

MARSHALL POLICE DEPARTMENT POLICY		TITLE: USE OF DEADLY AND NON-DEADLY FORCE	
ISSUE DATE: June 3, 2002	LAST UPDATE: November 16, 2020	SECTION: Operational	FILE NAME: USE OF FORCE
POLICY SOURCE: Chief John Nault			TOTAL PAGES: 9
SPECIAL INSTRUCTIONS:			

I. PURPOSE

- A. The purpose of this document is to establish a policy for the use of deadly and non-deadly force by sworn personnel to affect an arrest, control a person.

II. POLICY

- A. It is the policy of the Marshall Police Department that officers shall use only that amount of force that is reasonably necessary to achieve a lawful objective. The force used by an officer should only be that reasonably required to overcome the resistance being offered by an offender or the person the officer is trying to control.

III. DEFINITIONS

- A. **Deadly Force:** The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- B. **Choke Hold:** A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.
- C. **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 any other serious bodily injury.
- D. **Imminent Threat:** Imminent threat as defined by the State of Wisconsin DAAT Manual. For a subject's threat to be considered imminent it must meet three (3) criteria 1) Intent, 2) weapon and 3) delivery system.
- E. **Lawful Force:** A physical act by a police officer in the performance of duty when it is used to accomplish a legitimate law enforcement goal and the level of force used is reasonable considering all the facts and circumstances of the incident.
- F. **Necessary Force:** That amount of force, applied by an officer against a person by any means, reasonably necessary to control a person, a situation or to achieve a legitimate law enforcement goal.
- G. **Non-Deadly Force:** Any use of force other than that which is considered deadly force.
- H. **Physical Restraint:** Holding, restraining, handcuffing, or other physical manipulation without the use of any weapon by one or more officers acting alone or in concert to control a person or to affect an arrest.
- I. **Physical Force:** The level of force, which is more than physical restraint, needed to defend personal safety and/or to overcome resistance to arrest.
- J. **Preclusion:** Preclusion as defined by the State of Wisconsin DAAT Manual.
- K. **Privilege:** Privilege as defined by Wisconsin State Statute 939.45.

- L. **Reasonably Believes:** Means that an ordinary, prudent and reasonably intelligent police officer believes that a certain fact situation exists and such belief is reasonable under the circumstances known to the officer at the time the officer acted.
- M. **Self defense and defense of others:** As defined by Wisconsin State Statute 939.48.
- N. **Target Requirements:** As defined by the State of Wisconsin DAAT Manual, they must still fulfill three (3) target requirements – 1) Target acquisition, 2) Target Identification and 3) Target Isolation.
- O. **Graham V. Connor:** The United States Supreme Court Case that ruled that force is only to be applied by law enforcement officers when such use is “objectively reasonable” in a given situation, as determined by a “reasonable officer” at the scene. The factors which, in general, determine whether force is “objectively reasonable” include:
 - 1. The severity of the alleged crime at issue
 - 2. Whether the suspect poses an imminent threat to the safety of officers and/or others
 - 3. Whether the suspect is actively resisting or attempting to evade arrest by flight.
- P. **Tennessee V. Garner:** The United States Supreme Court Case which strikes down fleeing felon rules and states a law enforcement officer would **NOT** be justified in shooting to stop someone from fleeing whom is known to have committed only a property crime or who has apparently committed a felony or a misdemeanor that does not endanger life or threaten serious bodily harm.

IV. PARAMETERS FOR USE OF FORCE (Refer to Intervention Options Addendum A)

- A. Officer shall only use the degree of force they reasonably believe is necessary to control the situation. Officers are not required to begin a confrontation at the verbal command level and escalate step-by-step until control is gained. In determining the degree of force that is reasonably necessary, an officer shall consider the following factors:
 - 1. The existence of Alternative methods of control.
 - 2. Physical size, strength and weaponry of the person compared to the officer.
 - 3. The nature of the encounter and actions of the person.
 - 4. Subjects ability to escalate situation.
 - 5. Exigent circumstances such as injury or fatigue to the officer, availability of backup, multiple assailants, etc.

