

BAYSIDE POLICE DEPARTMENT

GENERAL ORDER

SECTION: 5100

ORDER: 5104

ISSUE DATE: August 22, 2023

REVIEW DATE: August 3, 2026

LAST REVIEW: August 3, 2023

SUBJECT: USE OF FORCE

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I PURPOSE AND SCOPE

To establish guidelines for the appropriate use of force that adhere to applicable federal, state, and local laws.

II POLICY

It is the policy of the Bayside Police Department that officers are to use only that force which is both reasonable and necessary to effectively bring an incident under control, while protecting the lives and safety of officers and others.

Sanctity of human Life - Officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall also respect and uphold the dignity of all persons at all times in a nondiscriminatory manner.

The U.S. Supreme Court, in Graham v. Connor, said that use of force must be "objectively reasonable" in the given situation.

When using force, an officer is required to act in good faith to achieve a legitimate law enforcement objective. Officers are authorized to use force that is objectively reasonable based on the totality of the circumstances, including:

- The severity of the alleged crime at issue.
- Whether the suspect poses an imminent threat to the safety of officers and/or others; and
- Whether the suspect is actively resisting or attempting to evade arrest by flight.

In deciding as to the reasonableness of force, courts recognize that law enforcement officers have to make split-second decisions and reactions. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time, and which an ordinarily prudent and intelligent officer, in the same situation, would have deemed reasonable under the circumstances.

In addition to this policy officers are also governed by WI Stat. 175.44; Law enforcement use of force, and WI. Stat. 939.48; Self-defense and defense of others.

All sworn personnel shall receive training on this policy and demonstrate their understanding of this policy before being authorized to carry a firearm or other authorized weapon. All sworn personnel will receive annual training on this policy and any related legal updates.

III DEFINITIONS

Active Resistance: Behavior which physically counteracts an officer's control efforts, and which creates a risk of bodily harm to the officer, subject and/or other persons.

Assaultive Behavior: Direct actions or conduct that generates bodily harm.

Chokehold: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. The use of a chokehold is prohibited, except in those situations where the use of deadly force is allowed by law.

Continued Resistance: Maintaining a level of counteractive behavior that is not controlled by an officer's current efforts.

Control: Established when a subject is voluntarily complying with the legal directions of an officer or restrained so that they are forced to comply with the officer's legal direction.

DAAT: Wisconsin Defensive and Arrest Tactics which is a system of verbalization skills coupled with physical alternatives.

Deadly Force: The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

De-escalation: Concept that involves an officer's use of time, distance, and relative positioning in combination with Professional Communication Skills to attempt to stabilize a situation and reduce the immediacy of threat posed by an individual.

De-escalation is incorporated throughout the Disturbance Resolution options and the term de-escalate is also used to describe the reduction of an application of force.

De-escalation may not be a viable option in every situation as there are many factors that influence its applicability. An officer must have the position of advantage to apply the concept of de-escalation. Although the law enforcement profession has a great deal of inherent risks, officers are not required to take unnecessary risks in order to apply this concept as their risks need to be strategic, deliberate, and consistent with other DAAT principles.

Electronic Control Device: (ECD) – Are instruments in which a safe amount of electricity is used to affect the sensory and/or motor nervous system of the body. The Department’s authorized ECD is the TASER.

Less Lethal Force Philosophy: The concept of planning and force application with less potential for causing death or serious injury than other police tactics.

Great Bodily Harm: As defined in S. 939.22 (14): 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.

Greater Danger Exception: The only reason for shooting if the target has not been “isolated” is if a failure to shoot would place those innocent persons and/or yourself and other officers in greater danger of death or great bodily harm.

Hobble Restraint: Belt-type restraint used to secure a subject’s legs and ankles in order to restrict the subject’s ability to kick or run.

Imminent Threat: An impending likelihood; in this context "Imminent Threat" of death or great bodily harm to you or another is a justification for the use of deadly force.

Intervention Options: Included within DAAT, a range of force options / responses available to an officer, each mode reflecting the need for an increasing level of control.

Last Resort: Those situations where certain immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered or authorized by policy, however, must still comply with the reasonable and necessary standard set forth in Graham v. Conner.

Passive Resistance: Non-threatening, Non-Compliant behavior.

Reasonable Belief: Belief formed when facts or circumstances the officer knows, or should know, are such as to cause any ordinary, prudent, and reasonable intelligent officer to act or think in a similar way under similar circumstances, even though such belief may later be determined to be erroneous.

IV DISTURBANCE RESOLUTION

- A. DAAT provides the basis for proper use of force by Wisconsin law enforcement officers. Force levels are identified under Intervention Options as part of Disturbance Resolution.

