

## **6-100 THE USE OF DEADLY FORCE**

Recognizing our legal and moral obligation to use force wisely and judiciously, it is the policy of this department that deadly force will never be resorted to unless an officer reasonably believes that a lesser degree of force would be insufficient to defend the life of another, one's self, or in limited situations, to apprehend a dangerous felon, or control an animal.

### **DEADLY FORCE DEFINED**

As used in this policy, deadly force refers to the intentional use of a firearm or other instrument, the use of which would result in a high probability of death.

### **DEADLY FORCE AUTHORIZED**

The use of deadly force is only authorized when, under any of the following circumstances, an officer reasonably believes a lesser degree of force would be insufficient:

- 1 in the defense of another person who the officer has reasonable cause to believe is in imminent danger of death or great bodily harm;
- 2 in defense of oneself, when there is reasonable cause to believe one is in imminent danger of death or great bodily harm;
- 3 to effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm;
- 4 to protect one's self or another from an animal which an officer reasonably believes may cause great bodily harm if not immediately controlled, or to end the suffering of an animal gravely injured or diseased after considering public view, safety, and other reasonable dispositions.

### **VERBAL WARNING**

Before using deadly force, officers shall, if reasonably possible, identify themselves and order the suspect to desist from unlawful activity.

### **DEADLY FORCE IS NEVER AUTHORIZED**

- 1 Warning shots will not be fired.
- 2 From a moving vehicle, unless an officer has reasonable cause to believe that one's self or another is in imminent danger of death or great bodily harm.
- 3 At a moving vehicle unless an officer has reasonable cause to believe that one's self or another is in imminent danger of death or great bodily harm or Deadly Force Authorized, paragraph 3, regarding certain felons applies.

Officers shall not use deadly force when its use unreasonably risks the lives of innocent bystanders.

### **USE OF FORCE TECHNIQUES/INSTRUMENTS**

1. The intentional punching, striking, or grabbing the throat (trachea) or blocking or restricting the carotid neck arteries creates a substantial likelihood of death or great bodily harm and is therefore considered deadly force and shall be used only in accordance with this policy.

2. Members of the department are permitted to carry folding knives with a blade no longer than 4 inches for utility purposes while on duty.

## **AUTHORIZED USE OF FIREARMS**

Authorized firearms (on or off duty) may be used for target practice or competition at a firing range, or other safe area

## **INVESTIGATION OF THE USE OF DEADLY FORCE**

It is important to recognize that employees, in the course of carrying out their responsibilities, may be confronted by violence and may be required to use deadly force to protect their life or the life of another person. Employees who are compelled to exercise deadly force may experience severe emotional trauma.

The investigative inquiry is to be conducted in a thorough, accurate and factual manner and must also take into consideration the psychological, physiological and legal ramifications that such incidents have upon the officer, their family and the community.

### **Use of Force Not Resulting in Death or Injury**

When an officer is responsible for the accidental or intentional use of deadly force which does not result in death or injury,

- 1 Officers shall inform the Chief of Police of the incident as soon as possible.
- 2 The Chief of Police shall make an investigation of the incident pursuant to department policy.

### **Use of Force Resulting in Death or Injury**

When an officer is responsible for the accidental or intentional use of deadly force which results in death or injury,

#### **1. Duties of Involved Officers**

- a. Officers shall inform the Chief of Police of the incident as soon as possible.
- b. Control the scene until relieved.
- c. Identify witnesses for subsequent interviews. Involved officers shall not participate in the interviews of witnesses.

#### **2. Duties of the Chief of Police.**

- a. Ensure adequate supervision at all scenes.
- b. Ensure that involved personnel have had appropriate opportunities to contact family members and/or attorneys.
- c. Ensure that EAP services have been offered.
- d. Place the officer(s) on a minimum of one-day paid administrative leave. This may include additional paid administrative leave time or a temporary special assignment.
- e. Ensure that within 72 hours of the incident, the involved officer(s) are contacted by a department approved traumatic stress professional.
- f. If applicable, ensure that Policy 5-300 Significant Exposure to Blood Borne Pathogens is followed.
- g. Shall have oversight of the criminal investigation.

h. Coordinate media releases with the Mayor

### **Investigations of Use of Force resulting in Death or Injury**

When an incident results in an officer's use of deadly force and results in death or injury the Chief of Police will request an investigation be conducted by the Wisconsin Department of Criminal Investigation. Any data, evidence or other investigation materials obtained during the initial investigation, prior to the arrival of DCI personnel will be turned over to DCI.

### **District Attorney Review**

All reports involving the use of deadly force by department personnel which cause injury or death shall be submitted to the District Attorney for review.

### **BPD Policy Compliance Review**

All instances of the use of deadly force shall be reviewed for compliance with BPD policy.

Chief of Police shall oversee all internal investigation resulting from the accidental or intentional use of deadly force which results in death or injury.

