

NORTH FOND DU LAC POLICE DEPARTMENT POLICY		TITLE: Use of Force	
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SPECIAL INSTRUCTIONS: Amends all previously issued policies, directives and orders regarding the use of force.			

I. PURPOSE

The purpose of this document is to establish a policy for the use of force by sworn personnel (hereinafter officer(s)) of the North Fond du Lac Police Department, to affect the detention, seizure, arrest, or other lawful custody of a person; in self defense or defense of another; to prevent or intercede in a person's self injury; in defense of property and in fulfilling the community caretaker function. By establishing guidelines on the proper use-of-force this policy will ensure appropriate due process for persons as well as provide protection for officers and the Department.

This policy is primarily based on the Defense and Arrest Tactics (DAAT) program of the State of Wisconsin as developed by the Wisconsin Training and Standards Board (Department of Justice – Training and Standards Bureau).

II. POLICY

It is the policy of the North Fond du Lac Police Department that officers shall use only that amount of force that is reasonably necessary to achieve lawful objectives and in accordance with the Constitution of the United States and the Constitution of the State of Wisconsin. The force used by an officer should only be the amount reasonably required to overcome the resistance being offered by an offender or the subject the officer is trying to control.

III. DISCUSSION

The State of Wisconsin Law Enforcement Training and Standards Board establishes standards and a training guide for the training of police officers in defense and arrest tactics (DAAT.) It is based on the premise that officers can and should accomplish the law enforcement objectives of control and/or arrest as quickly as possible, with minimal chances of injury or death to officers and subjects. The DAAT system also is premised on the principle of reasonable use of force in accomplishing such legitimate law enforcement objectives.

IV. DEFINITIONS

- A. Wisconsin Defense and Arrest Tactics (DAAT): This is a system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved, and governed by the State of Wisconsin Training and Standards Board.
- B. Disturbance Resolution Model: A Law Enforcement Training and Standards Board guide in providing a structure which law enforcement can use to safely, professionally, and

reasonably perform their duties. The Disturbance Resolution Model can be found as Annex A to this policy.

- C. Passive Resistance: Non-compliant and non-threatening behavior.
- D. Assaultive Behavior: Direct actions or conduct that generates bodily harm.
- E. Continued Resistance: Maintaining a level of counteractive behavior that is not controlled by an officer's current efforts.
- F. 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.
- G. Reasonable Force: An act by an officer in the performance of duty when it is used to accomplish a legitimate law enforcement goal and the level of force used is objectively reasonable under the totality of the circumstances as perceived by the officer at the time of the incident.
- H. Reasonably Believes: Means that an ordinary, prudent and reasonable officer believes that a certain fact situation exists and such belief is reasonable under the totality of circumstances known to the officer at the time the officer acted.
- I. Great Bodily Harm: Bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- J. Bodily Harm: Physical pain or injury or any impairment of physical condition.
- K. Less Lethal Force: The use of any weapon or instrument, or any physical action taken by an officer, which is not likely to cause death or great bodily harm.
- L. Deadly Force: The intentional use of a firearm or other instrument, that creates a high probability of death or great bodily harm.
- M. Deadly Force Justification: Is that behavior which has caused or imminently threatens to cause death or great bodily harm to you or to another person(s).
- N. Preclusion: The officer must have precluded that all other reasonable modes and tactics have been exhausted or would otherwise be ineffective.
- O. Imminent Danger/Imminent Threat: An imminent threat is an immediate threat. For a subject's threat to be considered imminent it must meet all of these criteria:
 - 1. Intent, either implied or actual, to cause death or great bodily harm.
 - 2. A weapon capable of inflicting death or great bodily harm.
 - 3. A delivery system for the utilization of that weapon.