V. PROCEDURE

A. Use of Deadly Force

- 1. The use of deadly force is permissible under the following circumstances:
 - a. As a last resort in the defense of one's self when the officer reasonably believes (s) he is in imminent danger of death or great bodily harm.
 - b. As the last resort in the defense of another person who the officer reasonably believes is in imminent danger of death or great bodily harm and whom the officer reasonably believes is entitled to self-defense.
 - c. As the final alternative to effect an arrest or prevent the escape of a fleeing felon who the officer reasonably believes has committed a felony involving the actual or threatened use of deadly force and the officer has probable cause to believe the

suspected felon poses a significant threat of death or great bodily harm to the officer, or others, if not immediately apprehended.

2. Before using a firearm, police officers shall identify themselves and state their intent to shoot, when feasible.

B. Officer Involved Death

1. When an officer uses deadly force resulting in injury or death they will:
 - a. Render first aid and call for emergency medical assistance.
 - b. Control the scene until relieved.
 - c. Notify a supervisor.
 - d. Remain on scene for investigators unless injured him/herself. A supervisor or investigator may remove the officer if such presence creates a hazardous situation or concern for the well-being of the involved officer.
 - e. Brief responding law enforcement personnel about the incident. Identify witnesses for subsequent interviews. Involved officers should not participate in the interview of witnesses.

****SEE OFFICER INVOLVED DEATH & SERIOUS USE OF FORCE POLICY REGARDING INVESTIGATIONS OF OFFICER INVOLVED DEATHS.**

C. Use of Non-Deadly Force

1. Non-deadly force may be used in those situations where the use of deadly force is not warranted. Non-deadly force may be used in the following situations.
 - a. To effect custody during a lawful arrest.
 - b. To defend oneself from attack.
 - c. To defend another officer or citizen from attack.
 - d. To prevent escape of an arrested person.
 - e. To overcome resistance to the performance of lawful duties of a police officer.
 - f. To keep a person from hurting themselves.
2. Officers shall use only that amount of force reasonably necessary to control a situation, affect the arrest of an offender or to control a person. The use of choke holds is prohibited except in those situations where deadly force is allowed by law.
3. Officers shall not continue to use force, except mere physical restraint, after an individual has ceased to resist or has discontinued attempting to escape or elude apprehension. Display of only passive resistance by the person warrants only his bodily removal and transport from the scene of the incident.
4. Officers involved in such situations shall display as much regard for the offender's safety and welfare as is possible under the circumstances. Unless circumstances dictate otherwise, all persons arrested will be handcuffed, searched and then transported in a police vehicle.

D. Use of Non-Lethal Weapons

1. Officers shall not brandish or display, as a threat, any weapon unless its use is anticipated.

a. Oleoresin Capsicum

- 1) Oleoresin Capsicum "O.C." as it shall be referred to in this policy is an organic based mixture.
 - a) Oleoresin is a mixture of a resin and an essential oil occurring naturally in various plants.
 - b) Capsicum is any of several varieties of red pepper.
- 2) Officers, who have been trained in and certified for use of O.C. by an instructor, are authorized to carry O.C.
- 3) The use of O.C. is permitted by officers when:
 - a) A person is actively aggressive towards the officer.
 - b) After an officer has indicated to a subject that (s) he intends to apprehend or restrain the person, that person indicates to the officer by words or actions that (s) he intends to physically resist the officer's efforts to apprehend or restrain him/her or intends to cause bodily harm to the officer.
 - c) Mere passive resistance (e.g. refusal to comply with verbal commands, going limp, stiffening of limbs without struggling or verbal arguments against being arrested, etc.) does not permit the use of O.C. without words or actions showing intent to physically resist or to harm the officer.
 - d) When the officer reasonably believes, considering all the information available to the officer, including the conduct and statements of the suspect and prior history of assault or resistive behavior known to the department, that efforts at mere physical restraint of the suspect would be ineffective or would unreasonably subject the officer to bodily harm.
- 4) When O.C. is used against a person or animal, the user will complete an incident report detailing the circumstances of the incident.
- 5) Officers shall exercise sound judgment when using O.C. and shall consider the potential for cross-contamination to the user, other officers and bystanders.
- 6) Departmental personnel who use O.C. against a person shall ensure the person is decontaminated as soon as practical after the person has been subdued. At a minimum, officers shall:
 - a) Expose the person to fresh air and flush exposed areas with large amounts of cold water as soon as practical.
 - b) Inform the person clothing should be washed thoroughly and soft contact lenses may have to be discarded. (See optometrist).
 - c) Do not apply salves, creams or lotions and inform the subject additional relief may be gained by showering and washing affected areas with soap and water.
 - d) Monitor the subject for one-half hour after application and, if incarcerated, notify confinement personnel of the use of O.C.. If an adverse reaction occurs, or if requested by the subject, transport to a medical facility shall be arranged.
 - e) Ventilate any enclosed areas where O.C. was used for at least 30 minutes.

b. Electronic Control Device (ECD)

- 1) Electronic Control Device is a less lethal incapacitation device that uses Electro-Muscular Disruption (EMD) to disrupt the central nervous system and create loss of

muscular control.

- a) TASER is an ECD developed by TASER International. The Taser X26 utilizes compressed nitrogen to shoot 2 small probes. These probes are connected to the weapon by high voltage insulated wire. When the probes make contact with the target, powerful electronic pulses are transmitted along the wires into the target.
 - b) Drive Stun is the act of firmly pressing the front of the ECD against the subject's body and "driving" it into them when the cartridge has been deployed or removed from the end of the weapon.
- 2) Officers, who have been trained in and certified for use of a Taser by an instructor, are authorized to carry a Taser.
 - 3) The use of a Taser is permitted by officers when:
 - a) A person is actively aggressive towards the officer.
 - b) After an officer has indicated to a subject that (s) he intends to apprehend or restrain the person, that person indicates to the officer by words or actions that (s) he intends to physically resist the officer's efforts to apprehend or restrain him/her or intends to cause bodily harm to the officer.
 - c) Mere passive resistance (e.g. refusal to comply with verbal commands, going limp, stiffening of limbs without struggling or verbal arguments against being arrested, etc.) does not permit the use of a Taser without words or actions showing intent to physically resist or to harm the officer.
 - d) When the officer reasonably believes, considering all the information available to the officer, including the conduct and statements of the suspect and prior history of assault or resistive behavior known to the department, that efforts at mere physical restraint of the suspect would be ineffective or would unreasonably subject the officer to bodily harm.
 - 4) When a Taser is used against a person or animal, the user will complete an incident report detailing the circumstances of the incident.
 - 5) Deployment of the Taser shall be in accordance with the Department approved training that an Officer received.
 - a) Officers will not intentionally target the head, face, groin, and neck area of the subject.
 - b) Officers will not perform a test arc prior to deployment on a human or animal.
 - c) Prior to deployment, an Officer shall make a reasonable assessment of potential of injury to a subject who is running, traveling at high speeds, or in an elevated position. Officers should not knowingly use an ECD near flammable gas or liquids.
 - d) Whenever a Taser is to be deployed, the deploying Officer should attempt, when possible, to notify other Officers on scene that it is a Taser being deployed and not lethal force. The announcement "Taser", Taser" to alert other Officers is appropriate.
 - 6) Post Deployment of Taser
 - a) Once a subject is safely secured and in custody, only trained Officers shall remove the probes according to the trained procedure.
 1. If the probe(s) penetrate a sensitive or soft tissue area such as the face,

neck, head, female's breast or groin/male genitalia only medical personnel shall remove them.

2. Removed probes shall be handled as a biohazard and disposed of in a sharps container.
3. After removal of probes photographs should be taken of the area affected.

b) Officers shall monitor the subject for adverse reactions and inform the receiving agency (jail, secure detention, crisis center, and other agencies) that the subject had been "Tased". Whenever there is doubt concerning the need for medical attention, it should be resolved through the examination of the subject by an appropriate medical facility.

