

FOX POINT POLICE DEPARTMENT GENERAL ORDER # 1.2		TITLE: Use of Force	
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PURPOSE

To provide officers of this department with guidelines for the appropriate use of force.

POLICY

It is the policy of the 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 and the officer must use only that force which a prudent officer would use under the same or similar circumstances.

DEFINITIONS

The following definitions apply for the purpose expressed in this policy:

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.

Deadly Force: Deadly force is defined as the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

Behavior which justifies your use of deadly force is that which has caused or imminently threatens to cause death or great bodily harm to you or to another person or persons.

Dangerous Weapon: Any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon as defined in § 941.295(4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

De-escalation Tactics: non-physical skills used to prevent a potentially dangerous situation from escalating into a physical confrontation or injury.

Excited Delirium: A state of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, hostility, exceptional strength and endurance without apparent fatigue.⁴

⁴ Morrison and Sadler, 2001

Excited Delirium presents as a cluster of physiological and behavioral symptoms, which may include:

- Bizarre and/or violent behavior
- Shedding of clothes or nudity
- Confusion or disorientation
- Hallucinations
- Incoherent/nonsensical speech
- Attraction to glass (smashing glass common)
- Hyperactivity
- Drooling/Foaming at the mouth
- Acute paranoia
- Fear and panic
- Aggression
- Exceptional physical strength
- Profuse sweating
- Endurance without apparent fatigue
- Hyperthermia
- Ability to effectively resist multiple officers

Great Bodily Harm: 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 injury.

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);
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.

Non-deadly Force: The use of force, which does not have a high probability of resulting in death. This includes any physical effort used to control or restrain a person, or to overcome a person’s physical resistance.

Electronic Control Devices: Instrument in which a small amount of electricity is used to affect the sensory and/or motor nervous system of the body.

DEFENSIVE AND ARREST TACTICS SYSTEM:

The State of Wisconsin has developed the Defensive and Arrest Tactics (DAAT) system which is a system of verbalization skills coupled with physical alternatives. All officers will be trained in, and receive updates on, the DAAT system, which will serve as a guide to officers using force against another person. The Wisconsin DAAT system does not provide instruction to officers on the use of any physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation. Except in those situations where the use of deadly force is justified, officers are prohibited from using such techniques.

The department understands that a use of force incident 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.

INFORMATION

The Fox Point Police Department recognizes the necessity of a policy by which it will provide its police officers with guidelines on the use of deadly and non-deadly force. The value of human life is immeasurable in our society and police officers have been delegated the awesome responsibility to protect life, property, and to enforce laws. These responsibilities include the officers having the ability and responsibility for protecting his/her own life and that of another. The objective of this use of force policy is to provide our officers with a clear understanding of the guidelines under which the use of force is applied in the course of their duties.

The United States Supreme Court decided in Graham v. Connor that the use of force must be “*Objectively Reasonable*” in the given situation. The factors which, in general, enter into a determination as to whether force used was objectively reasonable include;

1. The severity of the alleged crime at issue;
2. Whether the suspect poses an imminent threat to the safety of the officer or others;
3. Whether the suspect is actively resisting or attempting to evade arrest by flight.

In making a determination as to the reasonableness of force, courts recognize that law enforcement officers have to make split-second decisions and reactions. The reasonableness of the force used must be judged in the light of the circumstances as they appeared to the officer at the time, and which an ordinary prudent and intelligent officer, in the same situation, would have deemed reasonable under the circumstances.

It is not the intent of this policy to direct officers that they must attempt each of the options in the Disturbance Resolution Model before escalating to the next step. Proper assessment of each situation will dictate at which level an officer will start and stop at.

RESPONSIBILITIES

It is the responsibility of all officers to protect human life and use reasonable force to control the situation. Officers involved in a use of force incident should constantly be evaluating the totality of the circumstances and the amount of force being used. Officers on the scene should take reasonable action to stop or prevent any unreasonable use of force and render aid to subjects who may have been injured during the incident.

Any officer present and observing another officer 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. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

Nothing in this policy should be interpreted to mean that an officer is required to engage in prolonged hand-to-hand combat before resorting to a level of force that will more quickly, reasonably and safely bring a resistive person under physical custody. Likewise, officers should not quickly engage in physical confrontations with subjects who do not pose an immediate threat to control. Officers should evaluate the totality of the circumstances and consider using skills and tactics that minimize the likelihood that force will become necessary, including de-escalation tactics, to gain control and compliance.

DEADLY FORCE

The use of deadly force is intended as a last resort to control an incident and officers must be able to articulate the totality of the circumstances at the time the decision is made. An officer may use deadly force:

1. When the officer reasonably believes that he/she faces an imminent threat of death or great bodily harm.⁵
2. When the officer reasonably believes that another person is facing an imminent threat of death or great bodily harm.⁶
3. To prevent the escape of a suspect in any situation where the officer has probable cause to believe that the suspect poses a significant threat of death or great bodily harm to the officer or another person.⁷

Where practicable prior to discharge of the firearm, the officer should identify himself/herself as a law enforcement officer and state their intent to shoot.

