

<b>Sample Criminal Justice Agency</b>	
<b>Unit: Use of Force</b>	<b>Directive Number:</b> K -
<b>Title: General Use-of-Force Considerations</b>	<b>Effective Date:</b>
<b>Index:</b>	<b>Revision Date:</b>
<b>Issued by:</b> Department Executive	<b>Issued On:</b>
<b>State Statutory References:</b>	
<b>CALEA Standard References:</b> 1.3.1, 1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8, 1.3.9, 1.3.10, 1.3.11, 1.3.12, 1.3.13, 41.2.2, 61.3.4	
<b>State/Other Accreditation References:</b>	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

**Supremacy Clause** - This "General Use-of-Force Consideration Section" shall govern and direct the application of the Department's use-of-force policies, procedures, regulations, etc. If a disagreement arises, this section shall supersede all others and will be used exclusively to clarify the area in question.

**Enforcement Clause** - An officer who violates these policies may subject him/herself to Department sanctions including, but not limited to disciplinary actions, termination, etc.

**Primary Objective** - To assist in establishing and clarifying this Department's general use-of-force guidelines.

1. **Use-of-Force, General Guidelines:**

a. **"Authorized Force"** - The term "Authorized Force" shall have a particular meaning for an officer of this Department. "Authorized Force" means that an officer's use of force shall be considered acceptable if it meets ALL of the following criteria:

1) **Primary Requirements:**

a) **Have a Lawful Foundation** - The officer must have a lawful basis of authority.

b) **Have a Lawful Objective** - e.g. objectives that are normally considered to be legally acceptable include, but are not limited to: temporary detention, frisk, arrest, self-defense, defense of third parties, maintaining incarceration, emergency psychiatric detention, etc.

c) **Be U.S. Constitutionally Permitted** - An officer's use of force shall be within the permitted parameters of the United States Constitution.

(1) 4th/14th Amendment standard - "objective reasonableness" standard

- (2) 5th/14th Amendment standard - force that does not "shock the conscience"
- (3) 8th/14th Amendment standard - force that does not constitute "cruel and unusual punishment"
- d) **Be State Constitutionally Permitted** - An officer's use of force shall be within the permitted parameters of the State Constitution and applicable state statutes.<sup>1</sup>
- e) **Not Be Lethal Force** (Mortal or fatal force) - An officer is not permitted to employ "lethal force." An officer is permitted to use "deadly force" under certain circumstances.
  - (1) Note - A counter-sniper who is employing "deadly force" to a person via a sniper rifle would still be using the force to stop the person's behavior, however it is obvious that the probability of causing death is very high and therefore may be construed by some as appropriate "lethal force."
- f) **More Stringent Standard** - If the Department wishes, or if state law requires, to make the Department's use-of-force standard more stringent than the federal standard, then the Department may wish to add one of the following standards to the definition of "Authorized Force."<sup>2</sup>
  - (1) **Deadly-Force Defense Standard** - An officer may intentionally use deadly force against an individual only if the officer objectively reasonably believes under the totality of the circumstances that such force is necessary to prevent the individual from inflicting imminent death or great bodily harm to himself or others.
  - (2) **CALEA** - A written directive states that an officer may use deadly force (including deadly force on fleeing felons) only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of

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1. The Wisconsin State Constitutional parameters on an officer's use of force on a seized, free person is interpreted identically to the federal Constitution (the Fourth Amendment).
  2. Also note the Model Penal Code - **Model Penal Code Section 3.07. Use of Force in Law Enforcement.**
    - (1) Use of Force Justifiable to Effect an Arrest. Subject to the provisions of this Section and of Section 3.09, the use of force upon or toward the person or another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.
    - (2) Limitations on the Use of Force.
      - (a) The use of force is not justifiable under this Section unless:
        - (i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and
        - (ii) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.
      - (b) The use of deadly force is not justifiable under this Section unless:
        - (i) the arrest is for a felony; and
        - (ii) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized as a peace officer; and
        - (iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and
        - (iv) *the actor believes that:*
          - (A) *the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or*
          - (B) *there is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.* [Emphasis added]
      - (3) Use of force to Prevent Escape from Custody. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, that he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

any person (including the officer) in immediate danger of serious physical injury.<sup>3</sup>

2) **Secondary Requirements:**

- a) **No Discrimination** - An officer shall not make his/her use-of-force decision based upon race, ethnicity, national origin, gender, sexual preference, or disability.
- b) **Not be Done Maliciously and/or Sadistically For the Sole Purpose of Causing Harm or Pain** - An officer shall not use force for the sole purpose of inflicting pain, or torture, or for the extraction of information. This does not mean that an officer cannot use Authorized Force, which may include pain control techniques.
- c) **Unintentional Weapon's Discharge - Not Acceptable** - An unintentional weapon's discharge by an officer of this Department cannot be condoned. Even though the discharge by the officer may be unintentional, accidental, or inadvertent it will be construed as a violation of this policy.
- d) **Taking Action When Another Officer Uses Un-Authorized Force** - If an officer identifies/observes another officer, of the Department or any other law enforcement agency, using un-authorized force the officer will take reasonable appropriate action to stop the unauthorized use of force and shall immediately report the incident to his/her supervisor.

