



Division of State Patrol Policy and Procedure

Number

2-1

Subject

USE OF FORCE

Author/Originator

Bureau of Field Operations

Approved by

Superintendent

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Records Management Statement

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I. POLICY

It is the policy of the Division of State Patrol (DSP) to establish guidelines regarding the use of force by its sworn personnel in the performance of their law enforcement duties. The DSP recognizes that these guidelines are supported by statutory and case law and that the application of force by DSP sworn personnel must be deemed reasonable.

II. OBJECTIVES

The primary duty of all law enforcement is to preserve and protect the life and safety of all individuals. The key objective of this policy is to provide sworn personnel with an awareness and understanding that all force utilized in the performance of their duties needs to be objectively reasonable as outlined in the case law of *Graham v. Connor* and Wisconsin State Statute 175.44.

Considerations for “objectively reasonable” are the severity of the alleged crime, imminent threat to the safety of sworn personnel and/or others, and/or the suspect is actively resisting or attempting to evade arrest by flight. This reasonableness shall be judged under the “totality” of the circumstances by a reasonable officer at the scene with like experience and training.

III. DEFINITIONS

- A. **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.
- B. **Authorized Equipment** – equipment either issued and/or approved by the Department and/or Division.

- C. **Bodily Harm** – physical pain or injury; illness or any impairment of physical condition [s. 939.22(4)].
- D. **Choke Hold** - has the meaning found in s. 66.0511(1)(a), Wis. Stats., which reads: "...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." (NOTE: This definition includes techniques referred to as a Lateral Vascular Neck Restraint or LVNR).
- E. **Conducted Energy Weapon (CEW)** – a weapon which is designed to use propelled wires or direct contact to conduct energy to affect the sensory and/or motor functions of the nervous system.
- F. **Contact Officer Override** – is also a concept of shared responsibility. It means that cover officers have the proactive responsibility to intervene in a situation if the contact officer behaves inappropriately or is otherwise not handling the situation effectively.
- G. **Dangerous Crime** – any crime under the laws of the United States or any state which involves the use of force causing or creating a substantial risk of death or great bodily harm to another or a threat, expressed or implied, which places a person in fear of death or great bodily harm to himself, herself, or another.

Dangerous crimes include, but are not limited to:

- 1. Homicide under 940.01, 940.02, and 940.05
 - 2. Murder under 940.03
 - 3. Arson under 943.02
 - 4. Mayhem under 940.21
 - 5. Burglary under 943.10
 - 6. Battery; substantial battery; aggravated battery under 940.19
 - 7. Sexual assault under 940.225
 - 8. Kidnapping under 940.31
 - 9. Threats to injure or accuse of crime under 943.30
 - 10. Robbery under 943.32
- H. **Dangerous Weapon** – any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or

other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

- I. **Deadly Force** – the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- J. **Deadly Force Justification** – behavior which justifies your use of deadly force is that which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.
- K. **De-escalation** – an officer's use of time, distance, and relative positioning in combining with Professional Communication Skills to attempt to stabilize a situation and reduce the immediacy of threat posed by an individual.
- L. **Electronic Control Device** – instrument in which a safe amount of electricity is used to affect the sensory and/or nervous system of the body.
- M. **Employee** – as used in this policy, is intended to apply to sworn personnel falling within the statutory definition of peace officer [s. 939.22(22)].
- N. **Felony** – a crime punishable by imprisonment in the Wisconsin state prisons is a felony. Every other crime is a misdemeanor [s. 939.60].
- O. **Force** – the intentional application of physical force other than deadly force.
- P. **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 [s. 939.22(14)].
- Q. **High Risk Vehicle Contact** – a vehicle contact in which the officers' perception of danger is very high. Typically, these contacts involve multiple officers utilizing hand and/or long guns, ordering of vehicle occupants out one at a time, etc.
- R. **Impact Weapon** – all objects and instruments that are used, or are designed to be used, to apply force to another person by coming into physical contact with that person. Impact weapons include, but are not limited to, the expandable baton, riot baton and less lethal impact munitions.
- S. **Less Lethal Force** – the intentional application of force for the purpose of encouraging compliance, overcoming resistance or its threat, or preventing serious injury without posing significant potential of causing death.

- T. **Less Lethal Impact Munitions** – refers to munitions, flexible or non-flexible, that can be fired, launched, or otherwise propelled, which are intended to impede/subdue a subject with a reduced potential for causing death or serious physical injury. Examples of less lethal impact munitions include, drag stabilized beanbags, stabilized rubber rounds and other Division approved items.
- U. **Less Lethal Impact Munitions Weapon** – a dedicated weapon that is readily recognized as being different than the standard issued weapon, which will be used for deploying less lethal impact munitions.
- V. **Objectively Reasonable** – the standard by which many actions of a police officer are judged: Would your actions be judged appropriate by a reasonable officer based on the totality of circumstances and the information known to you at that time?
- W. **Oleoresin Capsicum (O.C.)** – refers to a less-than-lethal product derived from the extract of the capsicum pepper plant, which causes inflammation over areas of contact (the face, eyes, nose, and mouth). Used as a control alternative against resistive or combative subjects, or aggressive animals.
- X. **Peace Officer** – any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. "Peace officer" includes a commission warden [s. 939.22(22)].
- Y. **Preclusion** – the officer reasonably believes all other options have been exhausted or would be ineffective.
- Z. **Pursuit Intervention Technique (PIT)** – the pursuit intervention technique, known as PIT, is a controlled contact between the patrol unit and the pursued vehicle normally done at speeds of 35 miles per hour or less, low speeds which are intended to cause the operator of a pursued vehicle to lose control and the vehicle become disabled. PIT is a form of ramming, and if utilized, should be identified as such. The PIT maneuver at speeds in excess of 35 miles per hour is considered deadly force and its use shall follow the protocol under sub-G. of this section.
- AA. **Ramming** – ramming or forcing a fleeing vehicle off the highway is generally prohibited and may be considered only in extreme circumstances and only when all other reasonable methods of stopping the vehicle have been attempted.
- AB. **Reasonably Believes** – the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous [s. 939.22(32)].
- AC. **TASER** – a CEW which is software upgradable and manufactured by TASER International, Inc. By definition, the weapon is identified as an ECD within the Intervention Options of the Disturbance Resolution Model. Used as a control alternative against resistive or combative subjects or aggressive animals.

- AD. **Tire Deflation Device (TDD)** – a tool designed to stop a vehicle by deflating pneumatic tires.
- AE. **Unified Tactical Skills (UTS)** – incorporation of the Defensive and Arrest Tactics (DAAT), Firearms, Emergency Vehicle Operations and Control, Vehicle Contacts, Professional Communication Skills, and tactical response guidelines that have been adopted by the Law Enforcement Standards Board (LESB). The guidelines, established in part through the Disturbance Resolution Model, incorporate approach considerations, the intervention options detailing mode and purpose from presence, up to and including deadly force, and follow-through considerations.

IV. GENERAL PROVISIONS

- A. Sworn employees are authorized to utilize reasonable force to accomplish legitimate lawful enforcement objectives (i.e., achieve and maintain control of resistive subjects, detain persons reasonably suspected of criminal behavior, make lawful arrests, defend themselves or others and prevent escape). Reasonableness is based on the parameters outlined in Sub II. of this policy (Objectives). In order to maintain uniformity with training and the Law Enforcement Standards Board, the Division of State Patrol adopts the guidelines of the Disturbance Resolution Model (see Attachment 1). Section 939.45 (privilege) enumerates the conditions under which a Wisconsin Law enforcement officer may use force.
 - 1. When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under s.939.46 or 939.47; or [s. 939.45(1)]
 - 2. When the actor's conduct is in defense of persons or property under any of the circumstances described in s. 939.48 or 939.49; or [s. 939.45(2)]
 - 3. When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or [s. 939.45(3)]
 - 4. When the actor's conduct is a reasonable accomplishment of a lawful arrest; or [s. 939.45(4)]
 - 5. When for any other reason the actor's conduct is privileged by the statutory or common law of this state [s. 939.45(6)]
- B. Five fundamental principles used to determine if force is objectively reasonable (as articulated in *Graham v. Connor*):
 - 1. 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.

2. Employees may initially use the level and degree of force that is reasonably necessary to achieve control. Employees need not escalate step-by-step through the Intervention Options.
 3. At any time, if the level of force the employee is using is not effective to gain control, they 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.
 4. Once employees have gained control of a subject, they must de-escalate the level of force to that needed to maintain control.
 5. Employees must always safely maintain a position of advantage.
- C. Justification Limited to Facts Known to Employee – Justification for the use of force or deadly force must be limited to what reasonably appears to be the facts known or perceived by the employee at the time the employee decides to act. Facts unknown to the employee, no matter how compelling, cannot be considered in later determining whether the force used was justified or unjustified.
- D. Employee Identification – Whenever feasible, employees shall identify themselves and make known the purpose of the arrest unless the employee reasonably believes that his/her identity and purpose are otherwise known by or cannot reasonably be made known to the person to be arrested. This is particularly important when the officer is dressed in civilian attire.
- E. Use of Handcuffs
1. Employees of the Division of State Patrol shall handcuff all persons arrested for a felony. Whenever a person is arrested for a misdemeanor, a violation of a traffic regulation or other offense, the decision to handcuff is the officers. Generally, if the person arrested is to be transported in a patrol vehicle, the arrested person should be handcuffed behind the back for the safety of the employee. When available, patrol vehicles equipped with cages should be used to transport prisoners. Whenever handcuffs are used, they shall be checked for fit and double-locked. All prisoners being transported in Division of State Patrol vehicles shall be searched prior to transportation.
 2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the employee, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
- F. Use of Oleoresin Capsicum (O.C.) – The use of O.C. will fall under control alternatives in the intervention options of the Disturbance Resolution Model, “*to overcome active resistance or its threat.*”

G. Prohibited Weapons – Employees are prohibited from carrying on their person or in a Division vehicle, any unauthorized guns, knives, chemical agents, ammunition, or any other instruments which are designed to be used as defensive or offensive weapons, except those confiscated by the employee and being transported as evidence or for storage.

1. Examples of prohibited weapons include, but are not limited to:
 - a. black jacks
 - b. slingshots
 - c. slapsticks
 - d. saps
 - e. sap gloves
 - f. electric shocking devices (excluding Conducted Energy Weapons (CEW's) purchased and/or issued by the Department/Division)
 - g. brass knuckles
 - h. hand-held MACE or similar chemical agents (other than issued O.C.)
 - i. knives (other than a folding knife carried out of the public view)
 - j. batons – only batons issued by the Division will be carried

H. Choke Holds –These techniques are prohibited unless deadly force is justified.

I. Lateral Vascular Neck Restraint – Given the inherently dangerous nature of the Vascular Neck Restraint, this technique is prohibited unless deadly force is justified.

V. DE-ESCALATION

A. De-escalation is a concept that involves 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. The merging of Professional Communication Skills such as Crisis Intervention, and sound tactical positioning can be instrumental in generating the needed time, options, and resources to gain willful cooperation and ensure everyone's safety. De-escalation may not be a viable option in every situation as there are many factors that influence its applicability. An officer must have the position of advantage to apply the concept of de-escalation. Although the profession of law enforcement officer has a great deal of inherent risks, officers are not required to take unnecessary risks in order apply this concept as their risks need to be strategic, deliberate, and consistent with other principles covered in DAAT.

VI. USE OF LESS LETHAL FORCE

Sworn employees are authorized to utilize less lethal force to accomplish legitimate lawful enforcement objectives (i.e., achieve and maintain control of resistive subjects, detain persons reasonably suspected of criminal behavior, make lawful arrests, defend themselves or others and prevent escape). Reasonableness is based on the parameters outlined in Sub II. of this policy (Objectives). In order to maintain uniformity with training and the Law Enforcement Standards Board, the Division of State Patrol adopts the guidelines of the Disturbance Resolution Model (see Attachment 1).

- A. Only Division issued oleoresin capsicum (O.C.) shall be carried by the employee while on duty. The use of O.C. will fall under control alternatives in the intervention options of the Disturbance Resolution Model (see Attachment 1), *“to overcome active resistance or its threat.”*
- B. Only Division issued Conducted Energy Weapons (CEW’s) shall be carried by the employee while on duty. The use of the CEW will fall under control alternatives in the intervention options of the Disturbance Resolution Model (see Attachment 1), *“to overcome active resistance or its threat.”*
- C. Only Division issued baton(s) may be carried by the employee while on duty.
 1. The use of the baton will fall under protective alternatives in the intervention options of the Disturbance Resolution Model (see Attachment 1), *“to overcome continued resistance, assaultive behavior, or their threats.”*
 2. Employees will be trained in the use of the baton through the Tactical Skills training area of Defensive and Arrest Tactics (DAAT).
- D. Less lethal impact munitions are intended to impede/subdue a subject when other methods are impractical or would present a serious threat to the life of the subject, officers, or other citizens. The Division has incorporated the use of less lethal impact munitions to de-escalate potentially violent confrontations. The use of these munitions may be called for in situations including, but not limited to, combative/violent subjects, armed, and non-compliant subjects.
 1. In order to minimize the potential for causing death or serious physical injury, the use of less lethal munitions shall be in accordance with Division approved training and Policy and Procedure.
 2. Only personnel who have received Division approved training in less lethal impact munitions will be assigned and authorized to use them during actual operations.
 3. Less lethal impact munitions may be utilized by trained employees during situations where training and experience indicate that other controls would be less effective, or prove dangerous, and viewed as reasonable under the protective alternatives within the Disturbance Resolution Model (see Attachment 1).

VII. USE OF DEADLY FORCE

- A. An employee 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 employee or another person. If both practicable and feasible, an employee shall give a verbal warning before using deadly force. (s.175.44(2)(c))
- B. Employees have a legal duty to intervene to stop or prevent another law enforcement officer from use of force not complying with s. 175.44 (2)(a) and (b) (covering use of force and use of deadly force) and it is safe to do so. s. 175.44 (4)(a)2. Reporting of intervention is required to be reported to an employee's direct supervisor as soon as practicable after the occurrence. Intentional failure to intervene or intentionally fails to report may be subject to fines or imprisonment.

VIII. USE OF ISSUED OR AUTHORIZED FIREARMS

- A. Minimizing the Risk of Death – When a firearm is used, there is a realization that death could occur; however, the intent of a firearms use is to stop the threat, not kill. Target requirements are necessary in ensuring that there is no substantial risk of hitting an innocent bystander, with the understanding that target isolation may not always be met due to a greater danger.
- B. Drawing of Firearm – Nothing in this policy and procedure shall prevent the employee from drawing the firearm (shotgun, rifle, or handgun, as appropriate) during an arrest or an investigation when the employee deems it necessary for his/her safety or the safety of another person. The trigger finger shall rest alongside of the receiver, outside of the trigger guard, until such time as the actual pulling of the trigger is authorized.
- C. Permissible Discharge of a Firearm – Division employees may discharge their issued firearms under the following circumstances:
 - 1. In the performance of their duty, when confronted by a subject, or subjects, which exhibit behavior that has caused or imminently threatens to cause death or great bodily harm to the employee or another person or persons, and only after other reasonable options have been exhausted or would prove to be ineffective.
 - 2. Firing at or from a moving vehicle is generally prohibited and may be utilized only in rare and unusual circumstances and then only when in compliance with all other requirements of this policy.
 - 3. For the purpose of firearms training, sanctioned competitions, or animal euthanasia.
- D. Prohibited Conduct/Discharge:

1. Indiscriminate firing through doors, walls, or into the darkness at targets that are not clearly identified (this is not applicable when justification is present for target-specific fire as outlined in the Wisconsin Department of Justice Training and Standards Tactical Response Manual).
2. Indiscriminate firing in the direction of or over the heads of a crowd.
3. Warning shots, attention shots, or shots to summon aid are generally prohibited.

E. Securing a Discharged Weapon:

1. Any firearm discharged by an employee while on-duty or any authorized firearm discharged while off-duty, which results in injury or death to any person shall be secured immediately by a supervisor. The firearm shall be treated as evidence. This procedure applies in those situations where an investigating officer from another police agency does not take the weapon into custody.
2. The weapon will be properly secured and shall be held until it is no longer required as evidence.
3. In the case of an unwanted discharge of a Division authorized firearm while off-duty, which does not result in injury or death, the employee shall report the discharge to the duty supervisor immediately. If the employee believes the unwanted discharge was due to a weapon malfunction, the weapon should be removed from service and another weapon provided.
4. The procedure for handling unwanted off-duty discharges with a Division authorized firearm, not resulting in injury or death, shall be guided by P&P 11-12.

