

POLICY

WAUNAKEE POLICE DEPARTMENT

CHAPTER 1

DATE: 01/01/21

SUBJECT: LAW ENFORCEMENT ROLE AND LIMITS OF AUTHORITY

AUTHOR: Adam J. Kreitzman, Chief of Police

PAGE 1 of 13

INTRODUCTION

To ensure dedication to duty, integrity and commitment to professional law enforcement, the members of this department affirm standards in the Oath of Office, Mission Statement, and Code of Ethics. Department members shall adhere to these documents and place them in high regard as they fulfill their duties.

This policy's purpose is to (1) recognize this Department's legal and moral responsibility to use force wisely and judiciously and (2) govern the use, minimum proficiency, specifications, qualification standards and administrative review of all firearms, ammunition and weapons used by this Department. (3) recognize use of Miranda and (4) provide information pertaining to legal advice and liability insurance.

GENERAL POLICY

All personnel working for the Waunakee Police Department must adopt the department's Mission, take an Oath of Office, uphold the Constitution of the United States, and abide by a Code of Ethics. By affirming these beliefs, we seek the highest professional standards.

Officers will not resort to force until they reasonably believe force is necessary in the performance of legal duties. Deadly force shall never be resorted to until an officer reasonably believes there is an imminent threat of great bodily harm or death to another or an officer. The officer will take into protective custody a subject who poses a threat to either themselves or others.

DEFINITIONS

Reasonable Belief: When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Serious Physical Injury: A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the function of any bodily member or organ.

SCOPE This order applies to all members of this Department.

PROCEDURES

1.1 Department Authority

- A. This department maintains a Mission Statement, Code of Ethics, and Oath of Office. These documents guide the actions of all sworn personnel and provide the basis to judge whether one's conduct conforms to the department's ethical standards. Upon employment at the Waunakee Police Department, new officers must sign copies of each document.
- B. Copies of the United States Constitution and the Wisconsin State Constitution are available in the Waunakee Police Department.

1.2 Use of Force – Necessary Force – Non-Deadly

As used in this policy, non-deadly force refers to the use of any weapon or instrument, or any other physical action taken by an officer, which is **not** likely to cause death or serious physical injury. The use of non-deadly force is only authorized when an officer reasonably believes it is necessary to control a person under any of the following circumstances:

- A. Detaining a person reasonably suspected of criminal involvement
- B. Effecting an arrest
- C. Overcoming resistance
- D. Preventing escape
- E. Protecting oneself or another
- F. Maintaining order
- G. Taking into protective custody a subject who poses either a threat to themselves or others

Force shall **never** be used when a person has ceased to resist or ceased to attempt escape.

When officers do use a certain level of force, officers shall utilize tactics received in training which comply with the Wisconsin Department of Justice Standard on defense and arrest tactics (D.A.A.T.). Officers shall only use the degree of force they reasonably believe is necessary to control the situation. In determining the degree of force that is reasonably necessary, an officer shall consider the following factors:

- A. The existence of alternate methods of control
- B. Physical size, strength and weaponry of the person as compared to the officers

C. The nature of the encounter

D. Actions of the person

E. Exigent conditions (i.e. availability of back-up, number of persons involved, etc.)

Verbal commands to control a person will always be the alternative to use of physical force and/or non-deadly weaponry. Since this method is not always effective or appropriate in gaining compliance, officers may escalate the degree of force, if necessary. When verbal commands are neither effective nor appropriate, an officer may escalate the degree of force based on the actions of the person the officer is attempting to control.

The intentional continued restriction of the carotid neck arteries is not a trained Waunakee Police Department technique and is therefore prohibited, unless deadly force is justified. Escalating/de-escalating degrees of force results from an officer's reaction to a specific action of the person he/she is attempting to control.

(NOTE: Officers are not required to begin a confrontation at the verbal command level and escalate step-by-step until control is gained if the officer reasonably believes his/her reaction would be ineffective/inappropriate based on the actions of the person the officer is attempting to control.) Once a person is under control, officers must revert to the lowest degree of force necessary to maintain control. Officers involved in any use of force situation must complete a written report detailing their actions.

De-Escalation

When safe and feasible under the totality of circumstances, officers should attempt to slow down or stabilize the situation so that more time, options, and resources are available for incident resolution. Officers should utilize appropriate tactical and officer safety principles to avoid unreasonably placing themselves at risk.

Examples of De-escalation could include, but are not limited to:

- Placing barriers between an uncooperative subject and an officer.
- Moving from a position that exposes officers to potential threats to a safer position.
- Decreasing the exposure to potential threat by using
 - Back-up
 - Distance/time
 - Cover/concealment
- Communication from a safe position intended to gain the subject's compliance, using dialogue.

- Any other tactics and approaches that attempt to achieve law enforcement objectives.

An officer’s awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Mitigating the immediacy of the threat gives officers time to utilize extra resources and increases time available to call for back-up.

Duty to Intercede

Any officer present and observing another officer using excessive force, or engaged in unlawful conduct, or in violation of the Waunakee Police Department’s Code of Conduct must intercede and inform a supervisor.

The Use of Force Continuum used in the State of Wisconsin is as follows:

STATE OF WISCONSIN DISTURBANCE RESOLUTION MODEL:

INTERVENTION OPTIONS

Mode	Tactic	Purpose
A. Presence	Professional Presence	To present a visible display of authority
B. Dialog	Tactical Communication	To verbally persuade
C. Control Alternatives:	Escort Holds	To overcome passive resistance
	Compliance Holds	To overcome passive resistance
	Oleoresin Capsicum (O.C.) Aerosol Spray	To overcome active resistance or its threat
	Conducted Electrical Weapon	To overcome active resistance or its threat
D. Protective Alternatives	Focused Strike	To overcome continued resistance or assaultive behavior or the threat of
	Diffused Strike	To cause immediate, temporary cessation of violent behavior.
	Baton Strike	To impede a subject.
E. Deadly Force	Firearm	To Stop the threat

*****CEW use is only permitted as outlined in this policy**

The Intervention Options matrix is not simply a Continuum of Force; rather, each Mode, Tactic and Subcategory reflects an option that an officer may choose in order to deal with a particular situation. Note that each Mode contains a series of sub-steps, reflecting increasingly more intrusive force options. Several different Modes may be used to establish control in any given situation, and force options within different Modes may be appropriate in any given situation. Presence and Dialog will commonly occur throughout the duration of any police contact.

1.3 Use of Firearms/Deadly Force

Deadly force refers to the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. The use of deadly force is only authorized when an officer reasonably believes a lesser degree of force would be insufficient under any of the following circumstances:

- A. In defense of oneself or another person who the officer has reasonable cause to believe is in imminent danger of death or great bodily harm; To protect oneself or another from an animal which an officer reasonably believes may cause serious physical injury if not immediately controlled or after giving consideration to public safety and all other reasonable means of disposition to end the suffering of an animal gravely injured or diseased.
- B. Officers are authorized to use deadly force against a “Fleeing Felon” only when the officer reasonably believes that the action is within the circumstances stated above. (A “Fleeing Felon” should not be presumed to pose an immediate threat to life in the absence of actions which would lead one to believe otherwise, such as a previously demonstrated threat to or wanton disregard for human life.)
- C. Officers may not discharge warning shots in the use of force.
- D. Officers shall be issued copies, instructed and tested in the policies described in A, B, and C before being authorized to carry a firearm.
- E. Officers are prohibited from shooting at a moving vehicle unless deadly force is justified, such as a vehicle driving into a crowd of people or towards a person, and only after exhausting all other alternatives to resolving the situation.
- F. The State of Wisconsin has developed a Defense and Arrest Tactics curriculum which is part of our Use of Force policy. If possible, officers should exhaust all other options before using deadly force.

Deadly force shall never be used (1) from a moving vehicle unless paragraph A or B above applies, nor at a moving vehicle, unless paragraph A above applies.

Before using deadly force, officers shall, if possible, identify themselves, order the suspect to stop unlawful activity, and threaten to use deadly force if the lawful order is not obeyed.

Police work is dynamic and there will be situations where identifying oneself before using deadly force is not possible or practical.

1.4 Officers are authorized to carry and use the following less-lethal weapons:

A. Police Baton-According to the force continuum, a baton is an intermediate weapon. Its purpose is to impede by decentralizing. Use of a baton is one step below deadly force.

