

<b>New Berlin Police Department Directives Manual</b>		<b>Directive Title: Use of Force</b>			
<b>Issue Date:</b> 01/23/15	<b>Published Date:</b> 01/12/21	<b>Next Review Date:</b> 07/01/21	<b>Total Pages:</b> Page 1 of 11	<b>Directive Number:</b> 5101	<b>WILEAG Standards:</b> 5.1.1, 5.1.2, 5.1.3, 5.1.4

## **Purpose**

The purpose of this policy is to provide officers with guidance on the use of deadly and non-deadly force, as required by all applicable federal, state, and local laws.

## **Policy**

It is the policy of the New Berlin Police Department that officers will use only the amount of force that is reasonably necessary to control a person or to defend himself or herself or another person from an imminent threat. The use of force must be objectively reasonable. The officer must use only that force which a prudent officer would use under the same or similar circumstances. Officers have the duty and obligation to intervene to prevent or stop the known and apparent use of excessive force by another officer when it is objectively reasonable to do so.

## **Related Directives and Procedures:**

- [5101.01 - Electronic Control Devices](#)
- [5101.02 - Emergency Restraint Chair](#)
- [5101.03 - Less Lethal Impact Munitions](#)
- [5101.04 - Restraining Devices](#)
- [5201 - Use of Force - Rendering Aid](#)
- [5301 - Use of Force - Reporting and Review](#)
- [5401 - Excited Delirium](#)
- [6102.03 - Police Canine Unit Procedures](#)
- [6104 - Vehicle Pursuits](#)

## **Definitions**

**Active Resistance:** Behavior which physically counteracts an officer's control efforts and which creates a risk of bodily harm to the officer, subject, and/or other persons.

**Assaultive Behavior:** Direct actions or conduct that generates bodily harm to the officer(s) and/or another person(s).

**Bodily Harm:** Physical pain or injury, illness, or any impairment of physical condition, but less severe than great bodily harm.

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

**Control:** A perception based on an officers training, experience, and the facts situation.

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

**De-escalate:** To decrease the intensity or move to a lower level of force or control.

**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.

**Defensive and Arrest Tactics (DAAT):** A system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved, and governed by the Wisconsin Department of Justice – Law Enforcement Standards Board.

**Electronic Control Device (ECD):** A law enforcement tool with the purpose to overcome active resistance or its threat. Currently, the chosen ECD tool at the New Berlin Police is the Taser.

**Excited Delirium Syndrome:** A medical disorder generally characterized by observable behaviors including extreme mental and physiological excitement, intense agitation, hyperthermia often resulting in nudity, hostility, exceptional strength, endurance without apparent fatigue, and unusual calmness after restraint accompanied by a risk of sudden death.

**Great Bodily Harm:** A bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement, or which causes permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

**Intervention Options:** Trained techniques for intervening and gaining control in pursuit of a legitimate law enforcement objective. The techniques are categorized into five modes; presence, dialogue, control alternatives, protective alternatives, and deadly force, each reflecting the need for an increasing level of control.

**Imminent Threat:** An imminent threat is a threat that an officer reasonably feels is about to happen. To meet the criterion of “imminent threat”, the person whom the officer is intending to use deadly force against must have all of the following:

1. A weapon capable of inflicting great bodily harm or death (conventional or unconventional weapon);

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2. A displayed or indicated intent to cause great bodily harm or death to the officer or another person;
3. A delivery system for utilizing the weapon, or the capacity for utilizing the weapon, which has the means to inflict harm;

**Less Lethal Impact Munitions (LLIM):** Flexible or non-flexible projectiles, which are intended to impede a subject, the use of which is not likely to cause death.

**Less Lethal Tools:** Less lethal tools are oleoresin capsicum spray (OC), ECD, baton, beanbag shotgun, 40mm less lethal launcher and police canine.

**Non-Deadly Force:** An amount of force that, under normal circumstances, would not be expected to result in great bodily harm or death.

**Objective Reasonableness Standard:** The standard established by the U.S. Supreme Court in *Graham v. Connor* 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.

**Passive Resistance:** Non-compliant and non-threatening behavior.

**Preclusion:** The officer reasonably believes all other options have been exhausted or would be ineffective.

**Reasonable Belief:** A conclusion reached by an ordinary, prudent, and reasonably intelligent police officer that a certain fact situation exists under the totality of circumstances perceived by the officer at the time the officer acted.

