



WISCONSIN STATE FAIR PARK POLICE

Policy & Procedure

Subject: DUTY TO INTERVENE/OVERRIDE		Policy No: 501-C
Effective : January 2021	Revised : February 2022	Pages: 4

Updated using: Wisconsin State Statute 175.44(1)-(5).

501-C-01 PURPOSE

The purpose of this policy is to provide officers with the guidelines for the use of contact officer overrides and duty to intervene. Policy 501-C is a sub-section of Policy 501

501-C-02 POLICY

It is the policy of this law enforcement agency not only to comply with Wisconsin State Statute 175.44 (3) & (4), but to set forth the legal, ethical, and affirmative duty of all personnel to intervene and/or conduct contact officer overrides to prevent or stop misconduct and/or other problematic behavior by members. A contact override/intervention can prevent or stop member misconduct, reduce harm to individuals and preserve the honor and integrity of the Department. When misconduct occurs, it must be reported as soon as reasonably possible to the next ranking officer in the chain of command.

A failure to intervene in any unreasonable use of force, may violate Wisconsin State Statute 175.44(4), demonstrates a lack of courage, and is a violation of this policy and other Department Rules and Regulations that will result in a disciplinary action. Ethical Policing is a core principle of this agency and the State Fair Park Police Department is a proud proponent of our peer intervention policy, as ethical policing is courageous. The duty to intervene is reflected in our mission statement and values, in our standards of conduct (**Policy #201**), and through our training. By actively preventing or stopping misconduct and/or other problematic behavior, we as a team will preserve the integrity of the State Fair Park Police Department and promote a culture of accountability at all levels.

A member's duty to intervene/contact override is rooted in the department's commitment to its member's safety and wellness. A contact override that prevents misconduct and/or other problematic behavior will lead to fewer citizen complaints, fewer complaints by officers, higher morale, and an overall healthier working environment. Preventing misconduct preserves the integrity of all State Fair Park Police Department members, ultimately protecting members from jeopardizing their careers as a result of misconduct or, in some instances, as a result of a failure to intervene/contact override to prevent misconduct by others. In turn, a more accountable police department restores community/citizen trust and aids in the shared policing goals of the department and the citizens of this state.

501-C-03 DEFINITIONS

1. **Duty to Intervene/Contact Officer Override:** Any officer or supervisor who personally observes another officer(s) use of force, which the observing officer or supervisor believes to be beyond that which is objectively reasonable under the circumstances, shall reasonably attempt to intervene to prevent the use of such excessive force, when there is an opportunity to do so. Any officer or supervisor intervening shall promptly report their observations, along with his/her own intervening actions to a supervisor. A failure to intervene in any unreasonable use of force, may violate Wisconsin State Statute 175.44(4), demonstrates a lack of courage, and a violation of this policy and other Department Rules and Regulations that will result in a disciplinary action. All supervisors, regardless of rank or assignment, shall report all contact officer or supervisor overrides, where misconduct occurred, up the chain of command to the office of the Chief.

In addition, all officers have a duty to intervene in any situation if the contact officer(s) is/are behaving inappropriately or is/are otherwise not handling the situation effectively or professionally.

2. **Contact Override/Intervention Compliance:** Any contact officer or supervisor who is engaged in the use of force or problematic behavior, and becomes aware of an officer(s) or supervisor attempting to override the contact officer or supervisor's actions, shall promptly disengage in the use of force or behavior and turn the situation over to the overriding officer or supervisor conducting the intervention and immediately take a backup role, only if needed. A failure to disengage or comply with an officer override is a violation of this policy that will result in a disciplinary action.
3. **Misconduct:** Action, inaction, and/or failure to act by any member of the State Fair Park Police Department, civilian or sworn, that violates department policy, department rules and regulations, the State and Federal Constitutions, or the law, including but not limited to criminal acts or applicable civil laws.
4. **Intervene/Intervention:** To verbally or physically interact with another member so as to prevent or alter a result or course of events.