1. In the event of an adverse reaction, exhibited signs of extreme uncontrolled agitation or hyperactivity or if requested by the subject, transportation shall be arranged to a medical facility.
2. Any Taser deployment resulting in medical transport for probe removal will have photographs of the injuries attached to the case report.

c) It is the deploying Officers responsibility to obtain a new cartridge(s) prior to ending his/her shift.

7) Animal Deployment

- a) Officers should be prepared to act quickly with other restraint devices once a Taser has been deployed against an animal. In all cases, the Officers' safety and the safety of the public shall be considered first prior to deployment.
- b) Officers may use a Taser on animals if the Officer reasonably believes that the animal is vicious and is threatening and/or attacking another Officer, citizen, or other animal or if the animal is a public nuisance and needs to be controlled, and the use of other force in the Officer's belief would not be appropriate or safe.
- c) Officer shall use reasonable care when deploying a Taser when a police K-9 is near the subject about to be Taser.

c. Impact Weapons

- 1) Department approved batons are the only authorized impact weapons, other devices, flashlights, radios, firearms, etc are not recommended to be used as impact weapons; however, this department recognizes that emergency self-defense situations involving other objects and instruments may occur.
 - a) An impact weapon may be used only when an officer reasonably believes a lesser degree of force would be insufficient to control the situation.
 - b) An officer should not strike a person above the shoulders with an impact weapon.
 1. Generally a strike to the head with an impact weapon is considered deadly force and should not be used unless such an action is justified under the use of deadly force.
 2. This section is not intended to apply to accidental strike to the head as a result of resistance.
 3. Officers shall only use department approved baton techniques.
 - c) The use of authorized batons is permitted against an actively aggressive person where the officer reasonably believes mere physical restraint would be ineffective or would unreasonably subject the officer to bodily harm.

d. Specialty Impact Munitions

- 1) Specialty Impact Munitions (S.I.M.) are defined as an extended range impact weapon and commonly referred to as a shotgun deployed "bean bag" impact weapon.
- 2) Specialty Impact Munitions shall only be used by trained officers of the department when absolutely necessary to gain or regain control of a resistive, assaultive, or suicidal subject during arrest or other legitimate law enforcement function, or to defend ones self or others from physical assault.
- 3) Specialty Impact Munitions shall be considered an extension of an officer's baton and placed within the Force Option Continuum at intermediate weapons. Improper use of equipment or failure to comply with training and / or policy could result in serious injury or death. All use of S.I.M. shall be in conformity with departments USE OF FORCE POLICY.
- 4) Training will be conducted by certified Specialty Impact Munitions instructors.
- 5) The on duty or primary officer working shall be responsible for the S.I.M. shotgun during their shift.
- 6) Justification for Use:
 - a) To gain or regain control of a potentially dangerous suspect in order to enable their arrest.
 - b) To prevent a suicide or gain control of a suicidal suspect (Refer to State Statute 939.48(5)
 - c) To prevent a shooting
- 7) Target Areas (Aiming Points):
 - a) ZONE 1- Large Muscle Groups
Buttocks
Thigh
 - b) ZONE 2-Secondary Target Area Consisting of Skeletal and Medium Muscle Groups.
Shoulder, bicep, triceps, and forearm area
Lower abdominal area
Calf
Wrist, elbows, knees
 - c) ZONE 3-Final Resort Target Area (Level of Threat Escalating to Deadly Force
Chest (center mass)
Solar-plexus
Groin
Spine
Lower back
- 8) Exclusions of Use:
 - a) Children under 12 years old and obvious frail elderly adults
- 9) Method of Deployment:
 - a) Prior to deploying S.I.M. officers will make an attempt to notify all personnel in the immediate area that S.I.M. is going to be deployed.
 - b) Prior to deploying S.I.M. officers will attempt to use the display and threat (ultimatum) to use S.I.M. as a " show of force " to gain control of the suspect. If

this technique jeopardizes the possibility of the effectiveness of S.I.M., no ultimatum has to be given.