**Reasonable Force:** A physical act by a police officer in the performance of duty used to accomplish a legitimate law enforcement goal and objectively reasonable under the totality of circumstances as perceived by the officer at the time the officer acted. The totality of circumstances perceived by the officer can include statements made by the person or a known prior history of resistive or assaultive behavior.

**Warning Shot:** The intentional discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.

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## Standards

### **The Constitutional Standard for Use of Force**

[The U.S. Supreme Court case of \*Graham v. Connor\*, 490 U.S. 386 \(1989\)](#), established "Objective Reasonableness" as the standard for all applications of force in the United States. Remember, all Use of Force applications are judged based upon:

1. The totality of the circumstances;
2. From the perspective of a reasonable officer;
3. On the scene;
4. At the moment force was used;
5. Without 20/20 hindsight;
6. In circumstances that are tense, uncertain, and rapidly evolving.

The court specified factors, sometimes referred to as the Graham factors, assist in determining objective reasonableness. Although not required, nor all-inclusive, articulating these factors provides a good framework for justifying a particular Use of Force. The factors are:

1. The severity of the alleged crime at issue.
2. Whether the suspect poses an imminent threat to the safety of officer(s) and/or other(s).
3. Whether the suspect is actively resisting or attempting to evade arrest by flight.

## Wisconsin Law

### Privilege 939.45 states:

As a law enforcement officer, you are privileged to use force against another person. Wisconsin law affords officers the protection of privilege, the conduct must be reasonable.

*"The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:*

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1. *When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under §939.46 or 939.47; or*
2. *When the actor's conduct is in defense of persons or property under any of the circumstances described in §939.48 or 939.49; or*
3. *When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or*
4. *When the actor's conduct is a reasonable accomplishment of a lawful arrest."*

#### **Self Defense and defense of others §939.48**

Further, Wisconsin law (§939.48(1)) specifically limits the use of deadly force in self-defense as follows:

*"The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself."*

The same limitation is extended to use of force to defend a third person in §939.48(4).

The statutes prohibit the use of deadly force to prevent suicide in §939.48(5).

The statutes prohibit the use of deadly force solely to protect property in §939.48(1).

**Defensive and Arrest Tactics System:** The State of Wisconsin has developed the Defensive and Arrest Tactics (DAAT) system. This is a system of verbalization skills coupled with physical alternatives. All officers will be trained in the DAAT system. The DAAT system will serve as a guide to officers using force against another person. The department understands that the extreme stress of a forceful confrontation has many psychological and physical effects on an officer and, as a result, the force used by an officer may not follow the constraints of the DAAT system. The reasonableness of an officer's actions will be judged in light of the totality of the circumstances facing the officer.

Officer Use of Force must fit into one of these categories:

1. A trained technique;
2. A dynamic application of trained technique;
3. A technique not trained, but justified under the circumstances.

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The decision to use force and the amount of force to be used should be based on the totality of circumstances of the incident.

1. An officer may use force:
  - A. To achieve and maintain control of resistive subjects;
  - B. To detain persons reasonably suspected of criminal behavior;
  - C. To make lawful arrests;
  - D. To defend themselves or others;
  - E. To prevent escape;
  - F. To bring an unlawful situation safely under control.
  
2. Key Rules for Use of Force:
  - A. The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
  - B. You may initially use the level and degree of force that is reasonably necessary to achieve control. You need not escalate step-by-step through the Intervention Options.
  - C. At any time, if the level of force you are using is not effective to gain control, you may disengage and/or escalate to a higher level of force. This involves transitioning to a different level of force or different tactics based on the totality of circumstances.
  - D. Once you have gained control of a subject, you must de-escalate the level of force to that needed to maintain control.
  - E. You must always maintain a position of advantage.
  
3. De-escalation: If practical and safe, officers will look for opportunities to apply the concept of de-escalation to citizen contacts. De-escalation may not be a viable option in every situation as there are many factors that influence its applicability. An officer must have the position of advantage to apply the concept of de-escalation. Although the profession of law enforcement officer has a great deal of inherent risks, officers are not required to take unnecessary risks in order apply this concept as their risks need to be strategic, deliberate, and consistent with other DAAT principles.
  
