



DIRECTIVES

Oak Creek Police Department

Effective Date:

January 13, 1992

Reviewed Date:

December 21, 2021

Sign-Off Date:

December 27, 2021

Title: USE OF FORCE POLICY

Directive Number:

6-100

Critical Policy

Yes No

*State Statute §66.90511(2) – Use of Force Policy
 *State Statute §165.845 – Collection and Reporting of Crime Data
 *State Statute §175.44 – Law Enforcement Use of Force
 *Certified by WILEAG – valid through January 14, 2024

Open Record

Yes No

Total Pages:

14

Applicability:

Sworn Officers

I. PURPOSE AND OBJECTIVES

The Oak Creek Police Department recognizes the necessity of a policy by which it will provide its police officers with guidelines on the use of non-deadly and deadly force. We value the sanctity of human life. In serving the community, law enforcement officers shall make every effort to preserve and protect human life and the safety of all persons. Law enforcement officers shall also respect and uphold the dignity of all persons at all times in a nondiscriminatory manner. The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminals. These responsibilities include the officer’s having the ability and responsibility for protecting his/her own life and that of another. Society must be reluctant to license deadly force by police officers, but support its lawful use by officers when it is used reasonably to prevent imminent great bodily harm or death to the officer or to another person. The objective of the Use of Force Policy is to provide employees with a clear understanding of the constraints under which they should operate and the expectations they should fulfill. Law enforcement officers may use force legitimately when it is needed to achieve control in five specific situations:

- A. To achieve and maintain control of resistive subjects
- B. To detain persons reasonably suspected of criminal behavior
- C. To make lawful arrests
- D. To defend themselves or others
- E. To prevent escape

It is the policy of the Oak Creek Police Department that officers use only that amount of force that is **objectively reasonable** to effectively bring an incident under control, while protecting the lives of the officers and others. When using force, an Officer is required to act in good faith to achieve a legitimate law enforcement objective.

II. DEFINITIONS

The following definitions apply for the purpose expressed in this policy:

- A. *Baton*—departmentally issued, ASP Collapsible, Winchester Collapsible, and/or authorized impact weapon.
- B. *Control* – the purpose of the State of Wisconsin D.A.A.T. System; a perception based on training, experience, and the fact situation known to the officer at that time.
- C. *Dangerous Weapon* – any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in Wis. State Statute §941.295(4); or any other device or instrument which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

II. DEFINITIONS - *Continued*

- D. *Deadly Force* – the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. (State of Wisconsin Defense and Arrest Manual).
1. Behavior which justifies an officer’s use of deadly force is that which has caused or imminently threatens to cause death or great bodily harm to you or to another person or persons. (State of Wisconsin Defense and Arrest Manual).
 2. Choke holds and lateral vascular neck restraints are prohibited except in situations where deadly force is allowed by law.
- E. *Defense and Arrest Tactics (D.A.A.T.)* – This is a system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved and governed by the State of Wisconsin Training and Standards Board. This is the system that this Department trains and adheres to. (State of Wisconsin Defense and Arrest Manual).
- F. *Disengage and/or Escalate* – To increase/decrease the intensity or move to a higher level of force or control.
- G. *Electronic Control Device (Taser)* – A less-lethal force weapon utilized by trained personnel that causes Neuro-Muscular Incapacitation (NMI) to a combative or potentially combative subject (a potentially combative subject is someone who is actively resisting, being physically assaulting, or threatening a physical assault). The use of this device is intended to overcome active resistance or its threat with minimal potential for causing death or great bodily harm. This Department utilizes the Axon X-26P and X-26 Taser units. (Axon Instructor Manual and OCPD Electronic Control Device Policy #6-300).
- H. *Extended Range Kinetic Energy Impact Device* - A departmentally-issued and/or authorized less lethal alternative. (Less Lethal Extended Range Kinetic Impact Device Policy #6-400.) There are two kinetic energy impact devices utilized by this Department:
1. A 12-gauge kinetic energy projectile—also known as a “Super Sock” round—which is approximately a 40gm lead-shot-filled bag with a tail that spins to stabilize it for better accuracy. This round is delivered from a standard police dedicated 12-gauge shotgun.
 2. The second extended range kinetic impact device is a variety of 37mm impact rounds delivered from a specialized 37mm less lethal launcher.
- I. *Firearm* - departmentally issued and/or authorized weapon/s.
- J. *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. (State of Wis. Statute §939.22 [14]).
- K. *Greater Danger Exception*- The only reason for using deadly force when a target has not been “isolated” is if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person. Exception to the isolation portion of Target Requirements. (Wisconsin Defense and Arrest Manual).
- L. *Handcuffs* - departmentally issued, Peerless, Smith & Wesson, ASP Tactical, American Handcuff Co. and/or authorized restraint device.
- M. *Hobble Restraint* - polypropylene webbed belting that can be used to secure a subject’s legs or ankles.

II. DEFINITIONS - *Continued*

- N. *Imminent Threat* – An impending likelihood of trouble, “About to Happen”; in the context of “imminent threat” of death or great bodily harm to you or another person or persons is a justification for the use of deadly force.
- O. *Intervention Options* – This is the base list of intervention options/tactics/techniques recognized in the D.A.A.T. system. These intervention options are listed below. (State of Wisconsin Defense and Arrest Manual).

<u>Mode</u>	<u>Purpose</u>	<u>Tactic(s)</u>
A. Presence	To present a visible display of authority	Professional Presence
B. Dialog	To verbally persuade	Tactical Communication
C. Control Alternatives	To overcome passive resistance, active resistance, or their threats	Escort holds Compliance holds Oleoresin Capsicum (O.C.) aerosol spray Pepperball (PAVA Powder) Electronic Control Device Passive countermeasures
D. Protective Alternatives	To overcome continued resistance, assaultive behavior, or their threats	Active countermeasures *S.P.E.A.R. Incapacitating Techniques Diffused Strike *K9 apprehension Intermediate Weapon *Impact munitions
E. Deadly Force	To stop the threat	Firearm

*Tactics or options that are advanced standing training for the Oak Creek Police Department.

- P. *Less Lethal Force* – a concept of planning and force application, which meets an operational objective, with less potential for causing death or serious physical injury than conventional police tactics (i.e., extended range kinetic impact devices [12 gauge and 37 mm], noise flash diversion device, irritant agents and electronic restraint devices [Tasers]). (Def-Tec Less Lethal Instructor Manual). The Oak Creek Police Department, in choosing Less Lethal options or other tactics that are both safe for suspects/officers and effective, weighs a less lethal option’s or tactic’s propensity for injury vs. its propensity for control. This research, coupled with proper training and policy implementation, lends itself to both safe and effective options.
- Q. *Noise Flash Diversion Device (NFDD)* - Commonly referred to as a “Flash bang”, the NFDD is a device that, once activated, causes a brilliant light, loud noise and a change in the normal atmospheric pressure (over-pressure) which can have a physiological effect on a person. This physiological effect is created by causing a temporary sensory overload by very quickly overwhelming a person’s senses with a loud noise, bright light and over-pressure, causing a momentary shutdown in a person’s ability to interpret his/her surroundings, inhibiting a person’s ability to mount a violent response towards police. (Def-Tec Less Lethal NFDD Instructor Manual).

II. DEFINITIONS - *Continued*

- R. *Non-Deadly Force* – An amount of force that, under normal circumstances, might cause bodily harm, but would not be expected to result in great bodily harm or death. (Departmental Definition).
- S. *Objectively Reasonable* – Amount of force an officer uses must be reasonably necessary to accomplish the lawful objective (USSC Case: Graham v. Connor 1989); to determine whether force is objectively reasonable consider the following three factors: severity of the crime, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting or attempting to evade arrest by flight (all three need not be present in the determination).
- T. *Oleoresin Capsicum Aerosol Spray* – a less lethal, department-issued and/or authorized aerosol agent containing a concentration of 1% to 5% capsicum, which is a derivative of various red peppers. (Oleoresin Capsicum aerosol sprays will be referred to as OC products throughout the remainder of this policy.) (Def-Tec Chemical Munitions Instructor Manual and State of Wisconsin OC Instructor Manual).
- U. *Pepperball* – A non-lethal chemical agent delivery system that uses high-pressure air (large capacity hoppers) and CO2 (limited capacity magazines) to deliver PAVA powder projectiles from a safe distance.
- V. *Physical Force* – Intervention using bodily activity or equipment.
- W. *Physical Intervention* – To establish and maintain control with the use of specific psychomotor skills.
- X. *Psychomotor* – Of or pertaining to a response involving both brain and motor activity.
- Y. *Reasonable Force* – A physical act by a police officer in the performance of duty used to accomplish a legitimate law enforcement goal and objectively reasonable under the totality of circumstances as perceived by the officer at the time the officer acted. The totality of circumstances perceived by the officer can include statements made by the person or a known prior history of resistive or assaultive behavior. (CVMIC definition).
- Z. *Resistive Tension* – The level of agitation in a person's body.
- AA. *S.P.E.A.R. (Spontaneous Protection Enabling Accelerated Response)* – An empty-handed, behaviorally-based system and tactic created by Blauer Tactical Confrontation Management Systems that can be used to respond to an out-of-control situation or an ambush assault on an officer when that officer is dealing with a subject in extreme close quarters (i.e., handcuffing a subject or questioning them). The S.P.E.A.R. tactic can be used instinctively when a flinch response is induced by an ambush attack or an out-of-control situation occurs. The S.P.E.A.R. can also be used cognitively when a preemptive response is justified based on pre-contact cues (early warning signs) observed by an officer that would indicate that an ambush attack or an out-of-control situation is about to occur. (Blauer Tactical Confrontation Systems S.P.E.A.R. Instructor Manual).
- BB. *Target Specific Directed Fire* – Purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to you or others, but whom you may not be able to clearly observe.
- CC. *T.A.R.P. (Total Appendage Restraining Position/Procedure)* – A procedure for restraining a violent or possibly-violent, resistive subject safely by using a hobble.

II. DEFINITIONS – *Continued*

DD. *TranZport Hood* – Department authorized spit cap, which will not restrict the subject's airway or ability to breathe. Temporary protection for subjects at risk of infectious disease and could expose others by spitting, sneezing or coughing.

EE. *Uncooperative Subject* – A person who will not comply with verbal or physical direction.

III. GENERAL RULES AND GUIDELINES

A. Justification and Decision Making

It is not the intent of this policy to direct officers that they must attempt each of the options of the Intervention Options before escalating to the next step, but to allow Officers to select the proper tactic or tool to gain and maintain control. Proper assessment of each situation will dictate at which level an officer will start. Nothing in this policy should be interpreted to mean that an officer is required to engage in prolonged hand-to-hand combat before resorting to a level of force that will more quickly, reasonably, and safely bring a resistive person under physical control. Officers should maintain a position of advantage in order to initiate and maintain control of a situation. Sometimes officers have to utilize his/her ability to disengage and /or escalate to achieve and maintain a position of advantage. Proper police action is a balance of safety and efficiency.

The Department recognizes that there is NO constitutional duty to attempt to use non-deadly alternatives where deadly force is otherwise justified under the constitution. (Ref: *Plakas v. Drinski* 19 F. 3d 1143 [7th Cir. 1994]).

In any instance where a person may have sustained injury as a result of the use of force, it is the officer's responsibility to ensure that the person receives prompt medical attention to include, but not limited to, officer initiated first aid. First aid is that which the officer has been trained to provide.

B. Reasonableness of Force

1. In making any lawful arrest, an officer is privileged to use whatever force is reasonably necessary, short of that which is intended or likely to cause death or great bodily harm, unless circumstances are such as to leave the officer no other alternative. An officer may use such amount of force as he/she reasonably believes necessary to accomplish the purpose. The reasonableness of the force used will be judged in the light of the circumstances as they appeared to the officer at the time he/she took action, and not as they appear from a subsequent, more thorough knowledge of the circumstances. When determining what level of force is reasonable, officers should weigh 3 questions. These questions were set forth in the U.S. Supreme Court case *Graham v. Connor and WI §175.44(2)* to determine if the level of force is considered objectively reasonable by a reasonable officer given the fact situation at the scene. The three questions officers should keep in mind are:

- a. the severity of the alleged crime at issue;
- b. whether the suspect poses an imminent threat to the safety of law enforcement officers or others;
and
- c. whether the suspect is actively resisting or attempting to evade arrest by flight.