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. Warning shots are not permitted and shall not be used.
3. 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.
4. Officers are not permitted to discharge a firearm from within a moving vehicle. The use of a firearm against a moving vehicle is generally discouraged and should only be used when other alternatives are not available.
5. Officers are permitted, but not required to carry a firearm when off-duty. An officer who elects not to carry a firearm while off-duty shall not be subjected to disciplinary action if an occasion should arise in which he/she could have taken police action if he/she had been armed.
6. An off-duty officer who wishes to carry a firearm other than his/her issued duty weapon firearm, shall only be permitted to do so upon meeting specific department standards, guidelines and inspections as outlined in the training policy.
7. Officers will respect citizen's 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.
8. Police officers are generally prohibited from discharging their firearm when it appears *likely* that an innocent person will be injured. A police officer would not be justified in using deadly force when it is possible that innocent people may be seriously injured or killed, except that, when an officer would increase the danger by not reacting with deadly force or if not reacting would cause death or great bodily harm to the officer. (Greater Danger exception to target isolation).
9. While on-duty and off-duty, police officers shall carry only weapons and ammunition issued and/or authorized by the department. The Chief of Police reserves the right to revoke the privilege of carrying an off-duty weapon at their discretion. This section does not apply to an officer's personal weapon that is being used or carried for recreational purposes.
10. Under no circumstances shall an off-duty weapon be carried if the officer anticipates that he/she will be consuming any intoxicants or is utilizing prescription medications which may impact their judgement.
11. Authorized weapons are those with which the police officer has qualified and received departmental training in proper and safe usage and approved by the department. Standards for approved weapons are established by the Chief of Police and the Range Officer.

⁵ Wisconsin §939.48(1)

⁶ Wisconsin §939.48(1)

⁷ Tennessee v. Garner, 471 U.S. 1 (1985)

12. Probationary police officers who have completed their field training program and have been recommended for solo patrol may carry weapons while off duty, unless the officer is specifically directed not to do so by the Chief of Police. This does not prohibit the officer from carrying a personal weapon that is being used for recreational purposes.
13. Officers who are authorized to carry off-duty weapons shall qualify with the weapon prior to carrying the weapon off-duty. After the initial qualification, officers are required to qualify on a yearly basis.
14. Officers wishing to carry an off-duty firearm, other than the duty weapon issued by the department, shall have the firearm approved by the Chief of Police and the Range Training Officer.

Use of Vehicles:

Due to the high probability of death to a fleeing driver and his/her passenger(s), force to stop techniques, like firearms, are applications of deadly force and are governed by this directive. Force to stop techniques include full roadblocks, intentional vehicular contact at high speeds and moving roadblocks at high speeds. Force to stop techniques will only be used when deadly force is justified.

Destruction of animals:

Officers may use deadly force to destroy an animal if:

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

NON-DEADLY FORCE

Police officers are authorized to use non-deadly force techniques, within the Intervention Options (i.e., pain compliance, active countermeasures, OC, ECD, baton) for a resolution of the situation as follows:

1. To protect the police officer or another from what is reasonably believed to be a threat or danger of physical harm.
2. To restrain or subdue a resistive individual.
3. To bring an unlawful situation safely and effectively under control.
4. To affect a lawful arrest.

A police officer is not permitted to use a non-deadly force weapon unless qualified in its proficient use as determined by training programs and procedures.

USE OF LESS LETHAL WEAPONS

Electronic Control Device (ECD): Patrol Officers who are trained in the use of the ECD are authorized to carry and use it. Officers may consider using an ECD when they are faced with either active resistance, or the threat of active resistance. Generally, the use of the ECD on a fleeing subject is a capture technique and not active resistance. The ECD will be used in accordance with department procedures and training.

Oleoresin Capsicum (O.C.): Oleoresin Capsicum is an aerosol irritant that is used when officers face active resistance or the threat of active resistance. Officers who are trained in the DAAT system are authorized to carry O.C.

Police Baton (collapsible baton / straight 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.

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.

Nylon Control Strap and Leg Irons: If officers handcuff a person who is still combative and is kicking, a nylon control strap or leg irons may be applied to prevent the person from kicking any officers. The nylon control strap is intended to be used for securing the legs of a prisoner in the back of a squad car, however may be used in other situations as appropriate. Application of the leg irons or control strap are to be done in accordance with department training.

RENDERING AID

Officers shall render aid to their level of training after they have used force against another person.

Focused Strikes: When an officer uses a focused strike against another person, the officer will attempt to determine if the person is injured as soon as safely possible. If the person is injured, or requests medical assistance, the officer will summon an ambulance.

Oleoresin Capsicum (O.C.): Whenever an officer uses O.C. against another person, the officer will provide medical assistance and will summon an ambulance to medically evaluate the person. If available, the officer may provide the person with water to begin flushing the O.C. from the person's eyes.

