



POLICY & PROCEDURE

BURLINGTON POLICE DEPARTMENT

SUBJECT: **DEADLY FORCE**

SCOPE: All Sworn Personnel
DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes: 66.0511, 165.845, 939.22(14), 939.45, 939.48, and Chapter 941; DAAT Incident Response and Disturbance Resolution Model

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INDEX AS: Deadly Force

PURPOSE: The purpose of this Policy & Procedure is to provide guidelines for the use of deadly force when officers of the Burlington Police Department are involved in a shooting 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
- IV. REPORTING THE USE OF FORCE
- V. PUBLIC ACCESS TO POLICY & PROCEDURE

I. POLICY

- A. It is the policy of the Burlington Police Department to value and preserve human life; therefore, officers shall use only the force, including less lethal force that is reasonably objective to gain control, while protecting the lives of the officer or

others. Officers may include in their decision to use this force option, 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 would be ineffective and SHOULD only be used as a last resort.

This policy requires that an officer use reasonable alternatives, *if such alternatives are available*.

For example, an officer need not hesitate to employ deadly force against an individual who is shooting at him/her. He/she should, of course, use his/her weapon in such a manner as not to endanger the lives of innocent bystanders or fellow officers, but he/she is not required to seek alternatives to deadly force if he/she is under an immediate attack on his/her or other lives.

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 in the direction of the person to be arrested, even though no intent exists to kill.
 2. The firing of a firearm at a vehicle in which the person to be arrested is riding.
 3. Any force applied in any manner by any means, by any member of the Department that could reasonably be expected to cause death.
 4. Besides firearms, items such as flashlights, batons, and other instruments are considered lethal weapons when they are used in a lethal manner. For example, the use of a nightstick to subdue a subject by striking him/her on the arm is a nonlethal use of that instrument. However, striking on the head or repeated blows to the internal organs 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:** Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, or/and resources can be called upon to resolve the situation without the use of force or without the reduction of force necessary.
- 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 means the intentional and prolonged application of force to the throat, windpipe, or carotid arteries that prevents or hinders breathing or blood flow, reduces the intake of air, or reduces blood flow to the head.
- F. PRECLUSION: Before you can use deadly force, you must reasonably believe that all other options have been exhausted or would be ineffective. In other words, deadly force is always a last resort. This concept is called preclusion. Note that in many deadly-force situations, you will not have time or the ability to try other options—if a subject a few feet away from you suddenly pulls a gun and threatens to shoot you, generally the only reasonable response is to fire. There is simply not enough time to try alternatives.

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.
- 2. Only the amount of force reasonably required 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 an offender.
- 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. Where Deadly Force May or May Not Be Used. Deadly force may be used under the following circumstances:

- 1. As a last resort in the defense of oneself, when there is reasonable cause to believe that one is in imminent danger of death or great bodily harm.
- 2. As a last resort in the defense of another person or persons whom the officer has reasonable cause to believe is being unlawfully attacked and is in imminent danger of death or great bodily harm.
- 3. Deadly force may be used, after all other reasonable means of capture are exhausted, 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.

This Section allows the officer to use deadly force when the suspect is engaged in such felonies involving violence (armed robbery, murder, etc.). Non-violent felonies such as embezzlement or burglary do not in themselves justify the use of deadly force.

4. Deadly force should never be used in any misdemeanor case, unless the criteria in Subsections B.1. or B. 2. above is present, or when the officer is in doubt as to whether or not deadly force is justified, or when its use would unreasonably endanger innocent bystanders.
5. 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.

The value of human life is considered to supersede the importance of immediate apprehension.

6. Except when exigent circumstances exist where an arrest may be facilitated, an officer should not threaten to use deadly force unless he/she reasonably believes that he/she would be justified under this policy to, in fact, use such force.
7. Weapons should not be discharged from a moving vehicle unless absolutely 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.
8. An officer may draw his/her firearm when he/she has reasonable grounds to suspect that the use of deadly force may be necessary. The officer need not be under attack, but only be reasonably apprehensive that the situation may lead to circumstances outlines above. Firearms should not be drawn under any other circumstances.
9. This section is intended to allow the officer to have his/her weapon ready in such circumstances 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.
10. There is no legal distinction in the use of deadly force against juveniles as compared to adults.

