POLICY NUMBER: USE OF FORCE 1 (UOF 1)

POLICY TITLE: USE OF FORCE

PURPOSE:

The purpose of this policy is to provide guidance to the officers of the Brown County Sheriff's Office for the use of force. The scope of this policy covers the reasonable application of force, decision-making, review procedures and training.

POLICY:

It is policy of the Brown County Sheriff's Office to promote public safety and protect civil rights when using force that is reasonably necessary and justified. The use of force is permitted when it is reasonably necessary to achieve and maintain control of resistive subjects, to detain persons reasonably suspected of criminal behavior, to make a lawful arrest, in the defense of self or others, to prevent escape, or other legitimate law enforcement objectives in accordance with Wisconsin Department of Justice standards.

DEFINITIONS:

Active Resistance- Behavior which physically counteracts an officer's control efforts and which creates a risk of bodily harm to the officer, subject, and/or other persons.

Assaultive Behavior- Direct actions or conduct that generates bodily harm

Bodily Harm - Physical pain or injury, illness, or any impairment of physical condition.

Choke Hold - A physical maneuver or technique that restricts an individual's ability to breathe for the purpose of incapacitation.

Continued Resistance- Maintaining a level of counteractive behavior that is not controlled with the officer's current level of force.

Deadly Force - The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

De-escalate – Is a term used to describe the reduction of an application of force.

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.

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Disturbance Resolution Model - The Wisconsin Department of Justice model for Wisconsin Law Enforcement response when responding to any sort of disturbance or potential disturbance.

Electronic Control Device (ECD) – Electronic Control Devices are instruments in which a safe amount of electricity is used to affect the sensory and/or motor nervous system of the body.

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.

Greater Danger Exception- Exception to the requirement for target isolation, this exception allows an officer to use deadly force without target isolation if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person.

Intervention Options - Specific actions and force options available to the officer in attempting to effect control and/or in defense of self or another.

Less Lethal Force - Force that is not intended or likely to cause death or great bodily harm. In general, refers to any application of force, which does not fall into the category of deadly force.

Passive Resistance - Non-compliant and non-threatening behavior.

Serious Bodily Injury **–** United States Department of Justice definition; Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

Substantial Bodily Harm- bodily injury that causes a laceration that requires stiches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss of fracture of a tooth.

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 the officer or others.

Warning Shot – The intentional discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.

GENERAL INFORMATION**:**

1. An officer's use of force is governed by the following:

    a. The United States Constitution
    b. Wisconsin Law
    c. Agency Policy
    d. Officer Training

2. Objectively Reasonable

    a. The determination that the decision to use force, and the level of force used, is what a reasonable and prudent officer would use under the same or similar situations based upon the officer's evaluation of the situation, experience, training, and the totality of the circumstances known to or believed to exist by the officer at the time the force is used and is consistent with U.S. Supreme Court precedent.
    b. The following factors from the United States Supreme Court decision, *Graham v. Connor*, are used to determine if a use of force is objectively reasonable:
        i. The severity of the crime at issue;
        ii. Whether the suspect poses an immediate threat to the safety of the officers or others,
        iii. Whether suspect is actively resisting arrest or attempting to evade arrest by flight.

3. Under Wisconsin statute 939.45 Privilege is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

    a. When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under Wisconsin statute 939.46 or 939.47; or
    b. When the actor's conduct is in defense of persons or property under any of the circumstances described in Wisconsin statute 939.48 or 939.49. ; or
    c. When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or
    d. When the actor's conduct is a reasonable accomplishment of a lawful arrest; or
    e. When for any other reason the actors conduct is privileged by the statutory or common law of the state of Wisconsin.

4. Wisconsin Department of Justice *Defensive and Arrest Tactics* (DAAT) is adopted as the primary foundational tactical and training guide for law enforcement officers of this agency. It contains several key concepts and tactics, including, in part;

    a. Law enforcement officers may use force legitimately when it is needed to achieve control in five specific situations:
        i. To achieve and maintain control of resistive subjects
        ii. To detain persons reasonably suspected of criminal behavior
        iii. To make lawful arrests
        iv. To defend themselves or others
        v. To prevent escape
    b. An officer's Use Of Force must fit into one of three categories:
        i. A trained technique
        ii. A dynamic application of a trained technique
        iii. A technique not trained, but justifiable under the circumstances
    c. The below concepts assist an officer in understanding control:

i. Control is a perception based on an officer's training, experience and the fact situation
ii. Control is not a 50/50 proposition
iii. Proper police action balances safety and efficiency

d. Five key rules for the use of force:
   i. The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
   ii. An officer may initially use the level and degree of force that is reasonably necessary to achieve control. The officer does not need to escalate step-by-step through the Intervention Options.
   iii. At any time, if the level of force an officer is using is not effective to gain control, an officer may disengage and/or escalate to a higher level of force. This involves transition to a different level of force or different tactics based on the totality of the circumstances.
   iv. Once the officer has gained control of the subject, the officer must de-escalate the level of force to that needed to maintain control.
   v. An officer must always maintain the position of advantage.