4. Intervention Options: In determining the amount of force to be used, officers may use one level of force higher than that being used or threatened against them. The amount of force an officer may use should be based on the following *Intervention Options*:
  - A. Presence – The first mode. Presence reflects the fact that sometimes all that is needed to control a situation is the presence of an officer. The purpose of this mode is to present a visible display of authority.
  - B. Dialogue – The second mode. Dialogue covers the range of tactical communication from very low-level questioning to very direct commands. The purpose of dialogue is to verbally persuade subjects to comply with an officer’s lawful directives.

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- C. Control Alternatives – The third mode. It includes a wide range of tactics and tools for controlling subjects. The purpose of Control Alternatives is to overcome passive resistance, active resistance, or its threat. The tactics/tools within Control Alternatives are:

<b>Tactic/Tool</b>	<b>Goal</b>
Escort Holds	To safely initiate physical contact
Compliance Holds	To overcome passive resistance
OC/ECD	To overcome active resistance or its threat
Passive Countermeasures	To decentralize

- D. Protective Alternatives – The fourth mode. It includes tactics and tools to protect an officer while also managing continuing resistance. The purpose of a Protective Alternative is to overcome continued resistance, assaultive behavior, or its threat. The tactics/tools within the Protective Alternatives are:

<b>Tactic/Tool</b>	<b>Goal</b>
Active Countermeasures	To create dysfunction
Incapacitating Techniques	To cause the immediate, temporary cessation of violent behavior
Intermediate Weapons LLIM, K9, Baton	To Impede

- E. Deadly Force – The fifth mode. Deadly Force represents the highest level of force available to law enforcement officers with the purpose to stop the threat. Deadly Force is the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. The subject behavior that justifies an officer's use of deadly force is any behavior, which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons. In all such cases, the officer, should warn the subject if feasible, prior to using deadly force. 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.

- i. A total roadblock is the complete obstruction of the roadway that does not allow the pursued vehicle an escape route. Total roadblocks should only be employed when deadly force is justified (see [Directive 6104 Vehicle Pursuits](#)).
- ii. Intentional vehicle contact at high speeds (ramming) is considered deadly force. Pinning a vehicle, blocking a vehicle, and the pursuit intervention technique are not considered ramming.
- iii. "Warning shots" are prohibited.

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- iv. Officers may use deadly force to apprehend a criminal suspect who has used or threatened to use deadly force against someone, and presents a continued threat to the public, and you reasonably believe there is no other way to make the arrest or retain custody of the person once arrested. In any case the officer should not use deadly force unless he/she reasonably believes it is necessary to capture a dangerous suspect, and then only as a last resort.
  - v. **Chokeholds: The use of chokeholds (airway obstruction) are prohibited except in those situations where deadly force is allowed by law.**
5. Follow Through to Intervention Options - NBPD 5201 Rendering Aid: Officers have responsibilities after using force. Where an officer used force to establish control over a subject, the officer must monitor the subject for injuries. This may include handcuffing, unless inappropriate (based on the Defensive and Arrest Tactics Training). An initial medical assessment must be conducted as follows:
    - A. Determine the level of consciousness, using verbal or physical stimulus.
    - B. Check airway, breathing, and circulation.
    - C. Perform a body check for injuries – severe bleeding, gross deformities, etc.
    - D. Provide any necessary treatment to your level of training and, if needed or the subject requests it, activate the emergency medical system.
    - E. Continue to monitor and remain with the subject until he or she is turned over to someone of equal or greater responsibility. Find out if there is a need for long-term monitoring of the subject because of special medical or mental health needs.
  6. Use of the Electronic Control Devices (ECD) - NBPD Directive 5101: This Department utilizes the Taser as its chosen ECD tool within the Control Alternatives Mode. Only trained officers may carry and deploy a Taser.
  7. Oleoresin Capsicum Spray (OC): Officers, who have been trained and certified in the use of OC, may carry department issued OC while on duty.
    - A. Officers who are trained in the use of and carrying an electronic control device may choose not to carry OC.
      - i. Trained personnel may use OC when a subject is threatening to actively resist or is actively resisting an officer and the subject poses an articulable threat of bodily harm to an officer or another person. Mere passive resistance does not warrant the use of OC.
      - ii. Generally, OC should not be sprayed directly at the eyes of a person from a distance of less than 3 feet because of increased risk of eye injury from the pressure of the spray.
      - iii. Department personnel who use OC against a person shall render aid as soon as practicable after he or she is under control in accordance with directive 5201-Rendering Aid.

