

## **General Order 12**

### **USE OF FORCE AND DEADLY FORCE**

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Effective Date:	March 01, 2021
Annual Review Date:	One year from effective date
Issuing Authority:	Joseph Stark, Chief of Police

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#### **POLICY**

#### **USE OF FORCE AND DEADLY FORCE**

MN STAT 626.8452

##### **1) PURPOSE**

It is the policy of the Wabasha Police Department to provide officers with guidelines for the use of force and deadly force in accordance with:

MN STAT 626.8452 DEADLY FORCE AND FIREARMS USE;  
POLICIES AND INSTRUCTION REQUIRED;  
MN STAT 626.8475 DUTY TO INTERCEDE AND REPORT;  
MN STAT 609.06 AUTHORIZED USE OF FORCE;  
MN STAT 609.065 JUSTIFIABLE TAKING OF LIFE; and  
MN STAT 609.066 AUTHORIZED USE OF FORCE BY PEACE OFFICERS.

##### **2) POLICY**

It is the policy of this law enforcement agency to ensure officers respect the sanctity of human life when making decisions regarding use of force. Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. Officers shall treat everyone with dignity and without prejudice and use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of others and the officer.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

Officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.

The decision by an officer to use force or deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of

the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using such force.

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

This policy applies to all licensed peace officers and part-time peace officers engaged in the discharge of official duties.

Section (4) Procedure, paragraphs (g.1-2), are effective March 1, 2021 and thereafter.

### 3) **DEFINITIONS**

- a) ***Bodily Harm:*** Physical pain or injury.
- b) ***Great Bodily Harm:*** Bodily injury which creates a high probability 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 harm.
- c) ***Deadly Force:*** Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.
- d) ***De-Escalation:*** Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.
- e) ***Other Than Deadly Force:*** Force used by an officer that does not have the purpose of causing, nor create a substantial risk of causing, death or great bodily harm.
- f) ***Choke Hold:*** A method by which a person applies sufficient pressure to a person to make breathing difficult or impossible, and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce intake of air. Choke hold also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

g) **Authorized Device:** A device an officer has received permission from the agency to carry and use in the discharge of that officer's duties, and for which the officer has:

- a. obtained training in the technical, mechanical and physical aspects of the device; and
- b. developed a knowledge and understanding of the law, rules and regulations regarding the use of such a device.

#### 4) **PROCEDURE**

##### a) **General Provisions**

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. All uses of force shall be documented and investigated pursuant to this agency's policies.

##### b) **Duty to Intercede**

Regardless of tenure or rank, an officer must intercede when:

- a. present and observing another officer using force in violation of section 609.066, subdivision 2, or otherwise beyond that which is objectively reasonable under the circumstances; and
- b. physically or verbally able to do so

##### c) **Duty to Report**

An officer who observes another officer use force that exceeds the degree of force permitted by law has the duty to report the incident in writing within 24 hours to the chief law enforcement officer of the agency that employs the reporting officer.

##### d) **De-escalation:**

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of another or the officer and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

**e) Use of Other Than Deadly Force**

1. When de-escalation techniques are not effective or appropriate, an officer may consider the use of other than deadly force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved other than deadly force techniques and issued equipment in the following circumstances:
  - a. effecting a lawful arrest; or
  - b. the execution of legal process; or
  - c. enforcing an order of the court; or
  - d. executing any other duty imposed upon the public officer by law; or
  - e. defense of self or another.

**f) Use of Certain Types of Force**

1. Except in cases where deadly force is authorized as articulated in MN STAT. 609.066 to protect the peace officer or another from death or great bodily harm, officers are prohibited from using:
  - a. Chokeholds,
  - b. Tying all of a person's limbs together behind a person's back to render the person immobile, or;
  - c. Securing a person in any way that results in transporting the person face down in a vehicle.
2. Less than lethal measures must be considered by the officer prior to applying these measures.