Refer to attachment: **Disturbance Resolution**

- B. Officers are expected to attempt to establish and maintain control through the use of presence and dialogue. However, an officer may escalate to control, through the use of any or all force options, as deemed necessary and reasonable. Intervention Options should not be looked at as a continuum, rather as a toolbox in which an officer’s options are based on their Threat Assessments Opportunities.

Once control of a subject or subjects has been established an officer should de-escalate to a force level sufficient to maintain control.

- C. During the initial approach or contact, the officer(s) must attempt to determine the extent or degree to which the subject(s) present a threat to you and others. Officers should use this threat assessment to help identify safety concerns and potential responses.

V MEDICALLY SIGNIFICANT BEHAVIOR

Medically Significant Behavior is a variety of behaviors that indicate a serious and potentially life-threatening medical condition is present. Persons exhibiting Medically Significant Behavior can pose a threat to themselves, officers, and others. Officers may be required to use force to control the person so that they can receive immediate medical attention.

Officers should assess the situation to determine whether a person's actions or behavior are a result of criminal intent or a medical crisis.

- A. Considerations for dealing with Medically Significant Behavior:

- Request medical assistance as early as possible.
- Avoid increasing the subject's agitation or excitement.
- Minimize physical struggles with subject.
- Minimize use of restraints.
- Weigh the need for immediate control against risk to the subject.
- Maximize officer numbers to minimize the initial levels of force.
- Taser distance deployment has a greater chance of success than other intervention options due to the subject's high pain threshold.
- Stabilize and handcuff.
- Advise medical personnel of observations and behavior and suggest a chemical restraint.
- Position subject to facilitate deep breathing, if possible.
- Quickly transport subject to the hospital.

- B. The Non-Criminal Medical Situation Test should guide an officer's use of force decision.

1. Was the person experiencing a medical emergency that rendered him or her incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to themselves or others?
2. Was some degree of force reasonably necessary to ameliorate the immediate threat?
3. Was the force reasonably necessary under the circumstances?

VI DEADLY FORCE

An officer may use deadly force only as a last resort when the officer reasonably believes that all other options have been exhausted or would be ineffective. An officer may use deadly force only to stop behavior that has caused or imminently threatens to cause death or great bodily harm to the officer or another person. If practical and feasible, an officer shall give a verbal warning before using deadly force.

- A. Officers are authorized to use deadly force to:
1. To protect the officer or others from an imminent threat of death or great bodily harm; and/or
 2. An officer may use deadly force against a fleeing suspect if:
 - a) Deadly force is necessary to prevent the escape, and
 - b) The officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others. US Supreme Court decision, Tennessee v. Garner
 - c) A verbal warning should be given, unless it is not feasible to do so in the particular circumstances, before deadly force is used to prevent escape.
- B. To meet the criterion of "imminent threat," the person to whom the officer is intending deadly force must have all of the following:
1. The displayed or indicated intent to cause great bodily harm or death to you or another person(s).
 2. A weapon capable of inflicting great bodily harm or death (conventional or unconventional weapon).
 3. The delivery system for utilization of that weapon, i.e., the means of using the weapon to inflict harm.
- C. After an officer has determined that deadly force is necessary to stop a person and all other reasonable alternatives having been precluded, the officer must fulfill certain "target requirements." These include the following:
1. Target Acquisition: Has the officer acquired a target to shoot at.
 2. Target Identification: Does the target which has been "acquired" place the officer(s) and or others in "imminent danger" of death or great bodily harm. Does the acquired target have a weapon, intent, and delivery system.
 3. Target Isolation: The officer must make every effort to isolate the target from other innocent persons unless the Greater Danger Exception is applicable.

- D. An officer shall not threaten the use of deadly force unless he would be justified under this policy to use such force. Before using deadly force, the officer should, if possible:
 - 1. Attempt to identify him/herself
 - 2. Order the suspect to desist from the imminently threatening activity, and.
 - 3. Threaten to use deadly force if the officer's lawful order is not obeyed.
- E. No distinction shall be made relative to the age, sex, or race of the intended target of deadly force.
- F. Deadly force against an animal is justified under the following circumstances:
 - 1. For self-defense
 - 2. To prevent substantial harm to the officer or another, or
 - 3. When the animal is so badly injured that humanity requires its relief from further suffering, with approval from the shift commander.
- G. Officers are not authorized to shoot at or from a moving vehicle unless as a “Last Resort” or when the Greater Danger theory applies.
- H. Warning shots are not authorized unless deadly force is justified and as a “Last Resort.”

