



POLICY & PROCEDURE

BURLINGTON POLICE DEPARTMENT

SUBJECT: **LESS LETHAL WEAPONS**

SCOPE: All Sworn Personnel

DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes: 66.0511, 165.845, 175.44, 939.22(14), 939.45, 939.48, and Chapter 941; DAAT Incident Response and Disturbance Resolution Model

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Conducted Energy Weapon
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PURPOSE: The purpose of this Policy & Procedure is to establish policies and procedures regarding the use of less lethal weapons, including de-escalation measures and to identify the responsibilities of officers of the Burlington Police Department when using them or after they have been used.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURES
- IV. TRAINING
- V. REPORTING USE OF FORCE
- VI. PUBLIC ACCESS TO POLICY & PROCEDURE

I. POLICY

- A. It is the policy of the Burlington Police Department that when serving the community, officers make every effort to preserve and protect human life and the safety of all persons. Officers shall also always respect and uphold the dignity of all persons in a nondiscriminatory manner. When using force, officers are required to act in good faith to achieve a legitimate law enforcement objective. Officers are authorized to use force that is objectively reasonable based on the totality of the circumstances, including: the severity of the alleged crime at issue, whether the suspect poses an imminent threat to the safety of law enforcement officers or others, and/or whether the suspect is actively resisting or attempting to evade arrest by flight. Officers may include in their decision to use this force option, information known to the officer(s) at the time of the incident or conduct or statements by the subject or a prior history of resistive or assaultive behavior.

A law enforcement officer may use deadly force only as a last resort when the law enforcement officer reasonably believes that all other options have been exhausted or would be ineffective. A law enforcement officer may use deadly force only to stop behavior that has caused or imminently threatens to cause death or great bodily harm to the law enforcement officer or another person. If both practicable and feasible, a law enforcement officer shall give a verbal warning before using deadly force.

1. All sworn Officers are required to follow the State of Wisconsin's Law Enforcement Training and Standards' system of Defensive and Arrest Tactics when making all use of force decisions.
2. Officers shall use only force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others.
3. Any person injured through the use of force by one of its officers, shall receive medical aid for such injuries.
4. It is the responsibility of any officer who uses physical force or any of the enumerated weapons, items or devices indicated below to complete a Report on the incident and to specifically note the circumstances necessitating, and manner of, such use of force.
5. All cases where force is used shall be reviewed by the Chief of Police on a documented annual basis.

II. DEFINITIONS

- A. **ACTIVE RESISTANCE:** When an officer encounters behavior which physically counteracts his or her control efforts and which creates risk of bodily harm to the officer, subject, and/or other person.
- B. **DEADLY FORCE:** The intentional use of a firearm or other instrument that creates

a high probability of death or great bodily harm.

- C. DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force situation in an attempt to stabilize the situation and reduce the threat without the use of force or with a reduction in the force necessary.
- D. DEFENSIVE AND ARREST TACTICS (DAAT): A system of verbalization skills coupled with physical alternatives.
- E. CONDUCTED ENERGY WEAPON (CEW): A non-lethal force device that causes electro-muscular disruption to a combative, violent, or potentially combative, violent subject. The use of this device is intended to incapacitate the subject with a minimal potential for causing death or great bodily harm.
- F. 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." WI State Statute 939.22(14)
- G. NON-DEADLY FORCE: That amount of force which does not meet the definition of deadly force, but which is an amount of force which, in normal circumstances, can cause bodily harm.
- H. PASSIVE RESISTANCE: When a subject refuses to comply with a directive from a law enforcement officer but does not attempt to engage in physical action likely to cause bodily harm to the officer or to another person
- I. REASONABLE FORCE: That force which an ordinary, prudent, and intelligent person with the same knowledge of the particular situation as the officer would deem necessary.

III. PROCEDURES

A. Batons

1. The baton may be used by an officer only when it is reasonably apparent that a lesser degree of force would be inadequate to control the situation.

The baton may be used by an officer to subdue a violently resisting subject, in self-defense, or in defense of a third person if lesser methods have failed, or if circumstances warrant the immediate use of the baton.