11. To protect oneself or another from an animal which an Officer reasonably believes may cause great bodily harm if not immediately controlled or after giving consideration to public view, safety and all other reasonable means of disposition to end the suffering an animal gravely injured or diseased.
12. For Department-mandated firearms, practice and qualification on an approved range are mandatory.
13. As a last resort, to euthanize a dangerous or seriously diseased animal or one that is so seriously injured that humanity dictates its removal from suffering, but only after consideration is given to the public's safety and whether other dispositions may be feasible.
14. Officers should not fire into buildings or through doors, windows, or other forms of concealment or cover unless the Officer is certain of the person's presence that is to be lawfully fired upon.
15. Officers should not discharge a firearm from or at a moving vehicle unless the officer reasonably believes that the occupant(s) of the vehicle are using or are about to use deadly physical force against the officer or another person.
16. Officers should not fire warning shots, however if an officer does fire a warning shot, he/she will need to justify the reason(s) for doing so in a written report.
17. Before using deadly force, officers should, if reasonably possible, identify themselves, order the suspect to desist from the unlawful activity, and threaten to use deadly force if the lawful order is not obeyed.
18. Officers should not use deadly force when its use unreasonably risks the lives of innocent bystanders.
19. The 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, should be used only in accordance with this policy on the use of deadly force.
20. There is recognition that the use of deadly force is accompanied by severe emotional and psychological strain for the officer involved. Officers are trained in the proper use of firearms and are required to maintain rigorous standards of shooting proficiency and accuracy.
21. The use of neck restraints by personnel of the Burlington Police Department is prohibited unless the situation requires the use of deadly force that would be justified.

C. Reports on Use of Deadly Force.

1. In all circumstances, when a firearm is discharged by an officer while on duty, the officer involved or another officer on the scene shall immediately notify

dispatch of the incident. The Chief of Police 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 deadly force is used to dispatch an animal. A Supervisor or the Chief of Police or designee shall be notified of the weapons discharge and the circumstances surrounding the incident as soon as practical.
3. In the case of an accidental firearm discharge, a Supervisor or the Chief of Police 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 shall not discuss the matter with anyone, including other officers. The officer(s) may be debriefed or interviewed or questioned by the Chief or designee depending upon the circumstances of the incident.
5. A Supervisor or the Chief of Police shall complete any required report(s) of the incident and his/her investigation and forward either to the Chief of Police or the Records Section or other designated areas.
6. Also refer to Policy & Procedures 5.01 Use of Force and 6.15: Officer Involved Critical Incident.

D. Self-Defense

1. Before deadly force is authorized in self-defense, several qualifications should be observed:
 - a) Retaliation or revenge is not an excuse for killing in self-defense.
 - b) The danger or harm is a present one.
 - c) There is no justification to use deadly force after the danger has passed.
 - d) The force threatened is unlawful.
 - e) The officer believes that the use of deadly force was the only means available to avert death or great bodily harm.
 - f) The degree of force used by the officer was believed to be necessary under the circumstances.
 - g) The officer's belief in each of the foregoing aspects was reasonable even if mistaken.
2. An officer's response to being threatened or sprayed with oleoresin capsicum

(OC spray) may include deadly force because the officer will likely be completely vulnerable if successfully attacked.

a) In deciding whether an officer is threatened with OC, an officer should consider the following:

(1) Distance - Is the officer close enough to be sufficiently exposed to the OC to incapacitate him/her?

(2) Environmental Conditions at the Scene- Including, but not limited to:

(a) The number of suspects and officers present.

(b) Location of the incident.

(c) Time of day, lighting conditions, and weather conditions.

(3) Subject and Officer Factors - The subject's history, if known. Size, age, gender, and skill level of all participants involved.

(4) Special knowledge or special circumstances- Injury or exhaustion, proximity of subject to officer's firearm, ground fighting, disability, etc.

E. 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.

IV. REPORTING THE USE OF FORCE

A. Use of Force reporting shall follow guidelines within WI State Statute 165.845.

V. PUBLIC ACCESS TO POLICY & PROCEDURE

A. Public access to this Policy & Procedure pursuant to WI State Statute 66.0511(2) shall be the same as required in Policy & Procedure 5.01. Senate Bill 122 (signed by Governor Tony Evers on June 22, 2021) requires law enforcement agencies make their use of force policies publicly available on their websites. Policies are located at the department's Resources & Link page (<https://www.burlington-wi.gov/151/Resources-Links>). If a person requests a copy of UOF policies, it shall be provided free of charge and within 3 business days

Mark J. Anderson
Chief of Police

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