III. GENERAL RULES AND GUIDELINES - *Continued*

2. The Department also recognizes where an officer has probable cause to believe that the suspect poses a significant threat of death or serious physical harm either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect inflicted or threatened infliction of death or great bodily harm, deadly force may be used to prevent an escape that imminently threatens death or great bodily harm to the officer, others, or the community at large. When feasible, some warning should be given; unless doing so would create more danger for officer or others. (Ref: Tennessee v. Garner 471 U.S. 1 [1985].)
3. Also necessary in determining the amount of force that is reasonably necessary to make an arrest, the officer, based upon his/her training and experience, must consider the following:
 - a. nature of the offense;
 - b. presence of weapons;
 - c. availability of assistance;
 - d. past history of the subject, if known;
 - e. injury to the officer and/or subject(s)
 - f. age, skill level, size and strength of the person compared to the officer;
 - g. any other factors and/or observations;
 - h. pre-contact cues as taught in the S.P.E.A.R. System and D.A.A.T approach considerations;
 - i. Wisconsin Defense and Arrest Approach Considerations, to include decision-making, tactical considerations and tactical evaluations. (State of Wisconsin Defense and Arrest Manual).

C. Search and Handcuffing

Handcuffing and searching will be accomplished through application of current training techniques as taught in Defensive and Arrest Tactics. Handcuffs are to be checked for proper fit and double locked in accordance with the State of Wisconsin D.A.A.T. guidelines as soon as tactically feasible. The purpose of handcuffing is to ensure the safety of the officer, the arrested person, and the public. Officers should use discretion in handling custodial arrests involving cooperative and passive individuals. Only under extreme circumstances should a subject be handcuffed in front. This practice is dangerous and should generally be avoided. Special circumstances can be looked at for proper application of cuffing in front, but use of a hobble or extra restraints to ensure restrained limb movement is recommended. Officers should be aware of "Presumed Compliance", a Blauer Tactical Confrontation Management System theory.

D. Hobble and T.A.R.P.

A hobble restraint and T.A.R.P. can be used for a subject who is violently resisting or if there is a threat or possibility of resistance or escape. The hobble and T.A.R.P. should be applied according to department training. It is the policy of this department that we do not "hog tie" or place a subject in a position that hinders breathing as soon as tactically feasible for extended periods to avoid positional asphyxia.

III. GENERAL RULES AND GUIDELINES – *Continued*

E. TranZport Hood

A TranZport Hood should be applied to subjects who are threatening or actively spitting at officers or other subjects. The TranZport Hood can also be applied to those who have, or are suspected of having, infectious diseases and are sneezing, coughing or spitting. The TranZport Hood will not be used to restrict a subject's airway or ability to breath, and will be applied as trained. The only approved application of a restraint method of addressing a subject spitting is the department-authorized spit hood. No other item will be applied to stop someone from spitting at officers other than the authorized spit hood.

F. Tactical Communication

Following procedures outlined in the Intervention Options, tactical communication should occur between the officer and the subject during which the officer attempts to gain the voluntary compliance of the subject. Generally, officers should make a reasonable attempt to ensure the subject is given direction to what the officer wants the subject to do (i.e., knee striking an assaultive/resistive subject while directing the subject to stop resisting and place their hands behind their back). Circumstances may be such as to make a verbal exchange inappropriate, i.e., language barrier, mental disorder, exigency of the situation. It is recognized that it is not always possible to “fight” and “talk” at the same time. However, the officer must be able to justify why he/she did not attempt to gain verbal compliance. In situations where use of force is privileged, the officer may threaten to use such force to gain compliance by word and/or action. Whenever possible, officers should attempt to utilize the tactical communication techniques they are trained in (i.e., verbal judo's tactical eight step, 5-step hard style, and the State of Wisconsin's Tactical Communication).

G. OC Spray/Pepperball

OC products and Pepperball are considered an option within the list of Intervention Options and are not intended to replace a firearm, baton, or any other authorized equipment, nor are they intended to replace defense and control techniques that are used within the Intervention Options. Officers must keep in mind that some subjects who are extremely focused or under the influence of drugs or alcohol may not be affected sufficiently by OC spray or Pepperball. This fact may force officers to disengage and/or escalate to a higher force option depending on the fact situation.

IV. PROCEDURES

A. Parameters for Use of Deadly Force with a firearm (OCPD Firearms Policy #6-200).

1. Police officers are authorized to fire their weapons only to protect themselves or others from what is reasonably believed to be an immediate threat of death or great bodily harm. A law enforcement officer 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. The subject should be handcuffed once the threat has been stopped by use of deadly force unless the officer deems it otherwise unnecessary.
 - b. Once a subject is secured after a Use Of Force incident, when tactically feasible, an officer shall conduct an Initial Medical Assessment, request medical if necessary, and treat the subject to the level of their training.
2. Before using a firearm, police officers should identify themselves and state their intent to shoot, if both practicable and feasible. A verbal warning is feasible if you have sufficient time, distance, and/or cover from the subject posing the deadly threat, such that the verbal warning would not increase or prolong the danger to yourself or other innocent people.

