

# Use of Force

 <b>Ashwaubenon Dept. of Public Safety</b>		<b>Title: Use of Force</b>		
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## I. PURPOSE

The purpose of this policy is to establish guidelines for the reasonable use of force by sworn personnel for legitimate purposes. Proper use of force decisions, based on reasonableness, ensures due process for citizens as well as provides protection for the officer and the Department. It is the duty of all officers to provide for safety and security through the preservation of life of all individuals.

## II. POLICY

The Ashwaubenon Department of Public Safety recognizes in serving the community, officers shall make every effort to preserve and protect human life and the safety of all persons. Officers shall also respect and uphold the dignity of all persons at all times in a nondiscriminatory manner. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

Officers must understand and have a true appreciation for their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of their official duties.

This policy is intended to fulfill the requirements of Wisconsin Statutes [§ 66.0511\(2\)](#) and [§ 175.44](#).

## III. DEFINITIONS

- A. **Active Resistance** – Behavior which physically counteracts an officer's control efforts and creates a risk of bodily harm to the officer, subject, or other persons.
- B. **Assaultive Behavior** – Direct actions or conduct that generates bodily harm to the officer(s) and/ or another person(s).

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- C. Bodily Harm – Physical pain or injury, illness, or any impairment of physical condition, but less severe than great bodily harm.
- D. Choke hold - A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation.
- E. Continued Resistance – Maintaining a level of counteractive behavior that is not controlled with the officer's current level of force.
- F. Deadly force - The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm.
- G. De-escalation – Taking action to stabilize a situation and reduce the immediacy or a threat so more time, options, and resources become available to resolve the situation with a reduced likelihood that physical force will be necessary.
- H. Defensive and Arrest Tactics (DAAT) – A system of verbalization skills coupled with physical alternatives. It is the specific system formulated, approved, and governed by the Wisconsin Department of Justice – Law Enforcement Standards Board.
- I. Electronic Control Device – A battery powered device that uses propelled wires and probes or direct contact to deliver a safe amount of electricity for the purpose of affecting the sensory and motor functions of the human and animal nervous system. The intended purpose of this device is to incapacitate and help control threatened or active resistance and/or violent persons or animals.
- J. 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.
- K. Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed.
- L. 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.
- M. Intervention Options - In determining the amount of force to be used, officers may use one level of force higher than that being used or threatened against them.
- N. Kinetic Energy Impact Projectiles – Flexible or non-flexible projectiles, which are intended to incapacitate a subject with a minimal potential for causing death or great bodily harm, when compared to conventional projectiles.

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- O. Passive Resistance – Non-compliant and non-threatening resistance to lawful orders.
- P. Preclusion Requirement- Before an officer can use deadly force, the officer must reasonably believe that all other options have been exhausted or would be ineffective. In other words, deadly force is always the last resort. Note that in many deadly-force situations, the officer will not have time or the ability to try other options.

### IV. PROCEDURE

#### A. Determining Reasonable Force

1. 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:
  - a. The severity of the alleged crime at issue.
  - b. Whether the suspect poses an imminent threat to the safety of officers or others.
  - c. Whether the suspect is actively resisting or attempting to evade arrest by flight.
2. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.
3. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.
4. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In

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such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

5. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

### B. Duty to Intervene

1. Officers have a duty to intervene regardless of relative rank, position, or assignment of any of the involved or witnessing officers.
2. Any officer present and observing another officer using force that is clearly beyond what is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent the use of unreasonable force.
3. An officer who, in the course of his or her official duties, witnesses another officer use force that does not comply with section IV. A. 1 above and section H below, in the course of that officer's official duties, shall report the noncompliant use of force to a supervisor as soon as is practicable after the occurrence of the use of such force.
4. When observing or reporting force used by an officer, each officer should consider the totality of the circumstances and the possibility that other officers may have additional information regarding the threat posed by the subject.

