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## Use of Force

### 512.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this office is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Conducted Energy Device, Use of Restraints, and Electronic Restraints policies (Wis. Admin. Code § DOC 350.22).

#### 512.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Force reasonably anticipated and intended to create a substantial likelihood of death or very serious injury.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the correctional officer or another person.

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**Force team technique** - The force team technique ordinarily involves trained correctional officers clothed in protective gear who enter the inmate's area in tandem, each with a specific task, to achieve immediate control of the inmate.

**Imminent** - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

**Totality of the circumstances** - All facts and circumstances known to the correctional officer at the time, taken as a whole, including the conduct of the correctional officer and the individual leading up to the use of force.

### 512.2 POLICY

The use of force is a matter of critical concern, both to the public and to the public safety community. Correctional officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Correctional officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of public safety duties.

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The Rock County Sheriff's Office recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting correctional officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

#### **512.3 USE OF FORCE**

Correctional officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the correctional officer at the time of the event to accomplish a legitimate government purpose as to gain control of the individual; protect and ensure the safety of inmates, members, and others; prevent serious property damage; prevent escape; obtain compliance with facility rules and member orders; and ensure the institution's security and good order.

The reasonableness of force will be judged from the perspective of a reasonable correctional officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that correctional 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 a correctional officer might encounter, correctional officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which correctional officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by this office. Correctional 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 government purpose.

While the ultimate objective of every encounter is to avoid or minimize injury, nothing in this policy requires a correctional officer to retreat or be exposed to possible physical injury before applying reasonable force.

Force shall never be used as punishment (Wis. Stat. § 302.08).

#### **512.3.1 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether to apply force and evaluating whether a correctional officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) Immediacy and severity of the threat to correctional officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the correctional officer at the time.

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- (c) Correctional officer/individual factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of correctional officers available vs. individuals).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with correctional officer commands.
- (g) The proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) The seriousness of the suspected offense or reason for contact with the individual.
- (k) The training and experience of the correctional officer.
- (l) The potential for injury to correctional officers, inmates, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the correctional officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation to maintain or restore order.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the correctional officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

#### 512.3.2 DUTY TO INTERCEDE AND REPORT

Any correctional officer present and observing another law enforcement officer or a member using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force.

Any correctional officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances should report these observations to a supervisor as soon as feasible.

#### 512.3.3 ALTERNATIVE TACTICS - DE-ESCALATION

When circumstances reasonably permit, correctional officers should use nonviolent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

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#### 512.3.4 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each correctional officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

#### 512.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Correctional officers may only apply those pain compliance techniques for which they have successfully completed office-approved training. Correctional officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the correctional officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the correctional officer determines that compliance has been achieved.

#### 512.3.6 USE OF FORCE TO SEIZE EVIDENCE

In general, correctional officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, correctional officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, correctional officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration, or creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Correctional officers are encouraged to use techniques and methods taught by the Rock County Sheriff's Office for this specific purpose.

### **512.4 USE OF OTHER WEAPONS, TOOLS, AND CHEMICAL AGENTS ON INMATES**

#### 512.4.1 ELECTRONIC CONTROL DEVICES

The use of TASER® devices shall be in accordance with the office Conducted Energy Device Policy.

Other electronic control devices, such as stun cuffs and stun belts, shall only be used when it appears reasonably necessary to control an inmate who poses a serious threat to safety or security, and only with the approval of a supervisor. These devices shall not be used to punish or torment. Only office-trained personnel authorized by the Jail Commander shall deploy and use these devices.

Prior judicial approval should be obtained for any use of stun belts in court holding facilities if the device will be worn in the courtroom or will be visible to a jury.

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#### 512.4.2 CHEMICAL AGENTS

Chemical agents shall only be used in the facility as authorized by the Jail Commander or the authorized designee and in accordance with the office's Chemical Agents Policy. Oleoresin capsicum (OC) spray should not be used in the medical unit or other designated areas where inmates are assigned to respiratory isolation or on any inmate who is under control with or without restraints.

Inmates who have been affected by the use of chemical agents shall be promptly provided with the proper solution to decontaminate the affected areas.

If the inmate refuses to decontaminate, such a refusal shall be documented. If an inmate has been exposed in a cell and not removed from the cell where the exposure occurred, in-cell decontamination shall be afforded to the inmate, including:

- (a) Health-trained custody member advising the inmate how to decontaminate in the cell.
- (b) Clean clothing if the inmate's clothing was contaminated.
- (c) Monitoring of the in-cell inmate at least every 15 minutes on an irregular schedule, for a period of not less than 45 minutes, by health-trained custody member.