1. The department issues expandable batons. Primary patrol squads contain a wood baton.
2. A police baton may be used only when an officer reasonably believes a lesser degree of force would be insufficient to control the situation.
3. An officer shall never strike a person's head with a baton unless such action is justified under the use of deadly force. This section is not intended to apply to an accidental strike to the head as a result of resistance.
4. Officers shall only use approved baton techniques established by this policy and the Wisconsin Department of Justice Standards on Defense and Arrest Tactics (D.A.A.T.).
5. Department issued batons are the only authorized impact weapons. The use of other devices such as flashlights, radios, etc. are not recommended as impact weapons; however, the Department recognizes that emergency self-defense situations involving other objects and instruments may occur.

B. Conducted Electrical Weapon

1. An approved conducted electrical weapon (CEW) may only be utilized by officers that have successfully completed training in its use. Deployment and use of conducted electrical weapons will be in accordance with departmental training and procedure.
2. The CEW is not a substitute for deadly force in cases where a subject is believed to be armed with a firearm. Officers may not arm him or herself with a CEW against a person with a firearm unless another officer at the scene has the immediate ability to deliver deadly force. Officers armed with a CEW should continuously monitor and evaluate the ability of other officers present to deliver deadly force.

In situations where the subject is not believed to be armed with a firearm, it is not required that another officer at the scene have the immediate ability to deliver deadly force. An officer may arm him or herself with a CEW in these situations; however, they should continuously monitor and evaluate the situation to determine if the CEW use is appropriate.

3. An officer may only display, present, or threaten to use a CEW if the officer reasonably believes that the potential for its authorized use exists.
4. Deployment of a CEW will be evaluated using the criteria in this policy and within the framework of the Use of Force Intervention Options matrix. A CEW may only be used under the following circumstances:
 - a. To overcome active resistance or its threat; if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or another person.
 - b. To control persons to prevent them from harming themselves or others.
5. Use of a CEW under the following circumstances should not be utilized, unless exigent circumstances are present which an officer can clearly articulate:
 - a. Against handcuffed subjects.
 - b. Against subjects fleeing on foot.
 - c. Against subjects operating a motor vehicle.
 - d. From a moving vehicle.
 - e. Against known pregnant women, infirm, elderly, small children
6. The CEW will not be used under the following circumstances:
 - a. For coercion or intimidation.
 - b. To escort or prod subjects.
 - c. To awaken unconscious or intoxicated subjects.
 - d. Against subjects who are offering only passive resistance, unless posing a threat of harm to officers or other persons.

7. CEW probes may not be intentionally fired at the face, head, neck, or groin, unless the use of deadly force would be justified.
 8. Officers shall evaluate all subjects against whom a CEW has been deployed and EMS **SHALL** respond.
 9. If the CEW probes have penetrated the skin in a sensitive area (head, neck, groin or breast of a female) the subject will be conveyed to an emergency room for removal. If the probes are embedded in non-sensitive areas, a trained officer may remove them.
 10. Removing the air cartridge to deploy a CEW in the drive-stun mode should not be used as a primary CEW deployment technique.
 11. Within 10 days of an incident, the Taser Sergeant will review the CEW use and provide a written review for the Lieutenants and Chief.
- C. Oleoresin Capsicum (OC) according to the use of force continuum, OC can be used during active resistance **or the threat of active resistance**.
1. Officers may only carry and use department issued OC aerosol dispensers.
 2. Officers may use OC only when it is reasonably apparent that a lesser degree of force would be insufficient to control the situation.
 3. When an officer is at a point where an OC aerosol dispenser needs to be employed, the officer should attempt to provide a verbal warning to the person who is about to be sprayed. The officer shall use the product in accordance with techniques in the Wisconsin Department of Justice Standard on Defense and Arrest Tactics (D.A.A.T.).
 4. An individual sprayed with an OC product shall be provided with an opportunity to eliminate the effects of the inflammatory by washing and flushing the affected areas with cold water or by allowing air to relieve the discomfort. This will only be done after the person has been controlled and compliance gained.
 5. Officers *may* request an emergency medical service (ambulance) to respond and ensure that the subject sprayed with the OC product has the opportunity to be checked by an emergency medical technician. This is to insure that the effects are reduced immediately and the subject is not experiencing an unexpected side effect.
 6. Whenever an officer employs OC, the officer shall prepare a report. The report shall be filed the same day as the incident.