501-C-04 AFFIRMATIVE DUTY TO INTERVENE- also see Wisconsin State Statute 175.44(4)

- A. All members must recognize and act upon the affirmative duty to intervene to prevent or stop any member from conducting any act that is unethical or that violates department policy, department Rules and Regulations related to conduct, offensive language, neglect of duty, legal process, civility or unnecessary force, or that violates a law, but not limited to:
 - (1) Excessive force, including intentionally escalating an encounter absent lawful, necessary purpose.
 - (2) Stops, searches, and arrests that are unconstitutional or violate department policy.

(3) Retaliation against an individual participating in 1st Amendment protected activity.

(4) Theft/Fraud/Waste

(5) Inappropriate language including discourteous language to members of the public.

(6) Sexual misconduct

(7) Harassment

(8) Falsifying documents and

(9) Inappropriate behavior.

B. Additionally, members have an affirmative duty to intervene when they see unsafe behavior and/or bad tactics, corner cutting, and signs of a fellow members' stress and/or mental health issues that are affecting their performance. If apparent signs of stress and/or mental health issues are affecting a colleague's performance, members shall intervene by informing their supervisor, who can make a determination if a referral to the Employee Assistance Program is appropriate.

C. Interventions may be verbal and/or physical depending on the urgency of the situation and the potential level of misconduct and/or problematic behavior.

501-C-05 REQUIRED ACTION:

- (1) Take a preventative approach, whenever possible, if observing behavior that suggests that another member is about to engage in unethical or inappropriate behavior.
- (2) Examine the circumstances surrounding the incident to determine the appropriate form of intervention/override.
- (3) Intervene/override verbally or physically, depending on circumstances.
- (4) Take an active approach to intervene/override to stop any unethical behavior or misconduct, when such conduct is being committed by another member.
- (5) If verbal interventions are not sufficient to stop the act, come between the offending member and the other individual involved when safe and feasible while preserving officer safety (maintaining tactical advantage over a suspect).
- (6) If the other member is receptive to the intervention/override, and the unethical conduct is avoided, members may proceed with their duties. If no misconduct occurs, there is no reporting requirement.
- (7) If the other member is NOT receptive to the intervention/override and MISCONDUCT occurs, all members shall immediately contact a supervisor to respond to the scene (immediately) and report the incident in detail. Also see Wisconsin State Statute 175.44(3)(a)&(b).

501-C-06 SUPERVISORS

- (1) If misconduct occurred, supervisors shall report it up the chain of command to the Chief's office.

501-C-07 DUTY TO REPORT NONCOMPLIANT USE OF FORCE

- (1) Officers regardless of rank who, in the course of his or her duties, witnesses another law enforcement officer's use of force that does not comply with the standards of this department's USE OF FORCE Policy and/or does not comply with the standards under Wisconsin State Statute 175.44(2)(b) or (c) in the course of that law enforcement officer's official duties shall report the noncompliant use of force as soon as reasonably practicable after the occurrence of the use of such force to their immediate supervisor. If their immediate supervisor is not available, the officer will follow the chain of command in reporting the occurrence. All reports of non-compliance in the use of force must be reported to the Chief of Police through the chain of command. This reporting requirement is not limited to witnessing a SFPD member violating Wisconsin State Statute 175.44, it is inclusive of witnessing a violation of Wisconsin State Statute 175.44 while in the course of your duties, involving ANY law enforcement officer, regardless of department, not complying with the standards of Wisconsin State Statute 175.44.
- (2) Any officer who intentionally fails to report noncompliant use of force as required by Wisconsin State Statute 175.44(3)(a) may be subject to a criminal investigation under Wisconsin State Statute 175.44(3)(b), and a disciplinary action up to and including termination of employment.
- (3) If an officer of this department witnesses a noncompliant use of force under Wisconsin State Statute 175.44(2)(b) or (c) by an officer from an outside law enforcement agency they must report the occurrence to their immediate supervisor who will then report it up the chain of command to the Chief of Police.

