# POLICY & PROCEDURE

STOUGHTON POLICE DEPARTMENT

SUBJECT: **DEADLY FORCE**

SCOPE: All Sworn Personnel
DISTRIBUTION: Policy & Procedure Manual

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

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☐ RESCINDS
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PURPOSE: The purpose of this Policy & Procedure is to provide guidelines for the use of deadly force when officers of the Stoughton Police Department are involved in shooting incidents and other incidents where death or serious injury has resulted from an officer's actions.

This Policy & Procedure consists of the following numbered sections:


I. INTRODUCTION

II. DEFINITIONS

III. POLICY

IV. PROCEDURE

V. DEADLY FORCE REPORTING / REVIEW


## I. INTRODUCTION

There is no doubt that many circumstances exist within the normal duty functions of police officers which call for the use of force.
Difficulties have arisen however, because no easily understandable policy and procedure as to the use of force or the threat of force by Department members is available.

The use of deadly force particularly deserves a serious consideration, and calls for the development of practical guidelines for the officer on the street. One consideration should be stressed- in no way is this policy intended to limit the officer's ability to use deadly force when and if the proper circumstances exist.
The officer is expected to retain the right to defend him/her or others with as much force as is necessary to affect such defense.

This Policy & Procedure is intended to protect the officer from possible criminal or civil charges stemming from misinterpretation of the law covering the use of extreme deadly force.

While no general policy or procedure can hope to cover each and every specific situation the officer 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 officer can make valid and immediate decisions on the street.

II. DEFINITIONS

A. DEADLY FORCE: Deadly force is the intentional use of a firearm or other instrument, the use of which would result in a high probability of death.

1. The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill.

2. The firing of a firearm at a vehicle in which the person to be arrested is riding.

3. Any force applied in any manner by any means, by any member of the Department that could reasonably be expected to cause death.

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

B. 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.

C. IMMINENCE: Intent, weapon, delivery system.

III. POLICY

A. It is the policy of the Stoughton Police Department that deadly force SHOULD 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/should, of course, use his/her weapon in such a manner as not to endanger the lives of innocent bystanders or fellow officers, bye 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.

IV. PROCEDURE

A. Use of Deadly Force- Generally.

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.

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 force used by an officer should only be that which is required to overcome the resistance being offered 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 provided further, that the lives of innocent persons may be endangered if the officer does not use Deadly force.

This 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 or burglary do not in themselves justify the use of deadly force.

4. Deadly force should never be used in any misdemeanor case, unless the criteria in Subsections (a) or (b) above is present, or when the officer is in doubt as to whether or not deadly force is justified, or when its use would unreasonably endanger innocent bystanders.

5. 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.

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

6. 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.

7. Weapons should not be discharged from a moving vehicle unless absolutely necessary to protect the life of the officer or a third person and when the use of deadly force would not unreasonably endanger the lives of others.

8. An officer may draw his/her sidearm 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 outlines above. Weapons should not be drawn under any other circumstances.

9. This section is intended to allow the officer to have his/her weapon ready in such circumstances as answering a silent 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.

10. There is no legal distinction in the use of deadly force against juveniles as compared to adults.

11. To protect oneself or another from an animal which an Officer 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 an animal gravely injured or diseased.

12. For Department-mandated firearms, practice and qualification on an approved range are mandatory.

13. 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 other dispositions may be feasible.

14. Officers should 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.

15. Officers should 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.

16. Officers should not fire warning shots.

17. 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.

18. Officers should not use deadly force when its use unreasonably risks the lives of innocent bystanders.

19. 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 be used only in accordance with this policy on the use of deadly force.

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

**COMMENTARY:**

When determining Where Deadly Force May Be Used (B above), It is important officers have a clear understanding of deadly force justification.

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 killing in self-defense.

   b) The danger or harm is a present one.

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) is employed (or threatened) against an officer, an officer's response to being threatened or sprayed with OC may include deadly force because the officer will likely be completely vulnerable if successfully attacked.

a) In deciding whether an officer is threatened with OC, an officer should consider the following factors:

(1) Distance- Is the officer close enough to be sufficiently exposed to the OC 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- Hostile? Pro-police?

(f) Weather conditions.

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

(4) Nature of Initial Contact-Was the original offense serious?

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

D. Personnel mandated to receive and understand this Policy & Procedure.

1. Prior to being authorized to carry a firearm, all officers shall receive a copy of this Policy & Procedure and demonstrate their understanding of the procedures within the Policy & Procedure.

VI. Reports on Use of Deadly Force.

A. See Policy 5.05 Use of Force Reporting / Review

B. Deadly Force against Humans

1. In all circumstances when a firearm is discharged by an officer, the supervisor or OIC shall promptly notify the Chief of Police and the Patrol Lieutenant. The officer in question shall complete a Case report and Use of Force Report.

C. Deadly Force against Animals

1. In all circumstances when a firearm is discharged by an officer against an aggressive animal, the supervisor or OIC shall promptly notify the Chief of Police and the Patrol Lieutenant. The officer in question shall complete a Case report and Use of Force Report.

2. In all circumstances when a firearm is discharged by an officer against a sick or injured animal, the officer in question shall complete a Case report and Use of Force report.

D. Accidental Discharge

1. In all circumstances when a firearm is accidentally discharged by an officer, the supervisor or OIC shall promptly notify the Chief of Police and the Patrol Lieutenant. The officer in question shall complete a Case report and Use of Force report.

E. 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 designee.

F. The officer involved shall immediately submit a Case report which fully outlines the incident. The Chief may have an officer from another law enforcement agency interview the officer involved.

G. The investigating supervisor shall forward a complete report of the incident and his/her investigation to the Chief.

Gregory W. Leck
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 11/5/2018