VII USE OF FORCE PROCEDURES

- A. Officers should attempt to de-escalate the incident using presence and dialogue when feasible and appropriate.
- B. Officers should evaluate the incident to determine the level of force necessary to achieve and maintain control. The level of force must be necessary and reasonable.
- C. Once control is achieved, officers must adjust their use of force to that level which is reasonable in order to maintain control.
- D. Once a subject has been handcuffed and are under control, they should be moved to a position that will avoid positional asphyxia or other medical dangers.
- E. Officers shall use equipment and control techniques that are authorized by the department and consistent with their current training.

It is understood that techniques and equipment may not always be successful, and officers may have to resort to “not trained, but justified” techniques and equipment

to achieve control. These types of use of force must still comply with the reasonable and necessary standard set forth in Graham v. Conner.

- F. Handcuffing and searching will be accomplished through the application of current training techniques as taught through the DAAT System.
- G. Handcuffs may be used in a non-arrest situation provided that the use of handcuffs is reasonable and necessary.
- H. The trained target areas for the baton are the knee area, elbow area and lower abdominal area.
- I. A hobble restraint may be used to further stabilize a subject who is resisting or is a threat to escape. Officers shall not “hog tie” or place a subject in a position that hinders breathing for extended periods in an attempt to lessen the likelihood of respiratory related issues.
- J. The Taser is a conducted energy weapon that affects the sensory and motor functions of the central nervous system. The purpose of the Taser is to overcome active resistance or the threat of active resistance. The Taser falls within the Control Alternatives of the Intervention Options.
- K. The use of chokeholds and the LVNR is prohibited, except in situations where the use of deadly force is allowed by law.
- L. Kinetic Energy Impact Projectiles
 - 1. The purpose of the Kinetic Impact Projectiles is to impede a subject, preventing him or her from continuing resistive, assaultive, or otherwise dangerous behavior. The Kinetic Energy Impact Munition is a Less Lethal option.
 - 2. The Drag Stabilized 12-Gauge Bean Bag Round is the authorized Kinetic Energy Impact Projectile and is placed at the level of Protective Alternatives.
 - 3. Officers authorized to use the Drag Stabilized 12-Gauge Bean Bag Round will successfully complete an initial certification and receive annual training.
 - 4. Circumstances appropriate for the deployment include, but are not limited to, situations in which:
 - a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
 - b) The suspect has made credible threats to harm him/herself and others.
 - c) The suspect is engaged in riotous behavior or is throwing rocks, bottles, or other dangerous projectiles at people and/or officers.

- d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.
5. Kinetic Energy Impact Projectiles may be delivered to the subject's body in accordance with the following guidelines:
 - a) Primary target area are legs and buttocks. In addition to legs and buttocks, arms may also be considered a primary target under some circumstances. The Officer must consider the proximity of the targeted portion of the arm to vital areas of the body. The Primary areas are considered when incapacitation is necessary, but the threat is not imminent. Multiple impacts to the primary target areas should be considered before progressing to the secondary target area.
 - b) Secondary Target Area is the lower abdomen. The secondary target area is considered when incapacitation is critical due to the imminent threat posed by the subject, but deadly force has not yet become necessary.
 - c) Head / Neck / Chest / Kidney area (back): Intentional impact to these areas should be avoided unless the use of deadly force is justified.
6. In each instance where Kinetic Energy Impact Projectiles are utilized a determination should be made regarding the need for lethal cover. Lethal cover is required in all cases where the subject has a firearm.
7. Subjects who are struck by a Kinetic Energy Impact Projectile will be transported to a medical facility for evaluation.
8. Injuries will be photographed.
9. Discharged munitions should be recovered and inventoried.

VIII DUTY TO INTERVENE

Officers 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 requirements for use of force and/or deadly force identified in this policy and WI. Stat. 175.44. in the course of that law enforcement officer's official duties if all of the following apply:

- The officer observes the non-compliant use of force
 - The circumstances are such that it is safe for the officer to intervene.
- A. Officers have a duty to intervene when they observe an officer using excessive force or have inadvertently placed a subject in a position of danger. Intervention should be done in a manner that protects the safety of everyone involved.

- B. An officer who intervenes shall report the intervention to his or her immediate supervisor as soon as practical after the occurrence of the use of such force. Reports are to be documented in an internal memorandum.
- C. The statutory duty to intervene requirement is not limited to on-duty officers, it applies to officers regardless of duty status or location. As such, officers should consider the circumstances to determine whether or not it is safe for the officer to intervene. Some factors to consider are:
- If the officer is in his or her jurisdiction.
 - If the officer is familiar or known to the other officers on scene.
 - If the officer is in uniform or otherwise immediately identifiable as a law enforcement officer.
 - If the officer has the necessary tools or protective equipment to safely intervene.
 - Is the observed use of force in the context of an ongoing tactical situation or other high-threat situation.
 - Is the officer's intervention likely to escalate the situation.
- D. Supervisors that receive a report of an officer intervention shall, as soon as practical, investigate the incident. The incident shall be documented and forwarded to the Chief of Police for review. If the officer intervention was for a use of force by an officer from another agency, then the supervisor will notify a supervisor from that agency of the incident.