## **6-200 THE USE OF NON-DEADLY FORCE**

It is the policy of this Department that officers, while in the performance of legal duties, shall always employ force in a manner that is objectively reasonable based on the totality of the circumstances. *GRAHAM v. CONNOR*, 490 U.S. 386 (1989) The reasonableness test is an objective one and must be judged from the perspective of a reasonable officer at the scene.

### **NON-DEADLY FORCE DEFINED**

As used in this policy, non-deadly force means the use of any weapon or instrument, or any physical action taken by an officer which is not likely to cause death.

### **NON-DEADLY FORCE AUTHORIZED**

Non-deadly force is only authorized when an officer reasonably believes it is necessary to control a person under any of the following circumstances:

- 1 Detaining a person reasonably suspected of unlawful behavior.
- 2 Effecting an arrest.
- 3 Overcoming resistance.
- 4 Preventing escape.
- 5 Protecting oneself or another.
- 6 Maintaining order.

### **FORCE CONSIDERATIONS**

Officers shall use the degree of force believed to be objectively reasonable to control a situation considering the following factors:

- 1 The existence of alternative methods of control.
- 2 Physical size, strength and weaponry of the person as compared to the officer.
- 3 The nature of the encounter.
- 4 Actions of the person.
- 5 Exigent conditions (i.e., availability of backup, number of persons involved, etc.).
- 6 The severity of the offense.
- 7 Whether the suspect poses a threat to the safety of officers or citizens.
- 8 Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Control of a person through presence and verbal commands shall always be the preferred method of control. Because verbal commands are not always effective or appropriate in gaining compliance, officers may

escalate the degree of force based on the actions of the person they are attempting to control. Once a person is under control, officers are required to revert to the lowest degree of force necessary to maintain that control.

The degree of force an officer chooses should be based on his/her tactical evaluation and threat assessment of the situation. Based upon the totality of the circumstances known at the time and in light of the officer's training and experience, the officer should choose a tactic/procedure that is objectively reasonable and is consistent with one of the following:

- 1 The tactic/procedure utilized is a trained technique.
- 2 The tactic/procedure is a dynamic application of a trained technique.
- 3 The tactic/procedure not trained, but justifiable under the circumstances.\*

\* excerpted from Defensive and Arrest Tactics, A Training Guide For Law Enforcement Officers, Wisconsin Department of Justice, Law Enforcement Standards Board, March 2007.

### **THE USE OF OLEORESIN CAPSICUM SPRAY (O.C. SPRAY)**

- 1 Officers may use OC Spray when they reasonably believe they are facing active resistance, or its threat, from the subject. OC Spray is not to be used against subjects who are offering passive resistance.
- 2 Officers shall only direct O.C. Spray in a manner as prescribed by the Chief of Police through departmental training.
- 3 Oleoresin capsicum (O.C.) Spray shall not be used once an individual is subdued and under control.
- 4 If practical, the individual should be provided with an opportunity to eliminate the effects of the irritant by washing and flushing the affected areas with water. Further, the officer should inform such individuals that it is not advisable to use creams, ointments, or bandages on the affected areas

### **CHEMICAL AGENT USE**

Officers shall discharge chemical agents only in a manner as prescribed by the Chief of Police through departmental training.

### **ELECTRONIC CONTROL DEVICE USE**

1. An approved electronic control device (ECD) may only be utilized by officers that have successfully completed training in its use. Deployment and use of the electronic control devices will be in accordance with departmental training and procedure.
2. An ECD is not a substitute for deadly force—in cases where a subject is believed to be armed with a dangerous weapon, an officer may not arm him or herself with an ECD unless another officer at the scene has the immediate ability to deliver deadly force. Officers armed with an ECD should continuously monitor and evaluate the ability of other officers present to deliver deadly force.
3. An officer may only display, present, or threaten to use an ECD if the officer reasonably believes that the potential for its authorized use exists.
4. Deployment of an ECD will be evaluated using the criteria in this policy. An ECD may only be used under the following circumstances:
  - a. To overcome violent or assaultive behavior or its threat; if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person.
  - b. To control persons in order to prevent them from harming themselves or others.

5. Use of an ECD under the following circumstances is prohibited, unless exigent circumstances are present:
  - a. Against handcuffed subjects.
  - b. Against subjects fleeing on foot.
  - c. Against subjects operating a motor vehicle.
  - d. From a moving vehicle.
6. The ECD will not be used under the following circumstances:
  - a. For coercion or intimidation.
  - b. To escort or prod subjects.
  - c. To awaken unconscious or intoxicated subjects.
  - d. Against subjects who are offering only passive resistance.
7. ECD probes may not be intentionally fired at the face, head, neck or groin, unless the use of deadly force would be justified.
8. Officers shall evaluate all subjects against whom an ECD has been deployed. The subject shall be medically evaluated if:
  - a. The subject requests medical treatment.
  - b. The subject displays an adverse reaction to the ECD deployment.
  - c. The subject has been exposed to more than one ECD simultaneously.
  - d. The subject has been exposed to five (5) or more ECD firing cycles; or one continuous firing cycle of twenty-five (25) seconds or more.
9. If the ECD probes have penetrated the skin in a sensitive area (head, neck, groin or breast of a female) the subject will be conveyed to an emergency room for removal. If the probes are embedded in non-sensitive areas, a trained officer may remove them.
10. Removing the air cartridge to deploy an ECD in the drive-stun mode is not authorized as a primary ECD deployment technique.