5. Safety Priorities:

   i. Safety priorities are used to assist officers in making intervention and use of force decisions. This concept recognizes that law enforcement officers must protect themselves, or else they cannot protect others. It also recognizes that law enforcement officers will take appropriate tactical risks to protect innocent persons. Finally, the safety of innocent victims and law enforcement officers is a higher priority than the safety of the perpetrator who is putting others at risk of injury or death.

6. Great Bodily Harm/Serious Bodily Injury:

   i. The United States Department of Justice definition of Serious Bodily Injury and the State of Wisconsin's definition of Great Bodily Harm defined by Wisconsin Statute are recognized as being non-conflicting.

<u>DISTURBANCE RESOLUTION:</u>

It is the policy of the Brown County Sheriff's Office that all uses of force will comply with the state of Wisconsin Department of Justice Training and Standards Bureau Disturbance Resolution Model as outlined below:

1. Approach Considerations

   a. Decision-Making
      i. Justification
      ii. Desirability

b. Tactical Deployment
   i. Control of Distance
   ii. Relative Positioning
   iii. Relative Positioning with Multiple Subjects
   iv. Team Tactics
c. Tactical Evaluation
   i. Threat Assessment Opportunities
   ii. Office/Subject Factors
   iii. Special Circumstances
   iv. Level/Stage/Degree of Stabilization

2. Intervention Options

   a. Presence: to present a visible display of authority
   b. Dialog: to verbally persuade
   c. Control Alternatives: to overcome passive resistance, active resistance, or their threats
   d. Protective Alternatives: to overcome continued resistance, assaultive behavior, or their threats
   e. Deadly Force: to stop the threat

3. 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. Turnover/Release: removal of restraints, if necessary

SPECIFIC APPLICATION GUIDELINES:

1. Presence and display

   a. Display of weapons and/or use of emergency vehicles may be utilized as a deterrent in attempt to gain compliance of resistive subject(s) when their actual use may become reasonably necessary.

2. Identification and Warning

   a. Before using force, when feasible, and if time allows, an officer shall attempt to;
      i. Identify himself/herself as a law enforcement officer visually and/or verbally;
      ii. Order the suspect to stop the unlawful and/or resistive activity;
      iii. Warn the subject of an impending use of force.
   b. Exceptions will be made for identification and warning when the identification and/or warning would compromise the safety of the officer or other person(s).

3. Oleoresin Capsicum (OC)

    a. The goal for using OC spray is to overcome active resistance or its threat by creating in the subject a variety of physical effects that may result in confusion and disorientation, thus disrupting the subject's ability to resist.
    b. Officers must be trained in the use of OC products in order to carry and use them.
    c. Officer(s) must attempt to apprehend suspect(s) sprayed with OC unless the risk to the officer(s) or the operation outweighs the necessity for apprehension, such as a suspect(s) fleeing into a hostile crowd.
    d. Aftercare and decontamination of subjects affected by OC should be accordance with manufacturer's guidelines. In the absence of manufacturer's guidelines, the following apply:
        i. Use Professional Communications skills to calm and reassure the subject.
        ii. Allow subject to remove contact lenses if tactically feasible.
        iii. Dry excess OC on subject if possible.
        iv. Encourage the subject to blink eyes, move the subject to fresh air, and face the subject into the wind.
        v. Rinse the subject's face and eyes with water if tactically feasible.
        vi. Get medical assistance if either;
            1. The subject requests it
            2. If symptoms do not visibly improve after 45 minutes
            3. A reasonable officer observes any other problem or feels that medical assistance is warranted.

4. Electronic Control Devices (ECDs): Reference Policy UOF 3.

5. Specialty Munitions: Reference Policy UOF 4.

6. Deadly Force:

    a. There are two situations wherein an officer is permitted to use deadly force.
        i. Defense of Self or Others
        ii. Defense of Society at Large
            1. In uncommon circumstances the use of deadly force may be used in the defense of society at large to make an arrest or prevent the escape of a dangerous subject. Consistent with the U.S. Supreme Court decision in Tennessee vs. Garner, officers may use deadly force to prevent escape of a criminal suspect who has caused or imminently threatens to cause death or great bodily harm to the officer, or another person or persons; and presents a continued risk of death or great bodily harm to the public; *and the officer reasonably believes there is <u>no other way</u> to make an arrest or retain custody of the person once arrested prior to the subject causing further great bodily harm or*

death to another person. This may be used only as a last resort and when feasible, a warning to the suspect has been given.

b. Deadly Force Criteria
   i. Subject behavior which has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons.

