

Policy – Wauwatosa Police Department

POLICY:	Use of Force
CHAPTER & SECTION:	6.1.1
DISTRIBUTION:	All Sworn Personnel, Reserve & Community Service Officers
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I. Introduction

The City of Wauwatosa Police Department has adopted the Wisconsin system of Defensive and Arrest Tactics (DAAT), which was developed for the State of Wisconsin Law Enforcement Standards Board. The DAAT system is a system of verbalization skills coupled with physical alternatives. The City of Wauwatosa's use of force policies adhere to all applicable Federal, State and local laws.

The nature of police work at times requires an officer to use force to perform his/her duties. The purpose of this policy is to provide our officers with guidelines on the use of deadly and non-deadly force. The Disturbance Resolution model guides how officers should deal with situations in which they must intervene to resolve a disturbance.

It is the policy of the Wauwatosa Police Department that police officers use only the amount of force reasonable and necessary to arrest, apprehend or control any person, or situation.

The decision to use force is based on the facts and circumstances known to the officer at the time the decision to use force was made.

This policy rescinds policy # 22-01.

II. Definitions

- A. Use of Force:** A use of force is an action taken by an officer acting in an official law enforcement capacity which includes, but is not limited to control alternatives, protective alternatives and deadly force as defined in the Wisconsin DAAT manual. A *significant* use of force is considered a 4th Amendment seizure. A threat of force through verbal warning or presentation of an instrument is not a reportable use of force.
- B. Deadly Force:** The intentional use of a firearm or other instrument, the use of which would result in a high probability of death or great bodily harm.
- C. Justification of Deadly Force:** Behavior which has caused or imminently threatens to cause Death or Great Bodily Harm to you or another person/s.
- D. Non-deadly Force:** That amount of force, which is unlikely to cause death.
- E. De-escalation:** 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.
- F. Reasonable Belief:** Facts or circumstances known to the officer such as to cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.
- G. Objectively Reasonable:** Relevant factors in assessing whether force used was objectively reasonable: (Graham v. Connor)
 - 1. The severity of the alleged crime at issue.
 - 2. Whether the suspect poses an immediate threat to the safety of the officers or others; and;
 - 3. Whether the suspect is actively resisting or attempting to evade arrest by flight.
- H. Great Bodily Harm:** Bodily injury, which creates a substantial risk of death, or which, causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- I. Bodily Harm:** Physical pain or injury, illness, or any impairment of physical condition.
- J. Active Resistance:** When an officer encounters behavior which physically counteracts his or her attempt to control and which creates risk of bodily harm to the officer, subject, and/or other person.
- K. Passive Resistance:** When a subject refuses to comply with a directive from a law enforcement officer but does not attempt to engage in physical action likely to cause bodily harm to the officer or to another person.

- L. Law Enforcement Agency:** A governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority. (As defined by WI Statute 165.83 (1) (b)).
- M. Law Enforcement Officer:** 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. "Law enforcement officer" includes a university police officer, as defined in s. [175.42 \(1\) \(b\)](#). (As defined by WI Statute 165.85 (2) (c)).
- N. Noncompliant Use of Force:** Any use of force that does not comply with this policy, federal or state law, or local ordinances.

III. References

A. Disturbance Resolution:

1. Approach Considerations:

A. Decision-making	Justification Desirability
B. Tactical Deployment	Control of distance Relative Positioning Relative Positioning with Multiple Subjects Team Tactics
C. Tactical Evaluation	Threat assessment opportunities Officer/subject factors Special circumstances Level/stage/degree of stabilization

2. Intervention Options:

<u>Mode</u>	<u>Tactic</u>	<u>Purpose</u>
A. Presence	Professional Presence	To present a visible display of authority
B. Dialog	Tactical Communication	To verbally persuade
C. Control Alternatives	Escort Holds	To safely initiate physical contact
	Compliance Holds	To overcome passive resistance
	Control Devices (O.C. Spray, ECD's)	To overcome active resistance or its threat
	Passive Countermeasures	To decentralize
D. Protective Alternatives	Active Countermeasures	To create dysfunction
	Incapacitating Techniques	To cause the immediate, temporary cessation of violent behavior
	Intermediate Weapons Weapon	To impede a subject
E. Deadly Force	Firearm	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