## **BATON USE**

- 1 A baton may be used when an officer reasonably believes a lesser degree of force would be insufficient to control the situation.
- 2 An officer shall never intentionally strike a person's head with a baton unless such an action is justified under the use of deadly force.
- 3 Officers shall only use Department-approved batons and techniques.
- 4 Department-approved batons are the only authorized impact weapons. Flashlights, radios, firearms, etc., are not recommended as impact weapons; however, the Department recognizes that emergency self-defense situations involving other objects and instruments may occur.

## **IMPACT PROJECTILES**

1. Impact projectile weapons may only be utilized by officers that have successfully completed training in their use. Deployment of impact projectiles will be in accordance with departmental training.

2. Impact projectiles are not a substitute for deadly force—an officer may not arm him or herself with an impact projectile weapon unless another officer at the scene has the immediate ability to deliver deadly force. Officers armed with impact projectile weapons should continuously monitor and evaluate the ability of other officers present to deliver deadly force.

3. It is the responsibility of the officer arming him or herself with an impact projectile weapon to ensure that the weapon is loaded with impact projectiles each time the weapon is deployed.

4. Like any use of force, deployment of impact projectiles must be evaluated using the criteria in this.

Deployment of impact projectiles at non-vital areas is considered non-deadly force. Impact projectiles may only be used under the following circumstances:

a. To overcome violent or assaultive behavior or its threat; if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person.

b. To control persons in order to prevent them from harming themselves or others.

Additionally, an officer must reasonably believe that a lesser degree of force would be insufficient to control the situation, or that it is necessary to deliver force at a safe distance from the suspect/subject. The intentional deployment of impact projectiles at the face, head or neck is considered deadly force.

1 All persons taken into custody who have been struck with an impact projectile will be conveyed to an emergency room for medical clearance.

2 The investigative requirements of the Use of Deadly Force policy will be followed only if deployment of an impact projectile results in death or great bodily harm.

3 Absent an imminent risk of harm to officers or citizens, impact projectiles will not be used in crowd control situations. Impact projectiles will not be used to move or disperse crowds.

4 Impact projectiles may be deployed in other jurisdictions pursuant to a mutual aid request. In the event that an individual struck with an impact projectile is taken into custody by another agency, officers from that agency shall be notified of the need for medical treatment.

## **USE OF RESTRAINING DEVICES**

1 Officers shall place handcuffs on any individual in custody when the officer reasonably believes the individual may become violent, attempt to escape, or pose a danger to self or others. It is mandatory that all persons who have aggressively resisted or attacked another person be placed in handcuffs.

2 Officers shall apply handcuffs in a manner prescribed by the Chief of Police through Departmental training.

3 When handcuffs prove to be insufficient in restraining an individual (e.g., kicking, attempting to flee, etc.), officers may employ the use of additional department-approved restraining devices.

4 In an emergency situation when a Department approved restraining device is not available, the Department recognizes that alternative devices may have to be employed. In such situations, approved devices should be substituted as soon as reasonably practicable.

5 Individuals who are placed in the maximum restraint position should be continuously monitored for breathing and circulation.

## **USE OF SPIT HOODS**

1 A spit hood is a temporary protective device, which may be used on persons that display behavior or threatening behavior that pose a hazard of exposure to bodily fluids transmitted by spitting, wiping blood from

their face/head, or wiping/blowing nasal discharges at or onto officers.

2 Officers should use only department approved spit hoods. In an emergency situation if not readily available, officers may utilize other breathable items, such as pillowcases, surgical masks, etc.

3 Officers shall apply the spit hood in accordance with department training.

4 Persons wearing the spit hood must be closely monitored and shall not be left unattended.

5 Officers shall document the use of the spit hood including the circumstances requiring its use in their report of the incident.

### **USE OF FORCE REPORTING REQUIRED**

Any officer who uses physical force, or any of the following enumerated weapons, items or devices against another person, shall complete an original or supplementary report on the incident involved:

- 1 Firearms
- 2 Baton
- 3 Chemical Agents/electronic control devices,
- 4 Handcuffs or other restraining devices,
- 5 Physical force

The report shall specifically note the totality of the circumstances necessitating force and the manner of force employed. All aid rendered to suspects will be documented.

### **USE OF FORCE REVIEW AND INVESTIGATIONS**

All instances of the use of non-deadly force shall be reviewed for compliance with BPD policy by the Chief of Police.

In cases where a complaint is filed pertaining to an officer's use of non-deadly force, the Chief of Police has the primary responsibility for coordinating the internal investigation to ensure compliance with the BPD Use of Non-Deadly Force policy.

If necessary, as part of the Chief's internal investigation, officers who are certified WI Defensive and Arrest Tactics (DAAT) instructors can be consulted to determine findings and forward their conclusions to the appropriate source requesting assistance.