IV. PROCEDURES – *Continued*

3. Police officers may also discharge their firearm to destroy a seriously wounded or injured animal only after all reasonable attempts have been made to request assistance from the agency responsible for the disposal of such animals; i.e., Humane Society, DNR. The destruction of such animals as well as vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others. Squad rifles should not be used for this purpose.
4. Police officers should adhere to the following restrictions when their firearm is exhibited:
 - a. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create a reasonable belief that it may be necessary to use the weapon in conformance with this policy.
 - b. Police officers are generally not justified in using their firearm to fire a warning shot.
 - c. Police officers are generally not justified in using their firearm to fire at or from a moving vehicle except as the ultimate measure of self-defense or defense of another.
 - d. Police officers are prohibited from discharging firearms when it appears very likely that an innocent person will be injured, unless the “Greater Danger Exception” of the WI Defense and Arrest Tactics applies.
 - e. A secondary (back-up) firearm is authorized for on-duty use, but only upon meeting specific department standards, guidelines, and inspections. The officer must qualify with this weapon annually per Firearms Policy #6-200.
 - f. Officers are permitted, but not mandated, to carry a firearm when off-duty. An officer who elects not to carry a firearm while off-duty should not be subjected to disciplinary action if an occasion should arise in which he/she could have taken police action if he/she had been armed.
 - g. An off-duty officer who wishes to carry a firearm other than his/her issued on-duty firearm, should only be permitted to do so upon meeting specific department standards, guidelines, and inspections. The officer must qualify with this weapon annually per Firearms Policy #6-200.
 - h. Sworn officers must receive and pass the Oak Creek Police Department Use of Force (D.A.A.T. and Firearms) in-house training program during their F.T.O. Training program.
5. Within the parameters of deadly force, target-specific directed fire may be used when deadly force is justified, but is only appropriate in limited situations. Police officers may use purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to you or others, but whom you may not be able to clearly observe. The purpose of target-specific directed fire is to stop the threat when no other reasonable course of action would allow officers to perform a rescue, escape from danger, or otherwise prevent death or great bodily harm.

When the criteria of deadly force are met, officers may deliver purposeful, controlled, sustained fire at the suspect’s location for the duration of time necessary to perform the rescue or task, thereby stopping the threat or at least preventing the perpetrator from firing at officers or others that are in imminent danger.

B. Parameters for Use of Less Lethal Force

1. Where deadly force is not authorized, officers should assess the situation in order to determine which less lethal technique or weapon will best de-escalate the situation and/or bring it under control.

IV. PROCEDURES – *Continued*

2. Police officers are authorized to use less lethal force techniques. The tactic utilized is dependent on the mode and purpose as defined within the State of Wisconsin Training and Standards Disturbance Resolution.
 3. After using OC and/or Pepperball products and obtaining control of the suspect/situation, officers should make reasonable effort to relieve discomfort of the arrested person and any other affected bystanders in accordance with the manufacturer's recommendations, including requesting an ambulance and transporting to a hospital if the affected person requests medical treatment. Officers will continue to monitor and provide custodial care to the person affected.
 4. Extended range kinetic energy impact devices should be used in circumstances that require incapacitation, and force less than deadly would be preferable for creating such incapacitation (i.e., an armed walk-out). An officer should inspect weapon for lethal rounds and remove if found, then inspect, verify proper less lethal ammo, and load less lethal ammo for extended range kinetic energy impact devices to be utilized and generally have lethal cover. (OCPD Extended Range Impact Device Policy #6-400).
 5. The S.P.E.A.R. System is an empty-hand, behaviorally-based tactic to deal with an out of control situation or an ambush of an officer dealing with a subject in extreme close quarters. This tactic is an effective response to a violent assault or pending assault (telegraphed to the officer through pre-contact cues) created through a subject and/or Officer's forward movement and essentially jamming the subject's attack. This forward response allows an officer to bridge him/herself to their Defense and Arrest Control Tactics and reinitiate control over the subject and the situation.
 6. The Department-authorized electronic control device (E.C.D.) may be utilized by End User Trained Officers when a subject is threatening to actively resist or actively resisting an officer or the risk associated with closing the distance on the subject to take control makes other force alternatives unsafe or those alternatives would be ineffective or pose a greater propensity for injury for suspect/officer in light of the circumstances known to the officer. (OCPD Electronic Control Device Policy #6-300).
- C. Training and Qualifications
1. Firearms – See OCPD Firearm Policy #6-200.
 2. Other Weapons
 - a. A police officer is not permitted to use a less lethal force weapon unless qualified in its proficient use as determined by training procedures.
 - b. The less lethal force weapons authorized are those outlined in the State of Wisconsin Intervention Options or specifically authorized by this Department (i.e., empty hand control, the baton, all authorized extended range kinetic energy impact devices, K-9 apprehension, Department-authorized irritant agents including OC and Pepperball products, the S.P.E.A.R. empty hand system, Department-authorized electronic control device, and Department-authorized noise flash diversion devices).
 3. Use of trained techniques is preferred; however, techniques not trained (but justified) may be used as long as they fit the situation and the aforementioned guidelines laid out in this policy. Techniques may be dramatically altered on the street due to the situational logistics, dynamics of situation, and other factors.