7. All use of OC will be reviewed by a Lieutenant. The Lieutenant will provide a written review within 15 days and forward to the Chief.
8. Handcuffing: The standard use of handcuffs as a restraining device shall be included in all reports. In incidents where handcuffs were used, but there is not a typed report (i.e. warrant arrest) at a minimum it shall be documented on a Call Sheet. The documentation shall include double locking and checking for proper fit. Any time an officer is requested by an arrested person to adjust the handcuffs this will be documented.

D. Officers can only use department issued less lethal weapons when on-duty.

1.5 Firearms and Ammunition: Authorized Use and Possession

- A. This Department requires only firearms and ammunition specified in this policy be carried.
 1. Handgun – The officer has the option of providing his/her own gun or the department will provide one. If the department provides the firearm, the department will retain ownership of said gun upon discontinuation of employment. The officer must qualify under the provision in section 1.6 with this handgun. The Chief must authorize the handgun. The primary handgun must be 9 millimeter or 40 caliber semi-automatic. If an officer carries a back-up firearm on duty, the officer must qualify with that weapon prior to carrying. Carrying/possessing a firearm on duty that an officer has not qualified with is strictly prohibited.
 2. Tactical Rifle – The department provides M-4 tactical rifles chambered in .223 caliber. Rifles have 16” barrels equipped with EoTech holographic sights. Ammunition will be .223 caliber, 55 or 62 grain, full metal jacket or soft point, issued by a firearms instructor.
 3. Ammunition – Each officer must carry commercially manufactured ammunition provided by the department, consistent with type and grain of the ammunition with which they qualified. The department carries jacketed hollow point bullets.
 4. Inspection – A firearms instructor or supervisor may inspect an officer’s ammunition at any time.
- B. Full time Officers are authorized to carry a firearm concealed while off-duty pursuant to these requirements:
 1. Consumption of alcoholic beverages is strictly prohibited.

2. Officers shall carry their badges and identification cards.
3. Requirements in section 1.3, 1.5, and 1.6 have been satisfied.
4. Officers may not carry any off-duty weapon while on-duty that the officer has not previously qualified with. If used while on-duty, the officer is liable for any resultant consequences, and will face disciplinary action.
5. If an officer possesses a valid concealed carry permit, the officer is entitled to carry concealed any legal firearm, whether they have qualified with said weapon or not.
6. Officers can openly carry while off duty pursuant to state law and without badge and identification just as any other citizen.

1.6 Firearms Proficiency

A. Minimum Proficiency

Officers are required to demonstrate a minimum proficiency in the use of all authorized firearms before the firearm may be used or carried. For handguns and rifles, each officer must demonstrate a minimum proficiency in accordance with the course training criteria. Annually, Officers will be required to complete and pass the state proficiency course of fire. Officers unable to pass the course may be decertified by the state.

In addition to achieving minimum scores on a firearms course, officers will be tested on knowledge of laws concerning the use of firearms and safety procedures.

B. Qualification of Proficiency

Officers are required to meet section 1.6A standard for handgun at least two (2) times annually.

The specific course for qualification shall be established by the department's firearms instructor, pursuant to the Department of Justice Training Program.

1.7 Firearms Discharge

Officers who accidentally or intentionally discharge a firearm while on duty must submit a written report to the Chief. The report shall be filed as soon as possible and provide the circumstances of the incident. If the officer discharged the firearm because of negligence, the officer shall be required to undergo firearms and qualification training and may be subject to discipline.