### C. Whistleblower Protections

1. No officer may be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to employment, or threatened with any such treatment, because the officer reported, or is believed to have reported, any noncompliant use of force; intervened to prevent or stop a noncompliant use of force; participated in, or testified in, or is believed to have initiated, participated in, or testified in, any action or proceeding regarding a noncompliant use of force; provided any information, or is believed to have provided any information, about noncompliant use of force as per Wisconsin Statutes [§ 175.44\(5\)](#).

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### D. Situations in Which Force May Be Used

1. The purpose of an officer's use of force is to control.
2. Officers may use force legitimately when it is needed to achieve control in specific situations such as:
  - a. To achieve and maintain control of resistive subjects.
  - b. To detain persons reasonably suspected of criminal behavior.
  - c. To make lawful arrests.
  - d. To defend themselves or others.
  - e. To prevent escape.
3. Additionally, an officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the officer (Wis. Stat. § [968.07](#); Wis. Stat. [968.14](#)).

### E. Factors Used to Determine the Reasonableness of Force

1. The use of force by an officer is limited by the following laws and standards.
  - a. The U.S Constitution – An officer's use of force must be "objectively reasonable" as per the United States Supreme Court Case *Graham v. Connor*, which laid out the following considerations when deciding if a use of force is reasonable:
    1. The severity of the alleged crime at issue.
    2. Whether the suspect poses an imminent threat to the safety of officers and/or others.
    3. Whether the suspect is actively resisting or attempting to evade arrest by flight.
  - b. Wisconsin Law: Wis. Stats. §§ [939.45](#), [939.46](#), [939.47](#), [939.48](#) and [939.49](#).
  - c. Agency policy.
  - d. Officer Training – The DAAT system provides guidance on five

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fundamental principles that apply to the use of intervention options:

1. The purpose for use of force is to gain control in pursuit of a legitimate law enforcement objective. If verbalization is effective in gaining control, it is always preferable to physical force.
2. An officer may initially use the level and degree of force that is reasonably necessary to achieve control. The officer need not escalate step-by-step through the intervention options.
3. At any time, if the level of force an officer is using is not effective to gain control, the officer must disengage and/or escalate to a higher level of force.
  - a. This involves transitioning to a different level of force or different tactics based upon the totality of the circumstances.
4. Once an officer has gained control of a subject, the officer must reduce the level of force to that needed to maintain control.
5. An officer must always maintain a position of advantage.

### F. Use of Force to Seize Evidence

1. In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence.
2. However, officers shall not use force solely to prevent a person from swallowing evidence or contraband.

### G. Intervention Options Other Than Deadly Force

1. De-Escalation Tactics
  - a. When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources,

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formulating a plan, attempting verbal persuasion).

1. Presence - The purpose of this mode is to present a visible display of authority. This reflects that sometimes all that is needed to control a situation is the presence of an officer.
  2. Dialogue - The purpose of dialogue is to verbally persuade. Communication of the officer's intent to arrest, restrain or control a suspect is essential to gaining voluntary compliance. If possible, communication with the subject should continue throughout the intervention options until the suspect is under the officer's control.
2. Control Alternatives
- a. The purpose of control alternatives is to overcome active resistance or its threat.
  - b. The DAAT system incorporates the following tactics into this mode: escort holds, compliance holds, chemical irritants/ electronic control devices, and passive countermeasures.
    1. Chemical irritants are authorized to be used to overcome passive resistance, active resistance, or the threat of active resistance by a subject.
    2. Officers shall carry only department-issued chemical irritants.
    3. Those officers who are members of special units such as SWAT and Field Force may carry and utilize equipment issued by the respective teams while serving on those teams and in accordance with team training and policies. Officers serving in assignments other than uniform patrol may carry department-issued chemical irritants as needed or at the direction of a supervisor.
    4. Chemical irritants shall only be used by officers trained in their use and in accordance with manufacturer's recommendations.
    5. After using chemical irritants and obtaining control of a suspect, officers shall make every reasonable effort to relieve discomfort of the arrested person and any other affected bystanders in accordance with the manufacturer's recommendations. Prompt medical attention shall be provided if needed or requested.