IX DUTY TO REPORT NONCOMPLIANT USE OF FORCE

An 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 requirements for use of force and/or deadly force identified in this policy and WI. Stat. 175.44. in the course of that law enforcement officer's official duties shall report the noncompliant use of force as soon as practical after

X WHISTLEBLOWER PROTECTIONS

No 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 officer reported, or is believed to have reported, any noncompliant use of force or intervened to prevent or stop a noncompliant use of force.

XI USE OF FORCE INCIDENTS

- A. Officers shall closely monitor all subjects who were physically subjected to the use of force. Timely medical attention shall be provided for subjects who were injured or complain of injuries resulting from the use of force.
1. Medical attention will be summoned for those people who cannot recover from the effects of OC spray within 45 minutes of exposure, have an adverse

reaction from the effects of a Taser or OC deployment, or who request medical attention.

2. If the TASER probes are imbedded in sensitive tissue areas (such as the neck, face, groin, or the breast area of a female) the officer shall arrange transport to a medical facility for removal. If the probes are imbedded in non-sensitive tissue areas, officers shall arrange for medical personnel to respond to the scene, if safe, to remove the probes. Removed probes shall be handled as a biohazard, packaged accordingly, and destroyed.
 3. People struck by a Kinetic Energy Impact Projectile will be transported to a medical facility for evaluation.
- B. Officers shall notify the shift supervisor as soon as practical whenever force is used.
 - C. All use of force incidents above compliance holds shall be documented on a Bayside Police Department Use of Force Report. The officer shall document the circumstances requiring the use of force and the intervention options used. The report shall be reviewed by the shift supervisor for reasonableness and policy compliance. All Bayside Police Department Use of Force Reports shall be forwarded to the Chief of Police or appropriate command staff for review.
 - D. In cases where deadly force was used against a person, whether or not any injury occurred, or where the subject received significant injuries from the use of non-deadly force, a supervisory investigation shall be conducted. In these cases the officer(s) involved shall be placed on administrative leave, without loss of pay or benefits, for a period to be determined by the Chief of Police. The term of administrative leave may be determined by the circumstances surrounding the incident, the officer's ability to cope with the incident and their desire to return to duty, and the course of the investigation.
 - E. A supervisor will be immediately notified whenever a firearm is discharged, either intentionally or accidentally while engaging in subject control. The incident will be documented on a Bayside Police Department Use of Force report.
 - F. Applicable use of force data will be submitted to the WI DOJ Use of Force and Arrest-Related Data Collection (UFAD) through TraCs. An analysis of use of force incidents will be conducted annually to identify trends that could reveal the need for training, equipment, or policy modifications.

XII USE OF FORCE ANALYSIS

Annually, a member of the Command Staff designated by the Chief of Police should prepare a report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects, or case numbers, and should 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.

XIII POLICY AVAILABILITY

The Chief of Police or the authorized designee shall ensure that this policy (Wis Stat.§ 66.0511):

- A. Is made available free of charge within three business days of the request.
- B. Is publicly available on the department website and updated promptly upon amendment.

By Order Of:

Thomas Liebenthal
Chief of Police



DISTURBANCE RESOLUTION



APPROACH CONSIDERATIONS

Decision-Making

- Justification
- Desirability

Tactical Deployment

- Control of Distance
- Relative Positioning
- Relative Positioning with Multiple Subjects
- Team Tactics

Tactical Evaluation

- Threat Assessment Opportunities
- Officer/Subject Factors
- Special Circumstances
- Level/Stage/Degree of Stabilization

INTERVENTION OPTIONS

Mode

Purpose

- | | |
|----------------------------|---|
| A. Presence | To present a visible display of authority |
| B. Dialogue | To verbally persuade |
| C. Control Alternatives | To overcome passive resistance, active resistance, or their threats |
| D. Protective Alternatives | To overcome continued resistance, assaultive behavior, or their threats |
| E. Deadly Force | To stop the threat |

FOLLOW-THROUGH CONSIDERATIONS

- | | |
|----------------------|---|
| A. Stabilize | Application of restraints, if necessary |
| B. Monitor/Debrief | |
| C. Search | If appropriate |
| D. Escort | If necessary |
| E. Transport | If necessary |
| F. Turn-Over/Release | Removal of restraints, if necessary |