

Theresa Police Department

Section 600, Policy 601

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USE OF FORCE

I. PURPOSE AND OBJECTIVES

Recognizing our legal and moral obligation to use all force wisely and judiciously, it is the policy of this department that deadly force will never be resorted to unless an officer reasonably believes that a lesser degree of force would be insufficient to defend a life of another, one's self, or in limited situations, to apprehend a dangerous felon or control a dangerous animal.

II. DEFINITIONS

The following definitions apply for the purpose expressed in this policy:

A. *Deadly Force* – the intentional use of a firearm or other instrument, the use of which would result in a high probability of death. (State of Wisconsin Defense and Arrest Manual)

1. Behavior which justifies an officer's use of deadly force is that which has caused or imminently threatens to cause death or great bodily harm to the officer or to another person or persons. (State of Wisconsin Defense and Arrest Manual)

B. *Less Lethal Force* – a concept of planning and force application, which meets an operational objective, with less potential for causing death or serious physical injury than conventional police tactics (i.e., irritant agents and conducted electrical weapons).

C. *Dangerous Weapon* – any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in Wis. State Statute §941.295(4); or any other device or instrument which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. This also includes facsimile weapons that an officer reasonably believes are actual weapons.

D. *Great Bodily Harm* – bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury. (State of Wis. Statute §939.22 [14])

E. *Firearm* – any departmentally issued or authorized weapon.

F. *Baton*—departmentally issued or authorized impact weapon.

G. *Handcuffs* - departmentally issued or authorized restraint device.

H. *Oleoresin Capsicum Aerosol Spray* – hereafter referred to as “OC spray”; a less lethal, department-issued and/or authorized aerosol agent.

I. *Conducted Electrical Weapon* – A less-lethal force weapon utilized by trained personnel that causes Electro-Muscular Disruption (EMD) to a combative or potentially combative subject (a potentially combative subject is someone who is actively resisting, being physically assaulting or threatening a physical assault). The use of this device is intended to overcome active resistance or its threat with minimal potential for causing death or great bodily harm. This Department utilizes Taser International devices (Taser International Instructor Manual and Conducted Electrical Weapon Policy #604.1)

J. *Defense and Arrest Tactics (D.A.A.T.)* – A system of verbalization skills and physical alternatives, formulated by the Wisconsin Law Enforcement Standards Board and adopted by this department. (State of Wisconsin Defense and Arrest Manual)

K. *Intervention Options* – the base list of intervention options/tactics/techniques recognized in the D.A.A.T. system. These intervention options are listed below:

Mode	Tactic(s)	Purpose
A. Presence	Professional Presence	To present a visible display of authority
B. Dialog	Tactical Communication	To verbally persuade
C. Control Alternatives	Escort holds Compliance holds Oleoresin Capsicum spray Conducted Electrical Weapon Passive countermeasures	To overcome passive resistance, active resistance, or their threats
D. Protective Alternatives	Active countermeasures Incapacitating Techniques Diffused Strike Intermediate Weapon	To overcome continued resistance, assaultive resistance, or their threats
E. Deadly Force	Firearm	To stop the threat

(State of Wisconsin Defense and Arrest Manual)

L. *Greater Danger Theory* - A theory from the Wisconsin Defense and Arrest Tactics that states the only reason for using deadly force when a target has not been "isolated" is if failure to shoot would place those innocent persons, the officer and/or other officers in greater danger of death or great bodily harm.

(*Wisconsin Arrest and Defense DAAT Manual*)

M. *Reasonable Force* – A physical act by a police officer in the performance of duty when it is used to accomplish a legitimate law enforcement action and the level of force used is reasonable considering all the facts and circumstances known to the officer at the time of the incident.

N. *Reasonable Belief* – Means that an ordinary, prudent and reasonably intelligent police officer believes a certain fact situation exists and such belief is reasonable under circumstances known to the officer at the time the officer acted.

O. *Control* – the purpose of the State of Wisconsin D.A.A.T. System; a perception based on training, experience and the fact situation known to the officer at that time.

P. *Disengage and/or Escalate* – To increase/decrease the intensity or move to a higher level of force or control.

Q. *Imminent Threat* – An impending likelihood of trouble; in the context of "imminent threat" of death or great bodily harm to you or another is a justification for the use of deadly force.

R. *Physical Force* – Intervention using bodily activity or equipment.

S. *Resistive Tension* – The level of agitation in a subject's body.

T. *Uncooperative Subject* – A person who will not comply with verbal or physical direction.

III. GENERAL RULES AND GUIDELINES

A. Justification and Decision Making

It is not the intent of this policy to direct officers that they must attempt each of the Intervention Options before escalating to the next step. Officers may select the proper tactic or tool to gain and maintain control. Proper assessment of each situation will dictate at which level an officer will start before resorting to a higher level that will more quickly, reasonably and safely bring a resistive person under physical control

Officers should maintain a position of advantage in order to initiate and maintain control of a situation. An officer may need to disengage and /or escalate to achieve and maintain a position of advantage. Proper police action is a balance of safety and efficiency. In any instance where a person may have sustained injury as a result of the

use of force, it is the officer's responsibility to ensure that the person receives prompt medical attention when reasonably safe to do so. First aid should include that which the officer has been trained to provide.

B. Reasonableness of Force

1. In making any lawful arrest, an officer is privileged to use whatever force is reasonably necessary, short of that which is intended or likely to cause death or great bodily harm, unless circumstances are such as to leave the officer no other alternative. An officer may use such amount of force as he/she reasonably believes necessary to accomplish the purpose. The reasonableness of the force used will be judged in the light of the circumstances as they appeared to the officer at the time he/she took action, and not as they appear from a subsequent, more thorough knowledge of the circumstances. When determining what level of force is reasonable, officers should weigh three questions as set forth in *Graham v. Connor* to determine if the level of force is considered objectively reasonable by a reasonable officer given the situation the time:

- a. the severity of the alleged crime at issue;
- b. whether the suspect poses an imminent threat to the safety of others;
- c. whether the suspect is actively resisting or attempting to evade arrest

2. Also necessary in determining the amount of force that is reasonably necessary to make an arrest, the officer, based upon his/her training and experience, must consider the following:

- a. nature of the offense;
- b. presence of weapons;
- c. availability of assistance;
- d. past history of the subject, if known;
- e. age, skill level, size and strength of the person compared to the officer;
- f. any other factors and/or observations;
- g. physical and verbal cues displayed by the subject.

C. Search and Handcuffing

Handcuffing and searching will be accomplished through application of training techniques as taught in State of Wisconsin Defensive and Arrest Tactics. Handcuffs are to be checked for proper fit, to prevent and excessive tightening and should be double locked as soon as tactically feasible. The purpose of handcuffing is to ensure the safety of the officer, the arrested person and the public. Officers may use some discretion during handcuffing during custodial arrests involving cooperative and passive individuals. Officers may if deemed necessary to initially handcuff a person behind their back. However, as soon as responsibly possible, the handcuffs should be transitioned to the front. At no time, while processing a scene, interviewing

witnesses or merely waiting to be transported to the jail, etc., should a person be left with their hands handcuffed behind their back. Courts have ruled that this may be considered excessive. Officers should be aware of these types of situations and take appropriate measures such as using, the in car waist band suspect transport handcuff security belt which is provided transport in both of department's police vehicles.

D. Tactical Communication

Following procedures outlined in the Intervention Options, tactical communication should occur during which the officer attempts to gain the voluntary compliance. Generally, officers should make a reasonable attempt to ensure the subject is given direction as to what the officer wants the subject to do (i.e., knee striking an assaultive/resistive subject while directing the subject to stop resisting and place their hands behind their back). Circumstances may be such as to make a verbal exchange inappropriate, i.e., language barrier, mental disorder, exigency). It is recognized that it is not always possible to "fight" and "talk" at the same time. However, the officer must be able to justify why he/she did not attempt to gain verbal compliance. In situations where use of force is justified, the officer may threaten to use such force as a tactic to gain compliance by word and/or action.

E. OC Spray

OC products are considered an option within the list of Intervention Options. Officers must keep in mind that some subjects who are extremely focused, mentally ill, or under the influence of drugs or alcohol may not be affected sufficiently by OC spray. This fact may force officers to disengage and/or escalate to a higher force option depending on the fact situation.

F. Conducted Electrical Weapon

(See Taser Policy)

G. Choke and neck restraint type holds are prohibited.

These acts are considered deathly force. Officers shall not use them unless it is a deadly force situation and the officer believes without taking defensive action that he/she life is in threat of immediate threat of death or great bodily harm to themselves, the person has the ability and means to do carry it out if not immediately to the

IV. PROCEDURES

A. Parameters for Use of Deadly Force

1. Officers are authorized to fire their weapons in order to protect themselves or others from what is reasonably believed to be an immediate threat of death or great bodily harm.

- a. The subject shall be handcuffed once the threat has been stopped unless the officer deems it otherwise unnecessary.
2. Before using a firearm, officers shall identify themselves and state their intent to shoot, if feasible.
3. Officers may also discharge their weapon to destroy a seriously injured animal if no practical alternative is available and to alleviate the animal's suffering.
 - a. The destruction of vicious animals shall be guided by the same rules set forth for self-defense and the defense and safety of others.
4. Officers shall adhere to the following restrictions:
 - a. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create a reasonable belief that it may be necessary to use the weapon in conformance with this policy.
 - b. Officers shall not use a firearm to fire a warning shot.
 - c. Officers may fire at a moving vehicle only under exigent circumstances and as a last resort. Firing from a moving vehicle is prohibited.
 - d. Officers may not use flashlights or portable radios as impact weapons except under exigent life threatening circumstances against the officer or others.
 - e. Officers are prohibited from discharging firearms when it appears very likely that an innocent person will be injured, unless the "Greater Danger Theory" of the Wisconsin Defense and Arrest Tactics applies.

B. Parameters for Use of Less Lethal Force

1. Where deadly force is not authorized, officers should assess the situation in order to determine which less lethal technique or weapon will best de-escalate the situation and/or bring it under control.
2. Police officers are authorized to use less lethal force techniques within the Intervention Options (compliance techniques, active countermeasures, OC products, baton and the Conducted Electrical Weapon) for the resolution of situations, as follows:
 - a. To protect the police officer or another from what is reasonably believed to be a threat or danger of physical harm.
 - b. To restrain or subdue a resistive individual.
 - c. To bring an unlawful situation safely and effectively under control.
3. After using OC CEW products or other methods to obtain control of the suspect/situation, officers shall make reasonable effort to relieve discomfort of the arrested person and any other affected bystanders in accordance with the

Officers will continue to monitor and provide custodial care for the person including having an ambulance respond if the person is complaining or appears to be in distress and may be in need of medical treatment.

4. Based on what the officer knew at the time, the Conducted Electrical Weapon may be utilized when a subject is threatening to resist, is actively resisting, or is attempting to flee; other force alternatives would be unsafe, ineffective, or pose a greater likelihood for injury for the subject or officer; and failure to control or stop the subject could create a danger to the officer, the subject, or others.

C. Reporting Use of Force

1. Incident Reports assigned after a use of force

a. The Chief of Police or OIC should be notified of any of the following incidents involving an on-duty or off-duty officer:

- 1) When use of force results in death or injury to a person;
- 2) When a firearm is discharged outside of the firing range, not to include the dispatching of a wounded animal.
- 3) When a subject complains that an injury has been inflicted.
- 4) When an Officer complains that an injury has been inflicted.

2. A written report shall be filed when

- a) The discharge of a firearm by an officer occurs, other than in training or for lawful recreational use.
- b) When an officer takes an action that results in, or is alleged to have resulted in, injury or death of another person.
- c) When an officer applies force through the use of a lethal or less-than-lethal weapon.
- d) When an officer applies weaponless physical force upon another person during the course of an investigation or arrest.
- e) These use of force techniques include, but are not limited to physical touching, gripping, holding, pain compliance measures, pressure point application, come-a-longs, handcuffing, or other custodial procedures.

3. In an officer involved death, the law mandates that each agency have an outside agency take over the investigation. Initially the Dodge Count is our primary back up agency. ***By this directive, the department shall notify the DCI Unit of Wisconsin Department Justice to respond and conduct the officer involved investigation and formal community notifications with our agency in accordance with State Statutes, etc.***