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3. Electronic Control Devices
  - a. Are authorized to overcome active resistance or the threat of active resistance by a subject.
  - b. ECDs may also be used when the subject poses a threat of bodily harm to themselves, such as a self-inflicted injury or a suicide attempt.
  - c. Mere passive resistance does not warrant the use of an ECD.
  - d. Officers shall carry only department-issued electronic control devices upon successful completion of department-approved training.
  - e. Uniformed patrol officers shall carry an ECD while on duty. If an ECD is not available, a supervisor must be notified.
  - f. Non-uniformed officers and uniform officers whose primary duties do not include patrol may carry an ECD if an ECD unit is available.
  - g. Officers shall provide a verbal warning prior to the application of an ECT so long as it is not impractical and does not otherwise endanger the safety of the officer(s) or others.
  - h. Officers must balance the need for deployment of an ECD against the secondary concerns of the following risk factors:
    1. Presence of flammable materials.
    2. Subject located in elevated position.
    3. Subject operating a vehicle.
    4. Subject running.
    5. Subject obviously, or known to be, pregnant.
    6. Subject in water subject to drowning hazard.
    7. Subject obviously frail or infirm.
  - i. Officers shall deliver only the number of deployment cycles reasonably necessary to control the subject.
  - j. Officers shall monitor the subject for injury or adverse reaction as soon as practical after the subject is under control and arrange medical care, if necessary.

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- k. Officers may remove the probes when safe to do so and in accordance with their training. If the probes are imbedded in sensitive tissue areas, i.e., neck, face, groin, or the breast of a female, officers shall facilitate transport to a medical facility for removal.
- l. After the probes have been removed, they shall be handled as a biohazard and packaged according to trained procedure.
- m. Any officer who uses an ECD shall comply with use of force reporting requirements and turn the ECD over to the supervisor responsible for downloading data contained within.

### 4. Protective Alternatives

- a. The purpose of protective alternatives is to overcome active resistance, assaultive behavior, or their threats. The DAAT system incorporates the following tactics into this mode: active countermeasures, incapacitating techniques, intermediate weapons (baton, kinetic energy projectiles, police K-9).
- b. Police batons shall be carried for use by officers assigned to uniform patrol.
  - 1. The baton may be used to strike the subject in the designated target areas of the body, i.e., torso, legs, arms in accordance with techniques taught as part of the DAAT system. Intentional strikes to the subject's head and neck shall be considered deadly force and must meet the justification for such action.
  - 2. Officers shall monitor the subject for injury as soon as practical after the subject is under control and arrange medical care if requested by the subject.
- c. Kinetic Energy Impact Projectiles
  - 1. Officers who have been trained may use department-issued kinetic energy impact weapons (40mm sponge round) 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 unsafe or impractical.
  - 2. Officers are not required or compelled to use kinetic energy impact projectiles in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority

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over the safety of subjects engaged in criminal or suicidal behavior.

3. Deadly force cover shall be required in all cases in which the subject possesses a weapon capable of causing death or great bodily harm.
4. Officers shall provide a verbal warning prior to the application of a kinetic energy impact projectile so long as it is not impractical and does not otherwise endanger the safety of the officer(s) or others.
5. The need to immediately incapacitate the subject must be weighed against the risk of causing great bodily harm or death. Intentional targeting of the head and neck shall be considered deadly force and must meet the justification for such action.

### d. Police K9

1. The use of a canine to apprehend a subject, resulting in a bite, is considered use of force under this Policy.
2. A police canine may be used to apprehend an individual under the following circumstances:
  - a. There is a reasonable belief that the subject poses an imminent threat of bodily harm to another person or themselves.
  - b. The subject is physically resisting arrest or detention and poses an imminent threat of bodily harm to the officer(s) and/or others and the use of the canine appears necessary to overcome such resistance.
  - c. The subject is believed to be concealed from the officer(s) in an area that makes a canine search and apprehension the most appropriate method to avoid the potential threat outlined in the sections above.
  - d. Specific deployment and follow-through considerations shall comply with the Canine policy.