IV. PROCEDURES – *Continued*

D. Reporting Use of Force – There are two types of reports that could possibly be generated:

1. Incident Reports assigned after a use of force
 - a. A supervisor should be summoned to the scene of any of the following incidents with an incident number assigned and a written report completed by the officer involved to outline the entire incident:
 - 1) when use of force results in death or injury to a person;
 - 2) when a firearm is discharged outside of the firing range, not to include the dispatching of a wounded animal (supervisor's permission should be requested over the radio before dispatching an injured animal);
 - 3) when an extended range kinetic impact device (beanbag / impact munition—12ga. or 37/40 mm) is used outside of training;
 - 4) when a Taser is used outside of training;
 - 5) when a K-9 is utilized and bites or injures someone;
 - 6) when deployed “stop sticks” are struck by a vehicle outside of training (OCPD Pursuit Policy #8-300);
 - 7) when Pepperball is utilized outside of training
2. Supervisor's “Use of Force Report”
 - a. Any officer involved in or witnessing a use of force (the use of a ‘come-along’ restraint or higher), shall report it to a supervisor as soon as responsibly possible after the call.
 - b. A supervisor, along with the officer(s) involved, will complete a “Use of Force Report” whenever a level of force of a come-along or higher level of force to include stop sticks is used. All pursuits will also be documented as a use of force regardless of their outcome. Officers shall advise a supervisor of any complaint of injury by the suspect or officer(s) as soon as tactically feasible. If there is a complaint of injury, a use of force report should be completed, no matter how low the level of force used was. This report will outline the use of force and areas encompassing force application (other areas that need to be covered for court or other legal reasons, but not related to force application should be outlined in an assigned incident number report). The Administrative and Operations Captains should be notified any time an extended range impact device, or K-9 is used on someone, along with a Use of Force Report being completed.
 - c. Supervisors are to conduct on-scene interviews with any and all victims, witnesses, and officers so as to:
 - 1) ensure safety and medical care of all individuals at scene;
 - 2) accurately document and investigate use of force.
 - d. The report will be read and signed-off by the officer(s) involved, the shift supervisor, and shift Lieutenant.
 - e. The Use of Force Report will then be forwarded for review and sign off by the appointed EVOIC Instructor (only required for pursuits), the Use of Force Training Supervisor, the Operations Captain, the Administrative Captain, and the Chief of Police.

IV. PROCEDURES – *Continued*

- f. All Use of Force Reports will be filed with I.A.
- g. It is not necessary to fill out a Use of Force Report every time an officer un-holsters his/her weapon (i.e., clearing an alarm, etc.). The report becomes necessary when the show of force is directed at a subject.
- h. Pursuant to collection and reporting of crime data – §165.845
 - 1. To coincide with the state statute that law enforcement agencies forward certain use of force data to the FBI, a TRACS Use of Force and Arrest Related Death form is to be completed by the Training Lieutenant for the preceding month under the following circumstances:
 - a. Any incident involving the discharge of a firearm by a law enforcement officer at or in the direction of a civilian.
 - b. Any incident involving the discharge of a firearm by a civilian at or in the direction of a law enforcement officer.
 - c. Any incident in which an action taken by a law enforcement officer as a response to an act of resistance results in great bodily harm or death.
 - d. Any incident in which an act of resistance taken by a civilian against a law enforcement officer results in great bodily harm or death.
 - e. Outside of state statute, DOJ also requires notification anytime a subject dies while detained, arrested or in the course of being arrested.
 - 3. A supervisor will be immediately summoned to the scene and will comply with investigative procedures as required by the department in the following situations:
 - a. when a firearm is discharged outside of the firing range without authorization;
 - b. when the use of force results in death or injury;
 - c. when a subject complains that an injury has been inflicted;
 - d. when an officer complains that an injury has been inflicted.