      1. An imminent threat is an immediate threat. For a subject's threat to be considered imminent the following criteria must be met:
         a. Intent: a stated or implied intent to cause great bodily harm or death;
         b. Weapon: the subject has a conventional or un-conventional weapon capable of inflicting great bodily harm or death or is attempting to access one. Individuals are able to inflict death or serious injury with their hands or feet alone and if it is reasonable to believe the subject intends to do so, and has the following;
         c. Delivery system: the subject must have a means and capability of using the weapon to inflict great bodily harm or death.
   ii. Preclusion
         a. Before officers can use deadly force, officers must reasonably believe that all other force options have been exhausted or would be ineffective.
   iii. Target Requirements:
         a. Acquisition
         b. Identification
         c. Isolation (Greater Danger Exception)

7. Target Specific Directed Fire

   a. Officers may use Target Specific Directed Fire directed at a perpetrator but whom the officer may not be able to meet all target requirements for deadly force justification.

8. Personal Knowledge

   a. An officer may be justified in using less lethal or deadly force without having personal knowledge of all the justifying factors as long as the officer reasonably believes that the justification has been met.

9. Warning Shots

   a. Warning shots are prohibited.

10. Choke Holds

   a. The use of choke holds is prohibited, except in situations where the use of deadly force is justified.

11. Use of force involving vehicles

    a. Vehicles may be used in the application of force, for both pursuit and non-pursuit situations as long as their use is objectively reasonable. Use of force involving a vehicle does not automatically categorize its use as any specific intervention option. The level of threat the subject is presenting to the officer and/or other person or persons, the method the vehicle is used by the officer, and the totality of the circumstances are the determining factors of whether an officer's use of force involving a vehicle is justified.
    b. Shots fired at or from a moving vehicle involve additional considerations and risks. 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 the vehicle when the officer reasonably believes all other force options have been exhausted or would be ineffective and the deadly force justification requirements are met.
    c. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

12. Follow-Through Considerations

    a. If deadly force was used, or other force that resulted in Great Bodily Harm to the subject or subjects, the officer(s) may need to first control continued threats from the subject or other potential threats by moving to cover, communicating with other officers and dispatch, and tactical planning before beginning follow-through considerations.
    b. Officers shall provide medical care consistent with their level of training considering safety priorities and when tactically feasible; and shall monitor the subject until they are turned over/released. Medical care may include providing basic first aid, requesting emergency medical services, and/or arranging for transportation to a medical facility.

13. Medically Significant Behavior (MSB)

    a. MSB cannot be precisely defined, however it includes a variety of behaviors that indicates a serious and potentially life-threatening medical condition is present. Some of the common characteristic (delusional and/or violent) behaviors associated with medically significant behavior include:
        i. Agitation or excitement = Increased activity and intensity;
        ii. Delirium = Confusion;
        iii. Psychotic = Bizarre behavior
    b. When an officer recognizes MSB, the officer should request EMS for the subject as soon as reasonably possible. Quick medical intervention to the subject is a high priority to reduce the risk of death.
    c. When an officer has contact with a subject exhibiting MSB, the officer may need to adjust their use of intervention options and follow-through considerations with the goal of accomplishing the following:

i. Avoid increasing the subject's agitation or excitement;
ii. Minimize physical struggles with the subject;
iii. Minimize the use of restraints;
iv. Get medical care for the subject as quickly as possible.

d. When an officer recognizes that a subject is exhibiting MSB, that subject should be evaluated by EMS personnel prior to their transport.

14. An officer may use force against a person if the officer reasonably believes that to use such force is necessary to prevent such person from committing suicide, but this allowance which is granted by Wisconsin State Statute does not extend to the intentional use of force intended or likely to cause death.

15. Officer-Involved Critical Incident: Reference Policy UOF 2

USE OF FORCE DOCUMENTATION

1. An officer shall complete a use of force report after using force that involves control devices (of the intervention options) or greater. This includes discharge of a weapon in an attempt to control resistive subject(s) and/or defend self or other(s) regardless of the result.
2. An officer may complete or be directed to complete a use of force report after any incident if he/she determines the event to be of unique value or substance.
3. Each officer who used force, witnessed a use of force, or was involved in a use-of-force incident shall notify their immediate supervisor as soon as possible and complete an incident or supplemental report.
4. Each division shift supervisor is responsible for assuring the timely completion and routing of all required reports.
5. The Officer-Involved Critical Incident (UOF 2) policy supersedes the reporting requirements of this policy.

USE OF FORCE REVIEW

1. Upon completion and routing of all use of force documentation to the Professional Standards Division, the Professional Standards Director or designee shall complete an independent administrative review. If any policy violations or significant training issues are found, the Sheriff, Chief Deputy, and Division Director of the involved officer shall be notified.

TRAINING

1. Use of force training shall be conducted for all entry level officers during their initial field training and orientation period. Regular periodic training shall be conducted thereafter.

    a. The curriculum will be selected by the training section in accordance with the U.S. Constitution, Wisconsin State Law, Wisconsin Department of Justice training standards and this policy.

b. Advance standing training and tactics are allowed so long as they do not conflict with the U.S. Constitution, Wisconsin State Law, Wisconsin Department of Justice training standards and this policy.
c. The training section supervisor will determine the amount and frequency of training.
d. The training section shall maintain records of training.