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Wheaton Police Department

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## DEPARTMENT ORDER

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**TO:** All Department Personnel

**FROM:** William Murphy, Chief of Police

**SUBJECT:** Use of Force

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### 300.1 PURPOSE

The purpose of this department order is to provide guidelines for the use of non-deadly and deadly force.

### 300.2 POLICY

The Wheaton Police Department values the safety of the public and its officers. With this in mind, officers shall use only that force which is reasonable and necessary to effectively bring an incident under safe control. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene and whether the officers' actions are objectively reasonable in the light of the facts and circumstances confronting them: rather than with the 20/20 vision of hindsight. The 'reasonableness' must embody allowance for the fact officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving. The Wheaton Police Department shall use Illinois Use of Force Laws, 720 ILCS 5/7 et seq and *Graham v. Connor*, 490 U.S. 386 (1989) as its foundation in training and reviewing any Use of Force incident involving a Wheaton Police Officer. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone.

### 300.3 DEFINITIONS

**Actual Force:** Physical force of a control technique applied to the body sufficient to take control of a resistive subject.

**Constructive Force:** Verbal and/or non-verbal control sufficient to overcome the will of a subject and with the objective of gaining a subject's compliance.

**Coercive Force:** An action and/or verbal direction utilized to induce a subject to act (or refrain from acting) in compliance with the officer's orders. The act of pointing a firearm directly at a subject.

**Deadly Force:** Force which is likely to cause death or great bodily harm.

**Forcible Felony:** Treason, first and second degree murder, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.

**Levels of Resistance:** For purposes of reporting use-of-force incidents, officers shall acquaint themselves with the following terminology and use these terms in written reports and statements when describing the level of resistance demonstrated by the subject:

- a. **Psychological Intimidation:** Non-verbal communication offered by the subject that indicates a resistive attitude.
- b. **Verbal Non-Compliance:** Verbal communication offered by the subject which indicates the subject's intent to resist or harm the officer or others.
- c. **Passive Resistance:** The subject does not comply with the demands of the officer but does not attempt to defeat the officer's arrest procedures or harm the officer.
- d. **Defensive Resistance:** The subject attempts to defeat the officer's arrest procedures (e.g. pulling away, stiffening arms). There is no attempt to harm the officer.
- e. **Active Aggression:** The subject attempts to aggressively defeat the arrest procedure (e.g. physical attack, threat of attack).
- f. **Deadly Force Resistance:** The subject attempts to defeat the arrest procedure by threatening or applying deadly force against the officer.

#### **300.4 USE OF FORCE CONTROL OPTIONS**

- a. **Command Presence:** Officers should attempt to use their physical presence and non-verbal communication skills to take control and avoid escalation of the incident. In the event that officer's presence does not inhibit or decrease the amount of resistance or the continuation of the unlawful activity, the officer must be prepared to use another lawful use of Force Control option.
- b. **Verbal Direction:** Verbal direction, combined with a strong command presence, will many times diffuse even violent or potentially violent incidents. However, if verbal

direction does not cause the resistance or breaking of laws to cease, the officer must be prepared to use another Use of Force Control option.

c. **Empty Hand Control:** Soft and Hard empty hand control techniques are techniques that do not employ any of the approved Use of Force Control weapons and attempt to minimize the chance of injury. These techniques include the use of joint locks, pressure points, and strikes to physically control a resistive subject and gain compliance.

1. **Handcuffs:** Empty hand control includes the use of handcuffs or flex cuffs. Handcuffs should be used to restrain the movements of a subject. Handcuffs are not required to be reported as a use of force but should be properly documented in the officer's police report. However, a Use of Force Incident Supervisory Review shall be completed if the action results in, or is alleged to have resulted in, injury or death to another person. Handcuffs should be used under the following circumstances:

a. **Arrest:** Any subject who has been placed under arrest should be handcuffed behind his/her back. Exceptions to this procedure include if the subject has an injury or other physical limitation which would be aggravated by handcuffing behind the back. Additional acceptable cuffing techniques would include providing two sets of cuffs behind an individual's back or the use of a transport belt with the individual being cuffed in the front.

b. **Officer Safety:** When an officer can articulate a significant officer safety concern from a subject, an officer may handcuff the subject while the subject is being detained. Once the officer's safety concern has been dispelled, the officer shall immediately un-handcuff the subject unless the officer is arresting the subject.

c. **Handcuff Checks.** Whenever handcuffs are applied, the officer will ensure that the handcuffs are checked for fit and double-locked. If the arrest environment is such that checking for fit and double locking the handcuffs is tactically unsafe, the officer will check for fit and double lock the handcuffs at the earliest safe opportunity.

