

Fennimore Police Department		
Use of Force		
Issue Date: 11/04/2013	Last Updated: 09/22/2020	Total Pages: 12
Policy Source: Chief of Police		Special Instructions: Amends All Previous Versions

PURPOSE

The purpose of this document is to establish a policy for the use of force by sworn personnel to affect an arrest or otherwise lawfully control a person. Proper use of force decisions, based on reasonableness, ensure due process for citizens as well as provide protection for the officer and the Fennimore Police Department.

POLICY

It is the policy of the Fennimore Police Department that officers shall use only the amount of force reasonably necessary to achieve a lawful objective. The force used by an officer should only be the amount reasonably required to overcome the resistance or stop the threat being offered by an offender or the person the officer is trying to control.

This policy shall be maintained by the Chief of Police and be made available for public scrutiny. Wis. Stat. § 66.0511(2)

DISCUSSION

The privilege to use force is governed by legal and ethical limits. Law enforcement officers may use force legitimately when it is needed to achieve control in five specific situations:

- To achieve and maintain control of resistive subjects
- To detain persons reasonably suspected of criminal behavior
- To make lawful arrests
- To defend themselves and others
- To prevent escape

The safety of innocent bystanders should not be risked unless their safety has already been endangered and using force is the only possible means of protecting them. The use of deadly force is absolutely the last resort to accomplish lawful objectives.

Fundamental Use of Force Principals

- The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective.
- An officer may initially use the level and degree of force that is reasonably necessary to achieve control.
- At any time, if the level of force used is not effective to gain control, an officer may disengage or escalate to a higher level of force.
- Once an officer has gained control of a subject, the officer will reduce the level of force to that needed to maintain control.
- An officer will always maintain a position of advantage.

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.
Wis. Stat. § 939.22(4)
- **Conducted Electrical Weapon (CEW):** A weapon designed to disrupt a subject's central nervous system by means of deploying electrical energy sufficient to cause pain or uncontrolled muscle contractions and override an individual's voluntary motor response
- **Defense and Arrest Tactics (DAAT):** This is a system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved, and governed by the State of Wisconsin Law Enforcement Standards Board.
- **Deadly Force:** The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

- **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 any other serious bodily injury. Wis. Stat. § 939.22(14)
- **Greater Danger Exception:** An officer is allowed to engage a target with a firearm without target isolation if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person.
- **Intervention Options:** An element of Disturbance Resolution in DAAT containing five modes in which an officer can intervene with a subject.
- **Kinetic Energy Impact Projectiles:** Flexible or non-flexible projectiles, which are intended to impede a subject and prevent him or her from continuing resistive, assaultive or otherwise dangerous behavior with a minimal potential for causing death or great bodily harm, when compared to conventional projectiles.
- **Objective Reasonableness Standard:** The standard established by the U.S. Supreme Court in *Graham v. Connor* states 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. Three elements of the standard are:
 1. The severity of the alleged crime at issue.
 2. Whether the suspect poses an imminent threat to the safety of officers and/or others.
 3. Whether the suspect is actively resisting or attempting to evade arrest by flight.
- **Passive Resistance:** Non-compliant, but non-threatening behavior.
- **Preclusion:** Before an officer uses deadly force, an officer must reasonably believe all other options have been exhausted or would be ineffective.
- **Reasonably Believes:** Means an ordinary, prudent and reasonably intelligent police officer believes that a certain fact situation exists and such belief is reasonable under the circumstances known to the officer at the time the officer acted.
- **Target Specific Directed Fire:** Purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to an officer or other person.
- **Use of 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.

