

Use of Force (Reviewed 04/03/2023) (Revised 04/03/2023)

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force (Wis. Stat. § 66.0511(2)).

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

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 action or conduct that generates bodily harm.

Bodily harm - Physical pain or injury, illness, or any impairment of physical condition, but less severe than great bodily harm.

Choke hold - Means the intentional and prolonged application of force to the throat, windpipe, or carotid arteries that prevents or hinders breathing or blood flow, reduces the intake of air, or reduces blood flow to the head(Wis. Stat. § 66.0511 (1)a).

Deadly force - The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. (Wis. Stat. § 939.48(1))

Deadly force justification - Behavior which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.

De-escalation - Taking action or communicating verbally or non-verbally in an attempt to stabilize a situation and reduce the immediacy of a threat so more time, options, and resources become available to resolve the situation without the use of force or with a reduction in the force necessary.

Defensive and Arrest Tactics (DAAT) - A system of verbalization skills coupled with physical alternatives. It is a specific system formulated, approved, and governed by the Wisconsin Department of Justice - Law Enforcement Standards Board.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the Officer or another person.

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Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

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. (Wis. Stat. § 939.22(14))

Imminent threat - About to happen, impending. An imminent threat is an immediate threat.

Non-deadly force - An amount of force that, under normal circumstances, would not be expected to result in great bodily harm or death.

Objective reasonableness standard - Reasonableness should be judged under the totality of the circumstances from the perspective of a reasonable Officer at the scene with similar training and experience. Three elements of the standard are:

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

Passive resistance - Non-compliant and non-threatening behavior to lawful orders.

Preclusion - The Officer reasonably believes all other options have been exhausted or would be ineffective.

Totality of the circumstances - All facts and circumstances known to the Officer at the time, taken as a whole, including the conduct of the Officer and the subject leading up to the use of force.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Fond du Lac Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting Officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

300.2.1 DUTY TO INTERVENE AND REPORT

Any Officer present and observing another law enforcement officer or a member 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 or stop the use of unreasonable force (Wis. Stat. § 175.44).

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- (a) The Officer observes the use of force that does not comply with Wis. Stat. § 175.44(2) (b) or (c),
- (b) The circumstances are such that it is safe for the Officer to intervene.

Any Officer who intervenes and/or observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances shall report these observations and/or intervention to a supervisor as soon as practicable after the occurrence of the use of force (Wis. Stat. § 175.44).

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each Officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

300.2.3 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 as required under sub. (3) or (4); intervened to prevent or stop a noncompliant use of force as required under sub. (4); 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; provided any information, or is believed to have provided any information, about noncompliant use of force as required under sub. (3) or (4) (Wis. Stat. § 175.44(5)).

300.2.4 ADDITIONAL CONSIDERATIONS

The duty to intervene and report applies without regard to the chain of command.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the Officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable Officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that Officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

A force decision shall be based on the Disturbance Resolution Model incorporated in the DAAT system.

Given that no policy can realistically predict every possible situation an Officer might encounter, Officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

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It is also recognized that circumstances may arise in which Officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an Officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

A law enforcement officer may use reasonable force to arrest a person or execute a warrant. Additionally, a law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer (Wis. Stat. § 968.07; Wis. Stat. § 968.14).

300.3.2 FACTORS USED TO DETERMINE WHEN FORCE CAN BE USED

Law enforcement officers may use force legitimately when it is needed to achieve control in five specific situations:

- (a) To achieve and maintain control of resistive subjects.
- (b) To detain persons reasonably suspected of criminal behavior.
- (c) To make lawful arrests.
- (d) To defend themselves or others.
- (e) To prevent escape.

When deciding to use force, an Officer shall take the following into consideration:

- (a) The sanctity of human life (Wis. Stat. § 175.44).
 - 1. 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.
- (b) Use of Force.
 - 1. The severity of the alleged crime at issue.
 - 2. Whether the suspect poses an imminent threat to the safety of law enforcement officers and/or others.
 - 3. Whether the suspect is actively resisting or attempting to evade arrest by flight.