E. Departmental Response

- 1. Deadly Force Incident
 - a. This will be completed in accordance with the Officer Involved Shooting Policy #6-500.
- 2. Administrative Review of Critical Incidents
 - a. Where an incident was concluded through the use of force, the incident will be carefully examined as to the justification for the use of and the degree of force. Officers will include the degree of force used in narrative form within the body of the officer's report. The report should be thorough, including all the details of the incident.
 - b. All reported uses of force will be reviewed by the appropriate departmental authority to determine whether:

IV. PROCEDURES – *Continued*

- 1) departmental rules, policy, or procedures were followed;
 - 2) the relevant policy was clearly understandable and effective to cover the situation and that training was adequate;
- c. All findings of policy violations or training inadequacies shall be reported to the appropriate unit for resolution and/or other action.
- d. There will be a regular review of use of force incidents by the Use of Force Training Unit to ascertain training and policy needs.

F. Duty to Report Noncompliant Use of Force - §175.44(3)

- a. A law enforcement officer who, in the course of his or her law enforcement duties, witnesses another law enforcement officer use force that does not comply with the standards under §175.44(2)(b) or (c) in the course of that law enforcement officer's official duties shall report the noncompliant use of force as soon as is practicable after the occurrence of the use of such force. If multiple officers witness a noncompliant action, the statute creates a duty for each officer to report it

G. Duty to Intervene - §175.44(4)

- a. A law enforcement officer shall, without regard for chain of command, intervene to prevent or stop another law enforcement officer from using force that does not comply with the standards under §175.44(2)(b) or (c) in the course of that law enforcement officer's official duties if all of the following apply:
1. The law enforcement officer observes the use of force that does not comply with the standards under §175.44(2)(b) or (c), and
 2. The circumstances are such that it is safe for the law enforcement officer to intervene and
 - a. Although this list is not exhaustive, it lists some circumstances to consider intervening:
 - i. Being in full uniform in your jurisdiction
 - ii. Exigent or extraordinary circumstances exist when not in full uniform
 - b. Although this list is not exhaustive, it lists some circumstances to consider when not to intervene:
 - i. When you are not in full uniform in or out of your jurisdiction
 - ii. Force is occurring in a tactical situation you are not directly involved in – your intervention may escalate the situation
 - iii. Unless exigent or extraordinary circumstances exist, officers should not physically intervene in off duty use of force incidents. An off-duty officer should contact the on duty OCPD department supervisor to advise them of the incident regardless of where the incident occurred.
 3. The Officer has subjective knowledge that excessive force was being used, that a citizen has been unjustifiably arrested, or that any constitutional violation has been committed by a law enforcement official; and the Officer had a realistic opportunity to intervene to prevent the harm from occurring.

IV. PROCEDURES – *Continued*

- b. A law enforcement officer who intervenes or observes noncompliant use of force as required under §175.44(4)(a) shall report the intervention to his or her immediate supervisor as soon as is practicable after the occurrence of the use of such force. Additionally, the Officer shall complete a supplement report about the incident associated with the call number.
- c. Any law enforcement officer who intentionally fails to comply with the requirements under §175.44(4) and this department policy may be subject to departmental discipline and / or criminal prosecution.

H. Whistleblower Protections - §175.44(5)

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 as required under §175.44(3) or (4); intervened to prevent or stop a noncompliant use of force as required under §175.44(4); 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 as required under §175.44(3) or (4).