**g) Use of Deadly Force**

1. An officer is authorized to use deadly force if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary. Use of deadly force is justified when one or both of the following apply:

- a. To protect the peace officer or another from death or great bodily harm, provided that the threat:
    - i. Can be articulated with specificity
    - ii. is reasonably likely to occur absent action by the law enforcement officer; and
    - iii. must be addressed through the use of deadly force without unreasonable delay; or
  - b. To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in paragraph (a), items (i) to (iii), unless immediately apprehended.
2. An officer shall not use deadly force against a person based on the danger the person poses to self if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in paragraph (1a), items (i) to (iii).
  3. Where feasible, the officer shall identify themselves as a law enforcement officer and warn of his or her intent to use deadly force.
  4. In cases where deadly force is authorized, less than lethal measures must be considered first by the officer.

#### **h) Training**

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
2. In addition, training shall be provided on a regular and periodic basis and designed to
  - a. Provide techniques for the use of and reinforce the importance of de-escalation
  - b. Simulate actual shooting situations and conditions; and
  - c. Enhance officers' discretion and judgement in using other than deadly force in accordance with this policy.
3. Before being authorized to carry a firearm all officers shall receive

training and instruction with regard to the proper use of deadly force and to the agency's policies and State statutes with regard to such force. Such training and instruction shall continue on an annual basis.

4. Before carrying an authorized device all officers shall receive training and instruction in the use of the device including training as it relates to its use in deadly force and/or other than deadly force situations. Such training and instruction shall continue on an annual basis.
5. Officers will carry and use only authorized devices unless circumstances exist which pose an immediate threat to the safety of the public or the officer requiring the use of a device or object that has not been authorized to counter such a threat.
6. With agency approval officers may modify, alter or cause to be altered an authorized device in their possession or control.

**g) Recordkeeping Requirements**

The chief law enforcement officer shall maintain records of the agency's compliance with use of force training requirements.

**PROCEDURES**

**Application of Non-Deadly Force**

The department trains officers in the use-of-force continuum, emphasizing the recognition of and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Officers shall assess the incident to determine which technique will best defuse the situation and bring it under control. The following discussion reinforces key principles from training.

## **When to Use Force**

Officers of the department shall use the minimum amount of force necessary to apprehend a suspect, and shall exhaust all reasonable means of apprehension and control of the suspect before resorting to the use of deadly force. No member of the department shall unnecessarily or unreasonably endanger themselves or other members of the general public in applying the firearm regulations to the actual situation.

Apply force only when other reasonable choices have been exhausted or clearly would have been ineffective.

- \* Amount of Force - Use the least amount of force to complete lawful purposes for each situation you face.
- \* Control of Situation - Stop force immediately when you regain control of the situation.

## **Judgment and Level of Force**

A situation may call for immediate force at any level. Good judgment dictates application of force. Escalate force only if the level tried was inadequate, or the situation escalates.

## **Medical Aid**

If your application of force injures a person, it is your responsibility to summon medical aid and to administer first aid.

## **Criteria for Application of Deadly Force**

You may use deadly force when you reasonably believe there is imminent danger of serious physical harm and you must act in defense of the life of another person or yourself.

Notwithstanding the provision of 609.066 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

- \* To protect himself or another from apparent death or great bodily harm;
- \* To effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force;
- \* To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the apprehension is delayed.

## ***Levels of Force***

### **Verbal Level of Force**

Verbal control refers to the manner in which the officer speaks to a person, which of itself can effectively manage a situation. Verbal control includes advise, persuasion, admonitions, or orders. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

### **Defensive Tactic Level of Force**

The department authorizes the carrying and use of the ASP Baton. Other forms of striking or punching weapons are prohibited. Officers must be certified in the use of the ASP. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate, and lesser levels are inappropriate or ineffective.

\* ASP Batons shall not be used to strike handcuffed individuals.