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- iv. If circumstances permit, and it can be done without endangering department personnel, reasonable efforts to decontaminate domesticated animals should be made or the decontamination information conveyed to the animal's owner.
- 8. Use of Less Lethal Impact Munitions - NBPD 5101.03: The Department utilizes Less Lethal Impact Munitions and places it within the protective alternative mode which is an intermediate weapon.
  - A. Less Lethal Munitions utilized as a protective alternative mode of force will be collected and placed in a bag.
  - B. Seal the bag and inventory as evidence.
- 9. Police Baton: The police baton is an intermediate weapon that is used to impede a subject, preventing him or her from continuing resistive, assaultive, or otherwise dangerous behavior. Officers who are trained in the DAAT system are authorized to carry a baton.
- 10. Police Canine: The police canine like the baton can be used as an intermediate weapon to impede a subject. Only trained Police canine handlers can deploy a police canine as a use of force.

**Special Considerations on the use and carrying of firearms:**

- 1. Except for maintenance, inspection or during training, officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon.
- 2. Target-specific directed fire is defined as purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to you or others, but whom you may not be able to clearly observe. The purpose of target-specific directed fire is to stop the threat when no other reasonable course of action would allow officers to perform a rescue, escape from danger, or otherwise prevent death or great bodily harm. Before using target-specific directed fire, officers must meet the imminent threat criteria (intent, weapon, delivery system) and preclusion requirement. Officers must achieve target acquisition, identification, and isolation, or else satisfy the greater danger exception, before shooting.
- 3. Officers will respect citizens' rights to openly carry a weapon, and legally carry a concealed weapon. Officers must consider the totality of circumstances present and whether or not a person is presenting a threat to the officer or someone else before deciding on using their firearm to control a person that is openly carrying a weapon, or legally carrying a concealed weapon.
- 4. All sworn personnel must receive a copy of this directive, and demonstrate their understanding, before being authorized to carry a firearm.

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**Destruction of wild animals:** Supervisory approval is not required prior to using deadly force to destroy a wild animal. Officers are not required to write a report when using deadly force to destroy a wild animal, unless some other circumstance arises which should be documented. Officers should, however, log the destruction of the wild animal with dispatch and indicate the number of shots fired in the call summary. Officers may use deadly force to destroy a wild animal if:

1. The wild animal presents a threat of bodily harm to the officer or someone else and deadly force is the only reasonable option available to stop the animal.
2. A wild animal is diseased or gravely injured and deadly force is necessary to prevent further suffering of the wild animal.

In addition, officers may use deadly force to destroy a domestic animal if the animal presents a threat of great bodily harm to the officer or someone else and deadly force is the only reasonable option available to stop the animal. In any other circumstance, officers will not destroy or euthanize a domestic animal. Instead, officers should refer the owner to other resources that will assist with the domestic animal.

## **Restraining Devices**

### **5101.04 Restraining Devices**

**Handcuffs:** All persons who have been arrested will be handcuffed behind their back and the handcuffs will be safety locked. In instances where a medical or physical problem precludes an officer from handcuffing a person behind his/her back, officers may handcuff the person in front, securing the handcuffs to a belly chain or belt. Officers should obtain permission from a supervisor before using this option.

Officers may handcuff a person who is not under arrest if the officer reasonably feels that the person is, or may soon become, a threat to the officer. When an officer handcuffs a person for safety reasons and the person is not under arrest, the officer will write an incident report detailing the circumstances that lead to the officer fearing for his/her safety, and the actions that the officer took. Officer may handcuff in front before administering Naloxone in accordance with [directive 6111](#).

**Special Restraints and Leg Irons:** If officers handcuff a person who is still combative and is kicking, leg irons may be applied to prevent the person from kicking any officers. In the event that officers are dealing with a person that continues to resist, officers may utilize "special restraints" such as the special restraint Sit Belt in conjunction with the Special Restraint Hobble to prevent continued resistance. A person that is restrained in this manner will be constantly monitored.

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**Emergency Restraint Chair:** For persons that are extremely violent, or are exhibiting self-destructive behavior, officers may restrain the person in the Emergency Restraint Chair. Officers will secure a person in the Emergency Restraint Chair according to their training and department [procedure 5101.02](#) Emergency Restraint Chair.

By Order of:   
 Jeffrey Hingiss Chief of Police

Dimensions: 5.1.2.1 / 5.1.2.2