



TACTICAL CONFLICT SOLUTIONS

Professional Training for High Risk Situations

AIDE MEMOIR

This Aide Memoir is a condensed compilation of Western Australia Statute Laws and Procedural requirements that in our consideration is essential knowledge and has direct impact upon a Security Officer in execution of his/her duties. It is incumbent upon the individual to be conversant with the relevant Act & Regulations and it is recommended that you visit the WA Government authorized publishers at

www.slp.wa.gov.au where current laws can be viewed in their entirety and downloaded.

LEGISLATIVE CONSIDERATIONS AND USE OF FORCE

It is essential to have an understanding of the term “reasonable force”. Reasonable force is defined in Butterworths Legal Dictionary as “that degree of force, which is not excessive but fair, proper, and reasonably necessary in the circumstances”.

To determine whether or not force used was reasonable and necessary is best determined by, “would it be reasonable for a person with the characteristics of an ordinary man, placed in the same situation, to do the same thing?” It is an objective standard set by which a persons actions can be measured so that only sufficient force to overcome the threat is used.

Criminal Code

Authority to use force

Section 231 – Western Australia Criminal Code

Force used in executing process or in arrest.

It is lawful for a person engaged in the lawful execution of any sentence, process, warrant, or in making any arrest, and any person assisting, to use force as may be reasonably necessary to overcome any force used in resisting such execution or arrest.

It should be noted that this section allows for reasonable force to be used to overcome resistance. It does not allow the Police Officer or person making the arrest to become the aggressor.

Use of Force to Prevent Escape when Attempting to Arrest

Section 233 – Western Australia Criminal Code

Use of Force Before Arrest

(1) When any person is proceeding lawfully to arrest with or without warrant, another person, and the person sought to be arrested takes flight, or appears to be about to take flight, in order to avoid arrest, it is lawful for the person seeking to make arrest, and for any person lawfully assisting that person, to use such force as may be reasonably necessary to prevent escape of the person sought to be arrested.

(2) Subsection (1) does not authorise the use of force that is intended or is likely to cause death or grievous bodily harm unless-

- a) the person who uses that force is a Police Officer or a person assisting a Police Officer;
- b) the person sought to be arrested is reasonably suspected of having committed an offence punishable with imprisonment for life; and

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c) the person sought to be arrested is called on to surrender before that force is used.

Section 233(1) of the Criminal Code provides that:

- 1/. When proceeding to lawfully arrest;
- 2/. And the person takes to, or appears to be about to take flight;
- 3/. Reasonable force may be used to prevent his escape. (Not force likely to cause death or grievous bodily harm).

Section 233(2) provides that:

Force, which is likely to cause death or grievous bodily harm, may be used if;

- (a) The force is used by a Police Officer or person assisting;
- (b) The person is reasonably suspected of committing an offence punishable with life imprisonment; and
- (c) He is called upon to surrender first.

All three of the above elements must be satisfied before this force would be justified.

This section covers situations where you are attempting to arrest the person and he escapes or appears to be about to take flight.

**Use of Force to Prevent Escape After Person Arrested
Section 235 – Western Australia Criminal Code**

Use of Force After Arrest

(1) When any person has lawfully arrested another person for any offence, it is lawful for him to use such force as may be reasonably necessary to prevent the escape or rescue of the person arrested.

(2) Subsection (1) does not authorise the use of force that is intended or is likely to cause death or grievous bodily harm unless the offence referred to in that subsection is punishable with imprisonment for 14 years or upwards, with or without any other punishment.

Section 235(1) of the Criminal Code allows for the following;

1. When a person is lawfully arrested.
2. Reasonable force may be used to prevent escape. (No death or grievous bodily harm).

Section 235(2) of the Criminal Code provides that;

Force which is likely to cause death or grievous bodily harm may be used if;

1. The person has been arrested for an offence punishable by 14 years imprisonment or more, with or without any other punishment.

This section covers situation where you have already arrested the offender and reasonable force is required to prevent escape.