b. **Other Use-of-Force Requirements (not within the definition of "Authorized Force") -**

- 1) **Voice Commands/Instructions** - and other verbal, and non-verbal, communication used by an officer when addressing/communicating with anyone may be firm and forceful but shall be temperate and tactful, regardless of the nature of the circumstances or of the language that may be directed at the officer. Officers shall not address anyone in degrading, undignified, defamatory, and/or belittling terms; or use racial, ethnic, sexist, sexually preferential, and/or religious.
- 2) **Competency Requirements** - (Except as noted herein) An officer will not intentionally use techniques and/or instrumentalities of force with which (s)he has not been trained and deemed competent by this Department. An officer who believes his/her training is deficient and/or is not current will notify the training officer in writing of the perceived deficiency.
- 3) **Use-of-Force Equipment Requirements:** - (Except as noted herein) Only Department issued or approved (in writing) firearms, ammunition, and other use-of-force tools/equipment shall be issued to, used by and/or carried by officers working, or acting, under the auspices of this Department. See "Approved/Prohibited Use-of-Force Tools/Equipment" section for specifics.
- 4) **Improvised Use-of-Force Tools/Equipment** - When Departmentally issued/approved use-of-force tools/equipment are not readily available to the officer, the officer may improvise and use other suitable tools/equipment. When an officer uses an improvised tool/equipment against a person, the officer shall abide by the rules of encounter/use as

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3. **Defense of Life Standard:**

**Commission on Accreditation of Law Enforcement Agencies ("CALEA"):**

CALEA Standard 1.3.1 A written directive states personnel will use only force necessary to effect lawful objectives.

CALEA Standard 1.3.2 A written directive states that an officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious physical injury.

CALEA Standard 1.3.3 A written directive specifies that use of deadly force against a "fleeing felon" must meet the conditions required by standard 1.3.2.

listed in this Department's use-of-force policies. This section does not excuse an officer who intentionally or inadvertently neglects to carry his/her issued/approved use-of-force tool or piece of equipment (on his/her person) as required by this policy.

- 5) **Deadly Force: Other Instruments/Techniques** - The Department realizes that in exigent, tense, uncertain, and/or rapidly evolving confrontations an officer may need to use techniques, weapons, and/or improvised weapons/techniques which are not a part of this Department's formal training curricula, and/or which may not be specifically addressed by this policy. Also, the officer may need to use a technique or weapon in a manner that does not parallel Departmental training. It is further recognized that, due to the unpredictable nature of a person's movements and/or actions under these circumstances, the officer's technique(s) and/or weapon(s) may unintentionally (on the part of the officer) impact a bodily area, or produce an outcome, which does not parallel Departmental training. In evaluating the appropriateness of an officer's actions in these circumstances, the Department will examine each instance on a case-by-case basis in light of the foregoing to determine whether or not the force was "Authorized Force."
- 6) **Department Weapons** - Department weapons are to be used in the lawful performance of the officer's duties. An officer shall not make a Department weapon available to an unauthorized person, except under exigent circumstances.
- 7) **Horseplay/Rough-Housing Prohibited** - Horseplay and practical jokes when an officer is within the scope of his/her employment can cause serious injury, can degrade the image of the Department, and can cause discord among officers. Therefore, horseplay, rough-housing, practical jokes, etc. involving use-of-force techniques and/or instrumentalities are prohibited, including, but not limited to: using an electronic restraint inappropriately, using a chemical aerosol inappropriately, pointing of brandishing a firearm (whether loaded, unloaded, toy, blank, etc.) in an inappropriate manner and/or direction, etc.
- 8) **Medical/First Aid** - When an officer applies force against an individual, and the person is clearly injured, complains of injury, and/or the officer reasonably believes the person is injured, or is in need of medical attention, the officer shall render appropriate first aid (within the limits of his/her training and available equipment) as soon as it is practical, and safe, to do so. In addition, medical/rescue personnel will be summoned, if necessary.
- 9) **(OSHA) Bloodborne Pathogens Decontamination:**
  - a) An officer shall clean use-of-force equipment according to departmentally-approved training, manufacturer's recommendations and OSHA guidelines.
  - b) An officer shall follow OSHA decontamination procedures when it is likely that his/her body, clothing, use-of-force equipment, and/or gloves have come into contact with a bloodborne pathogen.
- 10) **Statements Regarding Use of Force** - Because of the possible misunderstanding by the public or the media of officers use of force, officers are directed not to render opinions regarding their use of force, without the prior written authorization of the Department. Any public/media use of force inquiries or questions shall be referred to the Department Executive.
  - c. **Use-of-Force Guidance** - This section is intended to "guide" the officer in making his/her decision in using "Authorized Force." This section is provided solely for guidance and strict adherence is not the intent - the required standard of conduct is "Authorized Force."
    - 1) **Risk Balancing Test** - When an officer has a legal basis for using force, his/her decision to use force hinges upon a balance of two opposing requirements: limitation of risk exposure and self-restraint.
      - a) An officer is expected to subject him/herself to reasonable risk during the performance

of his/her duties. It is an understood condition of this particular employment. However, an officer is not expected or required to subject him/herself to unreasonable and/or suicidal risk.

