



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



2024-4066  
Officer Involved Critical Incident – 1004 Park Lane, Apartment A,  
Middletown, Ohio (Butler County) (L)

**Investigative Activity:** Records Received, Review of Records  
**Involves:** Christopher Gorak (S)  
**Date of Activity:** 01/07/2025  
**Activity Location:** Middletown Police Department – Business – One Donham Plaza,  
Middletown, OH 45042  
**Author:** SA Steven Seitzman

**Narrative:**

On Tuesday, January 7, 2025, Ohio Bureau of Criminal Investigation Special Agent Steven Seitzman received the Middletown Police Department's Use of Force Policy that was in effect at the time of this incident. The document is attached to this investigative report for further review.

**Attachments:**

Attachment # 01: GO4 Use of Force

# **Exhibit 1**



## **MIDDLETOWN DIVISION OF POLICE**

*One Donham Plaza, Middletown, Ohio 45042*

*(513)425-7700 Main (513)425-7756 Administration (513)425-7755 Fax*

### **GENERAL ORDER 4 USE OF FORCE**

**(Effective Date: 10/10/2022 by Order of the Chief of Police)**

#### **USE OF FORCE**

- 4.1.1 Use of Reasonable Force
- 4.1.2 Use of Deadly Force
- 4.1.3 Warning Shots Prohibited
- 4.1.4 Use of Authorized Less Lethal Weapons
- 4.1.5 Rendering Medical Aid
- 4.1.6 Vascular Neck Restrictions
- 4.1.7 Choke Holds

#### **USE OF FORCE REPORTING AND REVIEW**

- 4.2.1 Reporting Use of Force
- 4.2.2 Written Use of Force Reports and Administrative Review
- 4.2.3 Removal from Line of Duty Assignment for Use of Force
- 4.2.4 Annual Use of Force Analysis

#### **WEAPONS AND TRAINING**

- 4.3.1 Authorized Weapons and Ammunition
- 4.3.2 Demonstrating Proficiency with Weapons
- 4.3.3 Firearms Qualifications/Weapons Proficiency Training
- 4.3.4 Prerequisite to Carrying Deadly/Less-Lethal Weapons
- 4.3.5 Firearms Range

## 4.1 USE OF FORCE

### 4.1.1 Use of Reasonable Force (CALEA LE-1)

#### A. Definitions

1. Non-Compliance – non-violent actions by a subject that present no threat of physical harm to the officer, but prevent or hinder an officer from carrying out his/her lawful duties.
2. Active Resistance – verbal or physical actions by a subject that indicate an unwillingness to comply with an officer's lawful authority and prevent or hinder an officer from carrying out his/her lawful duties.
3. Violent Assault – aggressive actions by a subject, with or without a weapon, directed at an officer with the intention of causing physical harm or death to the officer(s) or others.
4. De-Escalation – reducing the intensity of a conflict or potentially violent situation.
5. Force – the actions taken by an officer, with or without a weapon that significantly restrict or alter the actions of another person and/or compels compliance with the requests/instructions of the officer.
4. Less-Lethal – the use of force against a subject that does **not** create a significant risk of death. This includes, but is not limited to, options such as chemical spray, electronic control devices, and impact weapons. It also includes, but is not limited to, weaponless subject control techniques such as takedowns, forced handcuffing, hand strikes, knee strikes, and foot strikes.
6. Deadly Force – means any force which carries a substantial risk that it will proximately result in the death of any person.
7. Reasonable Belief – are facts and circumstances that the officer knows, or should know, would cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
8. Serious Physical Harm – means any physical harm which creates a substantial risk of death; permanent incapacity or permanent disfigurement; or results in long-term loss or impairment of the functioning of any part of the body.

## B. Authorization

1. Sworn Police Officers are authorized to use force in the following instances:
  - a. To stop potentially dangerous and/or unlawful behavior;
  - b. To protect the officer or another person from assault, injury, or death;
  - c. To protect a person from injuring themselves; and
  - d. In the process of conducting an arrest when the person offers resistance.
  
2. Corrections Officers are authorized to use force in the following instances:
  - a. Self-defense from physical attack or threat of physical harm;
  - b. Defense of another from physical attack or threat of physical harm;
  - c. When necessary to control or subdue an inmate who refuses to obey a command or staff order;
  - d. When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;
  - e. Prevention of an escape, or other crime; and
  - f. Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.
  
3. The Animal Control Officer is authorized to use force in the performance of their duties to defend themselves from an animal attack or violent assault from another person.
  
4. Officers should attempt to resolve confrontational situations using de-escalation tactics and techniques in order to reduce the need for use of force, as long as it does not compromise officer safety.
  
5. In situations where use of force is utilized, officers must weigh the facts and circumstances of each situation and employ the level(s) of force perceived necessary and reasonable to accomplish lawful objectives.
  
6. Use of force **will stop** when the person stops resisting or assaulting.
  
7. Reference: US Supreme Court Case – **GRAHAM v. CONNOR, 490 U.S. 386 (1989)**

## D. "Last Resort" Situations

Situations may occur wherein certain immediate and drastic measures must be undertaken by an officer in order to protect themselves or another utilizing techniques or weapons not covered in this General Order or agency written directives. Force used in these situations will be judged by reasonable and necessary use of force standards.

#### 4.1.2 Use of Deadly Force (CALEA LE-1)

##### A. Sworn Police Officers may use deadly force in the following circumstances:

1. By any means, when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury.
2. To arrest or prevent the escape of a suspect who the officer reasonably believes has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or serious physical injury to any person.
3. To protect themselves or others from an animal which the officer reasonably believes may cause serious physical injury if not immediately controlled, or to end the suffering of an animal gravely injured or diseased after considering public view, safety, and other reasonable dispositions.
4. 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 other than the vehicle is directed at the officer or others.

**B.** When feasible, a verbal warning should be given prior to engaging in the use of deadly force against another person.

**C.** Reference: US Supreme Court Case - **TENNESSEE v. GARNER, 471 U.S.1 (1985)**

#### 4.1.3 Warning Shots Prohibited (CALEA LE-1)

The use of warning shots is **prohibited**.

#### 4.1.4 Use of Authorized Less-Lethal Weapons (CALEA LE-1)

##### A. Authorized Less-Lethal Weapons

1. Sworn Police Officers are authorized to carry and/or utilize the following less-lethal weapons in the performance of their duties and/or as dictated by assignment:
  - a. OC Chemical Spray;

- b. ASP Expandable Baton or Straight Baton (Wood or polycarbonate in construction, 16-24" in length, maximum 2" diameter);
- c. TASER;
- d. Specialty Impact Munitions (12-gauge shotgun and 40 MM Launcher);
- e. Gas Agents (OC and CS);
- f. Pepper Ball Launcher;
- g. Diversionary Devices; and
- h. Police Canine.

2. Corrections Officers are authorized to carry and utilize the following less-lethal weapons in the performance of their duties:

- a. OC Chemical Spray; and
- b. TASER.

3. Animal Control Officers are authorized to carry and utilize the following less-lethal weapons in the performance of their duties:

- a. TASER;
- b. OC Chemical Spray; and
- c. ASP Expandable Baton.

4. Only those employees who have completed the prescribed course of instruction for the weapon are authorized to carry the weapon in an official capacity.

## **B. ASP/Straight Baton Guidelines**

1. When carrying an ASP/Straight Baton, uniformed personnel shall carry the weapon in a holder on the equipment belt.
2. Plainclothes personnel may carry the ASP/Straight Baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.
3. Use of the weapon is limited to those situations in which the subject is actively resisting or violently assaulting an officer.
4. Strikes to the body of a resistant person shall be limited to the muscle areas of the arms, legs, and torso. Bony areas should be avoided as much as possible.
5. Strikes to the head, neck, and spinal areas are restricted to those situations where the use of deadly force is authorized.
6. Use of ASP or baton strikes against a person who is non-compliant is specifically forbidden.

### C. Oleoresin Capsicum Spray Guidelines

1. Oleoresin Capsicum is an organically based aerosol spray designed to impair a subject's ability to cause harm with no lasting effects.
2. OC is bio-degradable and classified as an inflammatory agent causing swelling of the mucous membranes.
3. When carrying OC, uniformed personnel shall carry the canister in a holder on the equipment belt.
4. Plainclothes personnel may carry OC as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.
5. Chemical spray may be used when an officer reasonably believes a subject has indicated the intention to actively resist or violently attack the officer(s).
6. When deploying chemical spray, officers should use short bursts targeting the subject's face and upper torso.
7. Chemical spray should **not** be applied at a distance of less than 36 inches. This distance provides the greatest safety in order to avoid eye damage.
8. Whenever possible, officers should be upwind from the subject before deploying chemical spray and avoid entering the spray area.
9. The use of OC chemical spray should be limited, if possible, under conditions where it is likely to affect other officers or innocent bystanders.
10. Unless there are compelling reasons to do so which can be clearly articulated, officers should avoid deploying OC Spray on unarmed persons who reasonably appear to be, or are known to be:
  - a. In frail health;
  - b. Young children
  - c. Elderly;
  - d. Pregnant;
  - e. Persons with known respiratory conditions.
11. Unless a substantial risk of injury and/or property damage exists, officers are not to use OC spray on a handcuffed person.



#### D. TASER X26P Guidelines

1. The TASER is an electronic control device designed to disrupt the sensory and motor nervous system of the body.
2. Its use is intended to incapacitate a subject with a minimal potential for causing death or serious physical injury when compared to conventional projectiles.
3. Sworn Uniformed Police Officers issued the TASER will wear the weapon in a division issued holster in a cross-draw fashion on their duty belt.
4. The TASER may be deployed in one of the following modes when an officer reasonably believes that a subject has indicated the intention to actively resist or violently assault the officer(s):
  - a. Show of Force Mode – deploying the TASER without firing the weapon.
  - b. Standoff Mode – deploying the TASER and firing the darts into the body, cycling the weapon until compliance is obtained.
  - c. Contact Mode – deploying the TASER and utilizing a drive stun technique until compliance is obtained.
5. When feasible, officers deploying the TASER in the contact or standoff mode shall announce their intention to do so when other officers are present.
6. The preferred targeting location is center mass to the subjects back, however, it is recognized that it is not always possible to get behind a subject.
7. Frontal targeting should be to the subject's lower center mass. Targeting of the upper torso/chest area shall be avoided where possible.
8. When deploying the TASER reasonable efforts shall be made to avoid striking the subjects head, neck, eyes or genitals.
9. Officers should transition to a different force option if more than 3 cycles of the Taser fail to gain compliance.
10. Unless there are compelling reasons to do so which can be clearly articulated, officers should avoid deploying the TASER on unarmed persons who reasonably appear to be, or are known to be:
  - a. Pregnant;
  - b. Elderly;
  - c. Physically disabled, or medically infirm; or

d. Young children.

11. Unless a substantial risk of injury and/or property damage exists, officers are not to use the TASER on a handcuffed person.

12. Officers should not deploy the TASER on a fleeing subject where it is highly likely that a fall may cause serious physical injury or death.

13. Officers will not deploy the TASER on a subject operating and attempting to flee in a motor vehicle.

### **E. Specialty Impact Munitions Guidelines**

1. Specialty Impact Weapons are capable of deploying less-lethal direct impact munitions in an attempt to resolve violent or life-threatening situations.

2. Specialty Impact Munitions are available for use in the 12-gauge less-lethal shotgun (Orange Stock) or the 40MM Launcher.

3. Specialty Impact Munitions should only be deployed by sworn officers when they have armed cover.

4. Whenever possible under the conditions present, officers shall announce their intention to deploy Specialty Impact Munitions by clearly stating the type of round to be deployed prior to firing.

5. Officers utilizing Specialty Impact Munitions shall target those areas specific to the type of munition used and the officers' training on the weapon to achieve the desired effects.

6. When using Specialty Impact Munitions on a subject, an officer should deploy at a distance within the acceptable range specified by the manufacturer and in the officers' training.

7. Unless there are compelling reasons to do so which can be clearly articulated, officers should avoid deploying munitions on unarmed persons who reasonably appear to be, or are known to be:

- a. Pregnant;
- b. Elderly;
- c. Physically disabled, or medically infirm; or
- d. Young children.

8. While multiple rounds may be expended on a person as necessary, no more than two Specialty Impact Munitions weapons will be simultaneously deployed on a person.

#### **F. Gas Agents and Pepper Ball Guidelines**

1. The Special Weapons and Tactics team is authorized to use CS/OC gas agents that may be delivered by hand, pole, 40MM Launcher or 12-gauge shotgun, and Pepper Ball projectiles delivered by an air-powered launching device.

2. Pepper ball projectiles are plastic spheres that are filled with powdered or liquid Oleoresin Capsicum (OC). CS deployed by hand, pole or 40MM Launcher may be in powder or liquid form.

3. The chemical in CS and OC re-acts with a subject's skin and eyes causing a burning sensation, tearing and uncontrollable shutting of the eyes.

4. The use of these agents is at the discretion of the SWAT Commander or SWAT Officer on-scene. Situations for use include but are not limited to:

- a. Barricaded subjects to provoke a surrender and gain compliance;
- b. To temporarily impair a subject's ability to cause harm; and
- c. Crowd control and dispersal.

#### **G. Diversionary Devices (Flash-Bang)**

1. Diversionary devices are non-lethal explosive munitions used to temporarily disorient a subject by a bright flash of light and sound.

2. The SWAT team is authorized to use diversionary devices that may be delivered by hand, pole or command detonation.

3. The devices are designed to distract a subject during high risk entry into a structure or hazardous area and reduce the potential for using other forms of force.

4. The use of diversionary devices is at the discretion of the SWAT Commander.

#### **H. Police Canines**

1. Apprehension - A canine may be used to locate and apprehend a suspect in compliance with G.O. 41.1.4, by way of displaying force or the threat of force to counter an officer's lawful objective, or authority.

2. Display of Canine - The display of a canine may be used to gain compliance from a subject that is displaying non-violent opposition to an officer's lawful objective or authority, such as a refusal to cooperate with legal requirements

3. Non-Apprehension - Properly trained canines may be used to track or search for non-criminals (e.g., lost children, individuals who may be disoriented or in need of medical attention). The canine handler is responsible for determining the canine's suitability for such assignments based on the conditions and the particular abilities of the canine.

## **I. Other Restrictions**

1. The use of hand strikes, elbow strikes, foot strikes, and knee strikes to the upper torso and lower extremities will be used in accordance with the reasonableness standard as authorized in General Order 4.1.1, Use of Reasonable Force, Section D, Authorization, only during encounters of active resistance and violent assault.

2. The use of hand strikes, elbow strikes, foot strikes, or knee strikes to the neck, head or facial area will only be used when an officer is under violent assault, or the imminent threat of violent assault.

### **4.1.5 Rendering Medical Aid (CALEA LE-1)**

**A.** Appropriate medical aid, consistent with any injury sustained by an individual during apprehension, will be immediately provided in the form of minor first aid and/or request for paramedics as soon as possible after control of the incident has been established.

**B.** Officers must be aware that use of force, or any injury incurred during apprehension, may result in the person sustaining injuries that are not immediately apparent. Therefore, when a person complains of an injury, or appears to be in some form of physical distress, officers **will** summon medical assistance.

**C.** TASER probes may generally be removed by an officer on scene who has been properly trained on their safe removal. If the probes have struck any of the following areas they will be removed by qualified medical personnel:

- a. The eyes or close to the eyes;
- b. The trachea, carotid artery, or jugular area of the neck;
- c. Facial area on the cheeks or around the mouth and nose;
- d. Groin or genital areas.

**D.** Persons sprayed or exposed to CS or OC agents should be moved to fresh air, faced into the wind, and allowed to flush their face whenever possible.

**E.** Officers must have any individual who has been subject to use of force medically treated/cleared by qualified medical personnel at Kettering Hospital or Atrium Medical Center prior to transport and booking into the Middletown City Jail.

**F.** Officers shall ensure that medical personnel providing medical care or receiving custody of an individual are informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks (e.g., prolonged struggle, extreme agitation, impaired respiration).

**G.** If any such individual refuses medical attention, the refusal shall be documented in the officers related reports and, whenever practical, in any reports by medical personnel.

#### **4.1.6 Vascular Neck Restraints (CALEA LE-1)**

Use of Vascular Neck Restraints, or any technique that restricts blood flow to the brain is prohibited unless the officer is involved in a situation where all other reasonable means of force have been exhausted and deadly force is necessary for the defense of the officer's life, or the life of another.

#### **4.1.7 Choke Holds (CALEA LE-1)**

Use of Choke Holds, or any technique that restricts the intake of oxygen for the purpose of gaining control of a subject, is prohibited unless the officer is involved in a situation where all other reasonable means of force have been exhausted and deadly force is necessary for the defense of the officer's life, or the life of another.

## **4.2 USE OF FORCE REPORTING AND REVIEW**

### **4.2.1 Reporting Use of Force (CALEA LE-1)**

#### **A. Assault and Use of Force Reporting**

1. A written Use of Force report will be submitted whenever an employee:
  - a. Discharges a firearm, for other than training or recreational purposes;
  - b. They take any action that results in or is alleged to have resulted in injury or death to another person;
  - c. Applies force through the use of lethal or non-deadly weapons; or
  - d. Applies weaponless physical force at a level as defined by policy.
2. The employee(s) involved in the Use of Force incident will immediately notify the on-duty supervisor of the incident and the severity of any injuries sustained.
3. The employee(s) involved will complete a Use of Force report immediately following the incident unless directed to do otherwise by their supervisor.
4. The on-duty supervisor will respond to the scene whenever possible to investigate the use of force. The investigation will include observation of the subject of the force, interviews with the officers involved, photographs, and interviews with other witnesses.
5. If the on-duty supervisor is involved in a use of force, they are prohibited from performing the supervisory review of the incident they were involved in. If another supervisor is on duty and available, that Use of Force will be reviewed by the supervisor not involved in the incident. If no other on duty supervisor is available, the supervisor involved will complete the appropriate Use of Force report, and the supervisor's review report will be completed by the Patrol Commander or their designee.

#### **B. Discharge of Weapons Reporting**

1. Officers will immediately notify the on-duty supervisor of any incident in which they deliberately or accidentally discharge a firearm or TASER.
2. The officer(s) involved will complete a Discharge of Weapons report immediately following the incident unless directed to do otherwise by a supervisor.

3. If the discharge of a firearm by an officer is for any reason other than killing an animal, the ranking on-duty supervisor shall notify the Chief of Police and the officer's Division Commander.

4. This general order does not apply to rounds/cartridges fired at the range during regular practice and/or qualification, unless an injury results from such discharge.

#### **4.2.2 Written Use of Force Reports and Administrative Review (CALEA LE-1)**

##### **A. Submitting Reports**

1. Use of Force and Discharge of Weapons reports will be submitted to the on-duty supervisor by the officer(s) involved immediately following their completion.

2. Officers must be specific as to the amount and type of force utilized along with any verbal warning and/or de-escalation techniques utilized during the incident.

3. The on-duty supervisor will review the reports and complete the Supervisory Review of Use of Force. The completed reports along with the following documentation will be saved in the Use of Force folder:

- a. Taser download (if applicable);
- b. Color photos of subject;
- c. Color photos of officer if injured or assaulted; and
- d. Copy of cruiser video (if applicable).

4. Printed copies of all reports and supporting documentation listed above will be forwarded to the officer's Division Commander or Section Supervisor, along with the following supplemental documentation:

- a. Copy of call for service screen that initiated contact;
- b. Duplicate copy of arrest sheet;
- c. Any witness statements or additional video of incident; and
- d. Use of Force cover sheet.

5. If the officer(s) involved are injured/unable to complete the report, the officer's supervisor will submit a written report prior to the end of the shift.

##### **B. Administrative Review**

1. All reports regarding use of force and discharge of weapons will be reviewed by the officer's immediate supervisor and forwarded to the officer's Division or Section Commander to determine whether:

- a. Division of Police rules, policy, or procedures were violated;
- b. Relevant policy was clearly understandable and effective for the situation; and
- c. Division of Police training is currently adequate.

**2. All completed use of force reports and/or findings of policy violations or training inadequacies shall be forwarded to the Chief of Police for final review and disposition.**

3. If the force used by the officer(s) involves the discharge of a firearm and/or results in death or serious physical injury, an internal investigation will be conducted at the direction of the Chief of Police.

#### **4.2.3 Removal from Line of Duty Assignment for Use of Force (CALEA LE-1)**

**A.** Any employee, whose actions or use of force in an official capacity result in death or serious injury, will be relieved from duty pending an administrative investigation. **The employee(s) involved will suffer no loss of pay or benefits during said leave.**

**B.** The employee(s) involved may be placed on administrative leave or inside assignment as determined by the Chief of Police until such time as a finding on the incident is made. **The assignment of administrative leave or inside assignment shall not be interpreted to imply wrongdoing on the part of the employee(s) involved.**

**C.** While on administrative leave, employee(s) shall remain available to the assigned investigator(s) or the Chief of Police pending completion of the investigation and review of the incident. The employee may be subject to return to duty at any time.

