

Chapter 6

Use of Force

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Sec. 3-6-1 Use of Force

Purpose:

The purpose of this document is to establish a policy for the use of force by sworn personnel 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 based in part 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-Bureau of Training and Standards).

Policy:

It is the policy of the Kaukauna Police Department that officers shall use only the amount of force that is reasonably necessary to achieve a lawful objective and in accordance with the Constitution of the United States and the Constitution of the State of Wisconsin.

Definitions:

- A. Active Resistance: Behavior which physically counteracts an officer's control efforts which creates risk of bodily harm to the officer, subject, and/or other persons.
- B. Assaultive Behavior: Direct actions or conduct that generates bodily harm.
- C. Bodily harm: Physical pain or injury or any impairment of physical condition.

- D. **Deadly Force:** The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- E. **De-escalation:** Taking action to stabilize a situation and reduce the immediacy of a threat so more time, options, and resources become available to resolve the situation with a reduced likelihood that physical force will be necessary.
- F. **Excessive Force:** Is force that is greater than legally acceptable force.
- G. **Excited Delirium Syndrome:** A state of extreme mental and physiological excitement characterized by extreme agitation, hyperthermia, hostility, and exceptional strength and endurance without apparent fatigue.
- H. **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 any other serious bodily injury.
- I. **Intervention Options:** Trained techniques recognized in the DAAT system. These techniques may include additional techniques trained and authorized by the Kaukauna Police Department. A list of these techniques shall be attached in the Appendix of this policy.
- J. **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.
- 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.
- L. **Objective Reasonableness Standard:** The standard established by the U.S. Supreme Court in *Graham v. Connor* (1989), and its progeny, says 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. Proper application of reasonableness requires careful attention to the facts and circumstances of each particular case, including:
 - 1. Whether the suspect poses an imminent threat to the safety of officers and/or others;
 - 2. Whether the suspect is actively resisting or attempting to evade arrest by flight;
 - 3. The severity of the alleged crime(s) at issue.
- M. **Passive Resistance:** Non-Compliant and non-threatening behavior.
- N. **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 the force is used.

- O. Wisconsin Defensive 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.

Procedure:

A. General Guidelines

1. Officers shall use only the amount of force that is objectively reasonable to control or otherwise engage in a situation, affect a seizure, control, or maintain control or detention of a person. The officers' force decisions shall be based on the Intervention Options found in Appendix A of this policy.
2. When time and circumstances reasonably permit, officers shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 - a. Medical condition
 - b. Mental impairment
 - c. Developmental disability
 - d. Physical limitations
 - e. Language barrier
 - f. Alcohol/drug induced impairment
 - g. Behavioral crisis
3. When officers can reasonably conclude that the lack of compliance is attributed to a condition enumerated in Section 2, above, and when deemed safe under the totality of circumstances, officers shall use de-escalation techniques to reduce the need for physical force. Such techniques should not compromise officer or public safety. These techniques may include:
 - a. Containing the threat;
 - b. Placing barriers between the subject and officer;
 - c. Creating distance and seeking cover and/or concealment;
 - d. Tactical positioning;
 - e. Utilizing professional communications, including verbal persuasion;
 - f. Requesting additional resources, including additional officers, CIT officers, or less lethal equipment; and/or
 - g. Ensuring a proportional response.

4. Officers shall not continue to use force more than is objectively reasonable to maintain control once the person has stopped resisting and control of the person has been established.
5. Once control has been established officer(s) 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.
6. An officer shall not brandish, display, or threaten the use of Control Devices, Impact Weapons, and Firearms unless (s)he can reasonably conclude its use may become justified and is anticipated.
7. If an officer uses any of the below listed Intervention Options, the officer shall contact an on-duty supervisor. The officer shall also complete an offense report documenting the incident and a KPD Form #13 (Use of Force Report). The officer is responsible for forwarding the KPD Form #13 to the persons listed on the form, including the Assistant Chief. The Intervention Options include: Passive Countermeasures, Active Countermeasures, Control Devices, and Deadly Force.
8. 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.