PROCEDURE

Oleoresin Capsicum Spray (OC)

- Officers shall carry FPD issued or authorized OC while on duty. If the officer has a special duty assignment that does not make carrying OC feasible, the officer may be exempt from carrying OC for the assignment.
- OC may be used by officers to overcome active resistance or the threat of active resistance.
- An officer shall not brandish, display or threaten the use of OC unless he or she can reasonably conclude its use may become justified.
- Department personnel who use OC against a person shall ensure the person is decontaminated as soon as practical after he or she is under control.
 - If possible, expose the person to fresh air and flush the exposed area with cold water or apply an FPD issued OC decontamination product.
 - Continue to monitor the exposed person for any unusual reactions to the exposure. If the exposed person has an unusual reaction or requests medical attention, transportation to a medical facility shall be arranged.
- If circumstances permit and it can be done without endangering department personnel, reasonable efforts to decontaminate animals should be made or the decontamination information conveyed to the animal's owner.

Conducted Electrical Weapon (CEW)

- Department approved CEWs may be used by officers to overcome active resistance or the threat of active resistance. The CEW can be deployed in drive stun mode or by deploying a dart cartridge. When deploying in either mode, officers should follow end-user Department CEW training.
- An officer shall not brandish, display or threaten the use of a CEW unless he or she can reasonably conclude its use may become justified.
- Department personnel who use a CEW against a person shall ensure the person is monitored for injury as soon as practical after the person is under control.
- If an adverse reaction to the CEW occurs, or if requested by the subject, transport to a medical facility shall be arranged.
- If the probes are imbedded in sensitive tissue areas, i.e. neck, face, groin, or the breast

of a female, officers shall arrange transport to a medical facility for removal. If the probes are imbedded in other non-sensitive tissue areas, an officer may remove them according to the trained procedures.

- After the probes have been removed, they shall be handled as a biohazard and packaged according to the trained procedure. If possible, probes and wires shall be collected and stored as evidence.

Intermediate Weapons (straight/expandable baton)

- Uniformed officers will have an FPD approved impact weapon available to them while on duty.
- The use of authorized batons is permitted to impede a subject, preventing him/her from continuing resistance, assaultive behavior or otherwise dangerous behavior.
- An officer shall not brandish, display or threaten the use of an impact weapon unless he or she can reasonably conclude its use may become justified.

Kinetic Energy Impact Projectiles

- Kinetic energy impact projectiles may be utilized by trained department personnel in circumstances where a level of force less than deadly force may be appropriate for resolving the situation and when the risk associated with closing on the subject to take control makes other alternatives unsafe. This option may be used when a person poses a significant threat of harm to self or others and unarmed tactics have been exhausted or would not be effective or safe given the circumstances.
- An officer shall not brandish, display or threaten the use of a kinetic energy impact weapon unless he or she can reasonably conclude its use may become justified.
- Delivery system will be a department approved 12-gauge shotgun loaded with department authorized and issued less lethal projectile rounds.
- When deploying the 12-gauge shotgun as a less lethal option, the officer shall confirm the loading of only kinetic energy impact projectiles.
 - When possible, efforts shall be made to have another officer observe that only less lethal kinetic energy impact projectiles are loaded into the shotgun.
 - Once the shotgun has been confirmed to be loaded only with less lethal ammunition, the weapon will be clearly identified to all officers on scene as a less lethal weapon.

- Kinetic energy impact projectiles may be delivered to the subject's body in accordance with the following guidelines:
 - Primary Target Areas: (Legs and buttocks) The arms may also be targeted as a primary target under some circumstances. The officer must consider the proximity of the targeted portion of the arm to vital areas of the body. Primary target areas shall be considered when incapacitation is necessary. Multiple impacts to the primary target areas should be considered before progressing to the secondary target area.
 - Secondary Target Area: (Lower Abdomen) The secondary target area will be considered when incapacitation is critical due to the imminent threat posed by the subject, but deadly force has not yet become necessary.
 - Head/Neck/Chest area – Intentional impact to these areas will be avoided unless the use of deadly force is justified.
- Subjects who are struck by a kinetic energy impact projectile shall be transported to a medical facility for examination.

