

## MENOMONEE FALLS POLICE DEPARTMENT

**GENERAL ORDER: 5109**

**DATE:** January 18, 2021

**SUBJECT:** Use of Force

### **I. PURPOSE**

The purposes for which a police officer is legally entitled to use force are few. Law enforcement officers may use force legitimately when it is needed to achieve control in five specific situations: to achieve and maintain control of resistive subjects, to detain persons reasonably suspected of criminal behavior, to make lawful arrests, to defend themselves or others, and to prevent escape. Guidelines regarding how, when, and to what degree officers may use the various methods or types of force with which they are provided is the purpose of this General Order. The contents of this General Order will be the subject of annual training. All sworn personnel shall be issued copies of and be instructed in this General Order before being authorized to carry a firearm.

This policy is for departmental use only and does not apply in any civil or criminal proceeding. The Department policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

### **II. GENERAL POLICY**

It is the policy of this law enforcement agency that officers use only the force that reasonably appears necessary to effectively bring an incident under control while protecting the lives of the officer and others. It must be stressed that the use of force is not left to the unfettered discretion of the involved officer. This is not a subjective determination. The use of force must be objectively reasonable. The officer must only use that force which a reasonably prudent officer would use under the same or similar circumstances. **It is the intent of this policy to adhere to all applicable federal, state and local laws.**

An officer's intentional use of deadly force against a subject is justified only when the subject exhibits behavior which has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons. This also includes the use of deadly force to affect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent threat of great bodily harm or death to the officer or other persons. A "fleeing felon" cannot be presumed to pose an imminent threat to life of others unless he has demonstrated his dangerousness through recent acts, threats, recklessness, or wanton disregard for human life and the safety of others.

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### III. DEFINITIONS

This Department has adopted the Defensive and Arrest Tactics System (DAAT) which has been adopted by the State of Wisconsin-Department of Justice-Bureau of Training and Standards. This system of verbalization skills coupled with physical alternatives is the approved Department response for officers to gain voluntary compliance and control. There are circumstances when an officer will have to use physical force to achieve control in order to accomplish his/her legitimate law enforcement objective.

- A. Non-Physical Force: the officer's use of physical presence and/or dialogue. This is the least amount of force available to an officer and does not cause physical contact with a subject.
- B. Less than Deadly Force: the use of weapons or actions in such a manner not designed or likely to cause death or great bodily harm. This would include both Control Alternatives (to overcome passive resistance, active resistance, or their threats) and Protective Alternatives (to overcome continued resistance, assaultive behavior, or their threats).
- C. **Choke Hold: a physical maneuver or technique that restricts an individual's ability to breathe for the purpose of incapacitation.**
- D. Deadly Force: the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- E. Objectively Reasonable: The standard by which many actions of a police officer are judged: Would an officer's actions be judged appropriate **from the perspective of a reasonable officer at the scene with similar training and experience** based on the totality of circumstances and the information known to the officer at that time? Officers must consider 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.
- F. Great Bodily Harm (§ 939.22(14), Wis. Stats.): 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.
- G. **Warning Shot: the intentional discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.**

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**IV. DISTURBANCE RESOLUTION**

The Disturbance Resolution concept prescribed by the Wisconsin Department of Justice Law Enforcement Standards Board is adopted as the model of how officers should deal with situations in which they must intervene to resolve a disturbance. Contained within the Disturbance Resolution are Intervention Options which address an officer's use of force.

**V. SPECIAL GUIDELINES ON THE USE OF FORCE**

**A. Control and Protective Alternatives**

1. Controlling a subject by verbal techniques alone is not always possible. Sometimes physical intervention is required. Nevertheless, whenever possible, an officer must integrate verbalization with the use of physical intervention options. Doing so will help the officer to communicate effectively with the subject, other officers, others involved, and witnesses observing the officer's actions.
2. Officers may exercise the use of less-lethal weapons as may be appropriate to assist with the control of subjects consistent with DD 5109.01.
3. Officers may exercise the use of an Electronic Control Device (ECD) as may be appropriate to assist with the control of subjects consistent with DD 5109.02.
4. **Choke holds are prohibited except in situations where the use of deadly force is allowed by law.**

**B. Diversionary Devices**

Diversionary devices are used primarily in dealing with unruly crowds and armed barricaded subjects when negotiations have failed. As a normal course of business, diversionary devices will not be used without supervisory permission and shall be consistent with DD 5109.01.

**C. Tactical Enforcement Unit**

Tactical Enforcement Unit personnel may be called upon to use the planned use of deadly force to effectively end critical incidents such as hostage and barricaded subject situations. Authority for the planned use of offensive deadly force must come from the Chief of Police or the ranking officer authorized to act in the Chief's

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absence. Generally, this use of force option will be authorized only after other efforts have failed and/or it appears likely that failure to utilize this level of force will result in further loss of life, great bodily harm, or the escape of a dangerous fleeing felon.

**D. Discharge of Firearms**

If an officer determines that he/she is facing a threat that meets the requirements to permit a deadly force response, the officer must rely on his/her firearms training. **Circumstances permitting, and when reasonably practical, officers should identify themselves as law enforcement officers and give verbal warning of their intent to use deadly force .** A police officer is generally not justified in using his firearm to fire a warning shot. If the decision is made to fire a warning shot, it will be the officer's responsibility to justify the action. **Extreme caution and consideration must be taken when shooting at or from a moving vehicle.**

**E. Juveniles**

1. No distinction shall be made relative to the age of the intended target of deadly force.
2. When employing less than deadly force against juveniles, an officer should consider the age, physical strength, size, actual threat posed, and limited legal basis for detaining or taking custody of juveniles.