The Chief of Police shall assign and authorize a Deputy Chief of Police to make contact with the outside officer's agency to report and document the non-compliant use of force witnessed by the Wisconsin State Fair Park Police Officer(s). The authorized Deputy Chief in this matter will coordinate with the outside agency for any interview requests of the Wisconsin State Fair Park Officer(s) who witnessed the incident. Any outside agency contact, interviews or reporting of noncompliance of Wisconsin State Statute 175.44(2)(b) or (c) by a Wisconsin State Fair Park Police Officer must be authorized by the Chief of Police or the Deputy Chief of Police assigned by the Chief of Police to assure the noncompliant occurrence was properly reported and documented.

501-C-08 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; or provided any information, or is believed to have provided any information, about non-compliant use of force as required under Wisconsin State Statute 175.44(3) or (4) and/or department policy.

501-C-09 INTERVENTION AND CONTACT OVERRIDE COMPLIANCE

- (1) Any member, regardless of rank, who is engaged in the use of force or verbal contact with a citizen, who becomes aware of another member(s) attempting to conduct an intervention/contact override related to their actions, shall promptly disengage in the use of force or verbal contact and turn the situation over to the intervening/overriding member and immediately take a back up role, only if needed. A failure to disengage or comply with a member override/intervention is a violation of this policy that will result in a disciplinary action.

501-C-10 DISCIPLINARY ACTION- Administrative

- (1) The command officer assigned by the Chief of Police to investigate a "failure to disengage or comply with a member override/intervention," shall consider attempts to intervene and reception of intervention as mitigating factors in disciplinary decisions resulting from misconduct investigations as appropriate.

501-C-11 ASSOCIATED POLICIES

Policy #201 Standards of Conduct

Policy #202 Unbiased Policing

Policy #204 Harassment and Discrimination

Policy #501 Use of Force & Reporting

Policy #704 Strip Searches

501-C-12 Policy 501-C

Policy 501-C is a Sub-Section of policy 501

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James Bruno – Chief of Police

2-15-2022

Date



WISCONSIN STATE FAIR PARK POLICE

Policy & Procedure

Subject USE OF DEADLY FORCE		Policy No: 502
Effective : August 3, 2009	Revised : February 2022	Pages: 6

Updated using: Wisconsin State Statute 175.44

502.01 PURPOSE

The purpose of this policy is to provide law enforcement officers of this agency with guidelines for the use of deadly force in the performance of their duties.

502.02 POLICY

It is the policy of this law enforcement agency to value and preserve human life. 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 verbal warning before using deadly force.

Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight."

In addition, "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... the question is whether the officers' actions are 'objectively reasonable' in the light of the facts and circumstances confronting them."¹

In situations where the subject either ceases to resist or the incident has been effectively brought under control, the use of physical force or less than lethal alternatives shall be de-escalated or discontinued accordingly.

The use of force, as designated herein, will be reported in a timely, complete and accurate manner by all involved officers and as otherwise prescribed by this policy.

This policy is to be reviewed annually and any questions should be addressed to the immediate Command Officer for clarification.

¹ *Graham v. Connor*, 490 U.S. 368 (1989)

DEFINITIONS

Deadly Force: The intentional use of a firearm or other instrument that creates a high probability of death or great bodily harm. This includes all choke holds.

Less-Lethal Force: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Deadly Force Legal Justification: The subject is causing an imminent danger of great bodily harm or death to yourself or others, and other tactics have been exhausted or would be ineffective, the use of deadly force to stop the subject's actions is justified.

Objectively Reasonable: The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in the light of the totality of circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations. It is the standard by which many actions of a police officer are judged.

Great Bodily Harm {WI Statute 939.22(14)}: 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.

Imminent: Likely to occur at any moment; impending. An imminent threat is an immediate threat.

Imminent Threat Criteria: Weapon, Intent, Delivery System. To be justified in using deadly force the subject's threat must have all three imminent threat criteria.

Intent: The subject must indicate his or her intent to cause great bodily harm or death to you or someone else. Some of the ways intent might be shown would include deliberately pointing a firearm or other weapon at you or others, stating an intention to kill you or others, rushing you with a knife, and so on.