- a) Only those officers qualified in the Defensive and Arrest Tactics System shall be allowed to carry or use a baton.
- b) The acceptable primary target areas for the baton are the elbow, knee, and abdomen.
- c) The intentional striking of an individual above the shoulders is prohibited.

Generally, a strike to the head with an impact weapon is considered deadly force and should not be used, unless such an action is justified under the use of deadly force. It is recognized that because of a person's own resistance, the accidental, unintentional striking of a person above the shoulders may occur. If that happens, the officer must articulate this in detail in the report and will seek immediate medical attention for the subject if treatment is necessary.

- d) Department-approved batons are the only authorized batons. Other devices such as, flashlights, radios, and firearms are not recommended to be used as impact weapons; however, the Department recognizes that emergency self-defense situations involving other objects and instruments may occur. Expandable or wooden batons are authorized providing the baton of choice is readily available for on-duty, uniformed officers.
- e) When a baton is used against the body of a person, the officer should notify a supervisor and complete an Incident Report.

B. Kinetic Energy Impact Projectiles

1. Kinetic energy impact projectiles, including what are commonly referred to as "beanbag rounds" may be utilized by trained Department personnel in circumstances where a level of force less than deadly force may be appropriate for resolving the situation, and when the risk associated with closing on the subject to take control makes other alternatives unsuitable.

The option to use kinetic energy impact projectiles may be used when a person poses a significant threat of harm to self or others and unarmed tactics have either been exhausted or would not be effective or safe given the circumstances. Officers may include in the decision to use this force option information known to the officer at the time of the incident, including conduct of or statements by the subject or prior history of resistive or assaultive behavior.

2. When utilized, the Department places the use of kinetic energy impact projectiles and other Less Than Lethal Munitions at the Intermediate Weapon Mode. Less-lethal is defined as the "intentional use of an instrument to impede a subject, the use of which would not cause death."
3. An officer should not brandish, display or threaten the use of a kinetic energy impact weapon unless he/she can reasonably conclude it use may become justified and is anticipated.
4. When kinetic energy impact projectiles are used against the body of a person, the officer should notify the Chief of Police or a supervisor and will complete an Incident Report detailing the circumstances of the incident.
5. Only Department-authorized and issued kinetic energy impact projectiles may be used.

6. Kinetic energy impact projectiles may be delivered to the subject's body in accordance with the following guidelines:
 - a) Primary Target Areas (legs and buttocks): In addition to legs and buttocks, arms may also be considered a primary target under some circumstances. The officer must consider the proximity of the targeted portion of the arm to vital areas of the body. Primary target areas are considered when incapacitation is necessary but the threat is not imminent. Multiple impacts to the primary target areas should be considered before progressing to the secondary target area.
 - b) Secondary Target Area (lower abdomen): The secondary target area is considered when incapacitation is critical due to the imminent threat posed by the subject, but deadly force has not yet become necessary.
 - c) Head/Neck/Chest Area: Intentional impact to these areas is avoided unless the use of deadly force is justified.
7. In each instance where kinetic impact projectiles are deployed at an incident, a determination should be made regarding the need for lethal cover. Lethal cover is required in all cases in which the subject possesses a firearm.
8. Subjects who are struck by a kinetic energy impact projectile should be transported to a medical facility.

C. Chemical Control Device

1. The aerosol chemical control device authorized by the Department contains oleoresin capsicum (O.C.). No other aerosol chemical restraint is authorized or allowed without prior approval from the Chief of Police or designee. All O.C. must be non-flammable.
2. When an officer is threatened with physical force or dealing with a resistive or combative person and lesser control factors are ineffective, consideration should be given to the use of a chemical control devices.
3. All uniformed officers issued O.C. aerosol will be required to carry it while on duty. This rule shall not apply to administrative personnel and other officers assigned to plain clothes duties within the Department.
4. O.C. aerosol will be used consistent with the training provided by the Department and/or the Wisconsin Training and Standards Bureau.