#### 512.4.3 PROJECTILE CHEMICAL AGENTS

Pepper projectile systems are plastic spheres filled with a derivative of OC powder. A compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact, releasing the OC powder. The potential exists for the projectiles to inflict injury if they strike the head, neck, spine, or groin. Therefore, personnel deploying the pepper projectile system should not intentionally target those areas except when the correctional officer reasonably believes the inmate may cause serious bodily injury or death to the correctional officer or others. The use of the pepper projectile system is subject to the following requirements:

- (a) Office-approved projectile chemical agents may only be used by correctional officers who have received office-authorized training in their use.
- (b) Correctional officers encountering a situation that requires the use of the pepper projectile system shall notify a supervisor as soon as practicable. The supervisor shall respond to all such deployments. The supervisor shall ensure that all notifications and reports are completed as required by this policy.

Each deployment of a pepper projectile system shall be documented and, if reasonably practicable, recorded on video. This includes situations where the launcher was directed toward the inmate, regardless of whether the launcher was used. Only non-incident deployments are exempt from the reporting requirement (e.g., training, product demonstrations).

#### 512.4.4 IMPACT WEAPONS

The need to immediately incapacitate the inmate must be weighed against the risk of causing serious injury or death. The head and neck should not be intentionally targeted with an impact weapon, except when the correctional officer reasonably believes the inmate may cause serious bodily injury or death to the correctional officer or others.

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### **512.5 IMMEDIATE AND CALCULATED USE OF FORCE**

An immediate use of force occurs when force is used to respond without delay to a situation or circumstance that constitutes an imminent threat to security or safety. For example, the immediate or unplanned use of force by a correctional officer may be necessary to stop an inmate from inflicting life-threatening injuries to him/herself or to stop an assault on any other person, including other inmates. The destruction of government property may require the immediate use of force by a correctional officer in some circumstances. A verbal warning should be given before an immediate use of force unless the circumstances preclude it.

If there is no need for immediate action, correctional officers should attempt to resolve the situation through voluntary compliance or, if it reasonably appears necessary, the calculated use of force. A calculated use of force is called for when an inmate's presence or conduct poses a threat to safety or security and the inmate is located in an area that can be controlled or isolated, or when time and circumstances permit advance planning, staffing, and organization.

The assistance of available non-custodial members (e.g., psychologists, counselors) should be considered when attempting to resolve a situation without confrontation.

A supervisor shall be present in any situation involving the calculated use of force. The supervisor shall notify the Jail Commander or the authorized designee for approval and consultation prior to any calculated use of force action.

#### **512.5.1 CONFRONTATION AVOIDANCE PROCEDURES**

Prior to any calculated use of force, the supervisor shall confer with the appropriate persons to gather pertinent information about the inmate and the immediate situation. Based on the supervisor's assessment of the available information, the supervisor should direct the correctional officers to attempt to obtain the inmate's voluntary cooperation and consider other available options before determining whether force is necessary.

The supervisor should consider including the following persons and resources in the process:

- (a) Mental health specialist
- (b) Qualified health care professional
- (c) Chaplain
- (d) Office Records Bureau
- (e) Any other relevant resources

Regardless of whether discussions with any of the above resources are accomplished by telephone or in person, the purpose is to gather information to assist in developing a plan of action, such as the inmate's medical/mental history (e.g., asthma or other breathing-related illness, hypoglycemia, diabetes), any recent incident reports, or situations that may be contributing to the inmate's present condition (e.g., pending criminal prosecution or sentencing, recent death of a loved one, divorce). The assessment should include discussions with members who are familiar with the inmate's background or present status. This may provide insight into the cause of the

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inmate's immediate agitation. It also may identify other members who have a rapport with the inmate and could possibly resolve the incident peacefully, without the use of force.

If force is determined to be necessary and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the force team technique should be used to control the inmate and to apply restraints, if required.

Consideration should also be given to preventing exposure to communicable diseases in calculated use of force situations, and to ensuring that medical services personnel are available.

#### **512.6 REPORTING THE USE OF FORCE**

Every member use of force is an incident that shall be reported on the appropriate report form (Wis. Admin. Code § DOC 350.22(2)).

The documentation will reflect the actions and responses of each member participating in the incident, as witnessed by the reporting member.

The report should include:

- (a) A clear, detailed description of the incident, including any application of weapons or restraints.
- (b) The identity of all involved in the incident (e.g., inmates, members, and others).
- (c) The correctional officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.
- (d) Efforts made to temper the severity of a forceful response, and if there were none, the reasons why.
- (e) Description of any injuries to anyone involved in the incident, including the result of any medical checks that show the presence or absence of injury.

Any member directly observing the incident shall make a verbal report to a supervisor as soon as practicable and include as much of the aforementioned information as is known by the member.

Members shall submit the appropriate documentation prior to going off-duty, unless directed otherwise by a supervisor.

A video recording is required for all calculated use of force incidents and should include the introduction of all members participating in the process. The recording and documentation will be part of the investigation package. The supervisor should ensure the recording is properly processed for retention and a copy is forwarded with the report to the Jail Commander within three working days.

The supervisor responsible for gathering the reports may allow a reasonable delay in preparation of a report in consideration of the immediate psychological and/or physical condition of the involved member.