Weapon: The subject must have a conventional or unconventional weapon capable of inflicting great bodily harm or death. Guns and knives are not the only weapons capable of inflicting great bodily harm or death. There are many other common objects that can be used as weapons. Beer bottles, baseball bats, pieces of broken glass, large rocks or bricks. All of these can be used as weapons. Some individuals are even able to inflict death or serious injury with their hands or feet alone and some apparently innocuous items such as a pen or pencil can be used as a weapon.

Delivery System: The subject must have a means of using the weapon to inflict harm. A person armed with a baseball bat, having stated their intention to kill an officer, does not meet the criteria for imminent threat if he or she is standing 50 yards away from the officer on the other side of a fence. There is no delivery system. The same person standing 10 feet away from the officer does meet the criteria.

Preclusion: Within the DAAT system, an officer may use deadly force to

respond to behavior, but only if no other reasonable option is available. In other words, deadly force is a last resort. An officer must be able to articulate that all options except deadly force were not viable. Note in many deadly force situations, you will not have time or the ability to try other options. If a subject a few feet away from you suddenly pulls a gun and threatens to shoot you, generally the only reasonable response is to fire. There is simply not enough time to try alternatives. If feasible, you should give a verbal warning before firing. In some cases, it may not be desirable.

Target Requirements: If you have determined that you face a threat that meets the requirements to permit a deadly force response, and you decide to shoot, you must still fulfill three target requirements:

- A. Target Acquisition
- B. Target Identification
- C. Target Isolation

Target Acquisition: You have acquired an actual target to shoot at. You cannot fire blindly in the direction of a sound for example because you may endanger others. If someone has shot at you from an apartment building, you cannot return fire until you have a specific target to aim at.

Target Identification: You have identified your target as the source of the imminent threat. To continue the previous example, just because you see someone at a window in that apartment building, you cannot shoot until you verify that the individual you see is the person who shot or someone else who is about to shoot at you.

Target Isolation: You can shoot at your target without danger of harming innocent people. If the person who shot at you from the apartment building ran out of the building and into a crowd of people, you could not shoot at them without endangering others.

Greater Danger Exception: This exception allows you to shoot without isolation if the consequence of not stopping the threat would be worse than the possibility of hitting an innocent person.

Totality of Circumstances: Your judgement in a deadly force situation is based on the totality of the circumstances known to you at the time. For example, if a subject points a pistol at you with the clear intent to shoot, you are justified in using deadly force. If it turns out later that the subject's pistol was unloaded, that does not make your decision unjustified. Your perception of the threat was reasonable under the circumstances.

De-Escalation: An officer's use of time, distance, and relative positioning in combination with Professional Communication Skills to attempt to stabilize a situation and reduce the immediacy of the threat posed by an individual (**See Sub-Policy 501-B**).

Exigent Circumstances: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. ² s2 Based on the definition from *United States v. McConney*, 728 F 2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

Choke Holds: A choke hold is defined as a physical maneuver that restricts

an individual's ability to breathe and also restricts blood flow to the brain which causes unconsciousness at lower levels and death if there is prolonged use. In the most common choke hold, referred to as an arm-bar hold, an officer places his or her forearm across the front of an individual's neck and then applies pressure for the purpose of cutting off air and blood flow. Other physical maneuvers could consist of grabbing the front of the neck with a hand and applying pressure and using a knee or leg to apply pressure to the neck. These are extremely dangerous maneuvers that can easily result in serious bodily injury or death. Therefore, any choke hold maneuver is prohibited unless deadly force is authorized.

Duty to Intervene/Contact Officer Override: Any officer or supervisor who personally observes another officer(s) use of force, which the observing officer or supervisor believes to be beyond that which is objectively reasonable under the circumstances, shall reasonably attempt to intervene to prevent the use of such excessive force, when there is an opportunity to do so. Any officer or supervisor intervening shall promptly report their observations, along with his/her own intervening actions to a supervisor. A failure to intervene in any unreasonable use of force, may violate Wisconsin State Statute 175.44(2)(c), and demonstrates a lack of courage. This is violation of this policy and other Department Rules and Regulations that will result in a disciplinary action. All supervisors, regardless of rank or assignment, shall report all contact officer or supervisor overrides up the chain of command to the office of the Chief.

In addition, all officers have a duty to intervene in any situation if the contact officer(s) is/are behaving inappropriately or is/are otherwise not handling the situation effectively or professionally (**See Sub- Policy 501-B**).

Intervention/Override Compliance: Any contact officer or supervisor who is engaged in the use of force or problematic behavior and becomes aware of an officer(s) or supervisor attempting to override the contact officer or supervisor's actions, shall promptly disengage in the use of force and turn the situation over to the overriding officer or supervisor conducting the intervention and immediately take a back-up role, only if needed. A failure to disengage or comply with an officer override is a violation of this policy that will result in a disciplinary action.

Graham v. Connor: The United States Supreme Court Case ruled that force is only to be applied by law enforcement officers when such use is "objectively reasonable" in a given situation as determined by a "reasonable officer" at the scene. The factors, which, in general, determine whether force is "objectively reasonable", include:

- A. The severity of the crime at issue,
- B. Whether the suspect poses an imminent threat to the safety of officers and/or others,
- C. Whether the suspect is actively resisting or attempting to evade arrest by flight.

Tennessee v. Garner: The United States Supreme Court Case, which strikes down fleeing felon rules and states a law enforcement officer, would **not** be justified in shooting to stop someone from fleeing whom is known to have committed only a property crime, or who has apparently committed a felony or misdemeanor that does not endanger life or threaten serious bodily harm.

PROCEDURES**A. General Provisions**

1. Use of physical force should be de-escalated or 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 minimal 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. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so (**See Duty to Intervene/Contact Officer override- Sub-Policy 501-C**).
5. All uses of force shall be documented and investigated pursuant to this agency's policies (**See Policy 501 Use of Force and Reporting**).

B. De-Escalation (See Definition- Sub-Policy 501-B)**C. Use of Less-Lethal Force**

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less lethal force techniques and issued equipment

1. to protect the officer or others from immediate physical harm.
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of circumstances and the officer believes that all other options have been exhausted or would be ineffective. Use of deadly force is justified when one or both of the following apply:
 - a. To protect the officer or others from what is reasonably believed to be an immediate threat of death or great bodily harm
 - b. To prevent the escape of a fleeing suspect when the officer has probable cause to believe that the person has committed a felony involving great bodily harm or death, and the officer reasonably believes that there is an imminent risk of great bodily harm or death to the officer or another if the subject is not immediately apprehended.
2. When both practicable and feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.

3. Deadly Force Restrictions

- a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
- b. Warning shots are inherently dangerous. Therefore, they are prohibited.
- c. Firearms shall not be discharged at a moving vehicle unless
 - 1) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
 - 2) The vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.
- d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.
- e. Choke holds are prohibited unless deadly force is authorized.

E. 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 designated 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 judgment in using less-lethal and deadly force in accordance with this policy and Wisconsin state Statute 175.44
3. All use-of-force training shall be documented.

502.05

ASSOCIATED POLICIES

Policy #501 – Use of Force & Reporting

Policy #501-B – De-Escalation

Policy #501-C – Duty to Intervene/Override

Policy #507 – Less Lethal Weapons

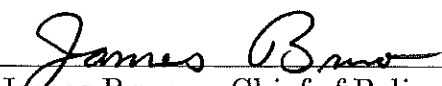
Policy #508 – Electronic Control Devices – CEW

Policy #512 - Oleoresin Capsicum Aerosol (OC Spray)

502.06

USE OF FORCE/DEADLY FORCE

Policy 502 Use of Deadly force is an extension of Policy 501 USE OF FORCE and Sub-Policy 501-B & 501-C.


James Bruno – Chief of Police

2-15-2022
Date