

## **CHAPTER 6: USE OF DEADLY FORCE**

### **SEC. 3-6-1 USE OF DEADLY FORCE**

#### **Statement of Purpose:**

- (a) The use of deadly force particularly deserves serious consideration, and calls for the development of practical guidelines for the Deputy. One consideration should be stressed -- in no way is this policy intended to limit the Deputy's ability to use deadly force when and if the proper circumstances and justifications exist. The Deputy is expected to retain the right to defend themselves or others with as much force as is necessary to affect such defense. This policy is intended to guide the Deputy on the reasonable use of force and justifications on when to use deadly force.
- (b) While no general policy can hope to cover each and every specific situation the Deputy may be required to participate in, it is hoped that this policy will cover the legal points inherent in every situation to the extent that the Deputy can make valid and immediate decisions on the street.
- (c) The use of deadly force is justified in the following circumstances involving imminent threat or imminent risk. The first (and by far the most common) is in defense of self or others. The second is in defense of society at large such as in 3-6-2(d).

This policy shall be made available to the public at no charge upon request (Wis. Stat. § 66.0511(2)).

#### **Policy:**

Recognizing the legal and moral obligation to use force judiciously and wisely, it is the policy of this Office that deadly force shall never be resorted to until every other reasonable means of apprehension or defense have been exhausted.

#### **Commentary:**

The above section requires that deadly force only be used as a last resort. The policy above requires only that a Deputy use reasonable alternatives, if such are available. For example, a Deputy need not hesitate to employ deadly force against an individual who is shooting at him/her. Deputies should, of course, use their weapon in such a manner as not to endanger the lives of innocent bystanders or fellow officers, but they are not required to seek alternatives to deadly force if they are under an immediate attack on their or other lives.

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

Besides firearms, many items such as flashlights, batons, and other instruments are considered lethal weapons when they are used in a lethal manner. For example, the use of a baton to subdue a subject by striking him on the arm is a non-lethal use of that instrument. However, striking on the head or repeated blows to the internal organs could be construed as deadly force.

**Definition:**

As used in this policy, "deadly force" is the intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. Behavior which justifies an officer's use of deadly force is that which has caused or imminently threatens to cause death or great bodily harm to the officer or to another person(s). Imminent does not mean immediate or instantaneous.

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**SEC. 3-6-2 WHERE DEADLY FORCE MAY BE USED**

**Policy:**

Deadly force may be used under the following circumstances:

- (a) 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.
- (b) As a last resort in the defense of another person or persons whom the Deputy has reasonable cause to believe is being unlawfully attacked and is in imminent danger of death or great bodily harm.
- (c) To protect one's self or another from an animal which a Deputy reasonably believes may cause great bodily harm if not immediately controlled, or after giving consideration to public view, safety, and all other reasonable means of disposition to end the suffering of an animal gravely injured or diseased.
- (d) Deadly force may be used, after all other reasonable means of capture are exhausted, to stop a fleeing subject when the deputy has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of great bodily harm or death, **and** the deputy reasonably believes that there is an imminent risk of great bodily harm or death to any other person if the subject is not immediately apprehended; and provided further, that the lives of innocent persons will not be endangered if the Deputy uses deadly force. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible. This section allows the Deputy to use deadly force when the suspect is engaged in such felonies involving violence (armed robbery, murder, etc.). Non-violent felonies such as embezzlement or burglary do not in themselves justify the use of deadly force.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if a deputy reasonably believes any of the following:

- (1) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the deputy or another person.
  - (2) The person is capable of causing great bodily harm or death without a weapon and it is reasonable to believe the person intends to do so.
- (e) Deadly force shall never be used in any misdemeanor case (unless the criteria in subsections (a) or (b) above is present), or when the Deputy is in doubt as to whether or not deadly force is justified, or when its use would unreasonably endanger innocent bystanders. When a person 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 Deputy to resort to the use of deadly force if other reasonable means have

failed to prevent the escape. The value of human life is considered to supersede the importance of immediate apprehension.

- (f) A Deputy shall never threaten to use deadly force unless the Deputy would be justified under this policy to, in fact, use such force.
- (g) Deputies may shoot from a vehicle, moving or not, only when the Deputy reasonably believes there are no other reasonable means available to avert the threat. Shots fired at or from a moving vehicle are rarely effective. Deputies should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the deputy or others. Deputies shall not shoot at any part of a vehicle in an attempt to disable the vehicle.
- (h) There is no legal distinction in the use of deadly force against juveniles as compared to adults. Such distinctions would be impractical due to the impossibility of distinguishing a mature youth in his or her mid-teens from an adult under the type of conditions, which frequently mark police combat situations.
- (i) Deputies may draw their firearm when he/she has reasonable grounds to suspect that the use of deadly force may be necessary. Deputy may have their weapon ready in such circumstances as answering a silent alarm, clearing a building, confronting a suspect whom there is reasonable grounds to believe may be armed, or when the Deputy reasonably believes circumstances indicate a substantial risk of death or great bodily harm to his/her person or another. The Deputy need not be under attack, but only be reasonably apprehensive that the situation may lead to circumstances outlined in Sections (a), (b) (c) and (d) above. Firearms should not be drawn under any other circumstances.
- (j) A warning shot shall not be fired under any circumstances.

### **Procedures:**

- (a) Before using deadly force, Deputies shall, 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.
- (b) Deputies shall not use deadly force when its use unreasonably risks the lives of innocent bystanders. The one exception to this requirement is called the “greater danger exception”. Essentially, this exception allows you to shoot without target isolation if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person. For example, if a deranged subject were randomly shooting people, you might be justified in firing without target isolation because if not stopped, the suspect could be expected to continue shooting. The likelihood of the suspect killing or injuring many others if not stopped outweighs the chance that your bullet might strike an innocent person.
- (c) Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, requests medical attention, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be monitored until he/she can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe. Based upon the deputy’s initial assessment of the nature and extent of the individual’s injuries,

medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another deputy and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling deputy shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the deputy reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple deputies to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

The patrol supervisor will ensure that any injured parties are examined and treated.

- (d) The use of a vascular neck restraint, also known as 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, shall be used only in accordance with this policy on the use of deadly force. This is not a trained technique to gain compliance.
- (e) The use of a respiratory restraint, also known as a chokehold, is limited to circumstances where deadly force is authorized. A chokehold is only permitted as a last resort, after all other options have been attempted and/or considered and those options would have been impractical or ineffective.

### **Commentary:**

There is recognition that the use of deadly force is accompanied by severe emotional and psychological strain for the deputy involved. Deputies are trained in the proper use of firearms and are required to maintain rigorous standards of shooting proficiency and accuracy.

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### **SEC. 3-6-3 REPORTS ON USE OF DEADLY FORCE**

#### **Policy:**

- (a) Any use of deadly force by a member of this office shall be documented promptly, completely, and accurately in inappropriate report. The Deputy should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.
- (b) In all circumstances involving the use of deadly force, when a Deputy in the performance of duty discharges a firearm or uses another means of deadly force, the Deputy in question shall report such facts promptly to the Sheriff or designee. The Sheriff or designee shall go to the scene immediately. The exception is when the deputy dispatches an injured animal.
- (c) The Sheriff or designee shall obtain all facts from the involved Deputy. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (d) Once the initial medical assessment has been completed or first aid has been rendered, the patrol supervisor will ensure that photographs have been taken on any visible injuries or complaint of pain, as well as overall photographs of uninjured areas.
- (e) The patrol supervisor will identify any witnesses not already included in related reports and ensure that a thorough and complete investigation of the incident is done.
- (f) Deputies involved in the use of deadly force shall not discuss the matter with anyone, including other Deputies, until after debriefing the sheriff or designee.
- (g) The Deputy involved shall have the opportunity to review and supplement their report within 48 hours of the incident. A supervisor shall submit immediate reports, which fully outline the incident.

A Captain shall complete an internal investigation and forward a complete report of the incident and their investigation to the Sheriff. A Captain will review and approve all related reports.

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### **SEC. 3-6-4 SELF-DEFENSE**

#### **Procedures:**

Before deadly force is authorized in self-defense, several qualifications must be considered:

- (1) Retaliation or revenge is not an excuse for using deadly force in self-defense.
  - (2) The imminent risk of great bodily harm or death must have been a present one.
  - (3) There is no justification to use deadly force after the imminent risk of great bodily harm or death has passed.
  - (4) The force threatened must have been unlawful.
  - (5) The Deputy must believe that the use of deadly force was the only means available to avert death or great bodily harm.
  - (6) The degree of force used by the Deputy was believed to be necessary under the circumstances.
  - (7) The Deputy's belief in each of the foregoing aspects was reasonable even if mistaken.
- (b) If oleoresin capsicum pepper spray (OC) or an electronic control device (ECD) is employed or threatened against a Deputy, a Deputy's response to the threat or deployment of either the (OC) or (ECD) on the Deputy may include deadly force because the Deputy will likely be completely

vulnerable if successfully attacked. The deputy's gun can easily be used by the suspect against them or other innocent citizens.

- (1) If a Deputy is threatened with (OC) or (ECD), the Deputy should consider the following factors:
  - a. Distance -- Is the Deputy close enough to be sufficiently exposed to the (OC) or (ECD) to incapacitate them?
  - b. Environmental Conditions at the Scene -- Including, but not limited to:
    1. The number of suspects present.
    2. The number of other law enforcement present.
    3. Location of the incident: Known high crime and/or violent area.
    4. Time of day/lighting conditions: Can the Deputy clearly see the offender and his movements?
    5. Type of crowd -- Hostile? Pro police?
    6. Weather conditions.
  - c. Subject and Deputy Factors:
    1. Subject's history - known gang member, tendency to violence, etc.
    2. Size, age, gender, and skill level of all participants involved.
    3. Previous actions of the suspect(s).
    4. Injuries already inflicted upon the officer(s) or others.
  - d. Nature of Initial Contact -- Was the original offense serious?
  - e. Special knowledge or special circumstances -- Injury or exhaustion limiting the ability to gain control, proximity of subject to Deputy's firearm, ground fighting abilities, disability, etc.

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### **SEC. 3-6-5 ACTION AFTER A DEADLY FORCE INCIDENT.**

A Deputy involved in a deadly force incident shall be placed on administrative leave with pay. The post-critical incident policies in Section 3-5-1 of this Manual will be followed.

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