When force is used, the use of force must fit into one of the following categories:

- (a) A trained technique.

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- (b) A dynamic application of a trained technique (i.e., not quite the classroom model, but as close to it as possible under the circumstances).
- (c) A technique not trained, but justifiable under the circumstances.

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an Officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to Officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the Officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of Officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with Officer commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and their ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the Officer.
- (l) Potential for injury to Officers, suspects and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the Officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the Officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

300.3.4 KEY RULES FOR USE OF FORCE

The following are important rules Officers shall consider when using force:

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- (a) The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
- (b) An Officer may initially use the level and degree of force that is reasonably necessary to achieve control. An Officer need not escalate step-by-step through the Intervention Options.
- (c) At any time, if the level of force an Officer is using is not effective to gain control, an Officer may disengage and/or escalate to a higher level of force. This involves transitioning to a different level of force or different tactics based on the totality of circumstances.
- (d) Once an Officer has gained control of a subject, an Officer must reduce the level of force to that needed to maintain control.
- (e) An Officer must always maintain a position of advantage.

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, Officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, Officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, Officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Fond du Lac Police Department for this specific purpose.

300.3.6 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, Officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

300.3.7 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passively, physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the Officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the Officer determines that compliance has been achieved.

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300.3.8 CHOKE HOLD

The use of a choke hold, which is the intentional and prolonged application of force to the throat or windpipe, is prohibited, except in life-threatening situations or in self-defense (Wis. Stat. § 66.0511(2)).

300.3.9 ADDITIONAL REQUIREMENTS

Any use of force by an Officer shall be undertaken in good faith to achieve a legitimate law enforcement objective.

300.4 INTERVENTION OPTIONS

The Fond du Lac Police Department adopts the Intervention Options as part of the Defensive and Arrest Tactics System which provide general guidelines that define the degree and type of force to be used in controlling subjects.

Intervention Options consist of the following five modes in which an Officer can intervene with a subject:

- (a) Presence - Purpose is to present a visible display of authority.
- (b) Dialogue - Purpose is to verbally persuade.
- (c) Control Alternatives - Purpose is to overcome passive resistance, active resistance, or their threats.
- (d) Protective Alternatives - Purpose is to overcome continued resistance, assaultive behavior, or their threats.
- (e) Deadly Force - Purpose is to stop the threat.

300.5 DEADLY FORCE APPLICATIONS

When circumstances reasonably permit, Officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g. summoning additional resources, formulating a plan, attempting verbal persuasion, etc.). 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.

When reasonable, the Officer will, prior to the use of deadly force, make efforts to identify themselves as a Police Officer and to warn that deadly force may be used, unless the Officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) An Officer may use deadly force to protect themselves or others from what they reasonably believe is an imminent threat of death or great bodily harm.
- (b) An Officer, may use deadly force to stop a fleeing subject when the Officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of great bodily harm or death,

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and the Officer reasonably believes that there is an imminent risk of great bodily harm or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an Officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the Officer or another.
 2. The person is capable of causing great bodily harm or death without a weapon and it is reasonable to believe the person intends to do so.
- (c) An Officer as the last resort may use deadly force as to euthanize a dangerous animal or one that is so seriously injured that humanity dictates its dispatch to alleviate further suffering, but only after careful consideration is given to the public's safety and whether other alternatives may be feasible.
- (d) Officers should identify themselves as a law enforcement officer and issue a verbal warning of the intent to use deadly force if both practical and feasible.

Use of deadly force is prohibited in the following circumstance:

- (a) An Officer shall not discharge a firearm as a warning.

300.5.1 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 you or others, but whom you may not be able to clearly observe. 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.