- c) S.I.M. should not be deployed unless a cover officer with a lethal force weapon accompanies the S.I.M. user.
 - d) Specialty Impact Munitions shall only be fired from departments designated LESS LETHAL shotgun.
 - e) Head/Neck area – Intentional impact to these areas will be avoided unless the use of deadly force is justified.
- 10) Following any situation involving the use of S.I.M., officers involved will initiate necessary and appropriate follow through procedures to ensure the safety and welfare of the subjects and others at the scene. Officer initiated follow through procedures include:
- a) Officers will handcuff subject per department policy
 - b) Suspects who are struck by the use of a S.I.M shall be transported to a medical facility for examination. Photographs should be taken of areas affected.
 - c) Officers will document the use of S.I.M. and follow through procedures in their incident report.

e. Use of Restraints

- 1) An Officer may use restraining devices in order to:
 - a) Maintain control of subject.
 - b) Prevent escape.
 - c) Protect subjects from injuring themselves or others.
 - 1. Subjects should be handcuffed behind the back unless conditions make it unreasonable. Officers should use the department's prisoner transport belt for transporting prisoners when reasonable.
 - 2. Handcuffs shall be checked for comfort and double locked.

f. Monitory Requirements

- 1) Whenever physical force is used to control a subject, it is the officer's responsibility to monitor the subject for signs of injury. If an injury is such that it requires medical treatment, every effort will be made to provide such treatment. If the subject refused medical treatment it will be documented in the officer's report.

7) Reporting

- a) Officers will complete a Use of Force Worksheet in addition to their incident report for all Use of Force Incidents.

8) For Departmental Use Only

- a) This policy is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for departmental administrative sanctions.

Issued June 3, 2002; Updated October 8, 2002; Updated April 19, 2006; Updated Sept. 25, 2007; Updated Jan. 24, 2008; Updated April 15, 2008; Updated Sept 24, 2015; Updated Oct 13, 2017, March 1st, 2018, Updated August 7th, 2018. Updated November 16, 2020.

ADDENDUM A

INTERVENTION OPTIONS

The Marshall Police Department adopts the guidelines established in the “DISTURBANCE RESOLUTION” utilized in Wisconsin’s Defense and Arrest Tactics System, specifically force options outlined under INTERVENTION OPTIONS. INTERVENTION OPTIONS are guidelines, which assist a law enforcement officer in analyzing a subject’s behavior and determining a reasonable level of force to use in response to that behavior. DISTURBANCE RESOLUTION can be better understood via the following flow chart, which specifies the five INTERVENTION OPTIONS or “modes”, the “tactics” available within each mode, and the “purpose” of those tactics.

<u>MODE</u>	<u>TACTICS</u>	<u>PURPOSE</u>
1. Presence	Professional Presence a. Open Stance b. Ready Stance c. Defensive Stance	To present a visible display of authority
2. Dialog	Tactical Communication a. Search Talk b. Persuasion c. Light Control Talk d. Heavy Control Talk	To verbally persuade
3. Empty Hand Control	Escort holds a. Blanket the Arm b. Escort Position	To safely initiate physical contact
	Compliance Holds a. Come-Alongs b. Pressure Points	To overcome passive resistance
	O.C.	To overcome active resistance or its threat
	Electronic Control Device	To overcome active resistance or its threat
	Passive Countermeasures a. Secure the Head b. Hug Yourself c. Lower Your Center d. Pull In/ Push Down	To decentralize
4. Intermediate Weapon	Active Countermeasures a. Vertical Stuns b. Focused Strike	To create dysfunction
	Intermediate Weapon a. Impact Weapon b. S.I.M. Note: Justification for Use, Target Areas – Zones 1,2,3, Exclusions of Use, Method of Deployment, Follow thru	To impede a subject
5. Deadly Force	Firearm	To stop the threat