- P. Target Requirements: If an officer has determined that s/he faces a threat that meets the requirements to permit a deadly force response, and the officer has decided to shoot, s/he must still fulfill three (3) target requirements:
1. Target Acquisition: Means simply that an officer has acquired an actual target to shoot at.
 2. Target Identification: Means that an officer has identified the target as the source of the imminent threat.
 3. Target Isolation: Means that an officer can shoot at the target without danger of harming innocent people.
 - a. The one exception to the requirement for target isolation is called the Greater Danger Exception. 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.
- Q. Physical Restraint: Holding, restraining, handcuffing, or other physical manipulation without the use of any weapon by one or more officers acting alone or in concert to control a person or to affect an arrest.
- R. Objective Reasonableness Standard: The standard established by the U.S. Supreme Court in *Graham v. Connor* (1989), and its progeny, says that reasonableness should be judged under the totality of the circumstances from the perspective of a reasonable officer at the scene with similar training and experience. The totality of the circumstances include, but are not limited to:
1. The severity of the alleged crime(s) at issue;
 2. Whether the person poses an imminent threat to the safety of officers and/or others;
 3. Whether the person is actively resisting the or attempting to evade arrest by flight.
- S. Electronic Control Device – (ECD): A battery powered less lethal force device that uses propelled wires and probes or direct contact to conduct sufficient energy to affect the sensory and motor functions causing sensory and/or motor nervous system overload. The intended purpose of the device is to incapacitate and help control threatened or active resistance and/or violent persons or animals. The use of this device is intended to incapacitate the subject with a minimal potential for causing death or great bodily harm.
- T. Intervention Options: Trained techniques recognized in the DAAT system. These techniques may include additional techniques trained and authorized by the North Fond du Lac Police Department. A list of these techniques shall be attached in Appendix A of this policy.
- U. Legally Acceptable Force: Is force that is acceptable under, and does not exceed, the applicable federal constitutional standards and the State of Wisconsin legal force standards as defined in the Wisconsin DAAT System.
- V. Excessive Force: Is force that is greater than legally acceptable force.

- W. Self-Defense: The act of defending one's person by physical force (§939.48, Wis. Stats.). "The actor may intentionally use only such force or threat thereof as he or she reasonably believes is necessary to prevent or terminate the interference. He or she may not intentionally use force which is intended or likely to cause death or great bodily harm unless he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to him- or herself or another."
- X. Totality of the Circumstances: Represents all information known to the officer at the moment action is taken and the facts used to judge the appropriateness of the action.

V. PROCEDURE

A. General Guidelines

1. Officers may legitimately use only that amount of force that is objectively reasonable when it is needed to achieve control in five specific situations: to achieve and maintain control of a resistive subject; to detain persons reasonably suspected of criminal behavior; to make lawful arrests; to defend themselves or others; and to prevent escape.
2. Officers shall not continue to use more force than is objectively reasonable to maintain control once the person has stopped resisting and control of the person has been established.
3. Once control has been established officers shall be responsible for monitoring the person's condition and welfare. Unless circumstances dictate otherwise, all persons arrested will be handcuffed, searched and then transported in a police vehicle.
4. Officers shall not brandish, display, or threaten the use of any weapon, technique, or the use of force in general, unless its use would be justified or reasonably anticipated.
5. Officers may include in the decision to use force; information known to or reasonably perceived by the officer at the time of the incident, including conduct or statements of the person, or prior history of resistive or assaultive behavior.
6. Unless emergency circumstances exist, officers shall only use, or carry for use, Departmentally issued or authorized equipment and weapons.
7. Officers shall not apply choke holds to any subjects except as the last resort in the defense of one's self when the officer reasonably believes s/he is in imminent danger of death or great bodily harm.

B. Disturbance Resolution Model

1. The Department adopts the DAAT System and Disturbance Resolution Model concepts, techniques, and teachings as its primary policy in the use of force and how this use of force is administered. As such, officers of the Department shall, in response to or while involved in any incident, strictly adhere to and follow these

concepts, techniques, and teachings as provided during Departmental DAAT, firearms and/or other use of force training.

C. Use of Deadly Force

1. The use of deadly force is justified when the criteria for the deadly force justification has been met or encountered:
 - a. As the last resort in the defense of one's self when the officer reasonably believes s/he is in imminent danger of death or great bodily harm.
 - b. As the last resort in the defense of another person who the officer reasonably believes is in imminent danger of death or great bodily harm and whom the officer reasonably believes is entitled to self-defense.
 - c. As the last resort to effect an arrest or prevent the escape of a fleeing felon who the officer reasonably believes has committed a felony involving the actual or threatened use of deadly force and the officer has probable cause to believe the suspected felon poses a significant threat of death or great bodily harm to the officer, or others, if not immediately apprehended.
 - d. As the last resort to euthanize a dangerous animal or one that is so seriously injured that humanity dictates its removal from suffering, but only after careful consideration is given to the public's safety and view and whether other dispositions may be feasible. Additionally, the use of a firearm to euthanize an animal shall also be the last resort and shall only be used in strict adherence to all other Departmental firearms and use of deadly force policies, guidelines and training principles. Whenever reasonably practical, officers shall seek permission from an on-duty or the on-call supervisor prior to using a firearm to euthanize an animal.
2. When reasonable, officers shall identify themselves and order the subject(s) to stop the unlawful activity prior to the application of deadly force. If the subject does not comply with the lawful order, the officer will, when reasonable, advise of his/her intent to use deadly force.
3. Generally, deadly force shall not be used under the following circumstances:
 - a. As a warning.
 - b. Warning shots shall not be fired.
 - c. From a moving vehicle unless (V.C.1.a.) or (V.C.1.b.) apply.
 - d. At a moving vehicle unless (V.C.1.a.) or (V.C.1.b.) apply.
 - e. When the target requirements have not been satisfied.
 - f. When the officer is in doubt as to whether or not s/he has the legal justification to use deadly force.

D. Use of Less Lethal Weapons

1. Oleoresin Capsicum Spray (OC)

- a. Officers, who have been trained in and certified for the use of OC by the Department, shall carry Department issued OC while on duty. (An officer's supervisor may make exceptions when officers are actively participating in assignments or duties where the carrying of OC would be unsafe, unnecessary or impractical. For instance, officers participating in undercover assignments.)
- b. OC may be used when a subject is threatening to actively resist or is actively resisting an officer and the subject poses an articulable threat of bodily harm to an officer or another person.
 - (1) Mere passive resistance (e.g. refusal to comply with verbal commands, going limp, stiffening of limbs without struggling or verbal arguments against being arrested, etc.) without posing an articulable threat of harm to the officers or others does not permit the use of OC.
- c. Officers shall exercise sound judgment when using OC and shall consider the potential for cross-contamination to the user, other officers and bystanders.
- d. Officers should not utilize OC if it appears children less than two years of age are in the area that would be contaminated unless exceptional circumstances exist.
- e. Unless exigent circumstances exist, OC should not be intentionally sprayed directly at the eyes of a person from a distance of less than three (3) feet because of an increased risk of eye injury from the pressure of the spray at these distances.
- f. Officers who use OC against a subject shall ensure that aftercare and decontamination procedures are started as soon as practical after the subject is under control and stabilized. Such procedures include, but may not be limited to:
 - (1) Remove the subject from the contaminated area.
 - (2) Place the subject in an area of fresh air.
 - (3) Verbally reassure the subject.
 - (4) When available, rinse affected areas with cool running water.
 - (5) Continuously monitor the subject until they are fully recovered or are turned over to a competent authority.
 - (6) If the subject's symptoms persist, they experience an unusual reaction or if they request, seek medical attention.

- (7) If contacts are worn, have the subject or qualified medical personnel remove them. Officers shall not remove contacts from a subject.
 - (8) Do not rub the contaminated areas or apply creams, salves or lotions.
 - g. Officers are permitted to use OC in self-defense when an animal endangers their personal safety or that of others. If circumstances permit, and it can be done without endangering Departmental personnel or others, reasonable efforts to decontaminate animals should be made or the information conveyed to the animal's owner.
 - h. A copy of the manufacturer's Material Safety Data Sheet (MSDS) for NFPD issued OC shall be permanently posted in the squad room of the Department; on the NFPD Intranet; and at least one copy will be provided to each officer upon his/her initial NFPD DAAT certification. If asked, officers shall, without delay, provide a copy of this sheet to any healthcare provider called upon to assist a subject that has been sprayed with or otherwise affected by the use of OC.
2. Intermediate Weapons
 - a. Officers who have been trained in and certified for the use of intermediate weapons by the Department shall carry NFPD issued baton(s) while on duty. (An officer's supervisor may make exceptions when officers are actively participating in assignments or duties where the carrying of baton(s) would be unsafe, unnecessary or impractical. For instance, officers participating in undercover assignments.)
 - b. An intermediate weapon may be used to impede a subject, preventing him or her from continuing resistive, assaultive, or otherwise dangerous behavior.
3. Electronic Control Device – (ECD)
 - a. Officers may only carry ECD units and accessories that have been approved by the Chief of Police or his/her designee
 - b. Officers who have successfully completed a Departmentally approved training course and written test concerning the use of an ECD shall carry it while on-duty if ECD units are available.
 - c. An ECD should not be used in a situation where the person poses an imminent threat of great bodily harm or death to the officer or another person unless another officer(s) are present and capable of immediately delivering deadly force.
 - d. The ECD may be used by trained officers when a person is threatening to actively resist, or is actively resisting an officer and the person poses a threat of bodily harm to an officer or another person. It may also be used when a person poses a threat of bodily harm to (him) herself such as a self-inflicting

- injury or a suicide attempt. Passive resistance without posing a threat of bodily harm to officers or others does not justify the use of an ECD.
- e. Elevated ECD deployment risk factors: The following factors, when reasonably perceived by the officer(s) at the time of the incident, require elevated justification(s) for deployment. Under the following conditions the risk of direct or secondary injury to the person is foreseeably elevated, thus the justification for ECD deployment is also elevated. The officer(s) must balance the elevated risk(s) of injury with the need for immediate apprehension.
- (1) Presence of flammable materials;
 - (2) Person in an elevated position;
 - (3) Person operating a vehicle;
 - (4) Person running;
 - (5) Person obviously or known to be pregnant;
 - (6) Person in water sufficient to drown;
 - (7) Person obviously frail or infirm;
- f. ECD deployment methods: The primary deployment method is to discharge the ECD cartridge propelling the probes and probe wires. The back-up deployment method is to firmly drive the attached fired ECD cartridge into the person's body. Removing the ECD cartridge to apply a drive stun is discouraged because it provides limited effectiveness and has a higher propensity for causing minor burn marks or friction abrasions to the skin than probe deployment.
- g. ECD deployment cycle(s): Officers shall deliver only the number of deployment cycles reasonably necessary to control the person. If cover officer(s) are present they should move in and control the person during the deployment cycle(s), if practical. If multiple cycles have been delivered and the person still cannot be controlled, officers should consider escalation of force options or disengage.
- h. If the probes are imbedded in sensitive tissue areas, i.e., neck, face, groin, or the breast of a female, officer(s) shall arrange transport to a medical facility for removal. If the probes are imbedded in other non-sensitive tissue areas, a trained officer may remove the probe(s) according to the trained procedures. All probes shall be considered a biohazard and removed using personal protective equipment if practical.
- i. After the probes have been removed, the probes, wires, and cartridge(s) shall be collected and entered into safekeeping. They shall be retained in the ECD

locker for a period of not less than 30 days. After the 30-day period they may be destroyed.

- (1) Don nitrile/disposable gloves.
 - (2) Collect probes, wires, and the cartridge as a unit if possible. If possible, do not break the wires from the probes or cartridge.
 - (3) Gently press the probes into the wire channels that house the wires on the front of the cartridge.
 - (4) Do not wrap or attempt to untangle the wires.
 - (5) Remove nitrile gloves in an inside-out fashion, encasing the cartridge.
 - (6) Place the whole cartridge unit into a properly labeled plastic storage bag and secure into a temporary evidence locker.
 - (7) Enter into ECD Log Book.
- j. Trained officers shall complete an ECD refresher course and a written examination annually.