300.5.2 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective. When feasible, Officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An Officer should only discharge a firearm at a moving vehicle or its occupants when the Officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the Officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.6 REPORTING THE USE OF FORCE

Any use of force at the level of compliance holds or higher by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The Officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related

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purposes, the Department also requires the completion of a Blue Team Use of Force Tracking Form whenever an officer uses force under the following circumstances:

- (a) When a firearm is discharged, either intentionally or accidentally while engaging in subject control, except in a training situation or for lawful recreational purposes.
- (b) When a firearm is pointed at a person except in a training situation.
- (c) When an action results in, or is alleged to have resulted in, injury or death of another person.
- (d) When force is applied through the use of a lethal or less lethal weapon.
- (e) When weaponless physical force is applied at the level of compliance holds or higher.

300.6.1 NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable Officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the ECD or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual was struck with an impact weapon.
- (j) Any application of deadly force.
- (k) An individual alleges unreasonable force was used or that any of the above has occurred.

300.6.2 REPORTING TO WISCONSIN DEPARTMENT OF JUSTICE

Statistical data regarding all qualifying use of force incidents is to be reported to the Wisconsin Department of Justice as required by Wis. Stat. § 165.845. For the purposes of this section, a qualifying use of force incident means any incident (Wis. Stat. § 165.845):

- (a) Involving the discharge of a firearm by an Officer at or in the direction of a civilian.
- (b) Involving the discharge of a firearm by a civilian at or in the direction of an Officer.
- (c) Involving any action taken by an Officer in response to an act of resistance that results in great bodily harm or death (Wis. Stat. § 939.22).
- (d) Involving an act of resistance taken by a civilian against an Officer that results in great bodily harm or death.

300.7 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Based upon the Officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another Officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling Officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the Officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, 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 be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable. If the situation warrants through the Officer's size-up report have medical personnel stage away.

See Policy 433 - Medical Aid and Response for additional guidelines.

300.8 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to an incident in which there has been a reported application of force as identified in policy 300.6.1, the supervisor is expected to:

- (a) Obtain the basic facts from the involved Officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
 - 1. Verify when medical assessment and/or treatment was offered or on scene and whether or not was received or refused.
 - 2. Verify injury description and injured body part(s).
 - 3. Verify when applicable that a medical release form was completed or refused.

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- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken. Photographs should be retained until all potential civil litigation has expired.
 - 1. Verify photographs of any areas involving visible injury or complaint of pain have been taken.
 - 2. Verify overall photographs of uninjured areas have been taken.
 - 3. Verify photographs of the scene have been taken.
- (d) Identify any witnesses.
- (e) Review and approve all related reports.
- (f) Determine if there is any indication that the individual may pursue civil litigation. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the Assistant Chief of Police/ Administration.
- (g) The Assistant Chief of Police/ Administration should evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. Supervisors must be prepared to justify any deviation from this responsibility.

300.8.1 ASSISTANT CHIEF OF POLICE/ ADMINISTRATION RESPONSIBILITY

The supervisor shall ensure a Blue Team Use of Force Tracking Form is completed with each incident report whenever an Officer uses force under the circumstances described in policy 300.6 and route the tracking form through Blue Team to the Assistant Chief of Police/ Administration and copy (i.e. Cc) the Assistant Chief of Police/ Operations. The Assistant Chief of Police/ Administration shall assign a review of each use of force to ensure compliance with this policy and to address any training issues.

300.9 POLICY AVAILABILITY

The Chief of Police or the authorized designee should 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.

300.10 TRAINING

Officers will receive annual training on this policy and demonstrate their knowledge and understanding. Officers are required to receive training and demonstrate their understanding of this policy before being authorized to carry any firearm.

Subject to available resources, Officers should receive periodic training on:

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- (a) Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
- (b) De-escalation tactics, including alternatives to force.

300.10.1 ADDITIONAL TRAINING REQUIREMENTS

Officers shall also receive annual training related legal updates.

The Department adopts the Defensive and Arrest Tactics (DAAT) training system per the Wisconsin LESB. Officers shall also be trained on the DAAT system.

300.11 USE OF FORCE ANALYSIS

At least annually, the Assistant Chief of Police/ Administration should prepare an analysis 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.

The Department will submit Use of Force and Arrest-Related Death Data (UFAD) to the Wisconsin Department of Justice through TraCS.