Deadly Force

- The purpose of Deadly Force is to stop a threat.
- Deadly Force may be used by officers when a subject's behavior has caused or imminently threatens to cause death or great bodily harm to the officer or another person or persons. The following criteria must be met for a threat to be considered imminent:
 - Intent – the subject must indicate his or her intent to cause great bodily harm or death to the officer or someone else.
 - Weapon – the subject must have a conventional or unconventional weapon capable of inflicting great bodily harm or death.
 - Delivery System – the subject must have a means of using the weapon to inflict harm.
- Deadly Force may be used as the final alternative, to prevent the escape of a fleeing felon when the officer has probable cause to believe the suspect poses a significant threat of death or serious bodily harm to the officer or others if not immediately apprehended, Tennessee v Garner 471 U.S. 1.

- Deadly Force may be used as the last resort, to euthanize a dangerous animal or one that is so seriously injured that humanity dictates its removal from suffering, but only after careful consideration is given to the public's safety and whether other dispositions may be feasible.
- The concept of Preclusion must be met before deadly force can be used.
- Before using deadly force and when feasible, police officers shall identify themselves and issue a verbal command.
- Deadly force cannot be used to prevent suicide or protect property.

Use of Firearms

- An officer shall not brandish, display or threaten the use of a firearm unless he or she can reasonably conclude its use may become justified.
- Three target requirements must be met before an officer may discharge a firearm:
 - Target Acquisition – a target must be acquired to shoot at.
 - Target Identification – a target must be identified as the source of the imminent threat.
 - Target Isolation – a target may not be engaged if discharging the firearm endangers innocent people unless the Greater Danger Exception applies.
- Target Specific Directed Fire will be authorized when there is a need to stop a deadly force 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.

First Aid and Medical Assistance

Whenever a person is injured as a result of force applied by an officer, officers on the scene will immediately provide first aid and request medical assistance, if necessary, for the injured person as soon as the scene is secure.

De-escalation

There is no expectation for an officer to use de-escalation techniques if doing so would put the officer or another person in unnecessary danger of bodily harm. When safe and feasible, a Fennimore Police Officer should consider and practice the following techniques to prevent or minimize the use of force deployed during an incident:

- Self-Awareness
- Subject Comprehension
- Time and Communication
- Tactics
- Seriousness of Incident

Officer Intervention

All law enforcement officers have a duty to intervene when they become aware a person is the subject of unlawful use of force by another law enforcement officer.

If a Fennimore Police Officer becomes aware of a potentially unlawful use of force by another law enforcement officer, the officer will intervene immediately by taking the following steps:

- Ask for clarification as to why the officer is engaging in the level of force being used.
- Instruct the offending officer to deescalate to an appropriate level of force.
- Physically intervene to stop the unlawful use of force.
- Report the unlawful behavior to an FPD supervisor as soon as the incident has been de-escalated and situation secured.

The Fennimore Police Department will fully support an officer who intervenes in the above manner based on training and facts known to the officer at the time of the incident.

Reports upon Use of Force

If an officer uses an Intervention Option considered by DAAT or the department to be a Control Alternative, Protective Alternative or Deadly Force technique, the officer shall complete an incident report documenting the incident as soon as possible. Escort Holds do not require an incident report.

An officer responsible for the accidental discharge of a firearm or CEW will complete an incident report documenting the incident. This includes the accidental discharge of a department owned firearm while off duty.

If an officer points a firearm at another person while acting as a law enforcement officer, they will complete an incident report documenting the incident.

Officers required to complete a use of force incident report will forward the report to a supervisor when complete. The supervisor will review the report to make sure the use of force is properly documented and decide if the matter requires review by the Use of Force Review Team.

A supervisor will complete a Use-of Force and Arrest-Related Death (UFAD) report on Tracs for the following circumstances:

- Death – Anytime an officer uses force that results in the death of a person or anytime a person dies while arrested, detained or in the course of being arrested.
- Great Bodily Harm – Anytime an officer uses force that results in the great bodily harm of a person.
- Firearm Discharge – Anytime an officer discharges a firearm at or in the direction of a person.