Breach of the peace

**Section 237 - Western Australia Criminal Code
(Repealed by No 59 of 2006 s22) Preventing a breach of the peace**

Use of force to prevent commission of an offence

**Section 243 – Western Australia Criminal Code
Prevention of offences for which an offender may be arrested without warrant: Prevention of violence by persons of unsound mind.**

Use of reasonable and necessary force to prevent commission of an offence for which the offender can be arrested without warrant.

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Use of Force in Defence

Section 248 – Western Australia Criminal Code

Self Defence

- (1) In this section –
Harmful act means an act that is an element of an offence under this part other than chapter XXXV
- (2) a harmful act done by a person is lawful if the act is done in self defence under subsection (4).
- (3) If –
- (a) a person unlawfully kills another person in circumstances which, but for this section, would constitute murder; and
- (b) the person's act that causes the other persons death would be an act done in self defence under subsection (4) but for the fact that the act is not a reasonable response by the person in the circumstances as the person believes them to be, the person is guilty of manslaughter and not murder.
- (4) A person's harmful act is done in self defence if –
- (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
- (b) the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
- (c) there are reasonable grounds for those beliefs.
- (5) A person's harmful act is not done in self defence if it is done to defend the person or another person from a harmful act that is lawful
- (6) For the purposes of subsection (5), a harmful act is not lawful merely because the person doing it is not criminally responsible for it.

Assault Unlawful Unless Authorised, Justified or Excused By Law

Section 223 – Western Australia Criminal Code

An assault is unlawful and constitutes an offence unless it is authorised or justified by law. The application of force by one person to the person of another may be unlawful, although it is done with the consent of that other person.

Excessive Force

Section 260 – Western Australia Criminal Code

In any case in which the use of force by one person to another is lawful, the use of more force than is justified by law under the circumstances is unlawful.

The key elements that must be satisfied when using force of any kind are;

- Authorisation
- Justification
- Appropriate, Proportionate and Reasonable
- Considering all the relevant facts and circumstances at the time

The use of force should only be considered when all other appropriate options have been considered. And, then only the minimum appropriate force should be used.

Force should only be used if there is an apparent and present ability of the threat being successful.

266. Duty of persons in charge of dangerous things

(1) In this section —
anything includes a source of ignition and a fire.

(2) It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

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Criminal Investigation Act 2006

Section 3. Interpretation

“basic search” of a person, means a search that complies with section 63;

“frisk search” a person, means to quickly and methodically run the hands over the outside of the person’s clothing;

“offence” means any offence under a written law;

“reasonably suspects” has the meaning given by section 4;

Section 4. “Reasonably suspects”, meaning of

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

Part 2 — Ancillary provisions about exercising powers

Section 14. When powers may be exercised

The powers in this Act may be exercised at any time of the day or night, unless it is expressly provided otherwise.

Section 15. Assistance to exercise powers

(1) A person who may exercise a power in this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

(2) A person so authorised may exercise the power or assist the other to exercise the power, as the case requires.

(3) Whether requested to do so or not, a person may assist another person to exercise a power in this Act if the person reasonably suspects that the other person —

(a) is lawfully entitled to exercise the power; and

(b) needs assistance for the purpose of doing so.

(4) A person who under this section is authorised by another to exercise a power, or is assisting another to exercise a power, must obey any lawful and reasonable directions of the other person when exercising or assisting to exercise the power.

(5) If a person, acting under this section, exercises a power in this Act having been authorised by another to do so, or assists another to exercise a power in this Act, any enactment that protects the person or the State from liability for the person’s acts or omissions is to be taken to operate as if those acts or omissions included the person’s acts or omissions when acting under this section.

Section 16. Force, use of when exercising powers

(1) When exercising a power in this Act, a person may use any force against any person or thing that it is reasonably necessary to use in the circumstances —

(a) to exercise the power; and

(b) to overcome any resistance to exercising the power that is offered, or that the person exercising the power reasonably suspects will be offered, by any person.

