

Use of Force

300.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Executive Law § 840).

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Federal MODIFIED

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury. This includes force that, under the circumstances, is readily capable of causing death or serious physical injury (Executive Law § 840).

De-escalation - Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or to reduce the use of the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents or weapons on another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Less than lethal force - Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Objectively reasonable - The determination that the necessity for using force and the level of force being used is based upon the officers evaluation of the situation in light of the totality of the

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circumstances known to the officer at the time the force was used and upon what a reasonably prudent officer would use under the same or similar situation.

Serious Physical Injury - Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

Totality of the circumstances - All facts and circumstances known to the officer at the time taken as a whole, including the conduct of the officer and the subject leading up to the use of force

300.2 POLICY

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The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Auburn Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

The purpose of this policy is to establish policies and procedures for the use of physical force or deadly physical force by sworn officers of the Auburn Police Department and to establish procedures for reporting and evaluating the use of physical force or deadly physical force. Officers shall use only that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law, and consistent with the training and policies of the Auburn Police Department. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, and shall use force when no reasonably effective alternative appears to exist. When an officer uses physical force, the officer must continuously assess the situation and select the most reasonable level of force available based on the circumstances perceived at that time by the officer.

Any use of force by officers must be consistent with the standard established by the United States Supreme Court in *Graham v. Connor*, which held that in order for an officer's use of force to be deemed objectively reasonable, that officer must consider: the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officer or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. Accordingly, officers shall employ only that level of force that is objectively reasonable and necessary to achieve their lawful objectives. It is the responsibility of each officer to be aware of the requirements of Article 35 and to guide their actions based upon that law and Department policy and training.

The intentional discharge of a firearm is considered to be a use of deadly physical force. Deadly physical force can be expanded to include the use of other weapons and force if the force is

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readily capable of producing death or serious physical injury. This shall include, but is not limited to: impact weapons such as batons, flashlights, motor vehicles, and individual physical force.

Only issued or approved equipment will be carried on duty and used when encountering resistance, except in emergency situations when an employee may use any justifiable resource at his disposal.

Members shall not unnecessarily or unreasonably endanger themselves or others in applying these guidelines to actual situations. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer at the scene, not with the twenty-twenty vision of hindsight. The question will be whether or not the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them.

300.2.1 DE-ESCALATION TECHNIQUES

Agency Content

An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with training whenever possible and appropriate, without jeopardizing officer safety, before resorting to force and to reduce the need for force.

Whenever possible and when such delay will not compromise the safety of the officer or another person and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual a reasonable amount of time and opportunity to submit to verbal commands before using force on the individual.

300.2.2 DUTY TO INTERCEDE AND REPORT

Federal MODIFIED

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances will, when in a position to do so, intercede to prevent the use of unreasonable force.

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances will report these observations to a supervisor as soon as feasible.

300.2.3 PERSPECTIVE

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When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

300.3 USE OF FORCE

Federal MODIFIED NYSLEAP - 8.4 - 20.1 (A)

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

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The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. The force applied must be reasonable in light of the totality of the circumstances known by the officer.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

Officers are justified in removing firearms from holsters and/or gun mounts if he/she reasonably believes that the situation may pose an immediate threat of death or serious physical injury to themselves or another person.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

State **NYSLEAP - 8.4 - 20.1 (A)**

A police officer or a peace officer may use reasonable physical force to effect an arrest, prevent escape of a person from custody, or in defense of self or others from imminent physical force (Penal Law § 35.30).

Force shall not be used by an officer to (Executive Law § 840):

- (a) Extract an item from the anus or vagina of a subject without a warrant, except where exigent circumstances are present.
- (b) Coerce a confession from a subject in custody.
- (c) Obtain blood, saliva, urine, or other bodily fluid or cells from an individual for scientific testing in lieu of a court order where required.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

Federal

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

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- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) 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).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with officer commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

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Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

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The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.4 ALTERNATIVE TACTICS - DE-ESCALATION

Best Practice NYSLEAP - 8.4 - 58.2 (I)

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

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In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration, or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Auburn Police Department for this specific purpose.

300.3.6 STATE RESTRICTIONS ON THE USE OF OTHER RESTRAINTS

State MODIFIED

Any application of pressure to the throat, windpipe, neck, or blocking the mouth or nose of a person in a manner that may hinder breathing or reduce intake of air is prohibited unless deadly physical force is authorized (Exec. Law § 840).

300.4 DEADLY FORCE APPLICATIONS

Federal MODIFIED

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible. Imminent does not mean immediate or instantaneous. An imminent danger

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may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The individual has a weapon or is attempting to access one and intends to use it against the officer or another person.
2. The individual is capable of causing serious bodily injury or death without a weapon and the officer believes the the individual intends to do so.
3. When feasible the officer shall identify himself or herself as a law enforcement officer and warn of his or her intentions to use deadly physical force.
4. Officers are justified in removing firearms from holsters and/or gun mounts if he/she reasonably believes that the situation may pose an immediate threat of death or serious physical injury to themselves or another person.
5. The use of deadly physical force shall not be utilized against a person whose actions are a threat to only them or to property.
6. Officers must reasonably consider the risk of injury to innocent persons prior to discharging firearms.

The officer is responsible for not discussing the incident with anyone except authorized personnel. Authorized personnel are as follows:

- (a) Chiefs of Police
- (b) All involved officer's command
- (c) Assigned investigative personnel
- (d) Corporation Counsel
- (e) District Attorney
- (f) Privately retained attorney
- (g) Department/private psychologist
- (h) Department/private physicians
- (i) Chaplain
- (j) Union representatives/attorney
- (k) Immediate family
- (l) District Attorney assigned

300.4.1 SHOOTING AT OF FROM MOVING VEHICLES

Best Practice **MODIFIED**

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective.