IV. Procedures

A. Use of Force – General

1. The Sanctity of Human Life
 - (a) 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.
2. 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:
 - (a) The severity of the alleged crime at issue.
 - (b) Whether the suspect poses an imminent threat to the safety of law enforcement officers or others.
 - (c) Whether the suspect is actively resisting or attempting to evade arrest by flight.
3. Officers use force for the specific purpose of achieving and maintaining control of a resistive subject.
4. The level and amount of force must be reasonably necessary to accomplish your objective of control under the particular circumstance.
5. The type of force necessary to control a subject is based upon the threat level and officer/ subject factors presented to the officer.
6. Once control has been achieved an officer will de-escalate to a use of force sufficient to maintain control.
7. Officers may use force in the accomplishment of legitimate law enforcement objectives, which include:
 - (a) Lawful arrest for violation of Federal, State Laws or Municipal ordinances,
 - (b) To prevent a person from injuring himself/herself,
 - (c) In self-defense or defense of another,
 - (d) Controlling an unruly, abusive, or combative person.

8. Officers are not trained in the use of chokeholds or strangleholds. Officers shall not use a chokehold or similar technique, or any other untrained deadly force application, unless the officer has reasonable belief the subject poses an **imminent** threat of death or great bodily harm to the officer or others.
9. Officer override is a trained concept that means officers have the proactive responsibility to intervene in a situation if another officer is behaving inappropriately or otherwise not handling the situation effectively.
10. It is not the intent of this policy to direct officers to try each force option before escalating, nor prevent the officer from initiating physical force first. The ultimate goal of any force used is to gain control.

B. Oleoresin Capsicum Spray (O.C. Spray)

1. Use of O.C. Spray.
 - (a) O.C. Spray is an option when the officer receives what is reasonably believed to be active resistance or its threat from a subject. Use of O.C. Spray may depend upon:
 - (i) Threat assessment factors (i.e. attack posture; muscle tension)
 - (ii) Officer /subject factors (i.e. age; relative strength; skill level; size, multiple subjects)
 - (iii) Special circumstances (i.e. previous contacts/knowledge of subject; reasonable perception of threat, sudden assaults, officer's physical positioning, injury or exhaustion, availability of backup.)
2. Deadly force in response against O.C. Spray
 - (a) Due to the incapacitating nature of O.C. Spray against an officer, deadly force may be justified as a final escalation of force if the officer reasonably believes he/she or another person is facing the imminent threat of death or great bodily harm. This perception must be based on the totality of circumstances including threat assessment opportunities, officer/subject factors and special circumstances.
3. Medical Attention
 - (a) Officers will provide opportunities for self-flush to all sprayed subjects.
 - (b) If the subject has an unusual reaction, or if the person is unable to recover after exposure medical attention will be summoned.

C. Electronic Control Devices (Taser)

1. See Electronic Control Device Policy 6.1.2
2. Use of the Electronic Control Device
 - (a) Electronic Control Device is an option when the officer receives what is reasonably believed to be active resistance or its threat from a subject. Use of the Electronic Control Device may depend upon:
 - (i) Threat assessment factors (i.e. attack posture; muscle tension)
 - (ii) Officer /subject factors (i.e. age; relative strength; skill level; size, multiple subjects)
 - (iii) Special circumstances (i.e. previous contacts/knowledge of subject; reasonable perception of threat, sudden assaults, officer's physical positioning, injury or exhaustion, availability of backup.)
 - (b) Electronic Control Device **may** be used in situations of passive resistance considering the totality of circumstances (i.e. threat assessment, officer subject factors, special circumstances, severity of the offense etc.) these instances are few and need to be thoroughly articulated by the officer.
3. Deadly force in response to an Electronic Control Device used against an Officer
 - (a) Due to the incapacitating nature of the Electronic Control Device if used against an officer, deadly force may be justified as a final escalation of force if the officer reasonably believes he/she or another person is facing the imminent threat of death or great bodily harm. This perception must be based on the totality of the circumstances including threat assessment opportunities, officer/subject factors and special circumstances.
4. Aftercare
 - (a) After the suspect has been properly stabilized and handcuffed, officers must provide appropriate care. See Electronic Control Device Policy 6.1.2.

B. Intermediate Weapons

1. **Baton**
 - (a) The police baton is to be used as a defensive or control weapon by an officer when it is reasonably believed that a lesser degree of force would be inadequate to control the subject. The baton is to be used:

- (b) To defend the officer or another from physical assault;
- (c) When the potential for physical assault immediately exists;
- (d) The subject violently resists arrest.

2. Less lethal extended range impact devices: see Policy 6.1.3.

C. Deadly Force

1. The use of deadly force is authorized as follows:
 - (a) To protect the officer or others from what is reasonably believed to be an imminent threat of death or great bodily harm.
 - (b) When it is necessary to prevent the escape of a fleeing violent felon whom the officer has reasonable belief poses an **imminent** threat of death or great bodily harm to the officer or others.
2. If both practical and feasible, a law enforcement officer shall give a verbal warning before using deadly force.
3. Preclusion is a factor in deadly force decision making. Deadly force is used only as a last resort. Before deadly force is used, other readily available force options should have been exhausted or considered as ineffective.
4. Police officers may also discharge a weapon under the following circumstances:
 - (a) During departmental training or competitive shooting events.
 - (b) To destroy an animal for humanitarian reasons or that is a threat to public safety.
5. Officers shall adhere to the following restrictions:
 - (a) Warning shots are prohibited.
 - (b) Officers shall not fire their weapons at a subject in a moving vehicle except to prevent **imminent** death or great bodily harm to himself/herself or another.
 - (c) Officers shall not fire their weapons from their own moving vehicle except to prevent **imminent** death or great bodily harm to himself/herself or another.
 - (d) Firearms should not be discharged when it appears likely that an innocent person may be injured, unless the officer reasonably believes failing to fire will result in a greater threat to life than firing.

D. Administrative Review of Deadly Force: Whenever an officer uses deadly force, or when the use of any level of force results in great bodily harm or death, the Chief of

Police or his designee and the Investigative Bureau Lieutenant shall be notified. An Administrative Review/Investigation shall be conducted or directed by one of these individuals consistent with Policy 11.1.1, Investigation of Law Enforcement Involved Fatalities / Great Bodily Harm.

E. Responsibility of Officer After Use of Force – Follow Through Considerations

1. Handcuffing.
 - (a) It is the general policy of this department to handcuff and search all persons arrested and taken into custody. This procedure will best ensure the safety of the officer, the arrested subject, and the public.
2. After the situation has stabilized and the subject is under control, the officer shall:
 - (a) Check for injuries and render first aid, if necessary;
 - (b) Call for appropriate medical aid, if necessary;
 - (c) Keep in close physical contact with subject to monitor condition while in police custody;
 - (d) Notify supervisor of any injuries to officers
 - (e) Notify supervisor of any injuries to subject

F. Use of Force Reporting Procedures

1. Officers using deadly force, baton, ECD, less lethal, O.C. spray, or physical force to control a subject will inform the immediate supervisor or Shift Commander of the incident. The notified supervisor will make every effort to respond to the scene and *preliminarily* investigate the use of force. This will include obtaining witness statements and all relevant evidence. It is not necessary to notify a supervisor when handcuffing or controlling a subject in situations where little or no resistance is encountered.
2. Incidents that generally do not require documentation in a call update or incident report include, but are not limited to, the use of:
 - (a) Professional Presence
 - (b) Tactical communication
 - (c) Escort Holds

3. Incidents that require documentation in a call update or incident update (RMS call notes) include:
 - (a) Handcuffing and Physical detainment
4. Use of Force incidents utilizing the below intervention options require documentation in an incident report and the completion of the Use of Force module within the incident report – *not* in the case search or case inquiry screen.
 - (a) Compliance Holds / Pressure Points
 - (b) Oleoresin Capsicum (Spray and other delivery mechanisms)
 - (c) Electronic control device
 - (d) Passive Countermeasures
 - (e) Active Countermeasures
 - (f) Spit hood
 - (g) Incapacitating Technique (diffused strike)
 - (h) Intermediate weapons
 - (i) Canine Deployment
 - (j) Any level of force that results in an injury to a subject or officer.
 - (k) Deadly Force
5. When the incident or supplemental report is submitted, all details regarding the use of force will be in the report and include:
 - (a) Reason for contact with the subject,
 - (b) Officer's evaluation of the situation,
 - (c) Steps of escalation and/or de-escalation leading to the level of force used,
 - (d) Care or treatment given to the subject after use(s) of force.
 - (e) Documentation of injuries to subject(s) and / or officer(s).