### **Non-lethal Weapon Level of Force**

Chemical Agents: The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the oleoresin capicum (OC) or "pepper spray". Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect, and within training standards. Specialized chemical agents, such as concussion grenades or tear gas, shall be used only by ERT personnel trained in their application, and then only under direct orders.

- \* Chemical sprays shall not be used to threaten to elicit information or on people who are handcuffed, secured, and properly in custody.
- \* Keep the application to the absolute minimum required to effectively control the subject.
- \* Observe subject(s) for any necessary medical attention following the use of chemicals.
- \* Follow the necessary clean up procedure as soon as you arrive at jail.



- \* Advise jail personnel that you have used a chemical agent while making the arrest and be sure he/she continues to monitor the subject for any delayed complications and continue any further decontamination clean up that may be necessary.
- \* Include in your report that you used a chemical agent, noting why, how much, reactions to, and any other information you deem appropriate. Complete information here may well prevent any law suits from being filed.

### **Deadly Force**

Minnesota Statute 609-066, Subd. 1 defines "deadly force" as a force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.

The highest level of force is using any weapon in a manner to cause serious physical harm or death. Use authorized weapons to perform official duties when other levels of force have failed or were not practical and only if circumstances meet the criteria for application of deadly force.

### **Compliance Techniques**

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating tension or a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.

### ***Fleeing Felons and Use of Force***

#### **Imminent Danger of Fleeing Felons**

Felony suspects trying to escape arrest generally do not pose an immediate threat to life. Unless you have information causing you to reasonably believe a felon is an imminent danger capable of serious physical harm, do not use deadly force.

### **Apprehension of Felony Suspects**

The law calls for you to apprehend without delay a person you believe committed a violent crime involving the use or threatened use of deadly force. However, committing or trying to commit a forcible felony is not the determining factor for use of deadly force. Use deadly force only if flight meets the criteria for application of deadly force.

### ***Safety in Use of Force***

Whenever the use of firearms appears justified, the following guidelines will be adhered to:

- \* An officer shall not discharge his firearm when there is substantial danger to innocent bystanders.
- \* Consistent with MSA 609.066, the use of firearms is prohibited in the apprehension of misdemeanors.
- \* An officer shall not discharge a firearm while running on foot.
- \* An officer shall not discharge a firearm when it appears likely that an innocent person may be killed or injured.
- \* An officer shall not unnecessarily display a firearm or carelessly handle a firearm at any time, and shall not remove a firearm from its holster other than in the proper performance of duty.

### **Warning Shot**

Do not fire warning shots. You must recognize potential dangers to yourself and to the public from ricochet or from firing a weapon while running or jumping.

An officer shall not fire warning shots for any purpose.

## **Vehicles in Motion**

An officer shall not fire at a moving vehicle, unless a situation arises involving a motor vehicle which would cause death or great bodily injury to the officer or another person.

An officer shall not discharge his firearm from a moving motor vehicle.

## **Direction of Fire**

An officer shall not discharge a firearm into a crowded area.

An officer shall not point or aim a firearm at any person, unless there is a justification for shooting. Nothing in this section shall prevent an officer from drawing a firearm in a situation where the officer reasonably believes that in doing so he or she could prevent death or great bodily harm to himself or another.

## ***Administrative Review Process for Use of Force***

### **Written Report on Use of Force**

Prepare and submit a written report on use of force when:

- \* You fire a weapon, either accidentally or intentionally, on or off duty;

**NOTE:** Except for firearms training, ballistic examinations, and lawful recreational activities such as sport shooting or hunting.

- \* Your use of force resulted or is alleged to have resulted in an injury or death to another person.

**NOTE:** This includes traffic accidents.

- \* You apply force by use of non-lethal weapons;

- \* You are disarmed by an assailant.

- \* Notice and Reporting Use of Force

- \*\* Whenever an officer discharges a firearm, either accidentally or while in the performance of a police duty, he shall verbally notify the Chief of Police as soon as time and circumstances permit.

