

CHAPTER 10

**USE OF FORCE AND DEADLY FORCE
POLICY**

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CHAPTER 10

USE OF FORCE AND DEADLY FORCE POLICY

MN STAT 626.8452

SECTION 1. PURPOSE.

It is the policy of the Winsted 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.**

SECTION 2. POLICY.

It is the policy of the Winsted Police Department 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 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 judgements 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, part-time peace officers, and reserve officers engaged in the discharge of official duties.

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

SECTION 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:
1. Obtained training in the technical, mechanical and physical aspects of the device; and
 2. Developed a knowledge and understanding of the law, rules and regulations regarding the use of such a device.
- H. *Approved Weapon:*** Approved weapon means a device or instrument which an officer has received permission from the department to carry and use in the discharge of that officer's duties and for which the officer has:
1. Obtained training in the technical, mechanical and physical aspects of the device; and

2. Has developed a knowledge and understanding of the law, rules and regulations regarding the employment of such weapons.

- I. **Chemical Agents:** Chemical agents mean Chemical Mace and tear gas.
- J. **Contact Weapons:** Contact weapons means all objects and instruments which are used or are designed to be used to apply force to the person of another by coming into physical contact with that person. Contact weapons include but are not limited to police batons, asps, and flashlights.
- K. **Weapon:** Weapon shall mean any instrument used or designed to be used to apply force to the person of another.
- L. **Taser Electronic Restraint Device (ECD):** The Taser is a hand held, laser aimed, battery-operated, less than lethal, conducted energy weapon. Voltage is applied to a subject by two darts connected to conducting wires propelled from a charged cartridge, or from direct contact. The unit uses a Neuro-Muscular Disruptive system, which overrides the central nervous system and affects the sensory and motor nervous system resulting in temporary, involuntary muscle contractions. The contractions will incapacitate a subject so they can be placed under the control of law enforcement officers.
- M. **Less Lethal Impact Munition:** A projectile, that is deployed either using a less lethal shotgun or 37/40mm launcher which allows the officer greater standoff distance from a suspect. The projectile is to be deployed into preferred targets zones to attempt to subdue a suspect via pain compliance. The term “Less Lethal” shall not be considered “non-lethal”. An Officer may be justified in using a less lethal impact munition to inflict great bodily harm or death if warranted.
- N. **Remedial Training:** Training that is required by the Chief of Police or Firearms Instructor to bring the officer within minimum standards of Department firearms qualification standards and firearms safety standards.
- O. **Firearms Instructor:** A Minnesota license police officer who is certified through POST approved training to be a Firearms Instructor. The Firearms Instructor must maintain his certification and keep a record of all training documents.
- P. **Qualification:** A Firearms qualification that meets the POST minimum standard guidelines and is conducted by the Department Firearms Instructor or outside agencies Firearms Instructor.
- Q. **MN POST Board:** The Minnesota Peace Officer Standards and Training (POST) Board is responsible for licensing active peace officers. The Board has the legislative authority to adopt administrative rules that have the force and effect of law, rules that enable the board to establish policies and standards to which all licensees must adhere.

SECTION 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. A peace officer who breaches a duty established in this subdivision is subject to discipline.

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.

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:

- effecting a lawful arrest; or
- the execution of legal process; or
- enforcing an order of the court; or
- executing any other duty imposed upon the public officer by law; or
- 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 of 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 (ii), 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 regards 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.

I. Recordkeeping Requirements.

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

SECTION 5. CONTACT WEAPONS.

A. Contact weapons shall be used only where efforts involving the use of less force have failed or where it reasonably appears that such methods would be ineffective if attempted. Contact weapons may be used only in the following manner:

1. To ward off blows or kicks from another person; or
2. To strike another for the purpose of rendering that person
3. Temporally incapacitated; or
4. To restrain persons; or
5. In appropriate crowd control situations, to direct and control the movement of people or persons or as a barricade.

B. Officers striking another person with a contact weapon should avoid striking, if possible, bodily area likely to result in serious injuries or death unless deadly force is authorized under this section. These areas include the head, neck, throat, armpits, elbows, ribs and kneecaps.

C. Officers striking another person with a contact weapon should attempt to strike, if possible, bodily areas likely to result only in incapacity. These areas include the arms, hands, legs, shins, toes, thighs, calves and tendons or ankles.

SECTION 6. USE OF NIGHTSTICK OR ASP.

The carrying and use of the nightstick or ASP shall be permitted as long as prior approval has been obtained from the Chief and yearly certification is kept. A nightstick or ASP can be considered both dangerous and a non-lethal weapon, depending on how it is used.

SECTION 7. CHEMICAL AGENTS.

A. The use of chemical agents shall be governed by the provisions governing less than lethal force. Only chemical agents, which are approved weapons, as defined in the section under chemical agents shall be used.

B. Officers shall exercise due care to ensure that only the intended person(s) is/are sprayed or otherwise subject to the application of chemical agents.