- b) As an officer's risk exposure increases, the officer is expected to take reasonable measures to minimize and/or control it.
  - (1) Reasonable control measures may include, but are not limited to, non-deadly force options, posturing, summoning backup, withdrawal, or other reasonable actions.
  - (2) Reasonable measures may also include deadly force, but an officer is expected to restrain him/herself from using deadly force until or unless (s)he reasonably believes risk exposure has already or is rapidly escalating to such a level that serious bodily harm or death is imminent and likely.
- 2) **Escalation of Force** - An officer will not intentionally encourage and/or aggravate unlawful behavior. When an officer is confronted with unlawful force, (s)he will, if circumstances permit, respond with superior force until the situation is under control.
- 3) **De-Escalation of Force** - In situations where multiple reasonable use-of-force alternatives are available this Department encourages officers to review options and to de-escalate if possible. De-escalation of force does not mean that the officer should drop his/her guard. An officer should provide force recipients with opportunities to reduce their resistance. When an officer perceives that a person is complying with the officer's lawful commands/actions, the officer should respond by reducing or not escalating the force (s)he is using. An officer should remember that a suspect may de-escalate resistance in an effort to distract the officer in order to resume or heighten hostilities.
- 4) **Officer Defense Against Weapon** - An officer who is him/herself attacked by a person using a club, other impact weapon, knife, or other dangerous weapon usually has no way of knowing what the attacker intends. Therefore, the officer may generally assume that (s)he (the officer) is in danger of death or serious bodily harm under such circumstances. Accordingly, the less than deadly force option should generally not be used to subdue a person armed with such a weapon, nor should an officer, under most circumstances, attempt to physically disarm a person armed with such a weapon. A person thus armed should generally be confronted, at a distance, by an officer with firearm(s) drawn. When reasonably possible, an officer should not allow a person thus armed to enter the officer's zone of danger.
- 5) **No Substitute for Other Use-of-Force Tools/Techniques** - Nothing in this use-of-force section shall be interpreted as a discouragement (by the Department) of an officer appropriately using his/her firearm, or other types of force.
- 6) **Deadly Force - Non-Firearm:**
  - a) **Physical Fighting Techniques** - Physical fighting techniques generally are not inherently capable of causing death or serious bodily harm, but some are capable of being applied to a deadly-force degree. Thus, no fighting technique will be intentionally applied to a person by an officer to a deadly-force degree, unless the use of deadly force is otherwise justified.
  - b) **Motor Vehicle As An Impact Device<sup>4</sup>** - When an officer uses a motor vehicle as a tactical impact device to impact another vehicle or pedestrian, it is foreseeable that death or serious bodily injury may result. Therefore, use of a motor vehicle to tactically

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4. For further delineation of vehicular policy, see the separate Vehicle Operations Policy.

ram another vehicle or to strike a pedestrian will usually be considered a use of deadly force. Accordingly, an officer of this Department will not intentionally use his/her vehicle to ram another vehicle or a pedestrian unless the following requirements have been fulfilled<sup>5</sup>:

- (1) The officer reasonably believes that the totality of the circumstances are such that deadly force is necessary and reasonable against all known (to the officer) occupants of the suspect vehicle, and that the use of a vehicle is a reasonable way to apply it. The officer must further reasonably believe that it is unlikely that innocent persons, including those known (by the officer) to be in the vehicle, will be harmed by the act; or
  - (2) The totality of the circumstances, as known to the officer, are so drastic and exigent that the officer reasonably believes that injury to innocent persons will be minimized if the vehicle or pedestrian is tactically rammed.
- c) Law Enforcement Knives:
- (1) When an "edged weapon" is used as a weapon it will generally be considered to be the use of deadly force. Therefore, an officer of this Department will not intentionally use an edged weapon as a weapon except under those circumstances where the use of deadly force is allowed by this policy.
  - (2) Conversely, if an officer is menaced or attacked by a person brandishing an edged weapon, when the person reasonably appears to have the opportunity to inflict death or serious bodily harm, the officer may assume (s)he (the officer) is in imminent danger of death or serious bodily harm and should act with Authorized Force, which may include deadly force.

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5. Any vehicular pursuit, or any other vehicle maneuver, approved by the officer's first-line supervisor (if available), and initiated and/or perpetuated with the intent of tactically ramming a vehicle or a pedestrian will be terminated if it cannot be accomplished and/or continued with a reasonable degree of safety to the officer, other officer, and/or the public at large.