

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Choke hold - 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.

Deadly force - The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

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.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Totality of the circumstances - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

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Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Tomah Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE AND REPORT

Any officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible.

300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

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Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

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While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 DISTURBANCE RESOLUTION

Officers are directed to the State of Wisconsin's Disturbance Resolution model as adopted by the Department of Justice Law Enforcement Standards Board, Defensive and Arrest Tactics Tactical Advisory Committee, for assistance in determining reasonable force for a given situation.

See attachment: DisturbanceResolution.pdf

300.3.2 USE OF FORCE TO EFFECT AN ARREST

A law enforcement officer may use reasonable force to arrest a person or execute a warrant. Additionally, a law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer (Wis. Stat. § 968.07; Wis. Stat. 968.14).

300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

1. Immediacy and severity of the threat to officers or others.
2. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
3. Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
4. The effects of suspected drug or alcohol use.
5. The individual's mental state or capacity.
6. The individual's ability to understand and comply with officer commands.
7. Proximity of weapons or dangerous improvised devices.
8. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
9. The availability of other reasonable and feasible options and their possible effectiveness.
10. Seriousness of the suspected offense or reason for contact with the individual.
11. Training and experience of the officer.
12. Potential for injury to officers, suspects, and others.
13. Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
14. The risk and reasonably foreseeable consequences of escape.

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15. The apparent need for immediate control of the individual or a prompt resolution of the situation.
16. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
17. Prior contacts with the individual or awareness of any propensity for violence.
18. Any other exigent circumstances.

300.3.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

1. The degree to which the application of the technique may be controlled given the level of resistance.
2. Whether the individual can comply with the direction or orders of the officer.
3. Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Tomah Police Department for this specific purpose.

300.3.6 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

300.4 DEADLY FORCE APPLICATIONS

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

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1. An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or great bodily harm.
2. An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of great bodily harm or death, and the officer reasonably believes that there is an imminent risk of great bodily harm or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing great bodily harm or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 MOVING VEHICLES

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective.

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 CHOKE HOLDS AND NECK RESTRAINTS

Officers shall not use choke holds, Lateral Vascular Neck Restraints, Carotid Restraints or any other tactics that restrict oxygen or blood flow to the head or neck unless deadly force is objectively reasonable.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

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300.5.1 NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

1. The application caused a visible injury.
2. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
3. The individual subjected to the force complained of injury or continuing pain.
4. The individual indicates intent to pursue litigation.
5. Any application of the Conducted Energy Weapon (CEW) or control device.
6. Any application of a restraint device other than handcuffs, shackles, or belly chains.
7. The individual subjected to the force was rendered unconscious.
8. An individual was struck or kicked.
9. An individual alleges unreasonable force was used or that any of the above has occurred.
10. Threatened use of any firearm.

300.5.2 REPORTING TO WISCONSIN DEPARTMENT OF JUSTICE

Statistical data regarding all qualifying use of force incidents is to be reported to the Wisconsin Department of Justice as required by Wis. Stat. § 165.845. For the purposes of this section, a qualifying use of force incident means any incident (Wis. Stat. § 165.845):

1. Involving the discharge of a firearm by an officer at or in the direction of a civilian.
2. Involving the discharge of a firearm by a civilian at or in the direction of an officer.
3. Involving any action taken by an officer in response to an act of resistance that results in great bodily harm or death (Wis. Stat. § 939.22).
4. Involving an act of resistance taken by a civilian against an officer that results in great bodily harm or death.

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be

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witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

300.7 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

1. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
2. Ensure that any injured parties are examined and treated.
3. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
 - (a) These photographs should be retained until all potential for civil litigation has expired.
4. Identify any witnesses not already included in related reports.
5. Review and approve all related reports.
6. Determine if there is any indication that the individual may pursue civil litigation.
 - (a) If there is an indication of potential civil litigation, the supervisor shall notify the Police Chief.
7. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

Attachments

DisturbanceResolution.pdf

DISTURBANCE RESOLUTION

1) Approach Considerations

- | | | |
|----|---------------------|--|
| A. | Decision-making | Justification Desirability |
| B. | Tactical Deployment | Control of distance
Positioning
Team Tactics |
| C. | Tactical Evaluation | Threat assessment opportunities
Officer/subject factors
Special circumstances
Level/stage/degree of stabilization |

2) Intervention Options

<u>Mode</u>	<u>Tactic</u>	<u>Purpose</u>
A. Presence	Professional Presence	To present a visible display of authority
B. Dialog	Tactical Communication	To verbally persuade
C. Empty Hand Control	Escort Holds	To safely initiate physical contact
	Compliance Holds	To overcome passive resistance
D. Control Devices	Oleoresin Capsicum (O.C.) Aerosol Spray	To overcome active resistance or its threat
	Electronic control Device (ECD)	
	Passive Countermeasures	To decentralize
	Active Countermeasures	To create dysfunction
	Incapacitating techniques	To cause the immediate, temporary cessation of violent behavior
E. Intermediate Weapon	Intermediate Weapons	To impede a subject
F. Deadly Force	Firearm	To stop the threat

3) Follow-through Considerations

- | | | |
|----|-----------------|---|
| A. | Stabilize | Application of restraints, if necessary |
| B. | Monitor/Debrief | |

C. Search If appropriate

D. Escort If necessary

E. Transport If necessary

F. Turn-over/Release

Removal of restraints, if necessary