

18. POLICY ON USE OF FORCE

18.1 PURPOSE

The purpose of this document is to establish a policy for the use of force by sworn personnel to affect an arrest or control a person. Proper use of force decisions, based on reasonableness, ensure due process for citizens as well as provide protection for the Officer and the Department.

This policy is based on the Defense and Arrest Tactics (DAAT) program of the State of Wisconsin as developed by the Training and Standards Board (Department of Justice-Bureau of Training and Standards)

18.2 POLICY

It is the policy of the Baldwin 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 the amount reasonably required to overcome the resistance being offered by an offender or the person the officer is trying to control.

18.3 DEFINITIONS

18.3.1 Defense and Arrest Tactics (DAAT): 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.

18.3.2 Intervention Options: Trained techniques recognized in the DAAT system. These techniques may include additional techniques trained and authorized by the Baldwin Police Department. A list of these techniques shall be attached in the Appendix of this policy.

18.3.3 Reasonable 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 known to the officer at the time of the incident.

18.3.4 Objective Reasonable Standard: The standard established by the U.S. Supreme Court in *Graham v. Connor* says that reasonableness should be judged under the totality of the circumstances from the perspective of a reasonable officer at the scene with similar training and experience. Three elements of the standard are:

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

18.3.5 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.

18.3.6 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.

18.3.7 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.

18.3.8 Conducted Energy Weapon: / Electronic Control Weapon: A less lethal force weapon utilized by trained personnel that causes Electro-Muscular Disruption (EMD) to a combative or potentially combative subject. The use of this device is intended to incapacitate the subject with a minimal potential for causing death or great bodily harm.

18.3.9 Kinetic Energy Impact Projectiles: Flexible or non-flexible projectiles, which are intended to incapacitate a subject with a minimal potential for causing death or great bodily harm, when compared to conventional projectiles.

18.3.10 Less-Lethal Force Philosophy: A concept of planning and force application, which meets operational objectives, with less potential for causing death or great bodily harm than conventional police tactics.

18.3.11 Deadly Force: The intentional use of a firearm other instrument where the use creates a high probability of death or great bodily harm.

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

18.4 PROCEDURE

18.4.1 General Guidelines

a. Officers shall use only the amount of force that is objectively reasonable to control a situation, effect an arrest, or to control a person. The Officer's decision shall be based on the Intervention Options.

b. Officers shall not continue to use force more than is reasonably necessary to maintain control once the subject has stopped resisting and control of the subject has been established.

(1) Once control has been established the officer shall be responsible for monitoring the subject's condition and welfare. Unless circumstances dictate otherwise, all persons arrested will be handcuffed, searched and then transported in a police vehicle.

(2) If an officer uses force listed in the Intervention Options as "Oleoresin Capsicum Aerosol Spray" or greater, the Officer shall contact a Supervisor. The Officer shall also complete an offense report documenting the incident and a Use of Force Tracking Form.

18.4.2 Oleoresin Capsicum Spray (OC)

a. Officers who have been trained and certified in the use of OC shall carry issued OC while on duty. If the officer has a special duty assignment that does not make carrying OC feasible, the officer may be exempt from carrying OC for the assignment.

b. OC may be used by trained personnel when a subject is threatening to actively resist or is actively resisting an officer and the subject poses an articulable threat or harm to an officer or another person.

(1) Officers may also include in the decision to use this force option, information known to the officer at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.

(2) Passive resistance without posing an articulable threat of harm to officers or others does not permit the use of OC.

c. An officer shall not brandish, display, or threaten the use of OC unless he or she can reasonably conclude its use may become justified and anticipated.

d. Department personnel who use OC against a person shall ensure the person is decontaminated as soon as practical after he or she is under control.

(1) If possible, expose the person to fresh air and flush the exposed area with cold water or apply a Department issued OC decontamination product.

(2) Continue to monitor the exposed person for any unusual reactions to the exposure. If the exposed person has an unusual reaction or requests medical attention, transportation to a medical facility shall be arranged.

e. When OC is used against a person the officer shall notify an on-duty supervisor, or if none is available shall leave a message for the Chief of Police, alerting them to the use of this level of force. The officer shall complete a report detailing the circumstances of the incident and shall also complete a Use of Force Tracking Form. The Use of Force Tracking Form shall be forwarded to the Chief of Police. (If used on an animal no notification or Use of Force Tracking Form is necessary).

f. If transportation to a medical facility is required as a result of the use of this level of force, the officer shall assure immediate notification to any supervisor is completed (no messages allowed).

18.4.3 Conducted Energy Weapon: / (ECW) Electronic Control Weapon:

a. A Conducted Energy Weapon may be used by trained personnel when a subject is threatening to actively resist or is actively resisting an officer and the subject poses an articulable threat of harm to an officer or another person. It may also be used when the subject poses a threat of harm to himself or herself such as self-inflicted injury or a suicide attempt.

(1) Officers may also include in the decision to use this force option information known to the officer at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.

(2) Passive resistance without posing an articulable threat of harm to officers or others does not permit the use of a conducted energy weapon.

b. An officer shall not brandish, display or threaten the use of a conducted energy weapon unless he or she can reasonably conclude its use may become justified and is anticipated.

c. In each instance when a conducted energy weapon is deployed on an incident, a determination will be made regarding the need for lethal cover.

Lethal cover shall be required in all cases in which the subject possesses a firearm.

d. Department personnel who use a conducted energy weapon against a person shall ensure the person is monitored for injury as soon as practical after the person is under control.

e. If an adverse reaction to the conducted energy weapon occurs, or if requested by the subject, transport to a medical facility shall be arranged.

f. If the probes are imbedded in sensitive tissue areas, i.e. neck, face, groin, or the breast of a female, officers shall arrange transport to a medical facility for removal. If the probes are imbedded in other non-sensitive tissue areas, a trained officer may remove them according to the trained procedure.

g. After the probes have been removed they shall be handled as a biohazard and packaged according to the trained procedure. The package shall be put in a hazardous materials bag and placed into a temporary storage locker with instructions to be destroyed.

h. When a conducted energy weapon is used against a person the officer shall notify an on-duty supervisor or if none is available shall leave a message for the Chief of Police alerting them to the use of this level of force. The user shall complete a Use of Force Tracking Form including the number of the deployed conducted energy weapon unit on the form so that the deployment information may be downloaded. The Use of Force Tracking shall be forwarded to the Chief of Police. (If used on an animal no notification or Use of Force Tracking Form is necessary).

- i. If transportation to a medical facility as a result of the use of this level of force, the officer shall assure immediate notification to any supervisor is completed (no messages allowed).
- j. Trained officers shall complete a refresher course and a written examination every year concerning the use of this weapon.

18.4.4 Intermediate Weapons/Impact Weapon (Baton)

a. Uniformed officers shall be required to have a Department approved impact weapon available to them while on duty.

b. The use of authorized batons is permitted against an actively aggressive person when the officer reasonably believes that lesser force options would be ineffective or would subject the officer to bodily harm.

Officers may include in the decision to use this force option, information known to the officer at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.

c. An officer shall not brandish, display or threaten the use of an impact weapon as a threat unless he or she can reasonably conclude its use may become justified and is anticipated.

d. When a baton is used against the body of a person, the officer shall notify an on-duty supervisor or if none is available shall leave a message for the Chief of Police alerting them to the use of this level of force. The officer shall complete a report detailing the circumstances of the incident and shall also complete a Use of Force Tracking Form. The

Use of Force Tracking Form shall be forwarded to the Chief of Police. (If used on an animal no notification or Use of Force Tracking Form is necessary).

e. If transportation to a medical facility is required as a result of the use of this level of force, the officer shall assure immediate notification to any supervisor is completed (no messages allowed).

18.4.5 Kinetic Energy Impact Projectiles

a. Kinetic energy impact projectiles may be utilized by trained department personnel in circumstances where a level of force less than deadly force may be appropriate for resolving the situation and when the risk associated with closing on the subject to take control makes other alternatives unsafe. This option may be used when a person poses a significant threat of harm to self or others and unarmed tactics have been exhausted or would not be effective or safe given the circumstances.

Officers may include in the decision to use this force option, information known to the officer at the time of the incident, including conduct or statements of the subject or prior history of resistive or assaultive behavior.

b. An officer shall not brandish, display or threaten the use of a kinetic energy impact weapon unless he or she can reasonably conclude its use may become justified and anticipated.

c. In each instance where kinetic energy impact projectiles are deployed on an incident, a determination will be made regarding the need for lethal cover.

Lethal cover will be required in all cases in which the subject possesses a firearm.

d. Subjects who are struck by a kinetic energy impact projectile shall be transported to a medical facility for examination.

e. When kinetic energy impact projectiles are used against the body of a person the officer shall immediately notify an on-duty supervisor or if none is available immediately notify any supervisor (no message allowed). The officer shall complete a report detailing the circumstances of the incident and also complete a Use of Force Tracking Form. The Use of

Force Tracking Form shall be forwarded to the Chief of Police. (if used on an animal no notification or Use of Force Tracking Form is necessary).

f. Trained officers shall complete a refresher course every two years concerning the use of these weapons.

18.5 Use of Deadly Force

18.5.1 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 he/she 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 affect an arrest or prevent the escape of a fleeing felon whom the officer reasonably believes has committed a felony involving the actual or threatened use of deadly force. The officer shall also have 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.
- d. As the last resort, to euthanize a dangerous animal or one that is so seriously injured that humanity dictates its removal from suffering, but only after careful consideration is given to the public's safety and whether other dispositions may be feasible.

18.5.2 Generally, deadly force shall not be used under the following circumstances.

- a. Warning shots.
- b. From a moving vehicle unless 18.5.1a. or 18.5.1b. apply.
- c. At a moving vehicle unless 18.5.1a. or 18.5.1b. apply.
- d. When the target of the force is not clearly visible. For example, firing into a building or through a door is not permitted unless officers are being fired upon from within and no alternative means of cover is available.
- e. When the officer is in doubt as to whether or not he or she has the legal justification to use deadly force.

18.5.3 An officer shall not brandish, display or threaten the use of firearm unless he or she can reasonably conclude its use may become justified and anticipated

18.5.4 Before using a firearm and when feasible, police officers shall identify themselves and issue a verbal challenge.

18.5.5 Whenever an officer is responsible for an unwanted or intentional discharge of a firearm while on duty other than firearms training, dispatching injured deer or the intentional use of deadly force by any means, the following notifications and reports shall be made:

- a. Used on or directed against a person – the officer shall immediately notify an on-duty supervisor or if none is available, immediately notify any supervisor (no messages allowed).

The officer shall complete a report detailing the circumstance of the incident and also complete a Use of Force Tracking Form. The Use of Force Tracking Form shall be forwarded to the Chief of Police.

- b. Unwanted discharge without injury – the officer shall immediately notify a supervisor (as indicated in a).

18.5.6 Whenever a person is injured as a result of force applied by an officer, officers on the scene will immediately provide first aid and request medical assistance, if necessary, for the injured person as soon as the scene is secure.

18.5.7 The officer shall complete ongoing training concerning the use of firearms and deadly force as directed by the department.

18.5.8 The Baldwin Police Department prohibits the use of choke holds/ respiratory restraints in all use of force situations unless, there is an imminent danger of death or great bodily harm to the officer or others and the use of deadly force is justified, in compliance with this policy, and allowable by law.

18.6 Investigation of the use of Deadly Force

When an officer is responsible for the use of deadly force:

18.6.1 An assigned supervisor shall initially investigate the incident and prepare a written report to be forwarded to the Chief of Police or his designee. An outside agency, not employing any officer involved, will be contacted to complete the investigation.

18.6.2 A deadly force investigation is a multi-faceted event. The responding supervisor should consider implementation of the incident command system and provide for:

- a. The security and preservation of the scene.
- b. Obtaining a brief summary of the incident.
- c. Removing involved officer(s) from the scene as soon as possible. A non-involved fellow officer should be assigned to accompany the involved officer(s).
- d. Insuring that the Chief of Police or his designee is notified immediately.
- e. Insuring that an officer(s) with information about the incident completes a report regarding their observations or actions as soon as practical.
- f. Proper retrieval and custody of the weapon (evidence) used by the officer. In the event the weapon retrieved is the officer's duty weapon, a department owned weapon may be immediately assigned to him/her.

18.6.3 After giving consideration to the administrative and constitutional rights of the officer(s) involved, and to public and departmental interests, the assigned supervisor shall contact the officer(s) involved and attempt to ascertain the circumstances of the incident.

18.7 Post Incident Services

The Supervisor or designee of the involved officer(s) shall ensure that the following services are provided:

18.7.1 An officer involved in a deadly force situation shall be encouraged to contact family members as soon as possible. In the event an officer is unable to provide input as to family contacts, etc., the "injury/line of duty death" packets file shall be consulted and directions followed.

18.7.2 The involved officer will be placed on administrative leave until, at minimum, the investigation into the incident is complete.

18.7.3 As soon as practical, the involved officer(s) and their families shall be offered counseling services. If desired, scheduling will be arranged by the department.

18.8 Chief of Police Responsibilities

18.8.1 Upon notification of an incident involving the use of deadly force by a member of this department, the Chief of Police shall (either personally or by his designee) make a full and complete investigation of the circumstances surrounding the incident.

18.8.2 Upon completion of the above investigation, the Chief of Police may take disciplinary action as prescribed by departmental rules and regulations, refer to the District Attorney's Office, or find the use of deadly force justified and without cause for further action.

18.8.3 All media releases shall be cleared through the office of the Chief of Police or his designee.

18.9 Officer's Responsibilities & Rights

18.9.1 In cases of administrative review the officer(s) involved in any use of deadly force incidents shall cooperate fully in the investigation.

18.9.2 In cases where criminal overtones against the officer exist, the officer shall be afforded all constitutional protections.

18.9.3 The officer shall receive written notice as to the outcome of all investigation of such incident.

18.10 Revision

These policies and procedures shall immediately supersede any previous policy.