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

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An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 DEADLY FORCE AGAINST ANIMALS

Agency Content

- (a) Deadly physical force may be employed against an animal when:
 - 1. The animal is attacking or presenting an imminent danger of substantial harm to the officer or another person.
 - 2. When an animal is badly injured, diseased, threatening, or destructive. The officer should make an effort to notify the owner of the animal, if known, prior to employing the use of deadly force.
- (b) Whenever deadly physical force is used to dispatch an animal, the officer should request the Department of Public Works respond to remove the animal unless it is being removed by the owner or their representative.
- (c) It shall be the responsibility of the involved officer's supervisor to:
 - 1. Investigate the use of deadly physical force against animals.
 - 2. Ensure that the incident is documented in a police report.
 - 3. Ensure that any firearm casings are recovered.

300.5 REPORTING THE USE OF FORCE

Best Practice MODIFIED NYSLEAP - 8.4 - 21.1 (A), 20.1 (B)

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. In the event that the officer using force is unable to complete the reports due to injuries, the supervisor shall prepare or cause them to be prepared. (Executive Law § 840).

See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATIONS TO SUPERVISORS

Best Practice MODIFIED NYSLEAP - 8.4 - 21.1 (A), 20.1 (B)

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.

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- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the ECW or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) Officers involved in use of force incidents, on or off-duty, shall immediately notify the officer in charge. If the member is off-duty and outside the City of Auburn when the use of force occurs, the officer shall also notify the police agency in such jurisdiction and notify the officer in charge at the Auburn Police Department.
- (j) An individual alleges unreasonable force was used or that any of the above has occurred.

300.6 MEDICAL CONSIDERATIONS

Best Practice **MODIFIED**

Once it is reasonably safe to do so, and prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if an on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving

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these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away from the scene until rendered and deemed safe to proceed in by the on scene officers (see the Medical Aid and Response Policy for additional guidelines).

300.6.1 ADDITIONAL STATE REQUIREMENTS

State **MODIFIED** NYSLEAP - 8.4 - 43.8

An officer will take steps to obtain medical attention for a person who reasonably appears to be mentally ill and is behaving in a manner that is likely to result in serious harm to the person or to others.

Officers will document requests for medical or mental health treatment as well as efforts to arrange for such treatment.

300.7 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED** NYSLEAP - 8.4 - 21.1 (A), 21.1 (C), 40.2, 20.1 (B)

When a supervisor is notified of a use of force and that use of force is applicable to the circumstances outlined in section 300.5.1, the supervisor will be required to make every effort to respond to the incident scene and will be expected to (Executive Law § 840):

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his/her *Miranda* rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
 1. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports, including any officers present at the incident.

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- (f) Review and approve all related reports.
 - 1. Supervisors should require that officers who engaged in the use of force submit the appropriate report.
- (g) Determine if there is any indication that the individual may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.
 - 1. Disciplinary actions will be consistent with any applicable disciplinary guidelines and collective bargaining agreements.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 SHIFT COMMANDER RESPONSIBILITIES

State **MODIFIED** NYSLEAP - 8.4 - 21.1 (A), 21.1 (C), 21.1 (D), 20.1 (B)

The Shift Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

The Shift Commander should ensure that the Records Supervisor is provided with enough information to meet the use of force reporting requirements for the DCJS (Executive Law § 837-t; 9 NYCRR 6058.3).

300.7.2 DEPUTY CHIEF AND CHIEF OF POLICE RESPONSIBILITIES

Agency Content

The Deputy Chief and Chief of Police shall review each use of force by all personnel under their command to ensure compliance with this policy and to address any training issues.

The Deputy Chief and Chief of Police shall ensure that the Records Supervisor is provided with enough information to meet the use of force reporting requirements for the DCJS (Executive Law § 837-t; 9 NYCRR 6058.3).

300.7.3 RECORDS SUPERVISOR RESPONSIBILITIES

Agency Content

The Records Supervisor shall ensure that reports are submitted to the DCJS when an officer (Executive Law § 837-t; 9 NYCRR 6058.3):

- (a) Brandishes, uses, or discharges a firearm at or in the direction of another person.
- (b) Displays, uses, or deploys a chemical agent or control device, including but not limited to oleoresin capsicum (OC), pepper projectiles, tear gas, batons, or kinetic energy projectiles (see the Control Devices Policy).

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- (c) Brandishes, uses, or deploys an impact weapon.
- (d) Brandishes, uses, or deploys an electronic control weapon, including an electronic stun gun, flash bomb, or long-range acoustic device (see the Conducted Energy Device Policy).
- (e) Engages in conduct which results in the death or serious bodily injury of another person.

300.8 TRAINING

Best Practice MODIFIED NYSLEAP - 8.4 - 33.1

Officers will receive annual training on this policy and demonstrate their knowledge and understanding. Training topics should include applications of use of force and conflict strategies as required by the State Use of Force Model Policy (Executive Law § 840).

Subject to available resources, officers should receive periodic training on:

- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
- (b) De-escalation tactics, including alternatives to force.
- (c) Applications of use of force and conflict strategies as required by the State
- (d) Use of Force Model Policy (Executive Law § 840).

300.9 POLICY AVAILABILITY

State NYSLEAP - 8.4 - 20.1 (C)

This policy shall be readily available to the public upon request and shall be posted on the department website (Executive Law § 840).

300.10 USE OF FORCE ANALYSIS

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At least annually, the Training and Planning Administrator will prepare a bi-annual report on use of force incidents. The report will be submitted to the Chief of Police. The report will include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.