### H. Deadly Force Applications

1. Deadly force represents the highest level of force available to officers with the purpose to stop the threat.

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2. Deadly force is the intentional use of a firearm, other instrument, or technique that creates a high probability of death or great bodily harm.
3. Deadly force is authorized when a subject's behavior creates an imminent threat of death or great bodily harm of an officer(s) or other person(s).
4. Deadly force shall only be used as a last resort when other intervention options have been ineffective, or the officer has determined other force options would be inappropriate to stop the threat.
5. Deadly force may be used to apprehend a criminal suspect who has used or threatened to use deadly force against someone and;
  - a. Who presents a continued threat to the public and;
  - b. the officer reasonably believes there is no other way to make the arrest or retain custody of the person once arrested.
  - c. In such circumstances, the officer must reasonably believe deadly force is necessary to capture the dangerous criminal suspect and must only be used as a last resort.
  - d. A verbal warning should precede the use of deadly force, when feasible, when using deadly force to stop a fleeing criminal suspect.

### I. Warnings and Warning Shots

1. Whenever feasible, officers shall identify themselves and issue a verbal warning before using deadly force.
2. Officers shall not discharge a firearm as a warning.

### J. Shooting at or From Moving Vehicles

1. Shots fired at or from a moving vehicle are rarely effective.
2. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer 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 officer or others.
3. Officers should not shoot at any part of a vehicle to disable the vehicle.

### K. Exceptional Circumstances

1. It is recognized that situations necessitating the reasonable use of

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force, including deadly force, are dynamic and unpredictable. There are exceptional situations where deadly force is reasonable and justified.

- a. Target Specific Directed Fire: The purposeful, controlled, sustained fire directed at a perpetrator who has caused or imminently threatens to cause death or great bodily harm to the officer(s) or others, but whom is not clearly observable. Generally, officers should establish target identification, acquisition, and isolation before discharging their firearm. Officers may direct fire to the specifically identified location where the subject has concealed themselves without isolation if the consequence of not stopping the threat is greater than possibly striking an innocent person.
- b. Greater Danger Exception: Generally, officers should establish target isolation before discharging their firearm. However, situations may occur where the consequence of not stopping a threat is worse than the possibility of striking an innocent person. The chance that the officer's bullet might strike an innocent person is preferable to the likelihood of the suspect killing or injuring many others.
- c. Untrained but Justified Techniques: It is recognized that there may be circumstances where the use of deadly force is justified but the tactics employed by the officer may not be trained techniques; an example of this could be a choke hold. Choke holds and any other untrained technique, method, or tactic that creates a high probability of death or great bodily harm are prohibited and may only be intentionally used in situations where there is an imminent threat of death or great bodily harm to the officer(s) or other persons.
- d. Injured Animals: The use of a firearm is authorized for humanely euthanizing injured animals.

### L. Follow Through Considerations

#### 1. HANDCUFFING / RESTRAINTS

- a. Restraint devices are authorized in accordance with DAAT training and department policy.
- b. Restraints shall not be used to punish, to display authority or as a show of force.

#### 2. WRAP DEVICE

- a. The WRAP device may be used by officers in accordance

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with their training prior to or after a violent or potentially violent/combative subject is controlled using approved and objectively reasonable methods.

- b. The WRAP should be considered for use to limit and or prevent violent or combative subjects from causing injury to themselves or others, damage to property, to facilitate transport of a combative subject, or when conventional methods of restraint are ineffective.
- c. Once applied, the subject shall be positioned on their side or in a sitting position and examined for any potential for respiratory compromise.
- d. The subject shall be monitored at all times when the WRAP is deployed with special attention for any signs of respiratory distress, chest pains, change in facial color, elevation of body temperature, vomiting, sudden inactivity, any other indication that the subject is undergoing a medical emergency.