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The Sergeant/Correctional Supervisor shall promptly notify the Jail Commander of any incident involving a member employing deadly force, or any incident where a death or serious bodily injury may have been caused by a member.

#### **512.6.1 REPORTING TO WISCONSIN DEPARTMENT OF JUSTICE**

Statistical data regarding all qualifying use of force incidents is to be reported to the Wisconsin Department of Justice as required by Wis. Stat. § 165.845. For the purposes of this section, a qualifying use of force incident means any incident (Wis. Stat. § 165.845):

- (a) Involving any action taken by a correctional officer in response to an act of resistance that results in great bodily harm or death (Wis. Stat. § 939.22).
- (b) Involving an act of resistance taken by a civilian against a correctional officer that results in great bodily harm or death.

#### **512.7 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported use of force, the supervisor is expected to:

- (a) Ensure a crime scene is established to preserve and protect evidence, if appropriate.
- (b) Ensure that the chain of command is notified and that all necessary health and safety and security measures are initiated.
- (c) Obtain the basic facts from the involved members. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (d) Ensure that the appropriate investigation authority is notified, if appropriate.
- (e) Ensure that any parties involved in a use of force situation are examined by medical staff, regardless of whether any injuries are reported or detectable, and afforded medical treatment as appropriate.
- (f) When possible, separately obtain a recorded interview with all individuals upon whom force was used. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
  - 1. The content of the interview should not be summarized or included in any related criminal charges.
  - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
  - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (g) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.

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1. These photographs should be retained until all potential for civil litigation has expired.
- (h) Identify any witnesses not already included in related reports.
- (i) Review and approve all related reports.
- (j) Determine if there is any indication that the individual may pursue civil litigation.
  1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (k) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving a reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

#### **512.8 USE OF DEADLY FORCE**

When reasonable, the correctional officer shall prior to the use of deadly force, warn that deadly force may be used, unless the correctional officer has objectively reasonable grounds to believe the person is aware of those facts.

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- (a) A correctional officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury.
- (b) A correctional officer may use deadly force to stop an escaping inmate, or to stop a fleeing individual, when the correctional officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the correctional officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the individual 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 individual is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if a correctional officer reasonably believes the individual has a weapon or is attempting to access one and it is reasonable to believe the individual intends to use it against the correctional officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon and the correctional officer believes the individual intends to do so.

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#### **512.9 USE OF FORCE REVIEW**

The Sergeant/Correctional Supervisor shall review all related reports of use of force incidents occurring on his/her command. The review is to determine whether the use of force was in compliance with policy, procedure, and applicable law, and to determine if follow-up action or investigation is necessary. The Sergeant/Correctional Supervisor should also ensure that a review packet containing a copy of all pertinent reports and materials is prepared and forwarded to the Use of Force Review Committee.

##### **512.9.1 USE OF FORCE LEAD INSTRUCTOR REVIEW**

The Use of Force lead Instructor shall review all use of force cases within 30 days of the incident. It is the responsibility of the Chief Deputy to ensure these meetings occur.

The Use of Force Instructor should render a single finding as to whether the use of force was within policy and training. Any recommendations for areas identified as needing training, changes in policy or further investigation into incidents that may lead to employee discipline shall be addressed in a separate memorandum to the Chief Deputy.

#### **512.10 TRAINING**

The Jail Commander shall work with the Training Sergeant to ensure legal and facility training mandates are met. This training shall include the following:

- (a) Use of force
- (b) Weapons training
- (c) Self-defense
- (d) Confrontation avoidance procedures:
  - 1. Communication techniques
  - 2. De-escalation techniques
  - 3. Dealing with the mentally ill
  - 4. Application of restraints
- (e) Forced cell extraction techniques
- (f) Force team techniques
- (g) General restraint training (soft and hard restraints)
- (h) Reporting procedures

##### **512.10.1 TRAINING FOR CONTROL DEVICES**

The Training Sergeant shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or recertified as necessary.

- (a) Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.

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- (b) All training and proficiency for control devices will be documented in the correctional officer's training file.
- (c) Correctional officers who fail to demonstrate proficiency with the control device or knowledge of this office's Use of Force Policy will be restricted from carrying the control device until demonstrating proficiency. If a correctional officer cannot demonstrate proficiency with a control device or knowledge of this office's Use of Force Policy after remedial training, the correctional officer may be subject to discipline.

#### **512.10.2 PERIODIC TRAINING**

Supervisors should conduct and document regular periodic briefings concerning this policy and the storage and use of weapons and control devices. Any test sheets or documentation of performance should be forwarded to the Training Sergeant to be included in the correctional officer's training file.

#### **512.11 POLICY AVAILABILITY**

The Rock County Sheriff's Office or the authorized designee should ensure that this policy (Wis. Stat. § 66.0511):

- (a) Is made available free of charge within three business days of request.
- (b) Is publicly available on the office website and updated promptly upon amendment.