- \*\* Whenever you apply force against another person immediately notify the Chief of Police or the on duty supervisor.

- \*\*\* File report before you go off duty unless you have an approved delay.

\*\*\* Give the report to the Chief of Police or designated authority.

\*\*\* Peace Officers discharging firearms - gunshot wounds.

\*\*\* As noted in MSA 626.553, the Chief of Police shall file a written report to the Commissioner of Public Safety within 30 days of the incident. The report shall be made on forms provided by the Commissioner.

### **Review and Investigation**

Review and investigation of use of force will include:

- \* All incidents where an officer applies deadly force, on duty or off duty, shall be reviewed.

- \* Conclusions and recommendations of the reviewing supervisor.

The Chief of Police or an outside agency shall investigate all incidents in which an officer discharges a firearm, on or off duty, except the following:

- \* Target practice

- \* Firearms testing

- \* Destruction of an animal which is obviously dangerous or to prevent further suffering of an animal which is injured, sick, and other means of disposition are not practical.

Incidents involving the **Shooting of a Person**, shall be investigated by the BCA. The Chief or his designated representative shall conduct preliminary investigation into the incident for the purpose of gathering necessary data for press releases, briefing of other officers, City Attorney or County Attorney.

The officer involved in the shooting shall be responsible for the following:

- \* Provide for his safety and the safety of others
- \* Notify Dispatch of incident, request the following:
  - \*\* Additional manpower
  - \*\* Medical assistance
  - \*\* Notification of Chief of Police or his designated representative
  - \*\* Protection of the scene

### **Use of Force Report Contents**

Write pertinent information in narrative form. Include the following in your use of force written report:

- \* All circumstances surrounding the incident:
  - \*\* Your name
  - \*\* Date and time
  - \*\* Location of event
  - \*\* Description of person or object fired at
  - \*\* Names of agency personnel responding to the scene.
- \* Deliberate actions of physical force:
  - \*\* Fighting
  - \*\* Verbal exchanges
- \* Uses of lethal and non-lethal weapons:
  - \*\* Type, caliber, and serial number of firearm(s) discharged

- \*\* Number, type, and caliber of ammunition fired
  - \*\* Direction fired
  - \*\* Assault by non-lethal weapons
  - \*\* Include assault by vehicle
- \* Extent of injuries from force:
  - \*\* Result of shots fired
  - \*\* Objects struck
  - \*\* Extent of wounds

### **Conclusion of Facts in Use of Force**

The reviewing investigator sends a written report of findings, plus conclusions and recommendations to the Chief of Police.

- \* The Chief of Police makes a final determination on acceptable performance and justification of use of force.

**NOTE:** Justification for use of force is limited to your reasonable belief or perception when you used the force. The department does not consider facts learned after the event to determine justification of force.

If it is determined that force was needless and unreasonable, or that your behavior was unacceptable, the Chief of Police may call for:

- \* More criminal investigation
- \* Disciplinary action
- \* Retraining

## **Supervisory Review**

Supervisory or investigating personnel responding to the scene shall be responsible for the following duties:

- \* Command of the scene and protection of the scene and evidence. The scene will be protected immediately by taping off the immediate area, and removing all unauthorized persons, including officers not required at the scene. The scene will be protected until completion of the investigation;
- \* Recovery and protection of the officer's firearm for evidence. The firearm will not be taken while the officer is in view of the general public, when practical. The officer will be issued a replacement firearm as soon as practical, if determination by the Chief of Police after initial review of the incident shall so warrant:
- \* The supervisor will determine when the officer involved is no longer needed at the scene.
- \* All officers who are witnesses to the incident will remain at the scene until released by supervisory personnel.
- \* The officer involved will protect the firearm for examination.
- \* When an officer is injured and has discharged a firearm, the firearm will be secured by the investigating authorities who will make the firearm available for examination.
- \* When one or more officers have discharged a firearm in an incident, a ballistics examination will be conducted of firearms discharged.
- \* The officer(s) involved in the incident will not be required to make written reports of the incident, until such time that the involved officer(s) physical and psychological needs have been met. The written reports should be completed as soon after the incident as possible, however.

### **Homicide by Officer in the Performance of Duty:**

- \* When an officer of the Wabasha Police Department, on or off duty, is involved in the homicide of another person, the BCA shall be contacted for a thorough and objective investigation of the facts involved in the incident. The Chief of Police or his designated representative shall conduct a preliminary investigation into the matter for the purposes of gathering data, for press release, briefing of other officers, city attorney, or county attorney.
- \*\* The officer shall be available at all times for official interviews and statements regarding the case, and shall be subject to recall of duty at any time. He shall notify the Chief of Police prior to leaving the county.

- \*\* The officer shall not discuss the case with anyone, except the prosecuting attorney and authorized personnel investigating the incident, or other legal representatives of the city. This does not prohibit the officer from discussing the case with his personal attorney, or professional counseling services the officer may be utilizing.
- \*\* The officer involved in the incident will not be required to make written reports of the incident until such time that the involved officer's physical and psychological needs have been met. The written reports should be completed as soon after the incident as possible, however.

This policy is not intended to imply or indicate that the officer has acted improperly.

When a decision has been made by the prosecutor or the Grand Jury relative to the homicide, the Chief of Police will:

- \* Suspend the officer without pay if the prosecutor files criminal charges or the Grand Jury returns a "true bill";
- \* Reinstatement the officer to an active duty status if the prosecutor determines the homicide to be justifiable or the Grand Jury returns a "no bill", except in those situations where pending department charges require the officer to be under suspension.

**Legal Services** - A department-furnished attorney should be immediately notified of an officer involved shooting incident. The attorney shall immediately proceed to the scene of the shooting to meet with and establish a lawyer-client relationship with that officer, and refrain from acting on behalf of the department at this initial stage of investigation until the officer's and department's interest are deemed to be consistent with each other.

The attorney shall assist the officer in drafting a formal statement as to the underlying facts and the reasonableness as perceived by the officer justifying his or her use of deadly force. The statement shall be drafted to ensure (if that be appropriate) that legal sufficiency for such use of force is included in the officer's statement. The officer will also be advised of his legal and departmental rights regarding statements. The attorney will continue to assist the officer during the post-shooting investigations as well as criminal, civil and federal civil actions, including the initial interview conducted by federal agents in a criminal civil rights action. Should this initial lawyer-client interview indicate that the officer has not acted lawfully, in good faith, or within the scope of his or her duties, the attorney assigned by the department will advise the officer that all future legal representation on his behalf will have to be financed personally by the officer. However, all communications between the officer and department-furnished legal counsel are privileged and will remain confidential and undisclosed.

**Psychological Services** - In all cases where any person has been injured or killed as a result of firearm discharge by a police officer, the involved officer will be required to undergo a debriefing with the department-furnished psychologist as soon as possible, but within 24



hours of the incident. The purpose of this debriefing will be to allow the officer to express his feelings and to deal with moral, ethical, and/or psychological effects of the incident. The debriefing shall not be related to any department investigation of the incident and nothing discussed in the debriefing will be reported to the department. The debriefing session will remain protected by the privileged physician-patient relationship.

- \* The psychologist will, following this initial contact, recommend to the Chief of Police the extent of administrative leave which appears, at this time, to be necessary for each involved officer.
- \* The Chief of Police will determine the appropriateness and duration of extended mandatory administrative leave, based upon the findings of the preliminary criminal investigation and the recommendation of the psychologist regarding the officer's readiness for field assignment.
- \* During this time, the officer(s) shall maintain regular contact with the Chief of Police, and may on a voluntary basis participate in follow-up contacts with the psychologist.

## **REFERENCES**

CALEA