### 3. MEDICAL CONSIDERATIONS

- a. Subjects will be monitored for injury and timely medical care will be provided as necessary as soon as safe to do so subsequent to any use of force. If an injury is observed or reported by the subject, officers shall provide first aid or request medical assistance.
- b. Persons 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 syndrome”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage if appropriate.
- c. Officers who identify medically significant behavior when encountering a violent subject should consider response tactics geared to accomplish the following:
  - 1. Avoid increasing the subject’s agitation or excitement – often accomplished containing the subject in a specified area while waiting for EMS personnel to respond.
  - 2. Minimize physical struggles with the subject – often

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accomplished by using an ECD to control the subject once EMS personnel are in place.

3. Minimize the use of restraints – often accomplished using chemical restraints medically applied by EMS personnel on scene.
4. Get medical care for the subject as quickly as possible – often accomplished by expediting access to EMS personnel and rapid transport to a medical facility.

### L. Reporting the Use of Force

1. Any use of force by a member of this Department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident.
2. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.
3. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms as specified in Department policy, procedure, or law.
4. A report will be required when any officer is forced to use any of the following:
  - a. When an action results in, or is alleged to have resulted in, injury or death of another person.
  - b. Firearms: discharge whether intentional or non-intentional (excepting the humane euthanizing of animals, training, or lawful recreational purposes).
  - c. Control Alternatives that include:
    1. Compliance Holds
    2. Control Devices
      - i. Oleoresin Capsicum
      - ii. Electronic Control Devices
  - d. Passive Countermeasures
  - e. Protective Alternatives
5. The primary officer and any witnessing or participating officers shall generate a case report and complete individual narratives

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documenting situations where the above listed uses of force occur.

6. Each individual officer that has used any of the above mentioned uses of force shall complete a use of force report as per the Department's reporting practices in addition, or supplementary to, the case report.
7. Officers shall also complete any reports or documentation as directed by a supervisor.
8. Supervisory notification shall be made as soon as practical following the application of force that would require a written report as listed in Section L. 4. a-f above and any of the following circumstances:
  - a. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
  - b. The individual subjected to the force complained of injury or continuing pain.
  - c. The individual indicates intent to pursue litigation.
  - d. Any application of a restraint device other than handcuffs, shackles, or belly chains.
  - e. The individual subjected to the force was rendered unconscious.
  - f. An individual alleges any of the above has occurred.

### M. Supervisor Responsibilities

1. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:
  - a. Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
  - b. Ensure that any injured parties are examined and treated.
  - c. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
    1. The content of the interview should not be summarized or included in any related criminal charges.

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2. The fact that a recorded interview was conducted should be documented in a property or other report.
  3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
  - e. Identify any witnesses not already included in related reports.
  - f. Review and approve all related reports.
  - g. Determine if there is any indication that the subject may pursue civil litigation.
  - i. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim to the Chief of Public Safety.
  - h. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.
  - i. In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.
  - j. The Supervisor in charge of Use of Force procedures shall review each use of force by any personnel in the Department to ensure compliance with this Policy and to address any training issues.
- N. Removal from the Line of Duty Assignment
1. Generally, whenever an employee's actions or use of force in an official capacity, or while using Department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review.
  2. The Chief of Public Safety may exercise discretion and choose not to place an employee in an administrative assignment in any case.

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- O. Training
  - 1. Officers will receive periodic training through Department in-service on this Policy and demonstrate their knowledge and understanding.
  
- P. Annual Use of Force Analysis
  - 1. At least annually, the Supervisor in charge of Use of Force should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Public Safety. The report should not contain the names of officers, suspects, or case numbers, and should include:
    - a. The identification of any trends in the use of force by members.
    - b. Training needs recommendations.
    - c. Equipment needs recommendations.
    - d. Policy revision recommendations.



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Brian A. Uhl  
Chief of Public Safety

7/19/21

Date: