



Ohio Attorney General's Office
Bureau of Criminal Investigation
Investigative Report



2022-1354

Officer Involved Critical Incident – 135 Old National Rd, Lore City
(L)

Investigative Activity: Initial Briefing
Date of Activity: 06/24/2022
Activity Location: – 135 Old National Rd, Lore City, OH 43755, Guernsey County
Author: SA James Poole

Narrative:

On Friday June 24, 2022, Guernsey County Sheriff's Office (GCSO) requested the Bureau of Criminal Investigation (BCI) to investigate an Officer-Involved Critical Incident (OICI) that occurred near 135 Old National Rd, Lore City, OH 43755. Responding from the BCI Special Investigations Unit were BCI Special Agents James Poole (SA Poole), Andrew Russell (SA Russell), James Gore (SA Gore), and Ryan Scheiderer (SA Scheiderer). Also responding was Special Agent Supervisor Kevin Barbeau (SAS Barbeau). Additionally, the BCI Crime Scene Unit was requested to process the scene by documenting and collecting pertinent evidence which included Special Agents Shawn Rowley (SA Rowley), Chad Holcomb (SA Holcomb), and Special Agent Supervisor Joshua Durst (SAS Durst).

The critical incident involved a subject, Joy Graham, and GCSO deputies Major [REDACTED] and Sergeant [REDACTED]. After being taken to Southeastern Medical Hospital Joy Graham ultimately succumbed to her injuries.

SAS Barbeau spoke with GCSO Lt Sam Williams, who explained Barnesville police attempted a traffic stop on a vehicle that came back with Felony warrants on a female in Belmont County. The pursuit continued into the Old Washington area of Guernsey County. The female was stopped with stop sticks, but refused to exit the vehicle. A canine was deployed, but the female brandished a pistol. GCSO SRT was dispatched and after using non-lethal tactics the SRT tried to extract the female out of the vehicle. During the incident the two involved deputies fired into the vehicle.

A copy of GCSO Use of Force Policy are attached below.

Attachments:

Attachment # 01: 05.01 Use of Force & Deadly Force 2020 Update

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Guernsey County Sheriff's Office Law Enforcement Policies and Procedures

Subject: Response to Resistance Use of Force/Use of Deadly Force	Policy Number : 5.01
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this Office for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Revised 12/2020	
<p>Approval Authority Title and Signature: Sheriff Jeffrey D Paden - Signature on file</p>	

Policy statement for the State of Ohio standard for Use of Deadly Force:

The preservation of human life is of the highest value in the State of Ohio. Therefore, employees must have an objectively reasonable belief deadly force is necessary to protect life before the use of deadly force. Deadly force may be used only under the following circumstances:

1. To defend themselves from serious physical injury or death; or
2. To defend another person from serious physical injury or death; or
3. In accordance with U.S. and Ohio Supreme Court decisions, specifically, *Tennessee v. Garner* and *Graham v. Connor*.

Employees may only use the force which is reasonably necessary to affect lawful objectives including: affecting a lawful arrest or overcoming resistance to a lawful arrest, preventing the escape of an offender, or protecting or defending others or themselves from physical harm.

Officers only use the amount of force reasonably necessary to protect life and enforce the law under decisions established by the Constitution of the United States, the Constitution of this State, established state and federal law and as articulated in this policy and procedures manual.

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate use and reporting of force.
- II. **Policy:** In an effort to protect and serve all citizens and visitors within this jurisdiction, respect the rights of suspects, and maximize officer safety in response to resistance events, it is the policy of this Office that officers will only use reasonable force to bring an incident or event under control and that all response to resistance events directed against active resistance be reported and reviewed as outlined in this policy. All uses of force must be objectively reasonable.
- III. **Definitions:**
 - A. **Deadly Force:** Any force that creates a substantial likelihood of causing serious bodily harm or death.
 - B. **Non-Deadly Force:** All uses of force other than those that are substantially likely to cause serious bodily harm or death.
 - C. **Imminent:** Has a broader meaning than immediate or instantaneous, the concept of imminent should be understood to be elastic, involving an ongoing period of time depending on the circumstances rather than a moment in time under the definition of immediate.
 - D. **Immediate:** means, That the officer is faced with an instantaneous, or presently occurring threat of serious bodily harm or death.
 - E. **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.
 - F. **Neck Restraint:** A method of rendering a person unconscious by restricting the flow of blood to the brain by compressing the sides of the neck where the carotid arteries are located.
 - G. **Intervene:** To come between, whether verbally or physically, so as to prevent or alter a result or course of events.
 - H. **De-escalation.** Force can often be avoided through the use of de-escalation techniques and other non-dynamic law-enforcement tools such as police presence, containment, and communication. When feasible, officers will use de-escalation and other techniques to reduce the immediacy of threats to peoples' safety and stabilize incidents. Whenever possible, officers will seek to slow things down. Not every situation or subject can be deescalated. Conversely, officer behavior can escalate a situation. Officers should not intentionally escalate situations unnecessarily.
 - I. **Duty of care:** Officers have an affirmative duty to care for persons in their custody. Officers and supervisors are responsible for providing or obtaining appropriate medical attention to any person in their custody who is injured or complains of injury. This pertains whether injuries preceded custody, occurred during apprehension, or were sustained during custody. Additionally, officers have an affirmative duty to

provide or obtain medical attention for members of the public who are injured as a result of police involved actions.

- J. Positional asphyxia.** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- K. Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances with which the officer using the force is presented.
- L. Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person, believes that the prescribed facts exist.
- M. Serious Bodily Harm/Injury:** Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.
- N. Active Resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.
- O. Active Aggression:** Behavior that creates an imminent risk of physical injury to a subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include but are not limited to an attack on an officer consisting of strikes, wrestling, undirected strikes with injury potential, kicks, shoves, or punches. Examples may also include words or behavior such as pre-assault cues that clearly indicate that such an attack or actions are imminent.
- P. Excessive Force:** is force that is not objectively reasonable from the perspective of a reasonable officer in the same circumstances. Excessive force will not be tolerated.
- Q. Passive Resistance:** A subject who takes no affirmative action to defeat the member's ability to make an arrest but who does not respond to verbal commands and presents a refusal to move by sitting down or acting as dead weight.
- R. Electronic Control Device:** Electronic Control Devices, TASER™, or stun-guns (electronic control weapons) that disrupt the central nervous system of the body. (SEE ECD POLICY)

IV. Response to resistance Procedure:

- A.** In determining the appropriate level of force officers should apply the levels of force under the Office's trained response to resistance options, along with the following three factor test:
 - i.** How serious was the offense the officer suspected at the time the particular force was used?
 - ii.** What was the physical threat to the officer or others?
 - iii.** Was the subject actively resisting or attempting to evade arrest by flight?

RESTRICTED LAW ENFORCEMENT DATA

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B. Officers may sometimes be required to take custody or otherwise control an individual who is a danger to themselves or others due to a medical or mental health emergency. In these cases, an officer may be required to use objectively reasonable force. In determining whether force is appropriate and the proper response under the Office's trained response to resistance options, the officer should consider the following three factor test:

- i. Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
- ii. Was some degree of force reasonably necessary to ameliorate or reduce the immediate threat?
- iii. Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

C. Deadly Force: The use of deadly force is objectively reasonable when:

- i. The officer is faced with an immediate threat of serious bodily harm or death to him/herself, or some other person who is present, or;
- ii. To prevent the escape of an individual in cases where the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death AND by the subject's escape, they pose an imminent threat of serious bodily harm or death to another.
- iii. Officers should warn the subject prior to using deadly force where feasible.

D. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force.

- i. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and/or provide for emergency medical response where needed and where reasonable to do so.
- ii. Officers should immediately place the subject in a recovery position which facilitates breathing.

E. Chokeholds & Neck Restraints: An officer shall not use a chokehold or neck restraints in the performance of his or her duties, **unless deadly force is justified.**

- i. In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers shall not use a chokehold, neck restraint or any lesser contact with the throat or neck area of another in order to prevent the destruction of evidence by ingestion.
- ii. Officers shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that

blood flow to the head or respiration would be restricted for the purpose of seizing evidence.

- iii. **Render Medical Aid:** Officers restraining a subject should be cognizant of and avoid positional asphyxia. This agency prohibits prolonged face-down prone restraint.
- iv. As soon as the subject stops resisting and is handcuffed and/or under control, monitor the person's vital signs closely. Take the following steps:
 - Roll the person onto his or her side, or into a sitting position
 - Monitor breathing
 - Check the pulse at the wrist
 - Check the person's facial skin color (a gray or blue tint is a sign of severe medical distress)
 - Determine if the person is functionally conscious (e.g., the person can exhibit voluntary movement, has the ability to converse, is aware of place/date/time)
 - If the person has difficulty breathing, is not at a functional level of consciousness, exhibits symptoms of medical distress, or if you have any doubt regarding the person's medical condition, request an emergency medic response and administer appropriate first aid.
 - If the person is being lodged at a correctional facility or taken to a medical facility, advise them if the person was rendered unconscious or subjected to a chokehold or neck restraint during restraint.

F. **Force Options:** Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. In any given circumstance there will be a range of options that may be reasonable. At no time should these options be considered a ladder which must be attempted one progressive step at a time. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.

- i. **Command Presence:** Visual appearance of the officer where it is obvious to the subject, due to the officer's uniform or identification, that the officer has the authority of law.
- ii. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
- iii. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; techniques that have a low potential of injury to the subject.
- iv. **Chemical Spray:** Where subject exhibits some level of active resistance, officers may use chemical spray to temporarily incapacitate the subject.

- v. **Electronic Control Devices:** Where subject exhibits some level of active resistance an officer may use an electronic control device to temporarily incapacitate the subject. See Electronic Control Device policy.
- vi. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating a stunned mental state and/or motor dysfunction.
- vii. **Impact Weapons:** Batons, ASP/Expandable Batons, other impact weapons as allowed by Office al policy, or weapons of opportunity as may be dictated by the circumstances facing officers may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where based on the officer's belief at the time, the other options would not be successful in bringing the event to a successful conclusion.
- viii. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement should be made when reasonable to do so.
- ix. **Deadly Force:** Force that creates a substantial likelihood of causing serious bodily harm or death.

G. Firearms Restrictions:

- i. Warning Shots are prohibited
- ii. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
- iii. Discharging a firearm at an occupied vehicle is prohibited unless deadly force is justified.
- iv. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.

H. Less Than Lethal Weapons/Tactics: Prior to deployment of any less than lethal weapon, officers must be trained and certified where applicable in the proper use of the weapon. All deployments must be consistent with Office al response to resistance training and policy.

i. Chemical Spray:

- i. Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant.
- ii. Chemical Spray shall never be used as a punitive measure.
- iii. Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the pressurized stream. Officers should never spray directly into a subject's eyes from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter), unless deadly force would be justified.

- iv. Officers should consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
 - v. Officers should consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
 - vi. Once control is gained, officers should immediately provide for the decontamination of the subject when reasonable and practical to do so.
 - vii. If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.
- ii. **Impact Weapons: Batons, ASP/Expandable Batons**
- i. Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
 - ii. Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
 - iii. Officers shall not intentionally strike a person with an impact weapon where it would create a substantial likelihood of causing serious bodily harm or death, unless the use of deadly force would be justified.

V. Duty to Intervene:

A. Use of Force: in accordance with the agency's **Duty to Intervene** policy Officers of this agency have an affirmative duty to intervene if they witness a use force that is clearly unreasonable. Any officer present and observing another officer using force that is clearly beyond that which is reasonable under the circumstances shall, when in a position to safely do so, intervene to prevent the use of unreasonable force. An officer who observes another employee use of force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

VI. Reporting Response to Resistance

A. Whether on or off duty, Officers will report responses to resistance, via approved Office al response to resistance form, when one of the following force options are utilized in response to active resistance.

VII. Chemical Spray

VIII. Electronic Control Devices

IX. Hard Hand Control

X. Impact Weapons

XI. Pointing of Firearms: Any time a member points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed is a reportable event under this policy. This does not include drawing a firearm and maintaining at the low-ready position.

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- vi.** Firearms discharges: Any intentional or unintentional discharge of a firearm, not inclusive of training scenarios or approved humane life terminations of injured animals.
 - vii.** Canine use: Use of an Office canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.
 - viii.** Deadly Force
 - ix.** Any incident, arrest, or circumstance, which in the officer's or supervisor's opinion involved a physical confrontation necessitating documentation of circumstances.
- B.** Officers involved in an incident where a reportable response to resistance did not involve death or serious bodily injury, the Officer will:
- i.** Notify their supervisor as soon as practical.
 - ii.** Document the response to resistance via Police Report
 - iii.** Complete the approved Sheriff's Office response to resistance form and forward it to their immediate supervisor prior to ending their tour of duty. The form will be completed in detail including a narrative account describing the following:
 - a.** Actions of the subject that necessitated a response
 - b.** Force utilized in overcoming the resistant subject
 - c.** Injuries or complaints thereof sustained by the subject and/or Officer
 - d.** Medical treatment received.
- C.** Officers involved in an incident where a reportable response to resistance involved death, serious bodily injury, or the discharge of a firearm will notify the on duty and/or designated supervisor immediately.
- D.** In the event of a reportable response to resistance involving death or serious bodily injury, the Office will ensure that:
- i.** Criminal Investigation: A Detective/Investigator will respond to the scene, conduct investigation, and complete the initial police report. In the event an Office has no available personnel for this purpose or the Office believes it is in their best interest to request an outside Office conduct the investigation, they may utilize an outside Office (such as another Sheriff's Office) for this purpose.
 - ii.** Officers are reminded that a criminal investigation will be conducted and that criminal liability may attach to their actions. In order to ensure Officers 5th amendment protections are not violated the following procedure is established:
 - (a)** Officers will be removed from the scene as soon as practical.
 - (b)** Officers will be allowed time to reflect about their actions and speak with an attorney if they desire prior to any criminal questioning.
 - (c)** Officers are not required to submit to a criminal investigative interview and are subject to 5th Amendment protections if they so choose.
 - iv.** Internal Investigation: Officers should understand that an Internal Affairs Investigation may begin at any time as determined by the Sheriff or his/her

