



GENERAL ORDER

TWO RIVERS POLICE DEPARTMENT

SUBJECT: **DEADLY FORCE**

SCOPE: All Sworn Personnel
DISTRIBUTION: General Orders Manual

REFERENCE: WI State Statutes: 939.45, 939.48, and
Chapter 941; DAAT Incident Response
and Disturbance Resolution Model

NUMBER: 5.02
ISSUED: 1/26/2021
EFFECTIVE: 1/26/2021
☐ RESCINDS
☐ AMENDS
WILEAG 5TH EDITION
STANDARDS: 5.1.2, 5.3.1, 5.3.3

Two Rivers City Manager provided a copy:

Date: 02-17-2021

This General Order cancels and supersedes
any and all written directives relative to the
subject matter contained herein.

By Order of:

Brian W. Kohlmeier
Chief of Police

INDEX AS: Deadly Force
Firearms
Reports-Deadly Force
Review-Deadly Force
Warning Shots

PURPOSE: The purpose of this General Order is to provide guidelines for the use of Deadly Force when officers of the Two Rivers Police Department are involved in a shooting or other critical incident where death or serious injury has resulted from an officer's actions. This General Order is intended to protect the officer from possible criminal or civil charges stemming from misinterpretation of the law covering the use of Deadly Force.

This General Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS

III. PROCEDURE

I. POLICY

- A. It is the policy of the Two Rivers Police Department that Deadly Force SHALL only be used as a last resort. This policy requires only that an officer use reasonable alternatives, if such alternatives are available.

For example, an officer need not hesitate to employ deadly force against an individual who is shooting at him/her. He/she should, of course, use his/her weapon in such a manner as not to endanger the lives of innocent bystanders or fellow officers, but he/she is not required to seek alternatives to deadly force if he/she is under an immediate attack on his/her or other lives.

II. DEFINITIONS

- A. **CHOKE HOLDS:** A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.
- B. **DEADLY FORCE:** Deadly Force is the intentional use of a firearm or other instrument, the use of which creates a high probability of death or great bodily harm.
- C. **DEADLY FORCE JUSTIFICATION:** Any behavior that an officer reasonably believes has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.
- D. **DE-ESCALATION:** Taking action or communicating verbally or non-verbally during a potential force situation in an attempt to stabilize the situation and reduce the threat without the use of force or with a reduction in the force necessary.
- E. **IMMINENT THREAT CRITERIA:** Intent, weapon, delivery system.
- F. **VASCULAR NECK RESTRAINT:** A technique that can be used to incapacitate individuals by restricting the flow of blood to their brain.

III. PROCEDURE

- A. Use of Deadly Force- Generally.

There is recognition that the use of Deadly Force is accompanied by severe emotional and psychological strain for the officer involved. Please refer to General Order 6.15: Officer Involved Critical Incident for further information.

When determining where deadly force may be used, it is important officers

have a clear understanding of deadly force justification.

1. Recognizing the legal and moral obligation to use force judiciously and wisely, it is the policy of this Department that Deadly Force should never be resorted to until every other reasonable means of apprehension or defense have been exhausted or would clearly be ineffective.
2. Only the minimum amount of force reasonably required to affect an arrest or control a person should be used by members of the Department.

The level of force used by an officer should only be that which is required to overcome the level of resistance by an offender.

3. This directive is consistent both with Wisconsin law and with the 1985 US Supreme Court decision in *Tennessee v. Garner*, 53 U.S.L.W. 4410.

B. Where Deadly Force May Be Used. Deadly Force may be used under the following circumstances:

1. As a last resort in the defense of oneself, when there is reasonable cause to believe that one is in imminent danger of death or great bodily harm.
2. As a last resort in the defense of another person or persons whom the officer has reasonable cause to believe is being unlawfully attacked and is in imminent danger of death or great bodily harm.
3. Deadly Force may be used, after all other reasonable means of capture are exhausted, to effect the arrest or prevent the escape of a suspect whom the officer has reasonable cause to believe has committed or attempted to commit a felony *involving the use or threatened use of Deadly Force* **AND** the officer reasonably believes the suspect cannot be apprehended later without the use of Deadly Force; **AND** that the lives of innocent persons may be endangered if the officer does not use Deadly Force.
 - a) The above section allows the officer to use Deadly Force when the suspect is engaged in such felonies involving violence (armed robbery, murder, etc.). Non-violent felonies such as embezzlement, burglary or misdemeanors do not in themselves justify the use of Deadly Force.
 - b) When a misdemeanant intentionally flees arrest or escapes from custody, pursuant to a legal arrest for a misdemeanor, or after having been lawfully charged with or convicted of a misdemeanor, such act of fleeing does not constitute a felony permitting the officer to resort to the use of Deadly Force if other reasonable means have failed to prevent the escape.
 - c) The value of human life is considered to supersede the importance of immediate apprehension.