G. Use of Restraints

1. Generally, all subjects taken into custody by officers of the Department will be handcuffed, or otherwise physically restrained, pursuant to Departmental training guidelines and training principles. Officers shall use only those physical restraints and techniques in which they have received departmental training. In an emergency where exigent circumstances exist and an approved restraining device is unavailable, or would otherwise be ineffective, the Department recognizes that temporary emergency techniques or devices may have to be used. If such action is necessary, the officer involved must use only such techniques or devices that would be reasonably justified in consideration of the totality of the circumstances. In these situations, Departmentally approved restraining devices or techniques shall be substituted as soon as reasonably practical.
2. Unless exigent circumstances exist, officers shall restrain subjects in all of the following situations:
 - a. Whenever the subject has acted in an aggressive manner to another person.
 - b. Whenever the subject has displayed, or threatened to display, any degree of either passive or active resistance to the officer.
 - c. Whenever an officer has knowledge that the subject has a history of violence or a lack of cooperation with law enforcement.

- d. Whenever an officer suspects that the subject is, or may be, agitated or otherwise emotionally disturbed. This shall include subjects that are suffering from, or have a recent history of suicidal or other destructive behavior.
 - e. Whenever the officer suspects that the subject may be motivated to attempt to flee from, or attack the officer or others.
3. Handcuffs are temporary restraining devices. An officer who applies handcuffs to a subject, must be prepared to closely monitor that subject's condition until the handcuffs are removed and the subject is released or turned over to a competent authority.
 4. Handcuffs serve to aid an officer in safely maintaining control of a subject if they effectively restrain the subject's hands. If it appears that the subject's hands are too small, or for some other reason the handcuffs would fail to restrain the subject, the handcuffs should not be used. If the use of handcuffs would appear to cause physical pain or inflict injury (as opposed to mere discomfort) to a subject, the handcuffs should not be used.

H. First Aid and Medical Assistance

1. An officer involved in any use of force incident shall display as much regard for the offender's safety and welfare as is reasonably possible under the circumstances. Whenever an officer injures a subject as a result of applied force, officers on the scene will immediately provide first aid and request medical assistance, if necessary, for the injured subject as soon as the scene is secure.
2. After any contact involving a possibility of illness or injury, including contacts involving physical intervention, officers shall conduct an initial medical assessment to find out if the subject, or anyone else, requires medical care. Officers shall:
 - a. Determine the subject's level of consciousness, using verbal or physical stimulus.
 - b. Check airway, breathing and circulation.
 - c. Perform a body check for injuries.
 - d. Provide any necessary treatment to the officer's level of training, and if needed or the subject requests it, activate the emergency medical system.
 - e. Continue to closely monitor and remain with the subject until they are turned over to a competent authority. Officers should find out if there is a need for long-term monitoring of the subject because of special medical or mental health needs. Subjects with medically significant behavior need medical help. Excited delirium is a medical condition that is usually brought on by stimulant drug abuse or non-compliance with psychiatric medications. Excited delirium is a phenomenon that has been recognized as a cause of death for subjects in police custody. It is very likely a substantial contributor to deaths of people

against whom law enforcement officers have deployed an electronic control device.

I. Policy Distribution and Use of Force Training

1. All officers shall successfully complete the proficiency goals as provided under LES.3.03 of the Wisconsin Administrative Code as it pertains to the DAAT and Firearms curriculum.
2. Only State of Wisconsin Department of Justice Training and Standards Board certified DAAT, and firearms instructors for firearms training, shall instruct officers in the concepts and techniques identified in the DAAT System and Disturbance Resolution Model.
3. The DAAT Training Coordinator shall ensure that each officer is fully trained and has demonstrated competency in both the physical and cognitive components of the DAAT System and Disturbance Resolution Model, as well as Department policy on the Use of Force. Officers will be required to demonstrate these competencies through both a physical skills and written exam at the following times:
 - a. Immediately upon being hired by the Department. This shall normally occur during the first week of field training. Officers shall not become involved in fieldwork or otherwise become involved in any incident where the potential for the use of force exists until they have completed this certification. Officers shall not wear their uniform or other attire that identifies them as an officer until this training has been successfully completed.
 - b. Annually, prior to June 30.
 - c. Upon returning from leaves of absence of six (6) months or more.
 - d. At any time that the DAAT Training Coordinator or Chief of Police has just cause to believe that such re-training and/or evaluation is necessary.
4. As it relates to the proficient use and care of firearms and the application of deadly force, the Firearms Training Coordinator shall ensure that each officer is fully trained in, and has demonstrated competency in both the physical and cognitive components of the use and care of Departmental firearms, the DAAT System and Disturbance Resolution Model, as well as Department policy on the Use of Force. Officers will be required to demonstrate these competencies, through both a physical skills and written exam, during the Department's firearms training and qualifications program. This training shall be conducted at the following times:
 - a. Immediately upon being hired by the Department. This shall normally occur during the first week of field training. Officers shall not become involved in fieldwork or otherwise become involved in any incident where the potential for the use of force exists until they have completed this certification. Officers shall not wear their uniform or other attire that identifies them as an officer until this training has been successfully completed.

- b. Twice annually; once during March, April or May and again during September, October, or November.
 - c. Upon returning from leaves of absence of six (6) months or more.
 - d. At any time that the Firearms Training Coordinator or Chief of Police has just cause to believe that such re-training and/or evaluation is necessary.
 5. The DAAT Training Coordinator and Firearms Training Coordinator are responsible for ensuring that all Department personnel are receiving use of force training that meets and/or exceeds the minimum standards of training established by state or federal laws, administrative codes, case law, or any other such legitimate mandate or recommendations. As such, the DAAT and Firearms Training Coordinators shall ensure that they remain fully aware of such information and changes thereto.
 6. A copy of the Use of Force policy, including all future amendments or revisions thereto, shall be distributed individually to all sworn personnel in strict accordance with the guidelines established in POLICY. However; the Department DAAT Training Coordinator, not the officer's immediate supervisor, shall review the Use of Force policy with all officers to ensure that they fully understand the policy requirements and information contained therein. Other policy distribution guidelines, as outlined in POLICY, shall be followed.
 7. The Use of Force policy shall be thoroughly reviewed with all sworn department personnel in January and July of each year. The Department's DAAT Training Coordinator shall be responsible for scheduling and completing this policy review. The Chief of Police shall be responsible for ensuring that the DAAT Training Coordinator is also provided with a review of the policy. A written confirmation of each officer's review and understanding of the policy shall be obtained. This confirmation shall be forwarded to the office of the Chief of Police, who shall ensure that it is maintained in the master policy file.
- J. For Departmental Use Only

This policy is for internal departmental use only and does not apply in any criminal or civil proceeding. The Department has duly deliberated and has intentionally raised the standards of care regarding several issues. The Department policy is not to be construed as the creation of a higher legal standard of safety or care in any evidentiary sense with respect to third party, and other, claims. Violations of this policy will only form the basis for Departmental administrative actions.

Annex A (Use of Force Policy)
Disturbance Resolution Model

1) APPROACH CONSIDERATIONS

- | | |
|-------------------------------|--|
| A. Decision-Making | Justification
Desirability |
| B. Tactical Deployment | Control of Distance
Relative Positioning
Relative Positioning with Multiple Subjects
Team Tactics |
| C. Tactical Evaluation | Threat Assessment Opportunities
Officer/Subject Factors
Special Circumstances
Level/Stage/Degree of Stabilization |

2) INTERVENTION OPTIONS

MODE

PURPOSE

- | | |
|-----------------------------------|---|
| A. Presence | To present a visible display of authority |
| B. Dialogue | To verbally persuade |
| C. Control Alternatives | To overcome passive resistance, active resistance, or their threats |
| D. Protective Alternatives | To overcome continued resistance, assaultive behavior, or their threats |
| E. Deadly Force | To stop the threat |

3) FOLLOW-THROUGH CONSIDERATIONS

- | | |
|-----------------------------|---|
| A. Stabilize | Application of restraints, if necessary |
| B. Monitor/Debrief | |
| C. Search | If appropriate |
| D. Escort | If necessary |
| E. Transport | If necessary |
| F. Turn-Over/Release | Removal of restraints, if necessary |