



Office of Law Enforcement Oversight (OLEO)

January 12, 2024

TO: Patti Cole-Tindall, Sheriff, King County Sheriff's Office (Sheriff's Office)

CC: Jesse Anderson, Undersheriff, Sheriff's Office
Jonathan Hoffman, Professional Standards Manager, Sheriff's Office

FR: Tamer Abouzeid, Director, Office of Law Enforcement Oversight (OLEO)

RE: Use of Force, General Orders Manual (GOM) 6.00.000, 6.01.000 Investigation/Reporting Use of Force & Serious Incidents, and 6.03.000 Less Lethal Weapons

In accordance with state law, the Sheriff's Office updated the agency's use of force and related policies to align with the Washington State Attorney General's Office (AGO) Model Use of Force Policy in late 2022.¹ OLEO reviewed the changes to GOM chapters 6.00.000 Use of Force, 6.01.000 Investigation/Reporting Use of Force, and 6.03.000 Less Lethal Weapons and sent preliminary recommendations in February 2023 (the initial recommendations as sent to the Sheriff's Office are included below).

The Sheriff's Office took steps to implement several of OLEO's recommendations, and we appreciate those changes; OLEO also believes there is additional room for improvement to fully reflect best practices set by the AGO. This memo reissues outstanding recommendations from OLEO's preliminary review of the draft use of force policy and issues new recommendations based on the latest revisions from the Sheriff's Office. Please note, OLEO is reviewing GOM 6.01.000 Investigating/Reporting Use of Force separately and additional recommendations on this chapter are forthcoming.

Reissued Recommendations

The following are outstanding recommendations that OLEO initially made in February 2023, but that the Sheriff's Office did not implement in their policy published in November 2023.

RECOMMENDATION 1.

Remove the section on *Graham* factors from GOM 6.00.000 and adopt the AGO model policy's language on standards of necessary, proportional, and reasonable.

OLEO is reissuing the recommendation to clarify policy language around the use of force by removing the section on *Graham* factors and replacing it with the AGO's model policy language

¹ Washington State Office of the Attorney General, "Model Use of Force Policy," July 1, 2022, https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/UOF%20Model%20Policies_070122_FINAL_0.pdf. See also The Sheriff's Office attestation of compliance letter, "Law Enforcement Use of Force and De-escalation Policy Submission," December 1, 2022, <https://agportal-s3bucket.s3.amazonaws.com/useofforcepolicy/UseOfForcePolicy103.pdf>.

on physical force. While we appreciate the Sheriff’s Office position that *Graham* factors are a comfortable and familiar framework for members, given the new standards set by the state, OLEO believes that the discussion of *Graham* factors is more appropriately communicated in training materials as opposed to within the agency’s formal policy. OLEO recognizes the weight and pressure placed on officers to make decisions regarding use of force and our recommendations aim to support a clear and streamlined use of force policy that allows officers and community members to easily understand and apply the policy. The following language from the AGO that should replace the section on *Graham* factors more accurately communicates the standards of necessity, reasonableness, and proportionality, which are now used to evaluate force decisions.

“For physical force to be **necessary**, a **reasonably** effective alternative does not appear to exist, and the use of force must be a **reasonable** and **proportional** response to effect the legal purpose intended or to protect against the threat posed to the officer or others.”

For clarity, OLEO recommends adding: “For detail on the standards of reasonableness and proportionality and how they will be evaluated, refer to the definitions of *reasonable* and *proportional* above.”

RECOMMENDATION 2.

Adopt model policy’s language on “Identification, Warning & Opportunity to Comply Prior to the Use of Physical Force.”

