



POLICY & PROCEDURE

PORTAGE POLICE DEPARTMENT

SUBJECT: **DEADLY FORCE**

SCOPE: All Sworn Personnel

DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes: 939.22(14), 939.45, 939.48, and Chapter 941; DAAT Incident Response and Disturbance Resolution Model

NUMBER: 5.03

ISSUED: 01/24/2021

EFFECTIVE: 01/24/2021

RESCINDS

AMENDS

WILEAG 5TH EDITION

STANDARDS: 5.1.2, 5.3.1, 5.3.3

PURPOSE: The purpose of this Policy & Procedure is to provide guidelines for the use of deadly force when officers of the Portage Police Department encounter a deadly force threat or other critical incident where death or great bodily harm has resulted from an officer's actions. This Policy & Procedure protects the public and is also intended to protect the officer from possible criminal or civil charges stemming from misinterpretation of the law covering the use of deadly force.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURE

I. POLICY

- A. It is the policy of the Portage Police Department to value and preserve human life therefore; officers shall use only force reasonably necessary to gain and maintain control, while protecting the lives of the officer or others. Officers may include in their decision to use force, information known to the officer(s) at the time of the incident or conduct or statements by the subject or a prior history of resistive or assaultive behavior. Deadly force shall never be resorted to until every other reasonable means of apprehension or defense has been exhausted or precluded and SHOULD only be used as a last resort.

II. DEFINITIONS

A. **DEADLY FORCE:** Deadly force is the intentional use of a firearm or other instrument, the use of which would result in a high probability of death or great bodily harm. Deadly force may include the following:

1. The firing of a firearm at or in the direction of a person
2. The firing of a firearm at a vehicle which is occupied by a person(s).
3. Any physical force or application that could reasonably be expected to cause death.
4. Many items such as flashlights, batons and other instruments are considered lethal weapons when they are used in a lethal manner. For example, striking a subject on the head or repeated blows to the internal organs with an object such as a flashlight or baton could be construed as deadly force.

B. **DEADLY FORCE JUSTIFICATION:** Any behavior that an officer reasonably believes has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.

C. **DE-ESCALATION-** 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.

E. **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." WI State Statute 939.22(14)

D. **IMMINENCE:** Intent, weapon, delivery system.

E. **NECK RESTRAINT:** an action taken by the use of any force or device to the neck area to restrain a person, including but not limited to:

1. Choke Hold – A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.
2. Vascular Neck Restraint – A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

III. PROCEDURE

A. Use of Deadly Force- Generally.

1. Recognizing the legal and moral obligation to use force judiciously and wisely, it is the policy of this department that deadly force should never be resorted to

until every other reasonable means of apprehension or defense have been exhausted or precluded.

2. Only the amount of force reasonably necessary to affect an arrest or control a person should be used by members of the department. The force used by an officer should only be that which is required to overcome the resistance being offered by a subject and to maintain control.
3. This directive is consistent both with Wisconsin law and with the 1985 US Supreme Court decision in *Tennessee v. Garner*, 53 U.S.L.W. 4410.

B. When Deadly Force May or May Not Be considered

1. To stop a threat which has caused or imminently threatens to cause death or great bodily harm to an officer or another person or persons.
2. To effect the arrest or prevent the escape of a suspect whom the officer has reasonable cause to believe has committed or attempted to commit a felony *involving the use or threatened use of deadly force*, and the officer reasonably believes the suspect cannot be apprehended later without the use of deadly force; and provided further, that the lives of innocent persons may be endangered if the officer does not use deadly force.
3. When a misdemeanant intentionally flees arrest or escapes from custody, pursuant to a legal arrest for a misdemeanor, or after having been lawfully charged with or convicted of a misdemeanor, such act of fleeing does not constitute a felony permitting the officer to resort to the use of deadly force if other reasonable means have failed to prevent the escape.
4. An officer shall not threaten the use of deadly force unless they reasonably believe they may resort to the use deadly force.
5. Firearms should not be discharged from a moving vehicle or at a moving vehicle unless reasonably necessary to protect the life of the officer or a third person and when the use of deadly force would not unreasonably endanger the lives of others.
6. An officer may draw their firearm when they have reasonable grounds to believe that the use of deadly force may be necessary. The officer need not be under attack, but only reasonably believe that the situation may lead to circumstances outlined above. Firearms should not be drawn under any other circumstances.
7. This section is intended to allow the officer to have their firearm drawn in situations such as answering a silent alarm, conducting a building search or confronting a suspect whom there is reasonable grounds to believe may be armed, or when the officer reasonably believes circumstances indicate a substantial risk of death or great bodily harm to his/her person or another.

8. There is no legal distinction in the use of deadly force against juveniles as compared to adults.
9. To protect oneself or another from an animal which an officer reasonably believes may cause death or great bodily harm if not immediately stopped.
10. Shooting into buildings or through doors, windows, or other forms of concealment or cover should be avoided unless the officer is reasonably certain the person who is imminently causing death or great bodily harm is behind the concealment or structure and shooting into it is necessary to attempt to stop the threat and by not stopping the threat there is a greater danger.
11. Before using deadly force, officers should, if reasonably possible and feasible, identify themselves, order the suspect to desist from the unlawful activity, and threaten to use deadly force if the lawful order is not obeyed.
12. Officers should not use deadly force when its use unreasonably risks the lives of innocent bystanders. Unless not shooting may pose a greater danger than shooting. See Greater Danger under the DAAT system.
13. The use of neck restraint, intentional punching, striking, or grabbing the throat (trachea) or blocking or restricting the carotid neck arteries creates a substantial likelihood of death or great bodily harm and, therefore, shall not be used unless the use of deadly force would be justified.

C. Reports on Use of Deadly Force.

1. In all circumstances, when a firearm is displayed or discharged by an officer while on duty, the officer involved or another officer on the scene shall immediately notify the on-duty supervisor of the incident. The chief or designee shall then be notified as soon as possible depending upon the circumstances of the incident. If the death or great bodily harm involves a person(s), Policy & Procedure 6.15: Officer Involved Critical Incident shall be utilized and followed.
2. Officers will only need to make a notation in the daily log and/or in an Incident Report when a firearm is used to dispatch an animal. A supervisor shall be notified of the firearm discharge and the circumstances surrounding the incident as soon as practical.
3. In the case of an unintentional firearm discharge on or off-duty, the chief or designee shall be notified as soon as practical and the appropriate reports completed as soon as possible.
4. Officers involved in the use of deadly force incident shall not discuss the matter with anyone, including other officers until represented and/or requested by the investigating authority.
5. The chief or designee will contact an outside agency to conduct the investigation of any deadly force incident.

6. Also refer to Policy & Procedures 5.01: Use of Force and 6.15: Officer Involved Critical Incident.

D. Personnel mandated to receive and understand this Policy & Procedure.

1. Prior to being authorized to carry a firearm, all officers shall receive a copy of this Policy & Procedure and demonstrate their understanding of the procedures within the Policy & Procedure.

Keith J. Klafke
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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