(2) If under subsection (1) a person uses force, the force may be such as causes damage to the property of another person.

(3) Any use of force under subsection (1) against a person is subject to *The Criminal Code Chapter XXVI*.

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Part 3 — Citizens' powers

Section 24. Prevention of offences and violence

- (1) Any person (the "citizen") may use any force that is reasonably necessary in the circumstances to prevent —
- (a) the continuance of an act being done by a person in his or her presence —
 - (i) that involves the use of violence against a person;
 - (ii) that the citizen reasonably suspects will cause a person to use violence against another person; or
 - (iii) that the citizen reasonably suspects will cause a person to fear violence will be used by a person against another person;
 - (b) an act by a person that the citizen reasonably suspects is just about to be done in his or her presence that is likely -
 - (i) to involve the use of violence against a person;
 - (ii) to cause a person to use violence against another person; or
 - (iii) to cause a person to fear violence will be used by a person against another person;
 - (c) any other breach of the peace by a person;
 - (d) the commission of an offence; or
 - (e) the doing of any act that the citizen reasonably suspects will be done in the course of committing an offence.
- (2) Subsection (1) does not authorise the entry of any place or vehicle.
- (3) If a person reasonably suspects that the unlawful killing of a person is occurring in a place or vehicle, the person, without a warrant, may enter it in order to prevent the unlawful killing.

Section 25. Citizen's arrest

- (1) In this section — "arrestable offence" means an offence the statutory penalty for which is or includes imprisonment.
- (2) Any person may arrest another person (the "suspect") if he or she reasonably suspects that the suspect has committed or is committing an arrestable offence.
- (3) Any person may arrest another person (the "suspect") who is doing or about to do an act that the person is entitled to prevent under section 24(1) (a), (b) or (c).
- (4) A person is not entitled, by reason only of subsection (2) or (3), to enter a place or vehicle where the person suspects the suspect is.
- (5) A person who arrests a suspect under subsection (2) or (3) must as soon as practicable —
- (a) arrange for a police officer to attend; or
 - (b) take the suspect and any thing relevant to the offence to a police officer.
- (6) For the purpose of complying with subsection (5), a person may detain the suspect until the police officer attends or until the suspect is taken to a police officer.
- (7) When a police officer attends or the suspect is taken to a police officer —
- (a) the officer may arrest the suspect if, under section 128 or an arrest warrant, the officer is authorised to arrest the suspect; but
 - (b) if the officer does not arrest the suspect, the suspect ceases to be under arrest.

Part 8 — Searching people

Division 1 — Preliminary

Section 62. Interpretation

A term used in this Part has the meaning given to it by section 73 which applies with any necessary changes.

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Section 63. “Basic search”, meaning of

- (1) A person who is authorised by this Act to do a basic search of a person may do any or all of the following —
- (a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;
 - (b) remove the person’s headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not his or her inner clothing or underwear, in order to facilitate a frisk search;
 - (c) frisk search the person;
 - (d) search any article removed under paragraph (b).
- (2) A person who is authorised by this Act to do a basic search of a person is not, unless authorised to do so under Part 9, authorised to also do a forensic procedure on the person being searched.

Section 65. Searches, ancillary powers for

- (1) This section operates if a person (the “searcher”) is authorised by this Act to do a basic search or a strip search of a person.
- (2) In the case of a basic search or a strip search, the searcher may do any or all of the following for the purposes of doing the search —
- (a) stop and detain the person for a reasonable period;
 - (b) search any thing being carried by or under the immediate control of the person;
 - (c) order the person to remove any thing that might injure the searcher when doing the search from any article that the person is wearing;
 - (d) order the person to do anything reasonable to facilitate the exercise by the searcher of any power in this section, or in section 63 or 64, as the case requires.
- (3) In the case of a basic search, the searcher may also photograph part or all of the search while it is being done.
- (4) In the case of a strip search, the searcher may also —
- (a) order the person to accompany the searcher to a place where the search can be done in accordance with section 72 (3);
 - (b) photograph any thing that may be lawfully seized in the position it is found on the person’s body.
- (5) A person who is detained under subsection (2)(a) when he or she is not under arrest is to be taken to be in lawful custody.