Sec. 3-6-2 Oleoresin Capsicum Spray (OC)

- A. Officers and Community Service Officers, who have been trained and certified in the use of OC, shall carry KPD issued OC while on duty. If an officer has a special duty assignment that does not make carrying OC feasible, the officer may be exempt from carrying OC for the assignment. Community Service Officers shall carry KPD issued OC only when on-duty and are limited to the use of OC for animal control duties and/or in self-defense.
- B. OC may be used by trained personnel when a person is threatening to actively resist or is actively resisting officers and the person poses a threat of bodily harm to an officer or another person. Passive resistance without posing a threat of bodily harm to officers or others does not justify the use of OC.
- C. Generally, OC should not be intentionally sprayed directly at the eyes of a person from a distance of less than four (4) feet due to an increased risk of eye injury from the pressure of the spray at these distances.
- D. Department personnel who use OC against a person shall ensure the person is decontaminated as soon as practical after (s)he is under control.
 1. If possible, expose the person to fresh air and flush the exposed area with cold water or apply a KPD issued OC decontamination product.

2. Continue to monitor the exposed person for any unusual reactions to the exposure. If the exposed person has an unusual reaction or requests medical attention, transportation to a medical facility shall be arranged.
- E. If circumstances permit, and it can be done without endangering department personnel, reasonable efforts to decontaminate animals should be made or the decontamination information conveyed to the animal's owner or keeper.

Sec. 3-6-3 Electronic Control Device (ECD)

- A. Conducted Energy Weapon (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 of the human and animal nervous system. The intended purpose of the device is to incapacitate and help control threatened or active resistance and/or violent persons or animals.
1. KPD Officers may only carry ECD units and accessories that have been approved by the Chief of Police or their designee.
 2. Officers who have successfully completed a KPD approved training course and written test concerning the use of an ECD shall carry it while on-duty if ECD units are available. Non-Uniformed officers trained in the use of an ECD may choose to carry an ECD.
 3. An ECD is not intended for use 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.
 4. 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.
 5. 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.
 - a. Presence of flammable materials
 - b. Person in an elevated position
 - c. Person operating a vehicle
 - d. Person running
 - e. Person obviously or known to be pregnant
 - f. Person in water sufficient to drown
 - g. Person obviously frail or infirm

6. 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.
7. 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.
8. 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 tissues 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.
9. After the probes have been removed, the probes, wires, and cartridge(s) shall be collected and entered into evidence or properly discarded.
 - a. Gently press the probes into the wire channels that house the wires on the front of the cartridge.
 - b. Do not wrap or attempt to untangle the wires.
 - c. Place the whole cartridge unit into a container. Place the container into a proper biohazard bag and enter into evidence. Ensure the darts are intact and no parts left in the skin.
10. When an ECD is used against a person or animal, the user shall complete KPD Form #13.
11. Trained officers shall complete an ECD refresher course and a written examination every even year.

Sec. 3-6-4 Impact Weapon/Bite Stick (expandable)

- A. Uniformed Officers and Community Service Officers who have been trained in the use of a KPD approved impact weapon shall have an approved impact weapon reasonably available to them while on duty. Community Service Officers shall carry KPD issued impact weapon only when on-duty and are limited to the use of the impact weapon (bite stick) for animal control duties and/or in self-defense.
- B. An impact weapon may be used to impede a subject, preventing him or her from continuing resistive, assaultive, or otherwise dangerous behavior.
- C. Chemical munitions, diversionary devices and kinetic energy impact projectiles, will be limited to use by Emergency Response Team (ERT) members under the direction of the ERT Commander. Use of these devices will be in accordance with the requirements of this policy that only lawfully acceptable force be used. Injuries to a person resulting from

the use of chemical munitions, diversionary devices and kinetic energy impact projectiles shall be documented in the offense report of the incident leading to the utilization of ERT personnel.

Sec. 3-6-5 Use of Deadly Force

Justification: The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.

Definition: Behavior which has caused or imminently threatens to cause death or great bodily harm to you or another person or persons.