D. Conducted Energy Weapon (CEW)

1. Only officers who have satisfactorily completed the Department's approved CEW certification training course shall be authorized to carry/use such weapon.
2. The CEW may be used by trained officers when a subject is threatening to actively resist or is actively resisting an officer and the subject poses an

articulable threat of harm to an officer or another person. It may also be used when a subject poses a threat of harm to themselves such as self-inflicted injury or a suicide attempt.

3. The CEW is considered to be in the Control Device section of the Intervention Options on the Disturbance Resolution Model.
4. Any use of the CEW shall be consistent with the manufacturer's recommendation and precautions.
5. Passive resistance without posing an articulable threat of harm to officers or others does not permit the use of a CEW.
6. An officer shall not brandish, display a CEW unless he or she can reasonably conclude its use may become justified and is anticipated.
7. In each instance that a CEW is deployed in an incident, consideration should be made regarding the need for lethal cover.
8. Officers who deploy a CEW against a subject shall ensure the subject is monitored for injury as soon as practical after the subject is under control.
 - a) If an adverse reaction to the CEW occurs, or if requested by the person, emergency medical services shall be provided to them.
 - b) If the probes are imbedded in sensitive tissue areas (e.g.: neck, face, groin, breasts), officers shall arrange transport to a medical facility for removal. If the probes are imbedded in other non-sensitive tissue areas, a CEW-trained officer may remove them according to the trained procedures.
 - c) After the probes have been removed, they shall be handled as a biohazard and packaged according to the trained procedure. Photographs of the wound site shall be taken if practical. Probes and wires will be retained as evidence.
9. Restrictions/Limitations on CEW Deployment
 - a) The CEW should not be used in the following circumstances unless exigent circumstances are present, and those circumstances are clearly articulated:
 - When the officer knows the subject has come in contact with flammable liquids, or is in a flammable atmosphere.
 - When the subject is in a position where a fall may cause substantial injury or death.
 - Punitively, for purposes of coercion, or in an unjustified manner.

- When a subject is handcuffed and offering no active resistance, or is offering resistance which may be overcome using lesser force.
- When the subject is visibly pregnant.
- When it is reasonable to believe that incapacitation of the subject may result in serious injury or death.
- In situations where the subject is in close proximity to water where, if incapacitated by the CEW, there is a high probability that the subject could drown.
- When the subject is at the extremes of age (young or old) or physically disabled.
- When a person has an apparent debilitating illness.

10. Detention Facility Notification after CEW Use

- a) Upon use of a CEW on a subject who is subsequently placed in a detention facility, officers will notify detention personnel of such CEW use and any other details that may be appropriate (such as injury complaint).

11. Use of the CEW on Animals

- a) CEW may be used on animals when:
 - (1) A vicious animal is threatening or attacking a person or other animal and the use of other force is not reasonable or may not be desired given the situation.
 - (2) An animal needs to be controlled for reason of public safety, preservation of property, or other legitimate purpose; and the animal poses an active threat to officers in their efforts to perform their duties.
- b) Officers should be prepared to use other justified force if necessary.
- c) Officers should be prepared to apply conventional controls once the CEW has subdued the animal.

12. When a CEW is deployed or feinted against a subject, the officer shall notify a supervisor and complete a Use of Force Form as well as a report detailing the circumstances of the incident.

13. Trained officers shall complete a refresher course and a written examination every two years concerning the use of this weapon.

IV. TRAINING

A. Training whether noted above or not for less lethal weapons shall occur at a

minimum biennially for officers authorized to use such weapons or techniques.

V. REPORTING USE OF FORCE

A The Department shall supply information regarding the use of force to the Wisconsin Department of Justice, in their format that is specific to the language in Wisconsin State Statute 165.845.

VI. PUBLIC ACCESS TO POLICY & PROCEDURE

A. Public access to this Policy & Procedure pursuant to WI State Statute 66.0511(2) shall be the same as required in Policy & Procedure 5.01. Senate Bill 122 (signed by Governor Tony Evers on June 22, 2021) requires law enforcement agencies make their use of force policies publicly available on their websites. Policies are located at the department's Resources & Link page (<https://www.burlington-wi.gov/151/Resources-Links>). If a person requests a copy of UOF policies, it shall be provided free of charge and within 3 business days.

Mark J. Anderson
Chief of Police

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