6. Each officer who uses force shall submit their own incident or supplemental report detailing their use of force. Each Officer will complete their own Use of Force **module** within their report.
 - (a) In an Officer uses force that results in death or great bodily harm, a supervisor will complete the Use of Force module for that officer.
 - (b) If an officer uses force, and is incapacitated and/or otherwise unable to complete their report, a supervisor will complete the Use of Force module for that officer.
7. Each Use of Force report will be reviewed by at least two supervisors; one of which will be Lieutenant. If a Lieutenant or Captain uses force in an incident, two levels of review will also occur up to a Chief's review. Any unauthorized use of force will be immediately investigated and the respective Bureau Captain, or Chief, advised of the investigation.
8. Use of Force reports are an internal and administrative report. Use of force reports will not be included or E-referred in any municipal or criminal court cases.

G. Duty to Report Noncompliant Use of Force

1. 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 this policy 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.
 - (a) The report shall be made to the reporting officer's immediate supervisor. In the absence of the immediate supervisor, any supervisor will suffice.
 - (b) If it is not practicable to immediately report the noncompliant use of force, the officer shall make the report to a supervisor prior to the end of their tour of duty.
 - (c) The reporting officer will write an "In the Matter Of" (ITMO) to the supervisor. The ITMO will include, but is not limited to:
 - (i) The report number of the incident, if available
 - (ii) The officer(s) who were observed using a noncompliant use of force
 - (iii) Any witnesses
 - (iv) What actions were observed by the reporting officer

H. Duty to Intervene

1. 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 of this policy if all of the following apply:
 - (a) The law enforcement officer observes the noncompliant use of force.
 - (b) The circumstances are such that it is safe for the law enforcement officer to intervene.
 - (i) A law enforcement officer who intervenes as required 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) This section applies to both on-duty and off-duty law enforcement officers.
 - (i) Off duty officers should consider the following safety factors:
 - (i) Is the officer in his or her own jurisdiction?
 - (ii) Is the officer in uniform or otherwise immediately identifiable as a law enforcement officer?
 - (iii) Is the observed use of force in the context of an ongoing tactical situation?
 - (iv) Is the officer's intervention likely to escalate the situation?

I. Whistleblower Protections

1. 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; intervened to prevent or stop a noncompliant use of force as required; 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.

J. Training

1. Officers shall receive agency authorized training designed to simulate actual physical confrontations and conditions and, as otherwise necessary to enhance officers' de-escalation skills and discretion and judgement in using deadly and non-deadly force in accordance with this policy.

K. Probationary Officer Weapon Prohibition

1. Probationary Officers are prohibited from carrying a department-issued firearm either openly or in a position of concealment during off-duty hours until he/she is certified as a law enforcement officer by the State of Wisconsin, and has successfully completed Step 4 of the Department's Field Training Program.

IV. References:

- A. State of Wisconsin Defense and Arrest Manual
- B. State of Wisconsin Professional Communications Manual
- C. State of Wisconsin Firearms Manual
- D. State of Wisconsin Tactical Response Manual
- E. State of Wisconsin Intervention Options
- F. WI Statute §66.90511(2) – Use of Force Policy
- G. WI Statute §165.845 – Collection and Reporting of Crime Data
- H. WI Statute §175.44 – Law Enforcement Use of Force
- I. WI Statutes §939.45/§939.46/§939.47/§939.48/§939.49 (statutes regarding privileged use of force by a law enforcement officer or related privileged use of force statutes)
- J. Graham v. Connor (109 S. Ct. 1865 {1989}) U.S. Supreme Court Case
- K. United States Constitution, 4th Amendment (Torres v. Madrid, 2023)



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