C. Chemical agents shall not be applied to any person for the purpose of effecting punishment.

D. As soon as it is feasible to do so, first aid or medical attention shall be provided to all persons sprayed with chemical agents pursuant to guidelines of the department.

SECTION 8. USE OF CHEMICAL MACE.

Only Departmental Chemical Mace shall be used. Chemical Mace shall be considered as a less than lethal weapon. However, as in use of all police equipment, it must be used with discretion and care. Chemical Mace is intended primarily for use in those cases wherein the officer confronts, or is confronted by a violent person who otherwise would not be able to be controlled by lesser degree of force.

SECTION 9. USE OF TEAR GAS.

To minimize injury to suspects, officers, others, or to avoid property damage, the use of chemical agent (i.e. tear gas) may be necessary in circumstances where a danger to life and property exists, and other methods of control or apprehension would be ineffective or more dangerous. Tear gas (not including Chemical Mace) shall be utilized only upon approval of the Chief of Police.

SECTION 10. LESS LETHAL IMPACT MUNITIONS.

The Winsted Police Department is committed to reducing the potential for violent confrontations. Less Lethal Impact Munitions, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.

A. DEPLOYMENT AND USE:

Only Winsted Police Department approved Less Lethal Impact Munitions shall be carried and deployed. Approved munitions may be used to compel an individual to cease his/her actions when such munitions present a reasonable option.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved Officer determines that deployment of these munitions cannot be done safely. The Officer should consider using lethal cover while deploying a Less Lethal Impact Muniton to maintain both officer safety and public safety. The safety of hostages, innocent persons and Officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

Circumstances appropriate for deployment include, but are not limited to, situations in which:

- a. The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- b. The suspect has made credible threats to harm him/herself or others.
- c. The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or Officers.
- d. There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

B. DEPLOYMENT CONSIDERATIONS:

Before discharging munitions, the Officer should consider such factors as:

1. Distance and angle to target.
2. Type of munitions employed.
3. Type and thickness of subject's clothing.
4. The subject's proximity to others.
5. The location of the subject.
6. Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of Officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other Officers and individuals that the device is being deployed.

Officers should keep in mind the manufacturer's recommendations and their training regarding effective distances and target areas. However, Officers are not restricted solely to use according to manufacturer recommendations. Each situation must be evaluated on the totality of circumstances at the time of deployment.

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death. The head and neck are should not be intentionally targeted, except when the Officer reasonably believes the suspect poses an imminent threat of great bodily injury or death to the Officer or others.

C. SAFETY PROCEDURES:

Shotguns specifically designated for use with less lethal impact munitions will be specially marked in a manner that makes them readily identifiable as such.

Officers will inspect the shotgun and munitions at the beginning of each shift to ensure that the shotgun is in proper working order and the munitions are of the approved type and appear to be free from defects. The Officer will also inspect the squad car for any conventional shotgun ammunition. If live conventional shotgun ammunition is located, that said officer is to advise the Firearms Instructor. This is to ensure that no conventional ammunition may be mistakenly deployed in the Less Lethal Impact Munition Shotgun.

When it is not deployed, the shotgun will be unloaded and properly and securely stored in the vehicle. When deploying the Less Lethal Impact Munition shotgun, the Officer shall visually inspect the munitions to ensure that conventional ammunition is not being loaded into the shotgun.

D. MEDICAL TREATMENT:

1. When the Less Lethal Impact Munitions has been used on a subject, Officers must offer medical treatment to the subject.

2. Medical personnel must remove munitions that may have penetrated the subject.

E. TRAINING FOR LESS LETHAL IMPACT MUNITIONS:

The Less Lethal Impact Munitions Instructor shall ensure that all personnel who are authorized to carry and control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary. Officers shall be certified yearly in the use of these devices both on proficiency and knowledge of this agencies Use of Force Policy. The instructor shall keep record of the all Officers of the Winsted Police Department and these certifications shall be maintained in the Officers' training file.

F. REPORTING AND DOCUMENTATION:

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy. Upon deployment of a Less Lethal Impact Munition and after the suspect is under control, photograph the location of impact of the munition. The Officer, if plausible, should attempt to photograph the impact location hours after and the proceeding day after for documentation. The Officer should also collect the impact munition as evidence.

SECTION 11. USE OF TASER ELECTRONIC CONTROL DEVICE (ECD).

- A. The ECD is viewed as the same as Chemical Mace on the continuum of less than lethal force and is authorized as an alternative to employing deadly force in situations where time and circumstances exist for ECD use. It is not intended to be used as a general substitute for other less than lethal force options.
- B. The ECD may be used when other less than lethal force options have been ineffective or when it reasonably appears that such options will be ineffective in subduing the subject. Examples of situations in which the ECD may be used include, but are not limited to, the following:
 1. Dealing with the mentally ill subject who is perceived to be violent.
 2. Armed subjects.
 3. Warrant service where the subject is perceived to be violent.
 4. Violent persons under the influence of drugs and/or alcohol.
 - a. Persons expressing the intent and having the means to commit suicide.
 - b. When deemed a reasonable alternative to lesser force options that will likely be ineffective or greater force options that may be inappropriate given objective circumstances.
 - c. On animals, when the Officer feels that their or others safety is at risk.
- C. The ECD should not be pointed at any individual unless the officer involved reasonably believes it will be necessary to use the device.

