TOWN OF EAST TROY POLICE DEPARTMENT POLICY	TITLE: General Order 2017-003 Use of Force		
ISSUE DATE: 05-03-2017	LAST UPDATE 01-05-2021	SECTION: 5	TEXT NAME: Use of Force
POLICY SOURCE: Chief of Police			TOTAL PAGES: 13
AUTHOR: Don P Jensen Sr.	SPECIAL INSTRUCTIONS: This policy rescinds the previous Department Use of Force policies including Use of Force Policies 5.001 and 5.009		

I. PURPOSE

Our community, the Wisconsin State Legislature, the judiciary and the Town of East Troy Police Department place great value on safety and preservation of life. You carry weapons capable of delivering deadly force to protect you or others from immediate threats of death or serious bodily harm. Your basic responsibility to protect life calls for you to exhaust other reasonable means for control in most instances before using deadly force. Treat your choices to use force with utmost seriousness. Your assessment, knowledge and judgment must dictate use of force... not emotions. In seconds you will make decisions that others may review for days. Exceeding reasonable applications of force may expose you to disciplinary action, civil liability and criminal prosecution.

II. POLICY

Safety and protection of human life are primary aims of the Town of East Troy Police Department. Within that context officers may meet force with force to a level necessary for the circumstances. Force is sometimes necessary to effect lawful purposes, to protect the lives of officers, or to protect the lives of the public. Objective Reasonableness: In Graham v. Connor the U.S. Supreme Court sets forth a guide to the objectively reasonable standard to determine whether the force applied was excessive. The "objective reasonableness" test: * Judgment and Level of Force -- A situation may call for immediate force at any level. Good judgment dictates application of force. Escalate force only if the level tried was inadequate, or the situation escalates.

III. PROCEDURE

5.1 OBJECTIVE REASONABLENESS

It shall be the policy of the Town of East Troy Police Department:

A) To maintain a profound respect for the value of all human life and the personal safety of all citizens.

B) To avoid the use of force if reasonably possible.

C) To utilize reasonable force when carrying out the command of the law in the protection of the public interest.

D) To utilize methods of force which are the most effective, humane, and safest under the particular circumstances.

E) The amount of reasonable force on the part of an officer making an arrest depends on the facts in a particular case. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time he or she acted, and the measure is generally considered to be that which an ordinarily prudent and intelligent police officer would have deemed necessary under the circumstances.

5.1.1

The use of force is the legal entitlement conferred by law upon a police officer. Specifically, Wisconsin Statutes 939.45(2) and (4), 939.47 and 939.48 address these legal entitlements. Force may be used only to the extent reasonably necessary.

5.1.2

Force should only be used to accomplish lawful objectives, and when all other appropriate alternatives are exhausted.

5.1.3

Law enforcement officers are entitled to use force in the performance of their legal duties. This use of force by a law enforcement officer is governed by the general principle that the amount of force used by the officer must be reasonable and not excessive. However, in any given situation, whether in making an arrest, conducting a search, protecting other persons and property, preventing crime, or acting in self-defense, the law enforcement officer must substantiate his/her use of force as being reasonable.

5.1.4

The use of force against another for the purpose of affecting an arrest is privileged if all the conditions are met. The principal condition is that although force is privileged to affect an arrest, it is not privileged if the means employed are in excess of those which the actor reasonably believes to be necessary. Although a police officer's privilege of self-defense is pertinent to this issue, a police officer in making or attempting to make an arrest for a criminal offense is acting for the protection of the public interest and is permitted even a greater latitude than when he acts in self-defense. The police officer is not liable unless the means which are used are clearly excessive. The principle is clear that one who has police authority to maintain the peace has a privilege to use force and the question then becomes simply whether the force was excessive for the accomplishment of the purpose. The reasonableness of the force depends upon the facts of each case.

5.1.5

If a suspect has what the officer believes to be contraband in their mouth, the officer should attempt to verbally direct the person to open their mouth and/or spit out the substance.

A) If the suspect fails to cooperate, and the officer believes the suspect has swallowed drugs, the suspect should be transported to the emergency room.

B) Upon arrival at the hospital, the officer should tell the ER staff that they believe the suspect has swallowed drugs. The concern is for the suspect's health and not evidence gathering. **If** the ER decides to pump the stomach, then emesis may be searched for drug evidence.

C) It is understood that officers may retrieve less evidence and that some evidence will be lost. The emphasis must be placed upon securing the safety of the person in our custody and control.

5.2 TERMS USED IN THIS GENERAL ORDER/ POLICY

5.2.1

Active Countermeasures - These are a series of unarmed hand strikes, foot strikes, forearm strikes, knee strikes or body stuns that an officer may choose from to gain control of a subject who is offering active physical resistance or attack. Active Countermeasures are tactics whose purpose is to create dysfunction. They are in the Protective Alternatives mode under Intervention Options.

5.2.2
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.

5.2.3
Assaultive Behavior – Direct actions or conduct that generates bodily harm or the potential for bodily harm.

5.2.4
Baton - This is an intermediate defensive weapon authorized and issued by the Department. It is designed as an impact weapon, and that is its function.

5.2.5
Chemical Aerosol Restraint - A personal defense spray used to control subjects by causing momentary loss of orientation and/or temporary incapacitation. This is normally carried on the duty belt or person of the officer.

5.2.6
Control – The purpose for any use of force is to gain control of a subject in pursuit of a legitimate law enforcement objective.

5.2.7
Critical Incident - Any incident such as hostage situation, barricaded person, or other unique situation in which police officers are required to respond in a manner which requires skill, knowledge and training beyond that which is expected from employees working in primary line and support functions.

5.2.8
Deadly Force – The intentional use of a firearm or other instrument, that creates a high probability of death or great bodily harm.

5.2.9
Defense and Arrest Tactics (DAAT)- This is a system of verbalization skills coupled with physical alternatives. It is a specific System, formulated, approved, and governed by the Wisconsin Department of Justice, Law Enforcement Standards Board.

5.2.10
Electronic Control Device – A non-lethal force weapon utilized by trained personnel that cause Neuro-Muscular Incapacitation (NMI) 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.

5.2.11
Excessive Force – The use of more force than is reasonable will not affect the validity of the arrest. It will expose the officer to civil suit, discipline, or both, and in aggravated circumstances possible criminal liability also.

5.2.12
Great Bodily Harm (Wisconsin State Statute 939.22(14) - "Great bodily harm" means 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.

5.2.13
Imminent Danger - The criteria for the use of deadly force. This would include self-defense, defense of another, or defense of the community at large, when an action of another would result in a high probability of death or great bodily harm. There are three components that comprise "immanency". These components must be present: intent, weapon, and delivery system.

5.2.14
Impact Weapon - See "Baton".

5.2.15
Intervention Options – are divided into five modes, each reflecting the need for an increasing level of control. The five modes are presence, dialog, control alternatives, protective alternatives, and deadly force. Each mode consists of one or more tactics to accomplish specific purposes.

5.2.16
Non-deadly Force - An amount of force which under normal circumstances might cause bodily harm but would not be expected to result in death or serious bodily harm.

5.2.17
Passive Counter Measures - These are decentralization techniques, which are used to direct subjects, who cannot be controlled in a standing, seated and/or kneeling position to the ground.

5.2.18
Passive Resistance – Non-compliant and non -threatening behavior.

5.2.19
Use of Force Review Supervisor – Supervisor charged with ensuring that use of force reports are reviewed and tracked.

5.3 DEFENSIVE TACTICS AND ARREST MECHANICS

5.3.1
The Town of East Troy Police Department hereby adopts the State of Wisconsin's system of defensive tactics and arrest mechanics. This system includes Intervention Options, which provides the general guidelines that define the degree and type of force to be used in controlling suspects. In accordance with the theory of this System, the following guidelines shall be observed:

5.3.2
Under no circumstances shall an officer continue to use force against an individual who has ceased to resist.

5.3.3
Only sworn personnel who have successfully completed the State of Wisconsin system of defensive tactics and arrest mechanics training are authorized to carry and use department issued non-lethal weapons (typically OC and baton). Equivalent training from other states may be substituted with the approval of the Chief of Police.