5. Except when exigent circumstances exist where an arrest may be facilitated, an officer should not threaten to use Deadly Force unless he/she reasonably believes that he/she would be justified under this policy to, in fact, use such force.
6. This section is intended to allow the officer to have his/her weapon ready in such circumstances as answering an alarm, conducting a building search or confronting a suspect whom there is reasonable grounds to believe may be armed, or when the officer reasonably believes circumstances indicate a substantial risk of death or great bodily harm to his/her person or another.
7. An officer may present his/her firearm when he/she has reasonable grounds to suspect that the use of Deadly Force may be necessary. The officer need not be under attack, but only be reasonably apprehensive that the situation may lead to circumstances outlined above. Firearms should not be drawn under any other circumstances.
8. There is no legal distinction in the use of deadly force against juveniles as compared to adults.
9. To protect oneself or another from an animal which an Officer reasonably believes may cause great bodily harm if not immediately controlled.
10. As a last resort, to euthanize a dangerous or seriously diseased animal or one that is so seriously injured that humanity dictates its removal from suffering, but only after consideration is given to the public's safety and whether the action is sheltered from the public's view where other dispositions may be feasible.
11. Officers shall not fire into buildings or through doors, windows, or other forms of concealment or cover unless the Officer is certain of the person's presence that is to be lawfully fired upon.
12. Officers shall not discharge a firearm from or at a moving vehicle unless the officer reasonably believes that the occupant(s) of the vehicle are using or are about to use deadly physical force against the officer or another person. The Use of Deadly Force should not unreasonably endanger the lives of others.
13. Officers shall not fire warning shots.
14. Before using Deadly Force, officers should, if reasonably possible, identify themselves, order the suspect to desist from the unlawful activity, and threaten to use Deadly Force if the lawful order is not obeyed.
15. Officers shall not use Deadly Force when its use unreasonably risks the lives of innocent bystanders.
16. The intentional punching, striking, or grabbing the throat (trachea) or blocking or restricting the carotid neck arteries creates a substantial likelihood of death

or great bodily harm and, therefore, should only be used in accordance with this policy on the use of Deadly Force. **The use of choke holds or vascular neck restraint techniques is prohibited** except in situations where Deadly Force would be justified. Only authorized Wisconsin Law Enforcement Standards techniques are permitted and dynamic applications of those trained techniques based on the totality of the circumstances.

17. The Use of Deadly Force with vehicles may only be employed by an officer if, the Use of Deadly Force would be authorized:

- a) The use of blockades or roadblocks constructed by placing obstacles (including but not limited to police vehicles) of such density and mass upon a roadway that any vehicle colliding with them would be so severely decelerated that its occupants would likely suffer death or serious injury.
- b) Ramming of a suspect/evader vehicle by a police vehicle.
- c) Forcing a suspect/evader off the roadway or highway and/or into another object by the use of a police vehicle.
- d) Also refer to General Order 6.02: Vehicle Pursuits.

C. Self-Defense

1. Before Deadly Force is authorized in self-defense, several qualifications should be observed:

- a) Retaliation or revenge is not an excuse for the use of Deadly Force in self-defense.
- b) The perception of danger or harm is imminent.
- c) There is no justification to use Deadly Force after the danger has passed.
- d) The force threatened is unlawful.
- e) The officer believes that the use of Deadly Force was the only means available to avert death or great bodily harm.
- f) The degree of force used by the officer was believed to be necessary under the circumstances.
- g) The officer's belief in each of the foregoing aspects was reasonable even if mistaken.

2. If oleoresin capsicum (OC pepper spray) or an ECD (Taser) is employed (or threatened) against an officer, an officer's response to being threatened or sprayed with OC or struck by an ECD may include Deadly Force as the officer

will likely be completely vulnerable if successfully attacked.

a) In deciding whether use of force is justified when threatened with OC or an ECD, an officer should consider the following factors:

(1) Distance- Is the officer close enough to be sufficiently exposed to the OC or struck by the ECD to incapacitate him/her?

(2) Environmental Conditions at the Scene- Including, but not limited to:

(a) The number of suspects present

(b) The number of officers present.

(c) Location of the incident: Known high crime and/or violent area.

(d) Time of day/lighting conditions: Can the officer clearly see the offender and his/her movements?

(e) Type of crowd- Attitude toward police presence

(f) Weather conditions.

(3) Subject and Officer Factors- The subject's history, if known: Prone to violence? (Known gang member, etc.). Size, age, and skill level of all participants involved.

(4) Special knowledge or special circumstances- Inquiry or exhaustion, proximity of subject to officer's firearm, ground fighting, disability, etc.

D. Reporting on Use of Deadly Force.

1. In all circumstances when a firearm is discharged by an officer while on duty, except in the case of dispatching an injured animal, the officer in question shall report such facts promptly to the Chief of Police, and/or his/her designee.
2. Officers involved in the use of Deadly Force shall not discuss the matter with anyone, including other officers. The officers will be debriefed by the Chief or his/ her designee.

E. Investigation of Deadly Force

1. The Two Rivers Police Department shall follow the Officer Involved Shooting investigation standards set forth by the WI Department of Justice.
2. The supervisor shall forward a complete report of the incident and his/her

investigation to the Chief.

3. Officers are only required to notify their supervisor and document the dispatching of an injured animal in a report.
4. The department armorer shall be notified anytime a weapon is discharged.
5. Also refer to General Order 5.01: Use of Force and 6.15: Officer Involved Critical Incident

F. Personnel mandated to receive and understand this General Order.

1. Prior to being authorized to carry a firearm, all officers shall receive a copy of this General Order and demonstrate their understanding of the procedures within the General Order.
2. All officers shall also be required to complete the Wisconsin Law Enforcement Training and Standards Board qualification guidelines.