Immediate Supervisor Notification

- A supervisor will be notified immediately if an officer uses deadly force or attempts to use deadly force against another person.
- A supervisor will be notified immediately of any firearm discharge if the discharge endangered another person or caused property damage.

Use of Force Review Team

The purpose of the Use of Force Review Team is to provide an impartial and thorough review as to whether an officer's use of force was justified or unjustified under the following circumstances:

- The intentional or accidental use of deadly force, whether injury or death occurs
- All use of force incidents resulting in great bodily harm or death to a person
- Any use of force incident if review is requested by the Chief of Police

The Use of Force Review Team shall consist of the following personnel:

- The Fennimore Police Department Chief of Police or his/her designee.
- A ranking member of another law enforcement department or another person certified by the WI LESB as an instructor in the tactic to be reviewed.
- The Mayor of Fennimore or a member of the City Council.
- A Fennimore Police Officer

Use of Force Review Team Investigation

All use of force incidents requiring review team action will be thoroughly investigated by the Chief of Police or his/her designee and all available information regarding the incident will be turned over to the review team. The Chief of Police may delay the convening of the review team until any criminal investigation associated with the matter has been completed and charging decisions made.

When making a decision as to the justification of an officer's use of force, the review team will only consider facts known or reasonably believed by the officer at the time of the incident. The Use of Force Review Team report shall include a finding the officer's use of force was:

- Justified – The officer's use of force was consistent with department training, policy, procedure and performance assessment categories.
- Not Justified – The officer's use of force was not consistent with department training, policy, procedure or performance assessment categories.

The officer involved will receive a copy of the review teams report. The officer involved may provide a rebuttal document to be attached to the review team's report if desired

The Chief of Police will decide the appropriate action to take after the review board completes their report. This action could include discipline, training, counselling or other courses of action.

Any officer who uses force which results in death or great bodily harm to another person may be assigned to administrative duties or placed on administrative leave at the discretion of the Chief of Police pending the completion of the review team's investigation and the final action of the department.

Training

A Firearms Instructor shall conduct training to all officers, at least annually, regarding the appropriate use of deadly force. A DAAT Instructor shall conduct training to all officers, at least annually, regarding the appropriate use of non-deadly force by officers pursuant to the terms of this policy.

DISCLAIMER

This policy is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for departmental administrative sanctions and is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/22/2020

Christopher J. French
Chief of Police

Date

Appendix (FORCE Policy)
INTERVENTION OPTIONS

Presence - the purpose of presence is to present a visible display of authority.

Open Stance - for non-threatening situations

Ready Stance - ready to respond quickly to unexpected actions by subject

Defensive Stance - ready to defend yourself

Dialogue - the purpose of dialogue is to verbally persuade.

Search Talk - routine questioning

Persuasion - requests for compliance

Light Control Talk - clear instructions

Heavy Control Talk - compliance or consequence

Control Alternatives - the purpose of control alternatives are to overcome passive resistance, active resistance, or their threats.

Escort Holds (blanket the arm, escort position) – to safely initiate physical contact

Compliance Holds (come along, pressure points) – to overcome passive resistance

Control Devices (OC spray and CEW) – to overcome active resistance or its threat

Passive Countermeasures (take down/decentralization techniques) - to decentralize a subject

Protective Alternatives – the purpose of protective alternatives is to overcome continued resistance, assaultive behavior or their threats.

Active Countermeasures (vertical stuns, focused strikes) - to create temporary dysfunction of an actively resistive or assaultive subject

Incapacitating Techniques (diffused strike) - to cause the immediate, temporary cessation of violent behavior

Intermediate Weapon (baton strikes, kinetic energy impact projectiles) – to impede a subject, preventing him/her from continuing resistive, assaultive or otherwise dangerous behavior.

Deadly Force (firearm, any other deadly force) – the purpose of deadly force is to stop the imminent threat of death or great bodily harm to self or others. Wis. Stat. § 939.48(1) and (4)