**Prohibited use of force by a peace officer (720 ILCS 5/7-5.5).** A peace officer shall not use a chokehold in the performance of his or her duties, unless deadly force is justified under 720 ILCS 5/7 – Justifiable Use of Force; Exoneration. A peace officer shall not use a chokehold, or any lesser contact with the throat or neck area of another, in order to prevent the destruction of evidence by ingestion. As used in this Section, "chokehold" means applying any direct pressure to the throat, windpipe, or airway of another with the intent to reduce or prevent the intake of air. "Chokehold" does not include any holding involving contact with the neck that is not intended to reduce the intake of air.

d. **Chemical Sprays:** Oleoresin capicum (OC) issued by the department is the only authorized chemical spray for officers to carry and use. Officers should consider using OC when the officer can articulate a resistive subject is displaying active aggression or deadly force resistance.

e. **Electronic Control Device:** An Electronic Control Device is a weapon that uses an electric current to create pain and motor dysfunction in a resistive subject (e.g. TASER). Officers are only permitted to carry an electronic control device issued by the department. Officers should consider using an Electronic Control Device when the officer can articulate the resistive subject is displaying active aggression or deadly force resistance.

f. **Impact Weapon:** An Impact Weapon is any department issued weapon that is used to control or strike a resistive subject to create pain and motor dysfunction (e.g. ASP expandable Baton). Officers should consider using an Impact Weapon when they can articulate a resistive subject is displaying active aggression or deadly force resistance.

g. **Non-Deadly Force Impact Weapon:** This category of control includes any department issued equipment intended for Non-Deadly Force (e.g. 40 MM LMT Tactical Single Launcher). Officers should consider using Non-Deadly Force when they can articulate a resistive subject is displaying active aggression or deadly force resistance.

Officers should consider using the above-noted Use of Force Control Options to take control of any subject the officer is justified to seize. The options are not in any order that the officer must follow and are listed as options the officer can choose from when making a Use of Force decision. The decision to deploy weapons shall follow the guidelines in the department order entitled, "Weapons."

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

### **300.5 USE OF FORCE**

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. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness

must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

### **300.6 USE OF FORCE TO EFFECT AN ARREST**

An officer may use any force which he/she reasonably believes to be necessary to effect an arrest and may use any force which he/she reasonably believes to be necessary to defend him/herself or another from bodily harm while making an arrest (720 ILCS 5/7-5).

### **300.7 USE OF DEADLY FORCE**

An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or great bodily harm.

An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any person, including the officer, if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- a. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- b. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

Deadly force should not be used against persons whose actions are a threat only to themselves or property or to attempt to apprehend an unarmed non-violent fleeing felon. **Tennessee vs Garner 471 US 1 (1995).**

### **300.8 DIRECTED FIRE**

Directed fire is deadly gunfire aimed at the probable location of an offender who poses an ongoing threat of death or great bodily harm and is otherwise not visible by cover or concealment for the purpose of seizing the offender, allowing officers to move into a tactically advantageous position, rescuing a downed officer or citizen, and/or denying movement of the offender in

situations where failure to do so will cause risk of death or great bodily harm to officers or the public at large.

The use of directed fire must not place the public in greater danger than the actions of the offender. Officers shall only use directed fire when they have a reasonable belief based on personal observations or those of other officers when determining the probable location of an offender posing an ongoing threat of death or great bodily harm.

Warning Shots are generally prohibited.

### **300.9 SHOOTING AT OR FROM MOVING VEHICLES**

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force including the vehicle is directed at the officer or others; or where the escape of an offender(s) otherwise indicates that they will endanger human life or inflict great bodily harm unless arrested without delay. This may include the offender's use of a vehicle as a deadly weapon, but not where the vehicle is being solely used as a means of escape. Discharging a firearm from a moving vehicle should only be done in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle unless the vehicle is being used as a deadly weapon.

### **300.10 REPORTING THE USE OF FORCE**

Any use of force by a member of this department that involves Actual Force to control, restrain, or overcome the resistance of another, shall be documented promptly, completely, and accurately in an appropriate report. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable and necessary under the circumstances.

Whenever Actual Force is used by an officer to control a resistive subject, the actions shall be reported to the on-duty supervisor. The use of force incident review will be completed by a supervisor.

Reports involving the use of force will be submitted before completion of the officer's tour of duty. If the officer is not physically or psychologically able to submit the report before the completion of the officer's tour of duty it shall be completed as soon as practicable, as directed by a supervisor.

### **300.11 DUTY TO INTERVENE**

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intervene to prevent the use of such excessive force. Officers shall promptly report these observations, as well as the associated reactions, to a supervisor.

### **300.12 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made immediately following any application of Actual Force, Non-Deadly Force or Deadly Force. The on-duty supervisor shall be requested to the location of the incident.

### **300.13 MEDICAL CONSIDERATIONS**

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Supervisory notification shall also be made, and the individual shall be continuously monitored until he/she can be medically assessed. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any individual refuses medical attention, such refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (commonly referred to as "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable.