

CITY OF BROOKFIELD POLICE DEPARTMENT POLICY	TITLE: USE OF FORCE		
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SPECIAL INSTRUCTIONS: Replaces all previous Use of Force Policies		TEXT NAME: USE OF FORCE	

I. PURPOSE:

The purpose of this policy is to provide police officers with guidelines on the use of deadly and non-deadly force.

II. DISCUSSION:

The City of Brookfield Police Department has adopted the Wisconsin system of Defensive and Arrest Tactics (DAAT), which was developed by the State of Wisconsin Law Enforcement Standards Board. The DAAT system is a system of verbalization skills coupled with physical alternatives.

III. POLICY:

The City of Brookfield Police Department recognizes and respects the value and rights of all human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only that force which is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. Officers will follow all applicable training, Departmental policy, Wisconsin state law, and the U.S. Constitution for guidance in their use of force.

IV. DEFINITIONS:

- a. **Control Alternatives** are defined in the DAAT system as tools and tactics designed to control subjects who are resisting or threatening to resist an officer's lawful orders. There are four tactics/tools: Escort holds, Compliance holds, Control Devices (Tasers and O.C. spray) and Passive countermeasures.
- b. **Protective Alternatives** are used to overcome continued active resistance, assaultive behavior or their threats. Active Countermeasures, Incapacitating Techniques and Intermediate Weapons, such as batons and less lethal impact munitions, are examples.
- c. **Deadly force.** The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

- d. **Great bodily harm.** 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.
- e. **Justification for the use of deadly force.** Behavior which has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons.
- f. **Imminent threat.** Imminent threat means that there is a significant likelihood, based on known facts, of death or great bodily harm if the situation is not immediately brought under control. In order for a threat to be imminent there must be the displayed **intent** to cause great bodily harm or death to the officer or others, a **weapon** capable of causing great bodily harm or death, and a **delivery system** or means of inflicting the harm. Imminent threat is a deadly force factor.
- g. **Non-deadly force.** The use of force other than that which is considered deadly force.
- h. **Preclusion.** Deadly force is used as a last resort. Before deadly force is used, other readily available force options should have been exhausted or considered ineffective, (precluded). Preclusion is a deadly force factor.
- i. **Target Requirements.** Before engaging an imminent threat with deadly force, the following 3 target requirements must be met. **Target acquisition-** the acquiring of an actual target. **Target identification-** means that you have identified your target as the source of the imminent threat. **Target isolation-** means that you can shoot at your target without the danger of harming innocent people. Target requirements are a deadly force factor.
- j. **Greater danger exception.** The greater danger exception is the one exception to the target isolation rule. This exception allows the officer to shoot without target isolation **if** the consequences of not stopping the threat would be worse than the possibility of hitting an innocent person. The greater danger exception is a deadly force factor.

V. USE OF FORCE:

This Department recognizes the DAAT system's five key rules in the use of force by its officers:

1. The purpose for use of force is **to gain control** in pursuit of a legitimate law enforcement objective. Legitimate law enforcement objectives include:
 - To achieve and maintain control of resistive subjects;
 - To detain persons reasonably suspected of illegal behavior or to effect an emergency detention (Chapter 51) or protective custody (Chapter 55);

- To make lawful arrests;
 - To defend officers or others;
 - To prevent escape.
2. If verbalization is effective in gaining control, it is always preferable to physical force. Officers may initially use the level and degree of force that is reasonably necessary to achieve control. They need not escalate step-by-step through the Intervention Options in Disturbance Resolution. As the situation dictates, officers may move from any mode to any other if it's reasonable to believe that a lower level of force would be ineffective.
 3. At any time, if the level of force used is not effective to gain control, officers may **disengage** and/or **escalate** to a higher level of force.
 4. Once officers have gained control of a subject, they must **reduce** the level of force to that needed to maintain control.
 5. Officers must always maintain a position of advantage.

An officer's use of force must be "objectively reasonable" in the light of the facts and circumstances known to the officer at the time. Some issues to consider when deciding if a particular use of force is reasonable include:

- The severity of the alleged offense at issue;
- Whether the suspect poses an imminent threat to the safety of officers and/or others;
- Whether the suspect is actively resisting or attempting to evade arrest by flight;
- Whether the suspect is believed to be armed;
- The suspect's criminal history, including propensity to resist officers.

The use of more force than is reasonable will not affect the validity of the arrest. It may however, expose the officer to civil litigation, Departmental discipline or both, and in aggravated circumstances, possible criminal liability.

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent the use of unreasonable force. An officer who observes another law enforcement officer use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

Officers shall display as much regard for the offender's safety and welfare as is appropriate under the circumstances. Unless circumstances dictate otherwise, all arrested persons shall be handcuffed and searched prior to being transported in a police vehicle. All persons being transported shall be seated in an upright position, seat-belted, and continuously monitored. Any restraint configuration resembling "hogtying" is strictly prohibited.

VI. USE OF DEADLY FORCE:

- A. Police officers may use deadly force when the officer reasonably believes that behavior exists which has caused or imminently threatens to cause death or great bodily harm to themselves or to others.

The purpose for which an officer uses deadly force is to stop the threat. Once the threat has been stopped, then the use of deadly force must stop.

In any situation, the officer should not use deadly force unless they reasonable believe it is necessary, and then only as a last resort.

1. Target-Specific Directed Fire

Target-specific directed fire is an application of deadly force that may be appropriate in certain limited situations. It is purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to the officer or others, but who may not be clearly observable. The purpose of target-specific directed fire is to stop the threat when no other reasonable course of action would allow officers to perform a rescue, escape from danger, or otherwise prevent death or great bodily harm. The only difference between target-specific directed fire and the "traditional" law enforcement use of deadly force is that the suspect's location is inferred rather than directly observed.

Deadly force decision making should be based on the totality of the circumstances known to the officer at the time, and should take into consideration the deadly force factors as outlined below:

- Imminent threat (weapon, intent, delivery system);
- Target Requirements (target identification, acquisition, isolation);
- Greater danger exception (considered when target isolation cannot be accomplished);
- Preclusion (no other reasonable force option is available).

When these deadly force factors have been satisfied, an officer's use of deadly force is legitimate and justified.

Imminent threat + Target requirements + Greater danger exception + Preclusion = Legitimate use of deadly force.

Warning shots are prohibited. However, and only if feasible, a verbal warning should be given prior to employing deadly force.

The intentional use of deadly force to prevent suicide or solely to protect property is prohibited [Wis. Stats. 939.48 (5) and 939.49(1)].

- A. As a last resort, officers may use deadly force to prevent a subject's escape, but only when the officer has probable cause to believe that the subject has committed a crime involving the infliction or threatened infliction of serious physical harm and when a high probability exists that the subject(s), if not immediately apprehended, may cause death or great bodily harm. (*Tennessee v. Garner*)
- B. Officers are cautioned regarding discharging firearms at or from a moving vehicle unless the officer(s) reasonably believe deadly force is necessary to defend themselves or others from the use, or imminent use, of deadly force.

Whenever possible, officers should try to move out of an oncoming vehicle's path, rather than fire at the vehicle.

NOTE: *Scott v. Harris*, 550 U.S. 372, 386 (2007); *Plumhoff v. Rickard*, 134 S. Ct. 2012, (2014); *Thompson v. Mercer*, No. 13-10773, 5th U.S. Circuit Court of Appeals (2014); *Cass v. Dayton Police Dept.*, No. 13-4409, 6th U.S. Circuit Court of Appeals (2014).

- C. Officers may kill an animal if the officer or another person is legitimately threatened with bodily harm by the animal or otherwise to provide for the safety of the general public.
- D. Officers may kill an animal that has been so badly injured that its destruction would prevent further suffering.
- E. It is the policy of this agency to prohibit the use of choke holds except in situations where the use of deadly force is allowed by law.

VII. WEAPONS:

Officers are not authorized to carry a weapon unless that weapon is approved and he/she is qualified in its use as determined by Department training procedures. It is recognized that in extreme circumstances, where Department-approved weapons or methods have been exhausted or are otherwise not immediately available, officers may need to resort to alternative methods of protecting themselves or others. The "objective reasonableness" standard will be applied in evaluating these cases.

The following control and protective alternatives have been authorized by the Department issued Batons, Oleoresin Capsicum Spray (O.C.), TASER X26 and TASER X26P (electronic control devices), 12 gauge less lethal impact munitions, PepperBall chemical delivery munitions, 40mm chemical and less lethal delivery systems and diversionary devices when used in accordance with Department policy or Suburban Critical Incident Team (S.C.I.T.) standard operating procedures.

Except for firearms maintenance or training, police officers shall not draw or exhibit any weapon unless circumstances create reasonable belief that it may be necessary to use the weapon in accordance with this policy. This restriction does not apply to the display of any non-deadly weapon for tours, public appearances, or other educational purpose.

VIII. FIRST AID AND MEDICAL ASSISTANCE:

Whenever any level of physical force is used to take a subject(s) into custody officers are required to conduct a medical needs assessment of that subject.

Generally, this assessment should not occur until the subject(s) is stabilized and poses a minimal threat to the safety of the officer or others. (Wis. Stat. 940.291, Failure to Render Aid by Law Enforcement Officer)

The initial medical assessment should include: Determining the level of consciousness, checking for ABC's (airway, breathing, circulation), performing a primary and secondary survey, providing treatment to the officer's level of training, and activating the emergency medical system (EMS) if appropriate. Officers are to continue to monitor the subject (stay close; watch closely) while in custody.

If medical attention is requested at any point, officers shall ensure that medical attention is provided as soon as it's safe to do so. Whenever force is used and a subject has obvious injuries but refuses medical attention, the refusal shall be documented in reports and whenever practicable, should be witnessed by another officer. If the TASER body camera has recorded the refusal, reports should make mention of same. Nonetheless, still photos of apparent injuries shall also be taken when possible.

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 persons exhibiting "medically significant behavior"), 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 also be considered medical emergencies. When feasible, request appropriate backup, notify a supervisor, and stage EMS.

In situations where force was used in an arrest and turnover is to be made to medical personnel or jail personnel, upon turnover the primary handling officer shall advise that the person in custody was subjected to the use of force and provide a description of the force used and any other circumstances the officer reasonably believes would be of a potential safety or medical concern for the subject (e.g. prolonged struggle, extreme agitation, impaired respiration).

IX. REPORTING THE USE OF FORCE:

Any time a sworn officer uses the following force options or a citizen claims to have been injured by an officer, the on duty shift commander shall be notified as soon as practical:

Control Alternatives – control devices (OC/ECD), passive countermeasures

Protective Alternatives – all protective alternatives

Deadly force – any time deadly force is used

A narrative report and Supervisor's Use of Force Review is required whenever any of the above-mentioned force options are employed by an officer or when a subject alleges that an injury has been inflicted by an officer.

The narrative shall detail the totality of the circumstances, provide a description of the level of resistance encountered, an explanation of what force was used, why it was used, the extent of injury inflicted or sustained, and what follow-through steps were taken. The Watch Commanders shall, whenever practical, respond to the scene of the event and will ensure that appropriate Departmental investigative and reporting procedures are followed and that all possible camera angles of the use of force event are obtained.

All of the above identified matters require a written report. Each officer submitting a report shall review the State of Wisconsin DAAT Student Manual (pages 119-130) on documentation following use of force.

The current DAAT student manual is dated January of 2018. Reports are to be completed in a timely manner depending on the circumstances of each case as directed by a supervisory officer.

For incidents involving death or great bodily harm, involved officers and officer witnesses may be allowed one to two sleep cycles prior to providing a statement to investigators. Officers directly involved will not be required to submit any Department form or report, to include: firearms discharge report or a use of force report. These reports will be completed at the conclusion of the criminal investigation at the direction of the lead investigator.

In addition to the above reporting requirements, a Firearm Discharge Report is required whenever a firearm is discharged in the line of duty (excluding when the discharge is part of a training/qualification exercise, recreational or competitive use). A Supervisory TASER Use Report shall be completed whenever the TASER has been employed against a subject or animal.

X. DEPARTMENTAL RESPONSE:

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, Assistant Chief of Police and the Patrol and Investigative Captains shall be notified. An investigation shall be conducted or directed by one of these individuals. The investigation is to be conducted following the practices and principles of a criminal investigation (i.e. protecting the crime scene, interviewing witnesses, collecting and preserving evidence, and following related procedures). [See Policy on Officer Involved Death Investigations.]

In all incidents involving great bodily harm or the use of deadly force, the involved officer(s) shall provide a blood sample for drug and alcohol screening for administrative purposes, e.g. fitness for duty, etc. Such samples will not be released for any criminal investigation, including investigations pursuant to Wis. Stat. 175.47, unless subpoenaed.

The officer(s) involved may be placed on administrative leave, with pay, by the Chief of Police or his designee. The Chief of Police will determine the length of leave based on but not limited to, the review and investigation of the incident, and recommendations from mental health and/or medical professionals.

The duty supervisor is required to provide a "preliminary notification" to the Chief of Police, the Assistant Chief of Police, and both Division Commanders whenever the use of force reporting and review procedure is required. This notification can be given in writing, by phone or by email. It should include a very brief explanation, the date, time, and IR number and the status of the review process. The Supervisor shall also assure that all reports required by policy are dictated/completed pursuant to Section IX above. All reports are to be considered "priority reports" for the records section. The reports are to be typed and returned to the duty supervisor for the review process. The duty supervisor is to review the report with the officer(s) and complete the Supervisor's Use of Force Review form.

All Use of Force matters will be reviewed following the chain of command review format on the Supervisor's Use of Force Review form.

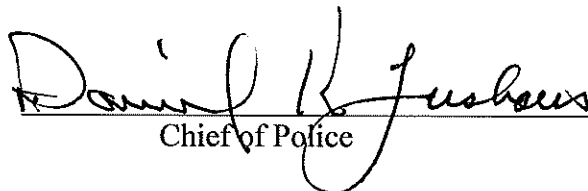
WARNING

This policy is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of 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.

This policy is designed to give direction to officers. It is not intended, nor should it be construed, as a rigid directive to the officer. It is recognized that every situation is unique and requires the application of various pieces of this policy, not necessarily in any specific order.

01-15-21

Date


Chief of Police

DKT:JPA:JPP