

## Current Language

### **460.05 POLICY**

## Proposed Language

It is the policy of the Milwaukee Police Department that members hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. It is the policy of the department that **Officers shall use the least amount of force that is objectively reasonable, necessary, and proportional to safely achieve the legitimate law enforcement objective under the circumstances.**

### 460.15 Objective Reasonableness

The use of force by a police member must be objectively reasonable. Police members shall use only the force necessary to effectively maintain control of a situation and protect the safety of police members and the public. Objective reasonableness is judged from the perspective of a reasonable police member facing similar circumstances and is based on the totality of the facts known to the police member at the time the force was applied, along with the member's prior training and experience, without regard to the underlying intent or motivation of the police member.

**The Constitution provides a "floor" for government action. This Department aspires to go beyond Graham and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this directive is intended to ensure that de-escalation techniques are used whenever feasible, that force is only used when necessary, and that the amount of**

force used is proportionate to the situation that an officer encounters.

Insert

## 460.20 Amount of Force

**PURPOSE 1. The primary purpose of this directive is to ensure officers respect the sanctity of 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. That authority is grounded in the responsibility of officers to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this directive. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. Use of force should never be considered routine. In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

**POLICY 2. This directive applies to all officer uses of force.** This directive establishes guidelines for officers with regard to use of force. This directive applies to all uses of force, whether officers are on- or off-duty. This directive complements the Critical Decision-Making model (CDM) that is the core of the Department's use of force training. CDM provides officers with an organized way of making decisions about how they shall act in any

situation, including situations that may involve potential uses of force.

The Department's core use of force principles are as follows:

CORE PRINCIPLE #1: Officers may use force only to accomplish specific law enforcement objectives.

CORE PRINCIPLE #2: Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable, necessary, and as a last resort.

CORE PRINCIPLE #3: Officers must use only the amount of force that is proportionate to the circumstances.

CORE PRINCIPLE #4: Deadly force is only authorized as a last resort and only in strict accordance with this directive.

CORE PRINCIPLE #5: Officers must promptly provide or request medical aid.

CORE PRINCIPLE #6: Employees have a duty to stop and report uses of force that violate any applicable law and/or this directive.

#### **4. Officers will be disciplined for violations of this directive.**

This directive is not intended to create or impose any legal obligations or bases for legal liability absent an expression of such intent by a legislative body, court, or agency. Nevertheless, officers have an affirmative, individual duty to ensure compliance with this directive and with applicable state and federal laws. This applies to the officer's own conduct, as well as observation or knowledge of the conduct by other employees. This directive

reinforces the responsibility of officers to take those steps possible to prevent or stop illegal or inappropriate uses of force by other officers. Actions inconsistent with this directive may result in disciplinary action, up to and including termination. At the same time, officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force.

## **PROCEDURES**

### **CORE PRINCIPLE #1: Officers may use force only to accomplish specific law enforcement objectives.**

5. Officers may use force for the following legitimate law enforcement objectives: To effect lawful law enforcement objectives, such as to effect a lawful seizure (an arrest or detention) or to carry out a lawful search; To overcome resistance directed at the officer or others; To prevent physical harm to the officer or to another person, including intervening in a suicide or other attempt to self-inflict injury; To protect the officer, or a third party, from unlawful force; or To prevent property damage or loss.

### **6. Officers may not use or threaten to use force for the following reasons:**

a. To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives;

b. To punish a person or to retaliate against them for past conduct or to impose punishment;

c. To prevent a person from resisting or fleeing in the future;

d. To force compliance with an officer's request, unless that request is necessary to serve officer or public safety, or criminal adjudication; or

e. Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

**CORE PRINCIPLE #2: Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable, necessary, and as a last resort.**

**7. Officers will use de-escalation and force-mitigation tactics and techniques whenever safe and feasible to do so.** It should be every officer's goal to resolve all situations without using force. To make this more likely, officers must use de-escalation and force-mitigation tactics and techniques whenever doing so will not put the officer or another person at undue risk.

a. Officers will receive substantial training on the Critical Decision-Making (CDM) model, as well as when and how to appropriately use de-escalation and force mitigation, including but not limited to Tactical Communication, Tactical Positioning, and Time as a Tactic.

**8. Officers will provide clear instructions and warnings whenever feasible before using force.** Whenever safe and feasible, officers should not use force immediately when encountering noncompliance with lawful verbal directions. Instead, whenever safe and feasible, before using force, officers should:

a. Provide clear instructions and warnings;

- b. Seek to communicate in non-verbal ways when a verbal warning would be inadequate (such as when the person does not speak English, or is unable to hear or understand warnings);
- c. Indicate the consequences of refusing to comply with a mandatory order, including that force will be used unless the person complies; and
- d. Give the person a reasonable amount of time to comply.

**9. Officers must consider an individual's mental, physical, or other incapacities.** Officers must, when feasible, consider whether a person's failure to comply with an officer's command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual's control. In these situations, officers should consider whether specific techniques or resources would help resolve the situation without force.

**10. Officers should not exercise force unless it is necessary and as a last resort.** Officers should exhaust all other reasonable means before resorting to the use of force. Using force only as a last resort means that officers not engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed. Using force only as a last resort also means that an officer shall not use force if a safe alternative would achieve the law enforcement objective.

**CORE PRINCIPLE #3: Officers must use only the amount of force that is proportionate to the circumstances.**

**11. Officers must evaluate all the circumstances facing them in the field to determine whether force is appropriate and what amount is proportionate.** Officers encounter a wide range of situations in the field, but the sanctity of human life should be at the heart of every decision an officer makes. When force cannot be avoided through de-escalation or other techniques, officers must use no more force than is proportionate to the circumstances. In general, the greater the threat and the more likely that the threat will result in injury or death, the greater the level of force that may be immediately necessary to overcome it. Consistent with training, some of the factors that officers should consider when determining how much force to use include:

- a. The risk of harm presented by the person;
- b. The risk of harm to the officer or innocent citizens by using force;
- c. The seriousness of the law enforcement objective;
- d. Whether further de-escalation techniques are feasible, including the time available to an officer to make a decision, and whether additional time could be gained through tactical means;
- e. If there is a practical, less harmful alternative available to the officer; Mental or physical disability, medical condition, and other physical and mental characteristics; and
- f. Whether there are other exigent/emergency circumstances.

**12. As a situation changes, officers must reevaluate the circumstances and continue to respond proportionately.** Over the course of an encounter, the circumstances and threats an officer face may change. Consistent with training and the CDM process,

while using force, officers must continually assess the effectiveness, proportionality, and necessity of their actions.

**13. This Department trains officers on the following range of force options.** The force options available to an officer fall along a continuum. Officers are not required to exhaust one type of force before moving to a greater force. Sound judgment and the appropriate exercise of discretion will always be the foundation of officer decision making in the broad range of possible use of force situations. This Department trains its officers on the following force options, from least to greatest force:

- a. Police Presence (least)
- b. Verbal Control Techniques
- c. Physical Contact
- d. Holding Techniques
- e. Compliance Techniques
- f. Control Instruments
- g. Physical Force
- h. Impact Weapons
- I. Canine Apprehension
- j. Conducted Energy Devices
- k. Deadly Force (greatest)

**14. The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force.** It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is necessary and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant.



Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- a. Cooperative Person: When dealing with a cooperative person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- b. Passive Resistor: When dealing with a passive resistor, officers may rely on police presence, verbal control techniques, holding techniques, compliance techniques, and/or control instruments, but greater force, such as physical force, impact weapons (batons), and Conducted Energy Devices (CEDs), should not be used.
- c. Active Resistor: In general, when dealing with an active resistor, in addition to the options available for passive resistors, properly trained personnel may use canine apprehension if the canine handler has probable cause to believe that the person has committed a crime, and less intrusive means of apprehension have been exhausted or under the circumstances would be unavailable or ineffective. Further guidance may be found in Department directive CCV4C5.
- d. Threatening Assailant: In general, when dealing with a threatening assailant, officers have all use of force options, other than deadly force, available to them, including impact weapons (such as batons or less lethal ammunition) and CEDs. Although a range of force options are generally available, particular options can be used only if proportional to the threat faced. For example:
  - CEDs and less lethal ammunition may be discharged only in response to resistance that poses a substantial risk of serious physical injury.

e. **Active Assailant:** In general, when dealing with an active assailant, officers have all force options available, though deadly force should only be used as a last resort and in strict accordance with the guidance below, see Core Principle #4.

**15. When an individual engages in certain aggressive actions, he/she is considered an assailant, not a resistor.** When a person uses force, threatens to use force, or otherwise acts in an aggressive manner that increases the likelihood that they may cause physical injury to an officer or to another person, that person is no longer considered cooperative or even a resistor, but instead becomes an assailant. Flight from an officer does not, on its own, qualify a person as an assailant (see Section 24 below for more information).

**16. When an individual's actions pose an imminent danger, he/she is considered an active assailant, not a threatening assailant.** The difference between a threatening assailant and an active assailant is how immediate a threat the assailant poses to the officer or another person. When the person poses an imminent danger, the person is considered an active assailant. When the threat exists but does not amount to imminent danger, the person is considered a threatening assailant.

**17. Special requirements must be met before an officer may display a firearm.** Unholstering or pointing a firearm are tactics that should be used with great caution. The presence of an officer's firearm, under the right circumstances, can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to actual force. At the same time, however, unnecessarily or prematurely drawing a firearm can limit an officer's options in controlling a situation, will create great anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Accordingly, officers should

only display their firearms in appropriate tactical situations and using the following principles as guidance:

a. Pointing a firearm. Consistent with training, officers may point a firearm at a person only when circumstances create a reasonable belief that it may be immediately necessary for the officer to use deadly force. When the officer no longer reasonably believes that deadly force may be immediately necessary, the officer shall, as soon as practicable, secure or holster the firearm.

b. Unholstering a firearm. Consistent with training, officers may unholster or otherwise display a firearm only when circumstances create a reasonable belief: (1) that the officer is permitted to point a firearm at a person, or (2) that unholstering or displaying the firearm may itself help establish or maintain control in a potentially dangerous situation.

**18. Persons under an officer's control should be positioned in a way so that their breathing is not obstructed.** After gaining control of a person, officers should position the person in a manner to allow the person to breath unobstructed. This means that officers should not sit, kneel, or stand on a person's chest or back, and whenever feasible should not force the person to lie on his or her stomach.

**19. In addition to this directive, specific weapons directives remain applicable.** In addition to the requirements of this directive, officers may only use weapons in a manner consistent with specific Departmental weapons policies, such as directive CCV3C3 (Weapons & Ammunition), directive CCV4C3 (Conducted Energy Devices – Tasers), and other relevant directives.