- D.** The ECD shall not be used:
1. When the operator cannot, for safety or other reasons, approach the subject within effective range of the device.
 2. In proximity to flammable liquids, gases, blasting materials, or any other highly combustible materials that may be ignited by use of the device, including, but not limited to, any subject who may have been contaminated with combustible liquids.
 3. When it is reasonable to believe that incapacitation of the subject may result in serious injury or death, or
 4. In conjunction with another ECD or any other electrical restraint device that may collectively exceed electrical power levels on the subject.
- E.** In less than lethal force situations, when possible, officers should avoid using the ECD on:
1. Persons in wheelchairs or in control of a vehicle.
 2. Pregnant women.
 3. People with known heart problems.
 4. People with apparent debilitating illness or the elderly.
 5. Children or those under 80 pounds.
 6. Individuals with known neuromuscular disorders such as muscular sclerosis, muscular dystrophy, or
 7. Persons known to be wearing pacemakers or other biomedical devices sensitive to electrical current.
- F. MEDICAL TREATMENT:**
1. When the ECD (Taser) has been used on a subject, Officers must offer medical treatment to the subject.
 2. Medical personnel must remove darts that may have penetrated soft tissue areas.
 3. If possible, an Officer/individual of the same sex shall remove the darts from a subject.

SECTION 12. WEAPONS TRAINING REQUIREMENTS.

All police officers will be required to fulfill the below qualifications in order to carry and/or use that particular weapon. The Winsted Police Department Firearms Instructor, McLeod County Sheriff's Department Firearms Instructors, or any other Firearms Instructor authorized by the Police Chief will be the only ones used for the purpose of Firearms qualifications. The Winsted Police Department requires that all officers attend a Use of Force training session once a year.

- A.** Firearms: All police officers, full and part-time, shall qualify at least two times a year within the minimum standards set up by the MN POST Board. One being a day shoot and the other an inclement condition shoot or night/inclement

weather qualification. These qualifications shall be mandatory for the on-duty, off-duty and back up weapon(s) to be carried. All firearms shall be used in accordance to Chapter 12.

- B.** Night sticks or ASPS: Contact weapons, such as Night sticks or ASPS, shall be allowed to be carried and used with pre-approval from the Chief and yearly certification.
- C.** Chemical Mace: Only Departmental approved Chemical Mace shall be carried and used with a yearly recertification required.
- D.** Taser Electronic Control Device (ECD): Only officers who have successfully completed the agencies approved course of instruction on the ECD are authorized to use it in tactical situations. Officers of this agency shall receive refresher training in use of the ECD on an annual basis or in accordance with manufacturer's recommendations.

SECTION 13. WARNING SHOTS.

Warning shots shall not be fired. See Chapter 12.

SECTION 14. DISPLAYING OF FIREARMS.

Firearms may be readied for use in situations where it is reasonably anticipated that they may be required. Such display alone, in conformance to his/her lawful duty, shall constitute Less Lethal Force. See Chapter 12.

SECTION 15. THREATENING THE USE OF FORCE.

An officer may announce to another his or her intention to use only that type and degree of force which is reasonably necessary under the circumstances. This provision shall not be construed to authorize or endorse the use of discourteous, abusive, or unprofessional language.

SECTION 16. REPORTING REQUIREMENTS

Supervisors shall review all incidents involving the use of force with all officers involved and shall contact the Chief of Police regarding the incident. A report shall be made and kept on file, which contains the supervisor's evaluation as to whether the officer's actions complied with the provisions of this section. A copy of the report shall be provided to the Chief of Police and if requested, to the officer(s) involved.

- A.** A written report outlining the use of force will be completed and submitted by the involved officers in the following, but are not limited to, the below listed:
 - 1.** When an officer discharges a firearm outside the firing range (not to include recreational or animal destruction incidents); or
 - 2.** When use of force results in death or injury; or
 - 3.** When any non-lethal weapon is used on a person; or

4. When force is used beyond routine escort procedures to control a resisting combative subject; or
 5. When any department action results in non-employee injury or death.
- B.** The report will be reviewed for completeness and to insure that proper force was used by the Chief of Police. The Officer(s) shall complete written Use of Force Report prior to the completion of their shift.
- C.** The Chief or Acting-Chief shall be immediately summoned to the scene and will comply with investigative procedures as required by the Department in the following situations:
1. When a firearm is discharged outside the firing range, excluding routine situations such as destroying animals; or
 2. When a use of force results in death or serious injury.