V. DISCLAIMER


The Use of Force Policy developed by the Oak Creek Police Department is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of the Use of Force Policy can only be the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

REFERENCE:

- Firearms Policy #6-200 (on-duty and off-duty)
- Less Lethal Extended Range Kinetic Impact Devices Policy #6-400
- Less Lethal Electronic Restraint Device Policy #6-300
- Oak Creek Police Department Use of Force Report - Phoenix
- State of Wisconsin Defense and Arrest Manual
- State of Wisconsin Professional Communications Manual
- State of Wisconsin Firearms Manual
- State of Wisconsin Tactical Response Manual
- Verbal Judo Instructor Manual
- State of Wisconsin Intervention Options
- Taser International Instructor Manual
- Blauer Tactical Confrontation Management Systems S.P.E.A.R. Instructor Manual
- Def-Tec Less Lethal Instructor Manual
- WI Statute §66.90511(2) – Use of Force Policy
- WI Statute §165.845 – Collection and Reporting of Crime Data
- WI Statute §175.44 – Law Enforcement Use of Force
- WI Statutes §939.45/§939.46/§939.47/§939.48/§939.49 (statutes regarding privileged use of force by a law enforcement officer or related privileged use of force statutes) Graham v. Connor (109 S. Ct. 1865 {1989}) U.S. Supreme Court Case

ATTACHMENTS:

- Use of Force Policy Certification
- WILEAG Approval Letter



Steven J. Anderson
Chief of Police

DRS/tlp

Policies\Use of Force Policy



Use of Force Policy Certification

Agency: Oak Creek Police Department

Assessor: Dan Meyer

Date: 12/11/2020

The Assessor is to review all relevant policies to determine compliance with the below listed mandatory requirements.

The Agency's use-of-force policies adhere to all applicable federal, state, and local laws.

Context

Compliance can be achieved by incorporating the above language into policy. If language is not present the assessor can find compliance if there are no procedures in their policy that would be in violation of the law, such as having procedures in violation of Graham v Connor, procedures in conflict with the Wisconsin DAAT Manual, etc.

In Compliance

Not in Compliance

The Agency maintains use-of-force policies that prohibit the use of choke holds, except in those situations where the use of deadly force is allowed by law.

Context

Policy must include a prohibition of chokeholds for compliance. The agency may elect to allow the exception for chokeholds in those situations where the use of deadly force is justified by law, or to ban chokeholds completely. Agencies choosing to maintain the use of a Vascular Neck Restraint as a force option must clearly identify the differences between a Choke Hold and a Vascular Neck Restraint in their policy and address any procedures, restrictions, or limitations on the use of the Vascular Neck Restraint.

Choke Hold – A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.

Vascular Neck Restraint – A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

In Compliance

Not in Compliance

Findings of Non-Compliance

The Assessor is to document reasons for non-compliance in the space below.

WISCONSIN LAW ENFORCEMENT ACCREDITATION GROUP
Challenging Wisconsin's Law Enforcement Agencies to Pursue Excellence



U.S. Department of Justice's Standards for Certification on Safe Policing for Communities.

January 14, 2021

Dear Chief Steven J. Anderson,

On behalf of the Wisconsin Law Enforcement Accreditation Group, this letter confirms we are certifying that the Oak Creek Police Department meets certain eligibility requirements, set forth by the U.S. Department of Justice, for discretionary federal grants. The Oak Creek Police Department is qualified to receive federal grants for three years from the date of this letter.

Pursuant to Section 2 of the Presidential Executive Order on Safe Policing for Safe Communities, dated June 16, 2020, Executive Order No. 13929 (the "Executive Order on Safe Policing"), the U.S. Department of Justice's discretionary grant funding is only available to state, local, and university or college law enforcement agencies that have obtained (or are in the process of seeking) credentials certifying that they meet certain standards on use of force. The Executive Order on Safe Policing empowers the U.S. Attorney General to designate independent credentialing bodies — including the Wisconsin Law Enforcement Accreditation Group — to certify that a law enforcement agency meets the conditions of eligibility for federal grants.

Following our review, we have determined that the Oak Creek Police Department meets the mandatory conditions for certification. Accordingly, the Wisconsin Law Enforcement Accreditation Group will include your agency going forward within our database of certified law enforcement agencies. On or before January 31st of each year, we will provide the name of each certified law enforcement agency to the Director of the COPS Office.

If you would like to discuss further, please do not hesitate to contact me either by email at m.ferguson@glendalewi.gov or by phone at (414) 228-1753.

Respectfully,

A handwritten signature in black ink that reads 'Mark Ferguson'.

Chief Mark Ferguson, Glendale Police Department
President, Wisconsin Law Enforcement Accreditation Group