

Use of Force

300.1 PURPOSE AND SCOPE

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 officer of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

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.

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

300.2 POLICY

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 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.

300.2.1 STATUTORY REQUIREMENTS

Wisconsin State Statue 175.44 Law enforcement use of force shall supersede any departmental policy, it reads:

(1) DEFINITIONS. In this section:

- (a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).
- (b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) USE OF FORCE.

(a) *The sanctity of human life*. In serving the community, law enforcement officers shall make every effort to preserve and protect human life and the safety of all persons. Law enforcement officers shall also respect and uphold the dignity of all persons at all times in a nondiscriminatory manner.

(b) *Use of force*. When using force, a law enforcement officer is required to act in good faith to achieve a legitimate law enforcement objective. A law enforcement officer is authorized to use force that is objectively reasonable based on the totality of the circumstances, including:

1. The severity of the alleged crime at issue.

2. Whether the suspect poses an imminent threat to the safety of law enforcement officers or others.

3. Whether the suspect is actively resisting or attempting to evade arrest by flight.

(c) *Deadly force.* A law enforcement officer may use deadly force only as a last resort when the law enforcement officer reasonably believes that all other options have been exhausted or would be ineffective. A law enforcement officer may use deadly force only to stop behavior that has caused or imminently threatens to cause death or great bodily harm to the law enforcement officer or another person. If both practicable and feasible, a law enforcement officer shall give a verbal warning before using deadly force.

(3) DUTY TO REPORT NONCOMPLIANT USE OF FORCE.

(a) A law enforcement officer who, in the course of his or her law enforcement duties, witnesses another law enforcement officer use force that does not comply with the standards under sub. (2) (b) or (c) in the course of that law enforcement officer's official duties shall report the noncompliant use of force as soon as is practicable after the occurrence of the use of such force.

(b) A person who intentionally fails to report a noncompliant use of force as required under par. (a) may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(4) DUTY TO INTERVENE. (a) A law enforcement officer shall, without regard for chain of command, intervene to prevent or stop another law enforcement officer from using force that does not comply with the standards under sub. (2) (b) or (c) in the course of that law enforcement officer's official duties if all of the following apply:

1. The law enforcement officer observes the use of force that does not comply with the standards under sub. (2) (b) or (c).

2. The circumstances are such that it is safe for the law enforcement officer to intervene.

(b) A law enforcement officer who intervenes as required under par. (a) shall report the intervention to his or her immediate supervisor as soon as is practicable after the occurrence of the use of such force.

(c) A person who intentionally fails to intervene as required under par. (a) or intentionally fails to report an intervention as required under par. (b) may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(5) WHISTLEBLOWER PROTECTIONS. No law enforcement officer may be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to employment, or threatened with any such treatment, because the law enforcement officer reported, or is believed to have reported, any noncompliant use of force as required under sub. (3) or (4); intervened to prevent or stop a noncompliant use of force as required under sub. (4); initiated, participated in, or testified in, or is believed to have initiated, participated in, or testified in, any action or proceeding regarding a noncompliant use of force; or provided any information, or is believed to have provided any information, about noncompliant use of force as required under sub. (3) or (4).

300.3 USE OF FORCE

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.

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.

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 the 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.

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

A law enforcement officer may use reasonable force to arrest a person or execute a warrant. Additionally, a law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer (Wis. Stat. §968.07; Wis. Stat. 968.14).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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:

- (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 (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.

- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. 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 person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.
- (d) The severity of the alleged crime.

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

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be 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 person 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 subject 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 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 person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

An officer intending to use deadly force must reasonably believe all of the following criteria of "imminent threat" are present:

- **INTENT:** The displayed or indicated intent to cause great bodily harm or death to you or another person, and;
- **WEAPON:** A weapon capable of inflicting great bodily harm or death (conventional or unconventional weapon), and;
- **DELIVERY SYSTEM:** The delivery system for utilization of that weapon. The subject must have a means of using the weapon to inflict harm.

300.4.2 TARGET REQUIREMENTS

When an officer has determined that deadly force is necessary and all other reasonable alternatives having been precluded, the officer must fulfill certain "target requirements." These include the following:

- **TARGET ACQUISITION:** Does the officer have a target?
- **TARGET IDENTIFICATION:** Even if the target has been "acquired," the officer cannot shoot until the target has been identified as an individual placing the officer and/or others in "imminent danger", and;
- **TARGET ISOLATION:** The officer must make every reasonable effort to isolate the target from other innocent persons. An exception to the target isolation requirement arises when withholding the application of deadly force results in a greater danger than the use of deadly force itself.

300.4.3 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should attempt if possible to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. 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 threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

300.5 REPORTING THE USE OF FORCE

Any use of force by an officer 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.

300.5.1 NOTIFICATION TO POLICE CHIEF AND/OR DESIGNEE

Notification to the Police Chief and/or his/her designee 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.
- (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 TASER Device 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) An individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATION

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious if requested. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the 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 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).

Persons 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 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 if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (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 subject upon whom force was applied. If this interview is conducted without the person 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 supplemental 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. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject 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 non-compliance or if for any reason further investigation may be appropriate.

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 POLICE CHIEF RESPONSIBILITY

The Police Chief 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.

300.8 REVIEW

This policy shall be made available to the public at no charge upon request (Wis. Stat. § 66.0511(2)).

300.9 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding