

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. 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 Electronic Control Device policies.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - The State of Wisconsin defines deadly force as the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

**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.

**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 him/herself to be searched, escorted, handcuffed, or restrained.

**Imminent** - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

**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 Appleton 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.

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#### 300.2.1 DUTY TO INTERCEDE AND REPORT

In serving the community, officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall also respect and uphold the dignity of all persons at all times in a nondiscriminatory manner.

Any officer present, without regard for chain of command, 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, intercede to prevent the use of unreasonable force (Wis. Stat. § 175.44).

Any officer who 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 to a supervisor as soon as feasible (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.

### **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, with similar training and experience, 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.

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. When using force, officers are required to act in good faith to achieve a legitimate law enforcement objective.

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

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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.

#### **APPROACH AND INTERVENTION DECISION MAKING PROCEDURE**

##### **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 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 his/her 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.

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- (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.

### SUBJECT BEHAVIOR AND OFFICER RESPONSE PROCEDURE

#### 300.3.3 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a 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.

#### 300.3.4 POSITIONAL HOLD

The proper application of the positional hold may be effective in controlling a violent or combative individual. However, due to the potential for injury, the use of the positional hold is subject to the following:

- (a) The officer shall have successfully completed department-approved training in the use and application of the positional hold.
- (b) The positional hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:
  1. The subject is violent or physically resisting.
  2. The subject, by words or actions, has demonstrated an intention to continue to resist or be violent and the officer's strength alone would not reasonably be able to keep a person under control without resorting to a higher level of force.
- (c) The application of a positional hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a positional hold:
  1. Females who are known to be pregnant
  2. Elderly individuals
  3. Smaller juveniles

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4. Individuals who have obvious deformities, malformations, or injuries to the neck or spine
  - (d) Any individual who has had a positional hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel if they complain of shortness of breath or pain.
  - (e) The use or attempted use of a positional hold shall be thoroughly documented by the officer in any related reports.

A "choke hold" is a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. Choke holds are prohibited.

#### **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.

#### **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).

#### **300.4 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.) 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.

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject 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

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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 serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

### **DEADLY FORCE DECISION AND APPLICATION PROCEDURE**

#### **300.4.1 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.

#### **300.4.2 WARNING SHOTS**

An officer shall not discharge a firearm as a warning. Warning shots are prohibited.

### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer shall articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law. The "Use of Force" circumstances shall also be selected in Spillman when completing the report.

#### **300.5.1 REPORTING POINTING OF A FIREARM**

If an officer intentionally points a firearm at a person in the course of duty, the officer shall complete a report detailing the circumstances of the incident. If multiple officers are involved, only the assigned officer is required to complete a report unless otherwise directed by a supervisor.

- (a) The mere pointing of a firearm at an individual does not require a Use of Force entry into the Axon Standards.

#### **300.5.2 NOTIFICATION TO SUPERVISORS**

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

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- (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 active countermeasures and/or the application of decentralization or incapacitating techniques.
- (f) Any application of the ECD or control device.
- (g) Any application of a restraint device other than handcuffs, flex cuffs or transport belts.
- (h) The individual subjected to the force was rendered unconscious.
- (i) An individual was struck or kicked.
- (j) An individual alleges any of the above has occurred.

The responding supervisor should review the incident and determine if a Use of Force report in Axon Standards should be completed.

#### **300.5.3 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.

#### **300.6 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, any officer who uses force against an individual shall ensure the subject is continuously monitored for an injury. Officers shall provide first aid and/or request medical assistance, as needed, 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. 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

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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 (sometimes called “excited delirium”), 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 and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

### **300.7 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to an incident in which there has been a reported application of force. The supervisor is expected to monitor the situation and take any immediate action, as deemed necessary, to include:

- (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.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Make notifications in accordance with the Major Incident Notification Policy.
- (f) Review and approve all related reports.
- (g) Complete a Use of Force entry in Axon Standards.
- (h) 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.



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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.

#### **300.7.1 USE OF FORCE REVIEW TEAM**

The Use of Force Review Team shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

#### **300.8 POLICY AVAILABILITY**

This policy shall be made available to the public at no charge upon request (Wis. Stat. § 66.0511(2)).

#### **300.9 TRAINING**

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

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

- (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 USE OF FORCE ANALYSIS**

Annually, the Assistant Chief or designee 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 may include:

- (a) The identification of any trends in the use of force by members.
- (b) The identification of any trends in the community.
- (c) Training needs recommendations.
- (d) Equipment needs recommendations.
- (e) Policy revision recommendations.