

<b>MENOMONEE FALLS POLICE DEPARTMENT POLICY</b>		
<b>5109 – Use of Force</b>		
<b>Date:</b> 12-30-2021	<b>Supersedes:</b> 01-18-2021	<b>Review Date:</b> 08-2024
<b>WILEAG:</b> Chapter 5		<b>Standards:</b> 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

**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 **Policy**. The contents of this **Policy** 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. POLICY**

**This policy is intended to adhere to all applicable federal, state and local laws to include, but not limited Wisconsin State Statute 175.44.** 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. 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.

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. **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.**

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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. **Law Enforcement Officer: Means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed and sworn to enforce. Referred to as “officer” in this policy.**
- B. **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?**
- C. **Use of Force Justification/Standard: 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.**
- D. **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.**
- E. **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).**
- F. **Choke Hold: a physical maneuver or technique that restricts an individual’s ability to breathe for the purpose of incapacitation.**

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- G Deadly Force: the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- H. **Deadly Force Justification/Standard**: 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.
- I. 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.
- J. 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.

#### 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 **Policy 5109.01**.

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3. Officers may exercise the use of a Conducted Electrical Weapon (CEW) as may be appropriate to assist with the control of subjects consistent with **Policy 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 **Policy 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 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.

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### 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 **Policy** 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.

### 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. 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.

### I. Duty to Intervene

**Every officer shall, without regard for chain of command (on or off duty) intervene to prevent or stop another law enforcement officer from using force that does not comply with the standards if all of the following apply:**

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1. **The officer(s) observes the use of force that does not comply with the standards for the justification for the use of force or deadly force as explained in this policy and;**
2. **The circumstances are such that it is safe for the officer to intervene. There are special considerations for an off-duty officer to assess whether it is safe to intervene:**
  - a. **Is the officer in his or her jurisdiction or otherwise known by the on-duty officers?**
  - b. **Is the officer in uniform, properly equipped or otherwise immediately identifiable as a law enforcement officer?**
  - c. **Is the observed use of force in the context of an ongoing tactical situation?**
  - d. **Is the officer's intervention likely to escalate the situation?**
3. **The officer or officers who intervenes shall report the intervention to his or her immediate supervisor or commander as soon as is practicable after the occurrence of the use of such force.**

### **J. 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.**

### **K. Training**

Prior to being permitted to carry and/or authorized to use a weapon (including lethal, less lethal, conducted electronic weapon, 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 **de-escalation techniques**, follow-through considerations and appropriate medical aid afterwards.

## **VI. REPORTING REQUIREMENTS**

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- 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 CEW.
  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 in 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.
  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.

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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.

### F. Reporting Noncompliant Use of Force

**Every 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 for use of force in the course of their official duties shall report the noncompliant use of force as soon as is practicable after the occurrence of the use of such force (*If three officers witness the noncompliant use of force, all three officers are statutorily required to report this*).**

- 1) **The observing officer(s) shall report this as soon as practicable to their immediate supervisor or commander in person. In the event the noncompliant use of force involves the officer’s immediate supervisor or commander they shall report it to the next available commander.**
- 2) **This shall be reported as soon as practicable, no later than the officer’s end of the shift. The officer is required to explain the circumstances to include the reason(s) the officer believed the use of force to be non-compliant.**
- 3) **The receiving supervisor or commander shall interview the officer to ascertain the specifics to include date/time, location, involved persons and other details as needed. A special report will be created detailing the information of the noncompliant use of force addressed to the Chief of Police. Any supervisor or commander receiving this shall require a command notification to be made immediately.**
- 4) **The Chief of Police will review the special report to determine any additional actions to include remedial training, department-wide training, internal investigation or any other actions deemed necessary.**



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- 5) **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, intervened to prevent or stop; participated in testifying or participated in any way with regards to reporting noncompliant use of force.**

Approved:



Mark P. Waters  
Chief of Police

## ATTACHMENT A

### DISTURBANCE RESOLUTION

(First approved by the Law Enforcement Standards Board on March 2002 and revised December 2020)

#### 1) APPROACH CONSIDERATIONS

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

#### 2) INTERVENTION OPTIONS

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

#### 3) FOLLOW-THROUGH CONSIDERATIONS

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