Section 66. How searches must be done

A basic search or a strip search that under this Act may be done on a person must be done in accordance with Division 3.

Division 2 — General powers to search people

Section 67. Warrant not required. The powers in this Division may be exercised without a warrant.

Division 3 — How searches must be done

Section 70. Basic search or strip search, rules for doing

- (1) This section operates if a person (the “searcher”) is authorised by this Act to do a basic search or a strip search of a person.
- (2) Before the searcher does a basic search or a strip search of the person the searcher must, if reasonably practicable —
- (a) identify himself or herself to the person;
 - (b) inform the person of the reason for the search;
 - (c) request the person to consent to the search; and
 - (d) if the person does not consent to the search or withdraws his or her consent, inform the person that it is an offence to obstruct the searcher doing the search.

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- (3) If a basic search or a strip search is done of a person —
- (a) it must be done as quickly as is reasonably practicable;
 - (b) it must not be any more intrusive than is reasonably necessary in the circumstances;
 - (c) the searcher, if he or she proposes to remove any article that the person is wearing, must tell the person why it is considered necessary to do so;
 - (d) the person must be allowed to dress as soon as it is finished;
 - (e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances; and
 - (f) the person must not be questioned while it is being done about any offence that he or she is suspected of having committed.

Section 71. Basic search, additional rules for doing

(1) This section is in addition to section 70 and operates if a person (the “searcher”) is authorised by this Act to do a basic search of a person.

(2) The searcher must, if practicable, be a person of the same gender as the person being searched, unless the searcher is a doctor or a nurse.

Legislative Amendments

It is the responsibility of the Employer and the Employee to maintain knowledge of legislative and regulatory requirements. Ignorance of the Law is not a Defence.

WA Police Act. Section 49 *Repealed by No59 of 2006 s64*

WA Criminal Code. Section 564 *Repealed by No 59 of 2006 s26*

WA Criminal Code. Sections 249 & 250 *Repealed by No 29 of 2008 s8*

Criminal Investigation Act. All persons should make themselves conversant with this NEW legislation, in particular; Sections 14 to 16 relating to Exercising powers under the Act and Use of Force.
 Sections 24 & 25 relating to Prevention of Violence and Citizens Powers to Arrest.
 Sections 63 & 65 relating to Powers to Search a person.
 Sections 70 & 71 relating to Rules of Searching a person.

Less Lethal Force is described as

Highly unlikely to cause serious injury and/or death

Less Lethal Force options, examples are;

- Empty Hand Techniques
- Handcuffs
- Pepper Spray
- Baton

Less Lethal Force is used to

- To stop or incapacitate the ability of the Subject to continue being a threat
- To remove the delivery system/method of the Subject
- To minimise the injury caused to the Subject and Officer
- To gain control of the Subject

Lethal Force is described as

Highly likely to cause serious injury and/or death

The intention of using Lethal Force is

- To Stop the threat

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Excessive force can be described as

- Any force that is not needed
- More force than is needed
- Any force or level of force continuing after the necessity for it has ended
- Knowingly wrongful use of force

Reasonable Force

The minimum level of force necessary to make actual and effective defence against an assailant and to gain compliance or control.

LEVELS OF RESISTANCE

Passive Resistance

The Subject refuses to co-operate without taking any physical action to interfere when the Officer attempts to otherwise control them.

Defensive Physical Resistance

Attempts by the Subject to resist the Officer's efforts to control him that involve defensive physical actions such as pulling away from or pushing the Officer in a manner that prevents the Officer being able to establish control, without the Subject attempting to strike the Officer.

Active Physical Aggression

A physical attack on the Officer made by or caused by the Subject, intended to defeat the Officer's efforts to control him. Here the Subject is attempting to injure the Officer.