5.3.4
Sworn personnel may use only the amount of physical force necessary to consummate an arrest based on probable cause for a violation of a state law or municipal ordinance. Necessary force may also be used in the apprehension of a violent emotionally or mentally disturbed person, or in the subduing and restraining of an unruly, combative, or abusive person.

5.3.5
While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force is reasonable and necessary to protect themselves or others from bodily harm. **The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances and may subject the officer to disciplinary action, criminal, and civil liability.**

5.3.6
Department training on Defensive Tactics and Arrest Mechanics will be reviewed at least biennially.

5.4 INTERVENTION OPTIONS

5.4.1
While primary target areas have been identified in Intervention Options, the Department recognizes that sudden or dynamic movement on the part of the suspect may cause inadvertent strikes to non-target areas. Officers will be required to fully explain the circumstances of such a strike in their report.

5.4.2
In utilizing Intervention Options, the officer uses force in reaction to other people's behavior and selects the appropriate response from the modes and tactics provided in the intervention options.

5.4.3
Force is to be applied on an individual basis. Each officer, upon his/her evaluation of the conflict must decide for themselves based on knowledge, training, experience, personal limitations, and/or subject factors what level of force will result in control.

5.4.4
It is recognized that an officer may choose the appropriate tactic in the intervention options to gain control. It is not necessary for the officer to attempt each lesser level of force first before applying another level of force if it would be inappropriate to do so.

5.4.5
It is recognized that an officer would want to evaluate the amount of force being displayed by a subject and choose an appropriate intervention option response to gain control. Taking into consideration officer/subject factors, environmental factors, and special circumstances, it is further recognized that an officer may need to respond with a force option that is higher than the force being displayed by the subject in order to gain control. However, once control is attained, the officer must de-escalate and select the appropriate intervention option to maintain control.

5.4.6
Generally, strikes to the head are not acceptable. Because of the higher propensity of injury, strikes (punches) to the head (face) are reserved for special situations. The **only** force option trained to strike the head is the reaction hand strike to the chin. Its purpose is to stop forward momentum, set up follow-up strikes or to provide a momentary distraction to give an officer time to create distance to disengage and/or escalate. Face strikes (punches) may also be used as dynamic applications on highly aggressive and assaultive subjects and/or subjects that have a decided advantage over the officer and the officer does not have the time or the ability to access the trained force option. However, untrained strikes to the head are not to be

used for the sole purpose of persuading resistive subjects to place their hands behind their backs. Nor are they to be employed on subjects in lieu of trained force options and the officer is not defending himself or herself and they have the time and ability to access other appropriate and trained force responses.

INTERVENTION OPTIONS

Mode	Tactic	Purpose
Presence	**Professional Presence**	**To present a visible display of authority**
Dialog	**Tactical Communications**	**To verbally persuade**
Control Alternatives	**Escort Holds**	**To safely initiate physical contact**
	Compliance Holds	**To overcome passive resistance**
	(Pressure points & wrist compression)	
	Oleoresin Capsicum	**To overcome active resistance or**
	(OC Aerosol Spray)	**its threat**
	Electronic Control Device	**To overcome active resistance or its threat**
	Passive Countermeasures	**To decentralize**
Protective Alternatives	**Active Countermeasures (Hand, forearm, knee, foot strikes & body stuns)**	**To create dysfunction**
	Incapacitating Techniques (Diffused strike)	**To cause the immediate, temporary cessation of violent behavior**
	Expandable baton	**To impede a subject**
Deadly Force	**The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.**	**To stop the threat**

5.5 USE OF DEADLY FORCE

5.5.1
An officer may use deadly force only when he/she reasonable believes that:

A) Subject behavior which has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons.

B) Deadly force is necessary to prevent escape of a suspect and the officer has exhausted all other reasonable means, and

1) The officer reasonably believes that the person to be arrested has used deadly force in the commission of a felony and,

2) The person to be arrested can reasonably be thought to be intent on endangering human life, or upon inflicting great bodily harm, unless arrested without delay, and the officer reasonably believes that the person to be arrested has the means to do so.

5.5.2
Deadly force shall only be used as a last resort.

5.5.3
A firearm shall not be discharged:

A) As a warning, such as by firing a warning shot.

B) From a moving vehicle, unless the officer believes that either he/she or another person(s) is in danger of death or great bodily harm, and it can be accomplished with due regard for target isolation, target acquisition, and target identification.

C) At a moving vehicle, unless the officer has reason to believe that he/she or another person(s) is in danger of death or great bodily harm, and it can be accomplished with due regard for target isolation, target acquisition, and target identification.

5.5.4
Before using deadly force, the officer should, if reasonably possible, identify himself/herself, and give some warning of the imminent use of deadly force.

5.5.5
Officers may also have a need to use their firearms in order to end the life of a dangerous, injured, sick, diseased, or similarly suffering animal. The officer will not do so unless it can be done with a maximum of safety, and with due regard for the people in the area, the terrain, and the site at which the animal is located.

5.5.6
Choke holds are prohibited except in those situations where the use of deadly force is allowed by law.

5.6 DRAWING AND DISPLAY OF A FIREARM

5.6.1
An officer will draw and display a firearm in the low-ready position, only when there are reasonable grounds to believe that he/she or others are in possible danger.

5.6.2
An officer will only point a firearm (target acquisition) at a subject when the officer has a reasonable belief that danger is imminent, and that deadly force may be necessary.

5.7 AUTHORIZED POLICE IMPACT WEAPON

5.7.1 <u>WOODEN BATON</u>
The section will be retained for future use.

5.7.2 <u>EXPANDABLE BATON</u>
Officers will have the option of carrying the department approved expandable baton.

5.8 WEARING OF AND USING THE AUTHORIZED IMPACT WEAPON

5.8.1
Officers will wear a baton when on duty and assigned to a function whose primary responsibility is enforcement, or those directly responsible for supervising enforcement personnel.

A) The department requires Court Officer wear the issued expandable baton.

B) Those officers who are operating in covert or undercover assignments are exempt from this requirement.

C) Officers who are trained and authorized to use the Town of East Troy Police Department's Electronic Control Device (ECD) are exempt from this requirement provided they are equipped with a functional ECD while on-duty.

5.8.2
When not in use, the baton shall be worn on the belt, opposite of the firearm, and carried securely upon the officer's person, and should only be engaged and/or placed in the loaded position if the use of the baton appears necessary. The baton must be of a reputable manufacturer and have a proper secured method in carrying same.

5.8.3
The baton may be used only when the application of a lesser degree of force would be unreasonable or inadequate to control the subject.

5.8.4
The Wisconsin System of Defensive and Arrest Tactics instruct baton techniques that are targeted at an area below a line from armpit to armpit. The department accepts these guidelines and directs its officers to limit their actions accordingly.

5.9 SPECIALTY IMPACT MUNITIONS

This section reserved for future use

5.10 USE OF CHEMICAL AEROSOL RESTRAINT

5.10.1
The aerosol chemical restraint authorized by the department contains the chemical agent Oleoresin Capsicum. No other aerosol chemical restraint is authorized or allowed. (This excludes CN or CS based "mace" products from use or aerosol chemical restraints that blend OC with CN and/or CS.)

5.10.2
Officers will take into consideration the position of police officers before using aerosol chemical restraint.

5.10.3
Officers shall be trained in the use of aerosol chemical restraint. This shall be done from time to time as determined by the Chief of Police and will meet the reqirements set forth by the Department.

5.10.4
Chemical aerosol spray shall be placed in Control Alternatives of the Intervention Options.

5.10.5
After use of an aerosol chemical restraint on a subject, and after the subject is under control; the officer will assess the medical needs of the person. Removing the subject to an area of fresh air and flushing the affected area with soap and water should be sufficient immediate care. If additional care is needed, the officer should request paramedics and will promptly notify his/her supervisor.

5.10.6
Officers will wear the issued chemical aerosol restraint when on duty and assigned to a function whose primary responsibility is enforcement, or those directly responsible for supervising enforcement personnel.

A) Those officers who are operating in covert or undercover assignments are exempt from this requirement.

5.10.7
Use of aerosol chemical restraint will require a written incident report detailing the circumstances of its application.

5.11 USE OF FORCE DOCUMENTATION

5.11.1
Officers shall complete a written report of all force used as soon as possible after completing his/ her investigation. If any force greater that an Escort hold is used, photographs or video will be taken of the suspect (area where force was applied), documentation of medical treatment and or decontamination. Medical clearance if needed from ER provided to booking as well as case file. Any Tactic higher than a Compliance Hold, the Chief or Supervisor will be called and apprised as soon as possible following the arrest or incident.

WISCONSIN LAW ENFORCEMENT ACCREDITATION GROUP
Challenging Wisconsin's Law Enforcement Agencies to Pursue Excellence

U.S. Department of Justice's Standards for Certification on Safe Policing for Communities.

January 19, 2021

Dear Chief Don Jensen,

On behalf of the Wisconsin Law Enforcement Accreditation Group, this letter confirms we are certifying that the Town of East Troy Police Department meets certain eligibility requirements, set forth by the U.S. Department of Justice, for discretionary federal grants. The Town of East Troy Police Department is qualified to receive federal grants for three years from the date of this letter.

Pursuant to Section 2 of the Presidential Executive Order on Safe Policing for Safe Communities, dated June 16, 2020, Executive Order No. 13929 (the "Executive Order on Safe Policing"), the U.S. Department of Justice's discretionary grant funding is only available to state, local, and university or college law enforcement agencies that have obtained (or are in the process of seeking) credentials certifying that they meet certain standards on use of force. The Executive Order on Safe Policing empowers the U.S. Attorney General to designate independent credentialing bodies — including the Wisconsin Law Enforcement Accreditation Group — to certify that a law enforcement agency meets the conditions of eligibility for federal grants.

Following our review, we have determined that the Town of East Troy Police Department meets the mandatory conditions for certification. Accordingly, the Wisconsin Law Enforcement Accreditation Group will include your agency going forward within our database of certified law enforcement agencies. On or before January 31st of each year, we will provide the name of each certified law enforcement agency to the Director of the COPS Office.

If you would like to discuss further, please do not hesitate to contact me either by email at m.ferguson@glendalewi.gov or by phone at (414) 228-1753.

Respectfully,

Mark Ferguson

Chief Mark Ferguson, Glendale Police Department

Use of Force Policy Certification

Agency: Town of East Troy

Assessor: S. Kelsey Date: 1/12/21

The Assessor is to review all relevant policies to determine compliance with the below listed mandatory requirements.

The Agency's use-of-force policies adhere to all applicable federal, state, and local laws.

Context

Compliance can be achieved by incorporating the above language into policy. If language is not present the assessor can find compliance if there are no procedures in their policy that would be in violation of the law, such as having procedures in violation of Graham v Connor, procedures in conflict with the Wisconsin DAAT Manual, etc.

☒ In Compliance ☐ Not in Compliance

The Agency maintains use-of-force policies that prohibit the use of choke holds, except in those situations where the use of deadly force is allowed by law.

Context

Policy must include a prohibition of chokeholds for compliance. The agency may elect to allow the exception for chokeholds in those situations where the use of deadly for is justified by law, or to ban chokeholds completely. Agencies choosing to maintain the use of a Vascular Neck Restraint as a force option must clearly identify the differences between a Choke Hold and a Vascular Neck Restraint in their policy and address any procedures, restrictions, or limitations on the use of the Vascular Neck Restraint.

Choke Hold – A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.

Vascular Neck Restraint – A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

☒ In Compliance ☐ Not in Compliance

Findings of Non-Compliance

The Assessor is to document reasons for non-compliance in the space below.