Electronic Control Device: Whenever an Electronic Control Device is used against a person, the officer will provide medical assistance and will summon an ambulance to medically evaluate the person. Officers may remove probes that are imbedded in non-sensitive areas. Officers will not remove probes that are imbedded in the person's face, neck, and groin. Male officers will not remove probes from a female's breasts. If a female officer is available, she may remove probes from another female's breasts. Officers will remove ECD probes in accordance with their training.

Lethal Force: Whenever an officer uses lethal force against another person, the officer, if able, will provide medical assistance and will summon an ambulance to medically assist the person.

In all instances where medical aid is provided to a person after any level of force has been used, an officer will stay with the person. The officer will maintain control of the person at all times until relieved of this responsibility. After any medical aid has been rendered to a person, officers will continue to observe the person for any obvious changes that may indicate the person is in medical distress.

MEDICALLY SIGNIFICANT BEHAVIOR / EXCITED DELIRIUM

When information suggests a person may be suffering from excited delirium, a sufficient number of officers to physically control the subject should respond together with North Shore Fire Department paramedics, all of whom should be alert to the possibility that the call may involve excited delirium. A supervisor will respond to the call to coordinate the police response.

Officers should minimize the use of unnecessary lights and siren.

Officer Responsibilities

Responding officers shall assess the situation to determine if the person is suffering from excited delirium. The determination must necessarily be based on a rapid assessment of the overall scenario and behavior of the subject.

If excited delirium is suspected, (err on the side of caution if unsure) and treat this as a medical emergency. Immediately request EMS and the shift supervisor if they have not been initially dispatched.

If the excited delirium subject is armed and/or combative or otherwise poses a threat that requires immediate intervention, officers shall employ reasonable and necessary force to protect themselves and others and take the person into custody.

If the excited delirium subject is unarmed and presents no immediate threat to self or others, officers shall, if practical, contain the subject while maintaining a safe distance and remove others who might be harmed.

Officers shall formulate a custody plan prior to making physical contact with the subject, if possible. There can be no medical intervention without custody. The object of the plan is to de-escalate the situation, calm the individual and gain control of the person so that he may be medically cared for. If practical, attempt to gain the excited delirium subject's voluntary compliance with these tactics:

- One officer should attempt to engage the subject in conversation. Remain calm, speak in a conversational, non-confrontational manner, and reassure the subject that you are trying to help.
- Attempt to have the individual sit down, which may have a calming effect. Also, refrain from making constant eye contact, which may be interpreted as threatening.
- Because of the subject's mental state, statements and questions may need to be repeated several times. The subject may be extremely fearful and confused, so be patient and reassuring, as it may take some time for him to calm down.

Control / Apprehension

Once sufficient officers are present and if the determination is made that physical force is necessary, the custody plan must be executed quickly, and with overwhelming force, to minimize the intensity and duration of any resistance and to avoid a prolonged struggle, which may increase the risk of sudden death⁸.

If possible, officers should ensure medical personnel are staged nearby and have been briefed on the plan prior to executing the custody plan.

⁸ Special Panel Review of Excited Delirium; Less-Lethal Devices Technology Working Group; NIJ Weapons and Protective Systems Technologies Center. December 2011

Officers shall take into consideration all available force options and control techniques, with the realization that excited delirium subjects often demonstrate unusual strength, resistance to pain, as well as instinctive resistance to the use of force.

- Primary consideration should be given to proper application of the ECD, which has proven effective as it temporarily causes neuromuscular incapacitation, providing officers with a window of opportunity to safely control and restrain the subject. Officers should utilize the ECD no longer than necessary to overcome resistance.
- Immediately upon ECD application, a multi-officer take-down team, using a coordinated group tactic, should swarm the subject, gain physical control and handcuff them while they are incapacitated by the ECD.

Place the individual in a recovery position, or seated position, and continually monitor and assess vital signs. Be especially vigilant if they suddenly stop resisting and become tranquil. Officers should apply medical care as appropriate and within the scope of their training.

Do not place the subject in a prone position or restrain them in a position which could lead to positional asphyxia.

Emergency Medical Care

Once the subject is in custody and the scene is secured, immediately convey EMS personnel to the subject.

Until primary responsibility for the care of the subject is transferred to EMS personnel, officers must keep the restrained subject under constant observation.

Officers shall coordinate with on-scene EMS personnel and transfer custody of the subject to them, assisting in any way to avoid delay in the transportation of the individual to a medical facility. An officer shall be assigned to accompany EMS personnel during the ambulance transport.

Documentation and Review

Officers should utilize mobile video recording equipment to aid in documenting the signs / symptoms displayed by the subject, officer interventions and outcomes from the event.

Officers will document the incident according to department directives on incident reporting and use of force, and will include a use of force report if applicable.

If the subject is injured or dies as a result of the officer's action, the incident will be investigated in accordance with department directives.

Disclaimer

The Use of Force Policy developed in part by the Fox Point Police Department is for its specific use and regulation. It does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of the Use of Force Policy can only be the basis of a complaint by this department, and then only in a non-judicial administrative setting.