Aggravated Physical Aggression

The Subjects use of physical force, with weapons and or technique that could cause bodily harm or death.

LEVELS OF CONTROL

"Control" defined as; ***The power of direction or restraint***

Selection of a force option is based on an Officers interpretation of an incident, and is linked to his perception of the risk faced. Any application of force should be followed immediately with an act or intention to lower force levels at the earliest opportunity.

FACTORS EFFECTING FORCE

Perception

Processes of situation or event interpretation are seldom the same for any two individuals, each interpretation, when it leads to a conclusion (state of mind) can be considered your perception of the threat faced while the process of evaluation in some instances is executed within seconds, the subject material (factors) can be extensive.

Preclusion

Preclusion is one factor that will always exist within a conflict event. Preclusion is the term given to the explanation used to describe why a particular force option was not selected for use or was passed over.

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Factors

Factors are those elements that exist within a confrontation; factors can behave in both positive and negative modes. When entering into an environment where conflict exists ask yourself one question;

“what here can hurt me and what can help me?”

When justifying the use of force, evidence should be sufficient to fulfill the following elements to **I.A.M.O.**

I.A.M.O.

Intent

Overt Actions or Words

Ability

Physically capable

Means

Having the ability or weapon capable of delivering intended harm

Opportunity

Immediate (not imminent) Danger at the time & place

Security and Related Activities (Control) Act 1996

Carriage of a Firearm

Section 24 Security and Related Activities (Control) Act 1996

Authorises a Security Officer who has successfully completed an accredited firearms training course, approved by the Commissioner of Police, and is endorsed to carry a firearm for a prescribed activity (ie, Cash in Transit).

Permit to carry Firearm

Section 25 Security and Related Activities (Control) Act 1996

Authorises a Security Officer who is endorsed to carry a firearm to do so for a specified period at a specified place while guarding or protecting articles of value otherwise than during an escort.
(ie, Static Guard of Precious Gems at Museum)

Carriage of a Baton

Section 26 Security and Related Activities (Control) Act 1996

Authorises a Security Officer to be in possession of a baton while engaged in activities authorised, if endorsed to possess a baton, and the baton is of a type approved by the Commissioner of Police. *Ref (Govt Gazette No 52 April 1 1997)*

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Security and Related Activities (Control) Regulations 1997

Annual medical examination prescribed for Section 24

Section 11. A security officer whose license is endorsed under section 24 must-

- (a) undergo a medical examination of the type prescribed by regulation 15 (as if the officer were an applicant) at least once in every twelve months, commencing on the day on which the endorsement was issued; and
- (b) within one month of undergoing that examination, give to the Commissioner a medical certificate relating to that examination.

Furthermore, the medical certificate must state the physical & psychological fitness of the individual to possess and use a firearm and state that testing of the individuals hearing and eyes has been conducted.

Application for endorsement under section 26

Section 12. an applicant for an endorsement under section 26 is to be made to a licensing officer in the approved form and is to be accompanied by-

- (a) evidence that the applicant has successfully completed an approved course in baton use.

Weapons Regulations 1999

7. Oleoresin capsicum spray weapon prescribed under section 7(4)

- (1) A spray weapon made or modified to be used to discharge oleoresin capsicum is prescribed for the purposes of section 7(4) of the Act.
- (2) Section 7(3) of the Act does not apply to a spray weapon referred to in subregulation (1) if it is carried or possessed by a person for the purpose of being used in lawful defence in circumstances that the person has reasonable grounds to apprehend may arise.

Schedule 1 – Prohibited Weapon

15. Spray weapon (not oleoresin capsicum) A spray weapon made or modified to be used to discharge a substance other than oleoresin capsicum.

[Schedule 1 amended in Gazette 11 Sep 2007 p. 4613; 8 Apr 2011 p. 1286.]

Schedule 2 - Controlled Weapon

17. Spray weapon (oleoresin capsicum) A spray weapon made or modified to be used to discharge oleoresin capsicum.

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