The Sheriff’s Office revisions partially align with OLEO’s initial recommendation to move the language on “identification, warning, and opportunity to comply” to its own subsection. However, OLEO maintains its position that the parallel language of the AGO model policy is clearer and captures additional aspects of warnings the Sheriff’s Office current language does not address. Additionally, the language from the model policy would align with recommendations OLEO made regarding improvements to the Sheriff’s Office Using Interpreters policy by instructing members to be mindful of the potential presence of a language barrier or disability when issuing warnings or commands. The language OLEO recommended in the March 20, 2023, memo goes a step further, and calls for members to “attempt to identify other means by which they can issue a warning if feasible.”²

<i>Sheriff’s Office Current Policy Language</i>	<i>AGO Model Policy Language</i>
If safe and feasible, members shall identify themselves as a police officer or sheriff’s deputy, issue a verbal warning, and give the person reasonable opportunity to comply before discharging their firearm or using other force options.	When safe and feasible, prior to the use of physical force, officers shall: (1) Identify themselves as law enforcement officers; (2) Attempt to determine whether the person has a special need, mental condition, physical limitation, developmental disability, language barrier, or other factor that may impact their ability to understand and comply with officer commands; (3) Provide

² See Recommendation 8. Tamer Abouzeid, “Using Interpreters, General Orders Manual (GOM) 16.04.000 and GOM 6.00.000,” March 20, 2023, https://kingcounty.gov/~media/independent/law-enforcement-oversight/policy%20recommendations/2023-03-20_Using_Interpreters.ashx?la=en.

clear instructions and warnings; (4) Warn a person that physical force will be used unless their resistance ceases; and (5) Give the person a reasonable opportunity to comply with the warning that physical force may be used.

RECOMMENDATION 3.

Remove the provision allowing use of physical force to prevent a person from fleeing, or, at the very least, adopt the previous provision allowing deputies to use physical force to prevent a person from fleeing only when specific crimes are suspected.

OLEO is reissuing our recommendation for the Sheriff's Office to further limit situations allowing officers to rely on broad discretion to use force in otherwise non-violent situations. As noted in the initial recommendations and previous memo on this subject,³ OLEO recognizes that current law makes use of force on a fleeing person permissible.⁴ However, lawmakers made clear that local authorities may adopt additional restrictions on the use of force and deadly force.⁵ Based on community concerns of excessive force, OLEO maintains its position that while it is legally permissible, the risks of use of force in a temporary investigative stop far outweigh the benefits and have potential to result in serious injury or death. At the very least, OLEO urges the Sheriff's Office to revert to language as previously written which explicitly restricts use of force during temporary investigative stops to specific and limited circumstances.

New Recommendations

The following recommendations have not previously been shared with the Sheriff's Office.

Recommendations 4 and 6 are based on new language the Sheriff's Office had added in the policies effective November 2023.

RECOMMENDATION 4.

Revert "imminent" to "immediate" in GOM 6.03.030(8) language on use of Taser Energy Weapon (EW)⁶ on handcuffed persons.

The November 2023 update to 6.03.030(8) now reads: "Members should not use the Taser EW on handcuffed persons, obviously pregnant females, elderly persons, young children, or visibly frail persons, unless these persons pose an imminent threat of bodily injury to themselves, deputies, or others and/or are actively resisting arrest and other more appropriate force options are not available." OLEO agrees with changing "are discouraged from using" Taser EW on handcuffed persons—which was in the July 2023 version of the policy—to "should not use." However, in the November version the Sheriff's Office included an additional change of "immediate threat" to "imminent threat" which is again a deviation from the AGO's model

³ Tamer Abouzeid, "Use of Force Policy, GOM 6.00.000," November 7, 2022, https://kingcounty.gov/~media/independent/law-enforcement-oversight/policy%20recommendations/2022-11-07_UOF.ashx?la=en.

⁴ See RCW 10.120.020 [2022 c 80 §3].

⁵ RCW 10.120.020 (5)d. [2022 c 80 §3]

⁶ In the most recent policy revisions the Sheriff's Office updated all reference of conducted energy weapons to Taser EW or Taser Energy Weapon; OLEO's recommendations mirror this change, though prior recommendations addressing Taser EW, Taser CEW, Taser, Conducted Energy Weapon, or CEW are all intended to reference the same tool.

policy. The model policy reads: “An ECW [Electronic Control Weapon also known as Conducted Energy Weapon] should not be used...On a person who is handcuffed or otherwise restrained unless deadly force is authorized.” According to state law and the Sheriff’s Office own policy, deadly force should only be used “when necessary to protect against an immediate threat of serious physical injury or death.” The distinction between “immediate” and “imminent” once again broadens the Sheriff’s Office proposed policy on Taser EW use beyond the AGO’s guidance.

RECOMMENDATION 5.

Define Less Lethal Weapons in GOM 6.00.000 and update RCW reference in GOM 6.03.000.

GOM 6.00.000 defines “less lethal alternatives,” but throughout the section, references to “less lethal weapons.” There is no explicit definition of what is considered a less lethal weapon either in GOM 6.00.000 or 6.03.000. For clarity, OLEO recommends adding a definition specifying department-approved less lethal weapons within GOM 6.00.000 Use of Force.

Additionally, the reference to RCW 9A.16.010 definition of “necessary” within the GOM 6.03.005 Less Lethal Weapons policy statement should be updated to RCW 10.120.010 which more accurately reflects the most recent Sheriff’s Office use of force policy.

RECOMMENDATION 6.

Revert back to previous policy language on show of force and clarify that pointing and aiming of less lethal weapons other than Taser EW should be considered pointing and aiming, not just a show of force.

In the most recent version of GOM 6.01.000 Investigation/Reporting of Use of Force and Serious Incidents (November 2023), the Sheriff’s Office downgraded pointing and aiming of less lethal weapons to be considered a show of force. Pointing and aiming is defined as “intentionally directing the muzzle of a firearm at a person,” and instructs that “Pointing or aiming a firearm is considered a level II [intermediate] use of force for reporting purposes.” Whereas a show of force, which is the “drawing or displaying of a pistol, rifle, or less lethal weapon, for the purpose of establishing constructive authority,” is considered a level I use of force and is documented with a CAD⁷ entry, a separate data repository from other use of force reports. A use of force report is required to be reviewed by supervisors, whereas a CAD entry is not automatically evaluated. OLEO’s position is that pointing and aiming of less lethal weapons, other than Taser EW, should be considered pointing and aiming and reported as such. Downgrading pointing and aiming of less lethal weapons like projectile impact weapons to a show of force unnecessarily conflates the two actions and undermines efforts for transparency and data collection, especially considering that less lethal weapons (other than Taser EW) are not always easily identifiable as such to community members. By reverting to requiring a use of force report for pointing and aiming of less lethal weapons (other than Taser EW) the Sheriff’s Office can more reliably collect data to examine trends in the use of less lethal weapons.

⁷ CAD stands for computer-aided dispatch, a data-entry system used to record information about calls for service.

Initial OLEO Recommendations Sent to The Sheriff's Office February 2023

OLEO sent the following recommendations in February 2023 based on the Sheriff's Office proposed revisions to incorporate the AGO model policy. The only change is noting which of these recommendations were or were not adopted in the Sheriff's Office revisions published this November.

Initial Recommendation 1. Adopt the model policy's language regarding prohibited use of Taser CEWs on handcuffed persons.

PARTIALLY ADOPTED

KCSO's revised Taser CEW GOM 6.03.030 (8) is not in compliance with the Attorney General's Model Use of Force Policy (model policy). The model policy stipulates that Conducted Energy Weapon (CEW) "should not be used... (b) on a person who is handcuffed or otherwise restrained unless deadly force is authorized." However, the revised KCSO policy stops short of restricting use of CEWs on handcuffed persons, stating:

"Members are *discouraged* from using the Taser CEW on handcuffed persons, obviously pregnant females, elderly persons, young children, or visibly frail persons, unless these persons pose an immediate threat to the safety of themselves, deputies, or others and/or are actively resisting arrest and other more appropriate force options are not available." (*Emphasis added*)

Initial Recommendation 2. Clarify Duty to Intervene and Duty to Report Wrongdoing by moving Duty to Intervene (3.00.035) to GOM 6.00.000 Use of Force and reinstate previous policy language in Chapter 3 which broadens scope of duty to intervene to include misconduct.

ADOPTED

The revised GOM Chapter 6 does not reference a Duty to Intervene. We believe it is important to emphasize the duty to intervene within the use of force policy itself, which can easily be accomplished by moving the existing language on Unlawful Use of Force (Duty to Intervene) from Chapter 3. Additionally, KCSO should adopt its previous policy language (see linked 3.03.015⁸) which defines a duty to intervene in *any* misconduct as opposed to only instances of excessive force. We believe this language on misconduct and duty to report appropriately remains in Chapter 3.

Initial Recommendation 3. Remove the section on Graham factors from GOM 6.00.000 and adopt model policy language on standards of necessary, proportional, and reasonable.

NOT ADOPTED

State law and the Attorney General's Model Policy set a new floor for proper use of physical force:

"For physical force to be necessary, a reasonably effective alternative does not appear to exist and the use of force must be a reasonable and proportional response to effect

⁸ This document is available upon request by email: oleo@kingcounty.gov.

the legal purpose intended or to protect against the threat posed to the officer or others.”

By outlining Graham factors, KCSO’s policy may confuse deputies by implying a different standard. As revised, KCSO’s policy which places the proportionality and reasonableness standards in the definitions section of the policy does not adequately communicate that reasonableness and proportionality are standards by which uses of force will be measured, not just principles to consider in determining the type of force to use.

Initial Recommendation 4. Adopt model policy’s language on “Identification, Warning & Opportunity to Comply Prior to the Use of Physical Force” in its own subsection.

PARTIALLY ADOPTED

The revised policy stipulates a requirement to issue a verbal warning *only* under the Deadly Force heading:

“If safe and feasible, members shall identify themselves as a police officer or sheriff’s deputy, issue a verbal warning, and give the person reasonable opportunity to comply before discharging their firearm or using other force options.”

This placement implies that it applies only to deadly force, and we believe it does not sufficiently communicate the requirement to provide identification, warning, and opportunity to comply prior to *any* use of physical force. We recommend adopting the language from the model policy as its own subsection.

Initial Recommendation 5. Remove the provision allowing use of physical force to prevent a person from fleeing, or, at the very least, adopt the previous provision allowing deputies to use physical force to prevent a person from fleeing only when specific crimes are suspected.

NOT ADOPTED

In addition, our previous memo sent on November 7, 2022 recommended that the Sheriff’s Office should strengthen provisions beyond the model policy to align with community concerns surrounding excessive force. However, the revised Sheriff’s Office policy preserves the policy that a deputy may use physical force when necessary to:

“...prevent a person from fleeing, or stop a person who is actively fleeing, a lawful temporary investigative detention (Terry stop), provided that the person has been given notice that he or she is being detained and is not free to leave”⁹

OLEO’s position remains that the inherent risks of using force on subjects for merely fleeing far outweigh the benefits, particularly when the subjects were stopped for suspicion of low-level, non-violent offenses.

As stated in our previous memo: In these cases, the subjects do not pose a significant threat to nearby parties, the deputies who stopped them, nor the community at large. The threat and use of force during these incidents escalates a non-violent situation into one that has potential to

⁹ OLEO is aware that this provision is made legal through RCW 10.120.020 [2022 c 80 §3].

result in serious injury. Additionally, permitting deputies to use force on subjects fleeing a stop for low-level, non-violent offenses allows for a wide range of discretion and permits potential biases to fuel stops that could result in otherwise preventable uses of force.