Use of Force

300.1 PURPOSE AND SCOPE

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

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

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

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or great bodily harm. Deadly force includes the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

De-escalation - 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.

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 themself to be searched, escorted, handcuffed, or restrained.

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

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

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

300.2.1 DUTY TO INTERVENE AND REPORT

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent or stop the use of unreasonable force (Wis. Stat. § 175.44).

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

300.2.2 ADDITIONAL CONSIDERATIONS

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

300.2.3 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.

300.3 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 officers 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.

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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.

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

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

300.3.1 USE OF FORCE TO EFFECT AN ARREST

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

300.3.2 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.

300.3.3 CAROTID CONTROL HOLD

A carotid control hold is a technique designed to control an individual by temporarily restricting blood flow through the application of pressure to the side of the neck. The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is limited to those circumstances where deadly force is authorized and is subject to the following (Wis. Stat. § 66.0511):

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a. At all times during the application of the carotid control hold, the response of the individual should be monitored. The carotid control hold should be discontinued when circumstances indicate that the application no longer reasonably appears necessary.
b. Any individual who has had the carotid control 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 such examination occurs.
c. The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the individual lost consciousness as a result.
d. Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
e. The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

300.3.4 USE OF FORCE TO SEIZE EVIDENCE

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

300.3.5 ADDITIONAL REQUIREMENTS

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

300.3.6 ALTERNATIVE TACTICS - DE-ESCALATION

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

300.3.7 CHOKE HOLD

The use of a choke hold, which is the intentional and prolonged application of force to the throat or windpipe, is prohibited except in circumstances where deadly force is authorized and if applied, is subject to the same guidelines and requirements as a carotid control hold (Wis. Stat. § 66.0511).

300.4 DEADLY FORCE APPLICATIONS

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

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

a. 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, and only to stop behavior that has caused or imminently threatens to cause great bodily harm or death to the officer or others.
b. An Officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of great bodily harm or death, and the officer reasonably believes that there is an imminent risk of great bodily harm or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where both practical and feasible.

However, an officer shall not use deadly force against a person whose actions are a threat solely to themself or property unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing great bodily harm or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force.

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.

300.5 REPORTING THE USE OF FORCE

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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 should 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 Elmwood Police Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

300.5.1 NOTIFICATIONS TO SUPERVISORS

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

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

300.5.2 REPORTING TO WISCONSIN DEPARTMENT OF JUSTICE

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

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

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically

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assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

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

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

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable 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 a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
b. Ensure that any injured parties are examined and treated.
c. When possible, separately obtain a recorded interview with the individual upon whom force was applied. If this interview is conducted without the individual having voluntarily waived his /her *Miranda* rights, the following shall apply:
    a. The content of the interview should not be summarized or included in any related criminal charges.
    b. The fact that a recorded interview was conducted should be documented in a property or other report.

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c. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

d. 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.
    a. These photographs should be retained until all potential for civil litigation has expired.

e. Identify any witnesses not already included in related reports.

f. Review and approve all related reports.

g. Determine if there is any indication that the individual may pursue civil litigation.
    a. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

h. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 CHIEF OF POLICE RESPONSIBILITY

The Chief of Police 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

The Chief of Police or the authorized designee should ensure that this policy (Wis. Stat. § 66.0511):

a. Is made available free of charge within three business days of the request.

b. Is publicly available on the department website and updated promptly upon amendment.

300.9 TRAINING

Officers shall receive annual training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, officers should receive periodic training on guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.

300.9.1 TRAINING REQUIREMENTS

Required annual training shall include:

a. Legal updates.

b. De-escalation tactics, including alternatives to force.

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c. The duty to intervene.
d. The duty to request and/or render medical aid.
e. Warning shots (see the Firearms Policy).
f. All other subjects covered in this policy (e.g., use of deadly force, chokeholds and carotid holds, discharge of a firearm at or from a moving vehicle, verbal warnings).

300.9.2 ADDITIONAL TRAINING REQUIREMENTS

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

300.10 USE OF FORCE ANALYSIS

At least annually, the Chief of Police should prepare an analysis report on use of force incidents. The report should not contain the names of officers, suspects, or case numbers, and should include:

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

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