1.8 Use of Force – Administrative Review

- A. Non-Deadly Force: Whenever an incident occurs where force is exercised the incident shall be reviewed by the Lieutenants within 30 days. The documented review shall address the manner and necessity of such force, and conformation of department directives. Force shall be defined as any contact above compliant subject handcuffing. Force will also include drawing and pointing a firearm or CEW at another person.
- B. Deadly Force: Whenever an incident occurs where deadly force is exercised, whether accidental or intentional, the officer shall notify the Chief and Lieutenants. The supervisor or senior officer working at the time of the incident shall:
 - 1. Assume responsibility for security of the scene. Notify the Chief and Lieutenants immediately.
 - 2. Remove the involved officer from the scene. The officer shall not be left alone.
 - 3. Request the District Attorney's Office and Wisconsin Department of Justice respond.
 - 4. Make personal contact with the officer's family.
 - 5. Request/suggest the officer attend a post incident de-briefing with a trained professional.
- C. Crisis Intervention: When a use of force incident results in serious injury or death of an individual that relates to an officer's action, the officer will be offered confidential post incident debriefing with a trained professional.
- D. Chief of Police shall, in all deadly force cases, receive a complete and accurate report of all facts. Within 20 days of the incident, the Chief shall meet with the Police Commission and provide a report.
- E. The Chief of Police shall immediately place any officer involved in use of force that results in death or serious injury on administrative leave, pending review.

1.9 Use of Discretion

The Department recognizes the need and practice in the use of discretion as an element in the enforcement and citizen compliance to statutes, laws, ordinances, and regulations. The Department further recognizes that enforcement efforts are separated into two (2) functions.

- A. The Discretionary Function provides “the freedom or authority to make decisions and choices; the power to judge or act.” Officers have the authority to exercise discretion. When discretion is used, officers should take into consideration:
 - 1. Formal and informal enforcement policies and practices;
 - 2. Community expectations and standards;
 - 3. Department philosophy, mission, goals, and objectives; and available resources.
- B. The Ministerial Function provides that “an act be carried out in a prescribed manner not allowing for personal discretion.” An example would be domestic abuse.

1.10 Constitutional Requirements

- A. As determined by the Supreme Court, officers must give suspects MIRANDA warnings prior to any custodial interrogation.
 - 1. Officers must read Miranda warnings verbatim.
 - 2. Officers must document the date, time, and place the suspect was advised of Miranda.
 - 3. The warnings must be read slowly and clearly.
 - 4. The suspect’s waiver should be written and witnessed. If oral, the officer will note as soon as possible the suspect’s exact words. A suspect’s silence doesn’t mean a waiver.
 - 5. Any statement given by the suspect must be voluntary, even after Miranda is read. The statement will not be the product of force, threats, harassment, or improper inducement.
 - a. Officers will document all relevant suspect statements.
 - b. The officer shall allow the suspect to proofread his/her own written statement.
 - 6. Any custodial interview of a juvenile or adult for a criminal offense must be audio recorded. When possible and practical, digital (audio and video) recordings is preferred. However, audio only is acceptable.
 - 7. Such recordings begin at the start of the contact and continue without interruption until the questioning ends. All recordings, whether audio, or audio and video, shall be handled and processed as evidence.

8. Recordings shall never be edited, and the original will be retained at all times.

- B. If a suspect chooses to invoke his/her legal rights, officers will not begin questioning of the suspect. If questioning has already begun, officers shall discontinue questioning at the time the suspect chooses to stop answering questions or requests an attorney. However, questioning may be resumed at the request of the suspect, even if at some earlier time the suspect invoked his/her rights.

1.11 Trespassing

Legislation which applies to the majority of trespass cases in Waunakee is: Wisconsin Statute Section 943.14 **Criminal Trespass to Dwelling**. Wisconsin Law requires police departments to have a policy on dealing with 943.14, and mandates the police removal of a subject from the premises if the police have probable cause to arrest for a violation of 943.14. **TRESPASS TO DWELLING: WISCONSIN STATUTE, SECTION 943.14**

To arrest for this violation, probable cause must exist to believe that the person involved:

- A. Intentionally entered the dwelling of another;
- B. Did so without consent of some person lawfully on the premises, or the owner of the premises and;
- C. Did so under circumstances tending to create or provoke a breach of the peace.

If A, B and C are fulfilled, officers **must** remove the person from the premises. Officers may choose to arrest, issue a municipal citation or warn the person involved, based on the circumstances in the case.

******In this section, “dwelling” means a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others to include the common halls, porches, passageways, and shared areas of apartments and other residential buildings, as well as individual units within residential buildings. A dwelling meets the definition regardless of whether the dwelling is currently occupied by a resident.

By order of Adam J. Kreitzman, Chief of Police