- A. The use of deadly force is permissible under the following circumstances:
 - 1. As a last resort, in the defense of one's self, or another person, when the officer reasonably believes (s)he is in imminent danger of death or great bodily harm.
 - 2. As the final alternative, to affect an arrest or prevent the escape of a fleeing felon whom the officer reasonably believes has committed a felony involving the actual or threatened use of deadly force. The officer shall also have 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.
 - 3. 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 whether other dispositions may be feasible.
- B. Before using a firearm and when feasible, police officers shall identify themselves and issue a verbal challenge.
- C. Generally, deadly force shall not be used under the following circumstances:
 - 1. Warning shots.
 - 2. From a moving vehicle unless A.1. or A.2. apply.
 - 3. At a moving vehicle unless A.1. or A.2. apply.
 - 4. When the target of the force is not clearly visible (*e.g.* firing into a building or through a door) is not permitted unless officers are being fired upon from within and no alternative means of cover is perceived to be available.
 - 5. When the officer is in doubt as to whether or not he or she has the legal justification to use deadly force.
- D. Prohibitions
 - 1. The use of Choke Holds is prohibited except in situations where the use of deadly force is allowed by law.

2. The use of Lateral Vascular Neck Restraints is prohibited except in situations where the use of deadly force is allowed by law.

Sec. 3-6-6 Pointing of Firearm

- A. If an officer points a firearm at a person in the course of duty and does not discharge the firearm, the officer shall complete an offense report detailing the circumstances of the incident. If multiple officers are involved, only the officer assigned the call is required to complete an offense report. A KPD Form #13 is not required.

Sec. 3-6-7 First Aid and Medical Assistance

- A. Officers who use force against a person shall insure the person is monitored for injury as soon as the scene is secured. If an injury is observed or reported by the person, officer(s) shall provide first aid and/or request medical assistance as needed.
- B. In addition to visible injuries and those reported by the subject, officers should be observant for indicators that the subject is experiencing excited delirium syndrome.
- C. If excited delirium syndrome is suspected, officers shall request an emergency response from EMS. Officers shall ensure the subject is continuously monitored until the subject is evaluated by EMS.

Sec. 3-6-8 Required Notifications and Reports Upon Use of Force

- A. Whenever an officer is responsible for an accidental or intentional discharge of a firearm while on or off duty (other than during firearms training, hunting or participation in appropriate (and lawful) firearm related sporting or recreational events), or the accidental or intentional use of deadly force by any means, the following notifications and reports shall be made:
 1. Used on or directed against a person: On-Duty Supervisor and Chief of Police or his/her designee.
 2. Used against an animal - if a firearm is used against an animal, the officer shall, if possible, (or immediately thereafter if not possible before) notify the Communications Center and his/her supervisor prior to discharge. The officer shall complete an offense report and KPD Form #13.
 3. Accidental discharge without injury - the officer shall immediately notify the on-duty supervisor and complete an interoffice memorandum that date to the Assistant Chief regarding the circumstances of the incident.

- B. In addition to any other reporting requirements in this policy, whenever an officer uses force against another that results in, or is alleged to have resulted in, injury or death to a person, the officer shall prepare an offense report describing the circumstances surrounding the use of force.
- C. If an officer uses any of the below listed Intervention Options, the officer shall contact an on-duty supervisor. The officer shall also complete an offense report documenting the incident and a KPD Form #13 (Use of Force Report). The officer is responsible for forwarding the KPD form #13 to the persons listed on the form, including the Assistant Chief. The Intervention Options include: Passive Countermeasures, Active Countermeasures, Control Devices and Deadly Force.
- D. The Assistant Chief shall review each incident to determine if the circumstances of the incident warrant an investigation into the officer's use of force.

Sec. 3-6-9 Policy Distribution and Training

- A. A copy of the Use of Force policy, including all future amendments or revisions thereto, shall be distributed to all sworn personnel.
- B. The Firearms Coordinator shall conduct training to all sworn personnel, at least annually, as part of the firearms training and qualification program of the appropriate use of deadly and non-deadly force by officers pursuant to the terms of this policy.
- C. The DAAT instructors or their designee shall conduct training for all CSO's authorized to carry OC.

DATE

CHIEF OF POLICE

Appendix A

(USE OF FORCE Policy) INTERVENTION OPTIONS

Mode	Purpose
A. Presence	To present a visible display of authority
B. Dialog	To verbally persuade
C. Control Alternatives	To overcome passive resistance, active resistance, or their threats
1. Escort Holds	
2. Compliance Holds	
3. Control Devices	
a. OC Spray	
b. Conducted Energy Weapons (CEW's)	
4. Passive Countermeasures	
D. Protective Alternatives	To overcome continued resistance, assaultive behavior, or their threats
1. Active Countermeasures	
2. Incapacitating Techniques	
3. Intermediate Weapon (Expandable Baton)	
E. Deadly Force	To stop the threat