVOLVED DEPUTY REPORTING**

Each deputy involved in a use of force incident shall document the incident as follows:

1. By use of an appropriate incident report/s completed before the end of their shifts.
2. By including in the appropriate incident report/s the observations of the involved deputies.

- a. These observations shall include but are not limited to, the reasons the involved deputy believed the use of force was reasonable under the circumstances existing at the time.
3. In a manner that is complete and accurate.

### **404.7.3 UNINVOLVED DEPUTY REPORTING**

Deputies who are not directly involved in a use of force incident but who witness a use of force incident shall complete additional report forms documenting their observations. Deputies shall provide these forms to the supervisor on duty before the end of their shifts.

The supervisor on duty shall collect these additional report forms from all deputies who witness a use of force incident and shall ensure they are submitted along with the incident reports completed by any involved deputies.

These uninvolved deputy report forms will be used to collect information to be used for purposes of training and analysis, resource allocation, and other related purposes.

## **404.8 MEDICAL ASSISTANCE**

### **404.8.1 MEDICAL ASSISTANCE GENERALLY**

Deputies should continuously monitor individuals who exhibit signs of physical distress until they can be medically assessed by either EMS or in a hospital setting.

The deputy on the scene who is responsible for coordinating with medical personnel, shall ensure medical personnel is advised:

1. That the individual was subjected to the use of force;
2. The type of force used.
3. Any other circumstances the deputy reasonably believes would pose medical or safety risks, e.g., the individual possessed narcotics, the individual exhibited impaired respiration, the individual engaged in a prolonged struggle, or the individual appears to have experienced extreme aggression or agitation.

If asked to do so by medical personnel, deputies should not sign any document or in any other way indicate that the BCSO will pay for medical care.

### **404.8.2 EXCITED DELIRIUM**

Deputies should treat individuals with signs of excited delirium as medical emergencies. Individuals with excited delirium may be at high-risk for experiencing sudden death. Signs of excited delirium may include:

- Violent behavior, combined with irrational behavior or irrational stated motivations, in the presence of profuse sweating;
- Extreme agitation;

- Strength beyond what an individual's physical characteristics would suggest is possible, e.g., ability to pick up or move very heavy objects, ability to jump or run beyond an individual's apparent conditioning, apparent inability to feel pain.
- The need to use multiple deputies, and/or engaged in a prolonged physical encounter to bring the individual under physical control.

Deputies who reasonably suspect excited delirium should request medical assistance as soon as reasonably practicable. When practicable, deputies should also encourage medical personnel to stage away until the individual is under physical control.

### **404.8.3 REFUSAL OF MEDICAL ASSISTANCE**

If any individual refuses medical assessment or medical attention, deputies shall fully document that refusal in all related reports, and if possible, should ensure the refusal is witnessed and documented by medical personnel.

This documentation should include noting the refusal:

1. On all written/type-written reports;
2. By obtaining the name of the medical personnel to whom refusal was made and including that in all reports; and,
3. Via use of the deputy's body camera, when practicable.

### **404.8.4 MEDICAL ASSISTANCE PRIOR TO PRESENTATION TO THE MAGISTRATE**

Deputies shall obtain medical assistance for any person, prior to presenting that person to a magistrate for either booking or release, who:

1. Has sustained a visible injury.
2. Has lost consciousness, even if regained.
3. Expresses a complaint of injury or of continuing pain.
4. Exhibits other signs of physical distress.

## **404.9 SUPERVISOR RESPONSIBILITIES**

Whether responding to a scene directly or when otherwise assigned as the supervisor to an incident in which force has been used or is alleged to have been used, supervisors should:

1. Ensure that all individuals reasonably presenting with injury or distress as set forth above are medically assessed and treated.
2. Obtain photographs of the individuals involved to accompany all reports in RMS. These photographs should include, but are not limited to, general photographs and photographs of areas of visible injury or reported pain, even if no visible injury is present.
3. Obtain basic incident information from involved deputies.
4. Identify any witnesses not already identified and ensure relevant statements, if any, are obtained.
5. Review and approve all related reports.

6. Determine if there is an injury which will result in hospitalization or death, or if any individual is indicating a desire to pursue litigation, and if so, activate the appropriate notification procedures.
7. Determine whether a need for further investigation, including but not limited to the notification of the North Carolina State Bureau of Investigation exists and if so, notify the appropriate officials.
8. Complete a supervisor's report documenting findings.

#### **404.9.1                    SHIFT AND SECTION SUPERVISOR RESPONSIBILITIES**

Shift and Section Supervisors shall review use of force incident reports arising from their supervisees. Review by the Shift and Section Supervisors should include review for policy compliance and Section training needs. Section Supervisors are responsible for transmitting any observed training needs to the Section Supervisor over Training.

#### **404.10                    NOTIFICATION TO THE NC SBI**

Shift supervisors are responsible for notifying the Duty Officer for their Division in the case of any incident involving the use of force where death or life-threatening injuries reasonably appear to have occurred. Shift supervisors may also recommend to the Duty Officer notification be made to the SBI based on other circumstances or factors.

The Duty Officer shall present the Shift Supervisor's recommendation, as well as the Duty Officer's recommendation if it differs, to the appropriate individuals as set forth in the Emergency Notifications policy.

#### **404.11                    TRAINING**

Deputies will undergo training on an annual basis regarding this policy.

**END OF POLICY DOCUMENT**