

Oconomowoc Lake Police Department Policy and Procedure

Subject:	Use of Force
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I. PURPOSE

The purpose of this Policy & Procedure is to establish policies and procedures for members of the Oconomowoc Lake Police Department regarding the use of force, and to identify the responsibilities of officers when using force or after it has been used.

II. POLICY

It is the policy of the Oconomowoc Lake Police Department recognizes and respects the value and special integrity of each human life. In vesting members with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of the Department that members shall use only force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the member or another. Deadly force shall never be resorted to until every other reasonable means of apprehension or defense has been exhausted or there is no other reasonable alternative.

III. DEFINITIONS

DEADLY FORCE: The intentional use of a firearm or other instrument, the use of which would result in a high probability of death or great bodily harm.

JUSTIFICATION FOR DEADLY FORCE: Any subject behavior which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.

POST TRAUMATIC STRESS DISORDER: An anxiety disorder that can result from exposure to short-term severe stress, or the long-term buildup of repetitive and prolonged milder stress.

LESS LETHAL FORCE: Force that is highly unlikely to cause death or serious injury to a suspect. However, the potential for death or serious injury is a reality and must be taken into account.

REASONABLE FORCE: That force which an ordinary, prudent, and intelligent person with the same knowledge of the particular situation as a member would deem necessary.

CONDUCTED ELECTRICAL WEAPON (CEW): A non-lethal force weapon that causes neuro-muscular incapacitation to a combative, violent, or potentially combative, violent subject. The use of this device is intended to incapacitate the subject with a minimal potential for causing death or great bodily harm.

DEFENSIVE AND ARREST TACTICS (DAAT): A system of verbalization skills coupled with physical alternatives.

NECK RESTRAINT: Any technique involving the use of an arm or other firm object to attempt to control or disable a subject by applying pressure against the windpipe, or the frontal area of the neck with the purpose or intent or effect of controlling a subject's movement or rendering a subject unconscious by blocking the passage of air through the windpipe. A neck restraint is an intentional force application. A *choke hold* is a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.

CAROTID RESTRAINT: Any technique which is applied in an effort to control or disable a subject by applying pressure to the carotid artery, the jugular vein, or the sides of the neck with the purpose or intent or effect of controlling a subject's movement or rendering a subject unconscious by constricting the flow of blood to and from the brain. A carotid restraint is an intentional force application.

IV. DEFENSE AND ARREST TACTICS

A. The Oconomowoc Lake Police Department adopts the Defensive and Arrest Tactics System. This is a system designed for all members for the primary purpose of self-defense. This system includes the Incident Response and Disturbance Resolution Models which provide general guidelines that define the degree and type of force to be used in controlling suspects. All Oconomowoc Lake Police Department members shall be trained in the DAAT system per State Training and Standard Bureau standards.

1. A member shall only use that amount of force which is necessary and reasonable in the performance of his/her law enforcement duties.
2. Under no circumstances shall a member continue to use force (except mere physical restraint) against an individual who has ceased to resist.
3. When an individual is non-compliant or resistive to arrest, which requires a member to use passive counter, decentralization, compliance holds, and / or escort holds a member shall bodily remove and transport such an individual with as much regard to the individual's safety and welfare as reasonable, practical, and possible.
4. When utilizing the Disturbance Resolution Model, a member must use the minimum necessary force in reacting to other people's behavior by escalating or de-escalating through the Intervention Options.
5. Use of Force Training will be conducted annually and will include various control techniques.

- B. Incident Response Model: The following is the Incident Response Model adopted by the State of Wisconsin DAAT Advisory Committee 03-07.

INCIDENT RESPONSE

R REPORT

- *Become aware
- *Plan response
- *Arrive/Assess
- *Alarm/Inform

E EVALUATE

- *Look for dangers
- *Determine backup needs
- *Enter when appropriate/tactically sound

S STABILIZE

- *Subject(s)
- *Scene

P PRESERVE

- *Life
- *Conduct an initial medical assessment (as trained)
- *Treat to level of training
- *Continue to monitor the subject(s)
- *Evidence

O ORGANIZE

- *Coordinate additional responding units (if necessary)
- *Communicate with dispatch and others
- *Organize the collection of evidence (if appropriate)

N NORMALIZE

- *Provide long-term monitoring (as appropriate)
- *Restore scene to normal
- *Return radio communications to normal

D DOCUMENT/DEBRIEF

- *Debrief self, other responding personnel, subject(s), other persons
- *Document incident appropriately

- C. Disturbance Resolution Model: The following is the Disturbance Resolution Model adopted by the State of Wisconsin DAAT Advisory Committee 03-07.

1. APPROACH CONSIDERATIONS

- A. Presence:** The first mode, Presence, reflects the fact that sometimes all that is needed to control a situation is the presence of a member. The purpose of this mode is to “present a visible display of authority.” Much as drivers are careful not to exceed the speed limit when they share the road with a marked squad, the simple presence of an officer in uniform or otherwise identified is enough to prevent people from starting or continuing to behave aggressively or otherwise create a disturbance.
- B. Dialogue:** The second mode, Dialogue, covers the range of tactical communication from very low-level questioning to very directive commands. The purpose of dialogue is to persuade subjects to comply with members lawful directives. The specific techniques used are covered extensively in Professional Communication Skills.
- C. Control Alternatives:** The third mode, Control Alternatives, includes a wide range of tactics and tools for controlling subjects. These are divided into four groups: escort holds, compliance holds, control devices, and passive countermeasures. This mode includes both empty-hand techniques such as applying an escort hold or directing a subject to the ground and tools such as Oleoresin Capsicum (OC) spray, commonly called “pepper spray,” and Conducted Electrical Weapons (CEWs). The common thread is that all these tactics and tools are used to control subjects who are resisting or threatening to resist.

The mode of Control Alternatives includes the following tactics/tools:

- Escort Holds
- Compliance Holds
- Control Devices (OC spray, CEW’s)
- Passive Countermeasures

Escort Holds - The goal of escort holds is to safely initiate physical contact. If a subject does not comply with your verbal directions, you can use an escort hold to gain control of the subject, preventing a physical confrontation. An escort hold also enables you to move the subject in a controlled way— out of a dangerous location, for example.

Compliance Holds - The goal of compliance holds is to overcome passive resistance. As noted earlier, passive resistance occurs when a subject refuses to comply with a lawful directive from a law enforcement officer, but does not engage in physical action likely to cause harm to the officer or another person.

Control Devices - The goal of control devices (OC spray and ECD’s) is to overcome active resistance or its threat. Active resistance, unlike passive resistance, involves a subject who is physically counteracting a members control efforts under circumstances in which the behavior itself, the environment in which the behavior occurs, or Officer/subject factors create a risk of bodily harm.

The criterion of active resistance or its threat means that in general, control devices would not be appropriate to use against verbal aggression, against people who are running away, against children and older persons, and against persons engaged in peaceful civil disobedience-unless reasonably justified by the circumstances covered in Approach Considerations.

Verbal Aggression - Verbal aggression occurs when a suspect is being argumentative, and/or confrontational with a member. While this behavior alone can be difficult for a member to deal with, Professional Communication skills are the preferred method. However, if arbitration is unsuccessful (REACT), and a member subject factor comparison dictates lesser levels of force would be ineffective, then a control device could be a viable alternative.

Evading Arrest - Before deploying a control device (in this case, an ECD would be a better choice than OC spray) during a foot pursuit, ask yourself, “what will the suspect force me to do when I apprehend him?” If the subject would force you to decentralize him or her during initial physical contact, using an ECD might be a better choice, as the risk of injury to the officer and subject would be less with an ECD as opposed to a passive countermeasure. On the other hand, if you don’t think the subject would require you to immediately take him or her to the ground, then an ECD would probably not be the best choice. In that case you could safely respond with a lower level of force.

Another way to think about the situation is to apply the three criteria from *Graham v. Connor* to determine whether using a control device would be reasonable:

- The severity of the alleged crime at issue: Is it a retail theft or a substantial battery?
- Whether the suspect poses an imminent threat to the safety of Officers and/or others: What is the suspect doing when you decide to use force?
- Whether the suspect is actively resisting or attempting to evade by flight. Is the suspect able to offer active resistance and/or flee?

Children or Older Persons - Members making use of force decisions involving children and older persons should ask themselves the following question when deciding if a control device is a viable alternative: What is my alternative force option and does it increase the propensity of injury? If the alternative creates a higher risk of injury, then a control device is a very viable alternative.

Persons engaged in peaceful civil disobedience - Often times in these situations, members must remove demonstrators from an area. If the protestors actively resist officer’s attempts to remove them, a control device may be appropriate. One alternative would be for members to attempt to carry or drag protestors out, resulting in a high probability of injury to both members and protestors. In the case of civil disobedience, be sure to distinguish between passive and active resistance. If the subjects are displaying passive resistance only, compliance holds or pressure points would normally be the preferred choice.

Passive Countermeasures - The goal of passive countermeasures is to decentralize a subject—in other words, to direct a subject to the ground. It is appropriate to use passive countermeasures if you reasonably believe that you will be unable to achieve control with the subject standing. For example, a subject continues to violently resist, even while you apply a come-along, preventing you from achieving control and applying handcuffs.

D. Protective Alternatives: Protective Alternatives is the fourth mode in Intervention Options. As the name implies, these interventions are designed to protect members in situations when they face subjects continuing to resist or threatening to assault.

The overall purpose is to overcome continued resistance, assaultive behavior or their threats. Continued resistance means that an individual is maintaining a level of counteractive behavior that is not controlled with the member's current level of force. Assaultive behavior occurs when an individual's direct action generates bodily harm to the member(s) and/or another person(s).

The mode of Protective Alternatives includes three tactics:

- Active Countermeasures
- Incapacitation Techniques
- Intermediate Weapon

Note that these tactics may also be used as control alternative, depending on the situation. For example, a jab with a baton (an intermediate weapon) may be used to prevent a person from pushing into a room while members are interviewing a victim of domestic violence. In that situation, the baton would be used as a Control Alternative rather than a Protective Alternative. Remember that Intervention Options are just that – options. You will choose the appropriate option depending on the totality of the circumstances.

Active Countermeasures – The goal of active countermeasures is to create a temporary dysfunction of an actively resistive or assaultive subject. In essence you are interrupting the subject's ability to resist, enabling the officer to direct the subject to the ground for stabilization, handcuffing, and other follow-through procedures.

Active countermeasures include two categories of techniques:

- Vertical stuns
- Focused strikes

Incapacitating Techniques – The goal of incapacitating techniques is to cause the immediate, temporary cessation of violent behavior. One such technique is taught in the DAAT system: the Diffused Strike. Like the Vertical Stun, the Diffused Strike disrupts nerve impulses to the brain. Unlike the Vertical Stun, however, the effect is usually greater, rendering the subject temporarily unconscious.

Intermediate Weapon – The goal of using intermediate weapons is to impede a subject, preventing him or her from continuing resistive, assaultive, or otherwise dangerous behavior.

Intermediate weapons include a variety of impact and other weapons designed to impede subjects. The intermediate weapon included in the DAAT program is the straight baton. The baton-either a wood or plastic fixed-length baton or a metal expandable baton-is an impact weapon.

While Wisconsin law (WI. Statute 939.45) affords members the protection of privilege “when the actor’s conduct is a reasonable accomplishment of a lawful arrest,” the conduct must be reasonable-using deadly force in the absence of significant threat would not be reasonable. Further, Wisconsin law specifically limits the use of deadly force in self-defense (WI. Statute 939.48(1)) as follows:

“the actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.”

The same limitation is extended to use of force to defend a third person, in WI. Statute 939.48(4).

The statutes and this Policy & Procedure specifically prohibit use of deadly force to prevent suicide or solely to protect property.

E. Deadly Force: The fifth mode, Deadly Force, represents the highest level of force available to Deputies; refer to Policy & Procedure 1a: Deadly Force.

1. 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 |

V. USE OF FIREARMS

A. Sworn personnel are authorized to carry and use weapons under the authority and powers granted to them by Wisconsin State Statutes and exemptions granted under various statutes found in WI. Statutes: Chapter 941. Members must also follow the requirements set forth in Policy & Procedure 013: Firearms Authorization.

- B. Members may display Department authorized firearms when they have reasonable suspicions to believe that the use of deadly force may be necessary. Officers need not be under attack, but only be reasonably apprehensive that the situation may lead to circumstances outlined in the Use of Deadly Force section of this Order. Department authorized firearms should not be displayed under any other circumstances.
1. A member shall have their firearm ready in circumstances such as answering a silent alarm or confronting a suspect whom there is reasonable suspicions to believe may be armed, or any other situation which may cause a member to have reasonable fear for his/her life.
- C. Whenever safety permits and time allows, members shall identify themselves and state their intent to shoot prior to using a firearm. Members are to fire their weapons to stop an assailant from completing a potentially deadly act. The primary target is the central nervous system, to stop the threat and to minimize danger to innocent bystanders.
- D. Firearms shall not be discharged when it appears likely that an innocent person may be injured unless failure to discharge will result in the greater danger exception. The greater danger exception allows you to shoot without target isolation if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person.
- E. A warning shot shall not be fired under any circumstances.
- F. Members should not discharge a firearm at or from a moving motor vehicle except as the last measure of self-defense of oneself or another and only then if an officer believes that the suspect has or is intent upon causing death or great bodily harm to oneself or another person. If this decision is made, consideration must be given to the safety of innocent bystanders and possible innocent passengers in the vehicle.
- G. A member may also discharge a firearm under the following circumstances:
1. During range practice or competitive sporting events.
 2. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
- H. Prior to being authorized to carry a firearm on duty for the Oconomowoc Lake Police Department, members must meet the following three requirements:
1. Members shall receive training in the safe handling and operation of Department issued and authorized firearms. Members must demonstrate their understanding of Department Policy & Procedures and state laws pertaining to deadly weapons and the use thereof.
 2. Members must be certified by the State of Wisconsin in the use of firearms. Members must qualify annually using the State of Wisconsin standard qualification firearm course.
 3. Officers shall qualify with a state certified Department/designee firearms instructor.

VI. USE OF VEHICLES-BLOCKADES, BARRIERS, RAMMING, AND TIRE DEFLATION DEVICES

- A. The following may only be employed by a member if, and only if, the use of deadly force would be authorized:
1. The use of blockades or roadblocks constructed by placing obstacles (including but not limited to police vehicles) of such density and mass upon a roadway that any vehicle colliding with them would be so severely decelerated that its occupants would likely suffer death or serious injury.
 2. Ramming of a suspect/evader vehicle by a law enforcement vehicle.
 3. Forcing a suspect/evader off the roadway or highway and/or into another object by the use of a law enforcement vehicle.
 4. Also refer to Policy & Procedure 003: Vehicle Pursuits.

VII. USE OF LESS LETHAL FORCE

- A. A member shall use only the minimum amount of force that is reasonably necessary to perform his/her duties. The amount of force which may be employed is determined by the circumstances of a situation, including, but not limited to:
1. The nature of the incident of offense.
 2. The behavior of the subject against whom force is to be used, actions by third parties who may be present.
 3. Physical conditions.
 4. The feasibility or availability of alternative actions.
- B. The reasonableness of the force used will be judged in the light of the circumstances as they appeared to a member at the time he/she acted, and not as they appear from a subsequent, more thorough knowledge of the circumstances.
- C. Under no circumstances may a member continue to use force (except for physical restraint) against an individual who has ceased to resist, escape, or otherwise violate the law. A member making an arrest has the right to use only that amount of force reasonably necessary to affect the arrest and maintain control of the arrested individual.
- D. Members may use reasonable force to:
1. Overcome an offender's resistance to or threat to resist a lawful arrest.
 2. Prevent the escape of an offender or arrested person.
 3. Protect a third person from bodily harm or death.
 4. Protect himself/herself from bodily harm or death.
- E. When an individual offers only passive resistance to arrest, a member shall take such person into custody and transport such individual with as much regard to the individual's safety and welfare as is reasonable, practical and possible.

- F. Members shall not mistreat persons who are in their custody. Members shall handle such persons in accordance with the law and Department policy. The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances and may subject an officer to disciplinary action.
- G. The DAAT Disturbance Resolution Model should be followed and adhered to at all time.
- H. Training for less lethal weapons shall occur at least biennially for members authorized to use such weapons or techniques.

VIII. USE OF RESTRAINTS

- A. For the protection of both the person being restrained and a member, use of restraints, such as handcuffs, reduces the likelihood of a struggle with the attendant possible injury to the offender, a member, or both.
- B. A member may use restraining devices in order to:
 - 1. Maintain control of subject.
 - 2. Prevent escape.
 - 3. Protect himself/herself or others.
- C. An officer should never use restraining devices as punishment.
- D. *All persons placed in protective custody or under arrest* shall be properly handcuffed during transportation.
- E. Hand-Style Restraints. Handcuffs or restraining devices during all transportation, except in the case of cooperative, non-threatening persons, where such decision shall be at a member's discretion. The following use procedures shall be followed:
 - 1. A member should use Departmentally-approved restraints.
 - 2. Handcuffs should be applied to the person's wrists behind his/her back unless not physically possible.
 - 3. Handcuffs should be double-locked upon placement on the person in order to negate any attempted tampering by the person and to assure that accidental tightening of the cuffs cannot occur.
 - 4. Handcuffs should be closed to a firm contact with offender's skin, but not so tightly as to produce pain.
 - 5. Handcuffs (or any other restraining device) should be removed from the person upon arrival at a secure area within the Department, or upon transfer of custody to a responsible party.
 - 6. Handcuffs should not be used when it appears likely that the person's wrists or hands are too small, or for some other reason which would negate the restraining effects of handcuffs. In such circumstances, flex cuffs or other restraints will be used.

F. Handcuffing Prisoners Being Transported.

1. Prior to any transportation of persons in custody, they should be searched for weapons.
2. Subjects should be handcuffed behind the back. The following factors, among others, may be taken into consideration in choosing alternate means of restraints:
 - a) Other restraining equipment is in use, i.e., belly chains. Handcuffs may be used in front of the body when the prisoner is wearing a garment with a belt through which the handcuffs may be laced to securely pin the hands to prevent flailing about.
 - b) Conditions exist that make it unreasonable or impossible to place handcuffs behind the subjects back. In all such cases the officer should detail in his/her written report the unusual circumstances that existed and what alternative restraining device or techniques was used.
3. Prisoners should be so placed in a law enforcement vehicle that seat belts shall be secured about the prisoner in order to enhance their safety during transportation.
4. The use of handcuffs should not be viewed as an absolute provision of safety. Members should continue to exercise all due care as to the safety and custody of prisoners.
5. The use of "Hog Tying" is not permitted.

G. Exceptions to Handcuff Requirements.

1. Members should always handcuff unless an officer can articulate exceptional circumstances. Member discretion may be used in the following circumstances when deciding not to handcuff.
2. Persons who are temporarily incapacitated, such as by a serious wound to the lower arms, hands, etc. or a woman in an advanced stage of pregnancy, etc.
3. At the discretion of the officer, Juveniles who are very young may be given consideration on whether handcuffs should be used or not.

H. Use of Force to Enter Private Property.

1. In lawfully entering the land of another to make a felony arrest (not for a misdemeanor ordinance), a member may use force reasonably believed necessary against persons on that land. A member may use force to break and enter a fence, enclosure, dwelling or other building.
2. Prior to forced entry into a building, a member should knock on the door announcing that he/she is a member unless such announcement is known to be futile.

He/she should announce that he/she is there to make an arrest and demand that the person inside open the door. Only after a reasonable period of time should a member

enter the door without it being opened from the inside. If a member does break in, he/she should try to do as little damage as possible.

3. There are exceptions to the above policies where members may enter without announcement and demand to make a lawful arrest. This occurs when an officer has good reason to believe that an announcement may:
 - a) Help the suspect to escape.
 - b) Endanger persons.
 - c) Result in the destruction of evidence.
 - d) Permission from a judge to serve a “No Knock” warrant.

X. NECK HOLDS and CAROTID RESTRAINTS (Lateral Vascular Neck Restraint)

- A. Neck restraints and carotid restraints create a high risk of injury or death when improperly applied. Any use of a neck or carotid restraint is considered Deadly Force and are prohibited unless deadly force is justified.
- B. Known inadvertent contact with a subject’s neck during the application of a head control tactic, or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint, but must be screened with a supervisor. Any contact with the neck, causing or reasonably likely to cause injury or loss of consciousness will be investigated as Use of Force.
 1. Officers are prohibited from using neck and carotid restraints (any choke hold) except when deadly force is justified.
 2. Officers will place the subject in the recovery position and summon medical aid immediately following the application of neck and carotid restraint.
 3. Officers shall monitor all subjects who have been subjected to neck and carotid restraints while they are in police custody.

This Policy & Procedure cancels and supersedes any and all previous written directives relative to the subject matter contained herein.

Jason A. Janicsek, Chief of Police

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Neck/Carotid Restraints (Lateral Vascular Neck Restraint, LVNR)

REFERENCE: WI State Statutes: 66.0511(3), 939.45, 939.48, and Chapter 941; DAAT Incident
Response and Disturbance Resolution Model
WI DAAT Manual

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