**F. Destruction of Animals**

1. Officers may use deadly force to destroy an animal that represents a threat to themselves and/or public safety or as a humanitarian measure where the animal is seriously injured when the officer reasonably believes that deadly force can be used without harm to the officer or others.
2. All officers shall use extreme care when shooting at standing or moving animals to prevent injury to persons or damage to property behind or near the animal. Consistent with DD 4303.02, rifles shall not be used to dispatch animals.
3. Consideration should be given to requesting assistance from another agency responsible for the disposal of animals such as the Humane Animal Welfare Society or DNR.

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**G. Distinction Between Weapon and Equipment**

**1. Definitions for the purpose of this section:**

- a. "Weapon" is defined as an instrument whose primary purpose is striking or otherwise causing an altered physical condition which diminishes or removes the ability to resist. Examples of weapons include firearms, a baton, and chemical agents.
- b. "Equipment" is defined as a tool, the primary purpose of which is indicated by design, and intended to be used only to assist an officer in performing his/her duties. Examples of equipment include handcuffs, squad car, radio, and flashlight.

- 2. Equipment shall not be used to strike people except as a last resort in extreme circumstances when the use of a weapon is justified and none is immediately or reasonably available to the officer.**

**H. Training**

Prior to being permitted to carry and/or authorized to use a weapon (including lethal, less lethal, electronic control devices, and oleoresin capsicum spray), officers will be issued copies of and instruction/training on all related policies and weapons. Furthermore, officers will be required to demonstrate both knowledge of these policies and proficiency with the respective weapon(s). This will include follow-through considerations and appropriate medical aid afterwards.

**I. Termination of Use of Force**

**When an officer believes it is objectively reasonable that a subject is fully in law enforcement's control, then the force must terminate.**

**J. Duty to Intervene**

**All officers have the duty and obligation to intervene to prevent or stop the known and apparent use of excessive force by another officer when it is objectively reasonable to do so.**

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**VI. REPORTING REQUIREMENTS**

- A. The following use of force actions require officers to notify the DS as soon as practical. The DS is then required to submit a Use of Force Report via the chain-of-command to the Chief of Police describing the incident, documenting the force used, and any medical attention rendered:
1. The use of force of a compliance hold or greater.
  2. The pointing and aiming of either a firearm or ECD.
  3. Multiple officers physically struggling with a subject.
  4. Actions of an officer(s) resulting in injury to any officer/person.
- B. Incidents involving the application of force against another person require a standard incident report. This report shall contain sufficient information to justify the use of force and document actions used to gain compliance and/or control of the person. If an actual or claimed injury occurs to any involved person, first aid or medical attention provided for the injured person must be noted in this report. Officers shall follow the provisions of Wisconsin State Stats. 940.291 by rendering first aid and/or medical assistance to injured persons in police custody.
- C. Incidents involving the use of force against an animal, including the humane destruction, require a standard use of force report explaining the circumstances and justifying the actions taken.
- D. The accidental or intentional discharge of a Department firearm (other than during approved range training) where no person is injured requires a detailed Special Report by the DS to be forwarded to the Chief of Police via the chain-of-command as soon as practical and in any event prior to the supervisor going off-duty.
- E. This agency will participate on the National Use-of-Force Data Collection program of the U.S. Department of Justice/Federal Bureau of Investigation. The program requests that use of force incidents that meet any of the following criteria be reported:**
- 1. When a fatality occurs to a person in connection to use of force by a law enforcement officer.**
  - 2. When there is serious bodily injury to a person in connection with use of force by a law enforcement officer.**

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- 3. In the absence of either death or serious bodily injury, when a firearm is charged by a law enforcement officer at or in a direction of a person.**

**The definition of serious bodily injury is based, in part, on 18 United States Code 2246(4). The term ‘serious bodily injury’ means bodily injury that involves the substantial risks of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.**

- 4. National Use-of-Force Data Collection program data will be submitted on a monthly basis through the Wisconsin Traffic and Criminal Software (TraCS) on a monthly basis. Submissions will be made even if there are zero qualifying Use-of-Force events which are called Zero Reports.**

#### **VII. EMERGENCY MEDICAL ASSISTANCE**

Any involved officer shall, when safety permits, immediately determine the physical condition of any injured person and render **basic first aid, requesting emergency medical services and/or arranging for transportation to a medical facility.**

#### **VIII. OTHER POST INCIDENT ACTIONS**

Department policy relating to the investigation of citizen complaints (G.O. 6104), the administrative review and investigation of use of deadly force (D.D. 3108.01) and post-incident employee assistance should be observed where applicable.

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Approved:



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Mark Waters  
Assistant Chief of Police  
*Acting Chief of Police*

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Retention:	Permanent
Distribution:	All Personnel Policy Manuals
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WILEAG:	1.7.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2.1, 5.3.1, 5.3.2, 12.1.3



## ATTACHMENT A

### DISTURBANCE RESOLUTION

(First approved by the Law Enforcement Standards Board on March 2002 and revised March 2007)

#### 1) APPROACH CONSIDERATIONS

- |    |                     |  |
|----|---------------------|--|
| A. | Decision-Marking    | Justification<br>Desirability  |
| B. | Tactical Deployment | Control of Distance<br>Relative Positioning<br>Relative Positioning with Multiple Subjects<br>Team Tactics                 |
| C. | Tactical Evaluation | Threat Assessment Opportunities<br>Officer/Subject Factors<br>Special Circumstances<br>Level/Stage/Degree of Stabilization |

#### 2) 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,<br>or their threats     |
| D. | Protective Alternatives | To overcome continued resistance, assaultive<br>behavior, or their threats |
| E. | Deadly Force            | To stop the threat   |

#### 3) 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     |