F. Surrendering Firearm – An employee shall use every tactical tool at his or her disposal to avoid surrendering an issued or authorized weapon (except for the purpose of VIII. E. above).

IX. ROADBLOCKS, BLOCKADES, TDDs, AND RAMMING

Roadblocks, PIT maneuver, blockades, tire deflation devices and ramming procedures may be utilized in an attempt to apprehend an evader or violator when all other reasonable means of apprehension have been exhausted or the continuation of the pursuit may result in significant injury to the public, the officer, or the suspect.

Amount of Force – Roadblocks, PIT maneuver, blockades, tire deflation devices, and ramming procedures must be executed in such a manner that they do not constitute the use of deadly force, unless deadly force is otherwise justified by the provisions of this policy.

X. DUTY TO INTERCEDE AND REPORT

- A. Any employee present and observing another law enforcement officer clearly using excessive or unreasonable force, or engaged in unlawful conduct, shall, without regard to chain of command, make reasonable efforts to intercede to prevent or stop the use of that excessive or unreasonable force.
- B. An employee who observes another law enforcement officer use force that is potentially beyond that which is objectively reasonable under the circumstances shall report those observations to a supervisor as soon as practicable. The employee shall document their observations and actions using the electronic Offense/Incident Report (eSP4500) and any applicable supplements.
- C. When observing or reporting force used by another law enforcement officer, an employee shall consider the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.
- D. Intentional failure to report another law enforcement officer's use of force not in compliance with these standards can subject the employee to fines or imprisonment under s. 175.44(4)(c)
- E. **Whistleblower protections:** 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; 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.

XI. POST INCIDENT REPORTING REQUIREMENTS

- A. Whenever an employee uses or observes force at or above the level of "control alternatives," the employee shall immediately report the incident. As soon as practical, the employee shall submit a written report of the details to their supervisor using the electronic Offense/Incident Report (eSP4500) and any applicable supplements to include, at a minimum, the Subject Management Report in accordance with applicable reporting procedures and directives. This procedure includes any occasion when the employee uses force, which the employee claims was done in performance of his/her duties as an employee of the Division.
- B. The subject management report shall be completed utilizing the Division's electronic reporting system, linking all incident documents.

- C. Electronic copies of all reports shall be forwarded to the DAAT Program Director at the Wisconsin State Patrol Academy within 30 days of the incident.
- D. The DAAT Program Director will complete the Law Enforcement Officers Killed or Assaulted monthly summary for the Wisconsin Office of Justice Assistance.

XII. REFERENCES

eSP4500, Offense/Incident Report
eSP4504, Subject Management Report
DSP Policy & Procedure 2-5, Use of Electronic Control Devices
DSP Policy & Procedure 2-8, Use of Chemical Agents and Munitions
DSP Policy & Procedure 3-6, Roadblocks
DSP Policy & Procedure 3-9, Pursuits
LESB UTS Manuals (DAAT, Firearms, EVOC, Vehicle Contacts and PCS)
Wis. Stats. Ch. 66.0511
Wis. Stats. Ch. 175.44
Wis. Stats. Ch. 939
Wis. Stats. Ch. 940
Wis. Stats. Ch. 941
Wis. Stats. Ch. 943
Wis. Stats. Ch. 961

DISTURBANCE RESOLUTION

Attachment 1

APPROACH CONSIDERATIONS

Decision-Making

- Justification
- Desirability

Tactical Deployment

- Control of Distance
- Relative Positioning
- Relative Positioning with Multiple Subjects
- Team Tactics

Tactical Evaluation

- Threat Assessment Opportunities
- Officer/Subject Factors
- Special Circumstances
- Level/Stage/Degree of Stabilization

INTERVENTION OPTIONS

MODE

A. Presence

PURPOSE

To present a visible display of authority

B. Dialogue

To verbally persuade

C. Control Alternatives

To overcome passive resistance, active resistance, or their threats

D. Protective Alternatives

To overcome continued resistance, assaultive behavior, or their threats

E. Deadly Force

To stop the threat

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