**D.** Employee(s) who are involved in an incident where use of force results in death or serious physical injury will have psychological counseling and evaluation made available to them prior to returning to regular duty.

#### **4.2.4 Annual Use of Force Analysis (CALEA LE-1)**

**A.** The Administrative Operations Commander, or their designee will conduct a documented annual analysis of those reports required in General Order 4, section 4.2.1. The analysis shall identify:

1. Date and time of incidents;
2. Type of encounters resulting in use of force;
3. Trends or patterns related to race, age and gender of subjects involved;
4. Trends or patterns resulting in injury to any person including employees; and
5. Impact of findings on policies, practices, equipment and training.



**B.** This analysis and all revisions/recommendations shall be submitted to the Chief of Police. The Chief of Police shall upon review, determine if additional or alternative training is necessary for agency personnel dealing with any aspect of the application or reporting of the use of force.

## **4.3 WEAPONS AND TRAINING**

### **4.3.1 Authorized Weapons and Ammunition (CALEA LE-1)**

#### **A. Policy Statement**

Only weapons and ammunition that are authorized for use by the Chief of Police will be used by agency personnel in the performance of their duties. This includes weapons and ammunition carried both on and off-duty. Sworn Police Officers having Ohio Peace Officer Training Academy (OPOTA) certification are the only personnel authorized to use and carry firearms.

#### **B. Duty Firearm**

1. Uniformed sworn officers and plain clothes sworn officers may carry either the Glock Model 17 or Model 45 Modular Optic System pistol chambered in 9mm.
2. The Chief of Police and Deputy Chiefs may carry the Glock Model 17, Model 45, or Model 43/43X chambered in 9mm.
3. Sworn plain clothes officers assigned to the Special Operations Unit may carry any Glock model chambered in 9mm. Officers utilizing this option are responsible for the purchase of the firearm and must demonstrate proficiency with the weapon as dictated by policy prior to carrying the weapon in any official capacity.
4. The firearm will be secured and carried on the person of the officer in a Division issued or approved holster and carried **loaded and chambered** with a full magazine.

#### **C. Patrol Carbine**

Sworn Police Officers are authorized to carry and use a patrol carbine (AR platform) that is departmentally issued or personally owned while on-duty. The weapon will be of .223/5.56 caliber and semi-automatic only.

#### **D. Shotgun**

Sworn Police Officers are authorized to carry and use a shotgun that is departmentally issued or personally owned while on-duty. The weapon will be of 12-gauge caliber and pump action only.

#### **E. TASER**

Officers are authorized to carry the TASER X26P Conducted Energy Weapon (CEW), as one of several non-deadly use of force options.

## **F. Oleoresin Capsicum (OC Spray)**

Officers are authorized to carry Oleoresin Capsicum (OC) spray in an approved pouch to be carried on the duty belt.

## **G. ASP & Straight Baton**

Officers are authorized to carry a Straight Baton (Wood or polycarbonate in construction, 16-24" in length, maximum 2" diameter) that is not leaded or otherwise weight enhanced, and/or the ASP expandable baton.

## **H. Specialty Impact Munitions (Beanbag)**

Sworn Police Officers are authorized to carry and use a departmental Specialty Impact Munitions 12-gauge pump action shotgun while on-duty. The weapon will have a special orange stock set to differentiate it from a standard pump action shotgun.

## **I. Police Canine**

Use of a trained police canine is authorized under the supervision of a trained, certified handler in accordance with General Order 41, section 41.1.5 - Police Canines

## **J. Special Purpose Weapons**

1. Sworn Police Officers assigned to the SWAT team are authorized to utilize the following special purpose weapons:
  - a. 40mm Launcher;
  - b. Gas Agents (OC and CS);
  - c. Air Powered Pepper Ball Launcher;
  - d. Diversionary Devices; and
  - e. Sniper Rifles chambered in .308 caliber with approved scopes and accessories.
2. The weapons are only to be used by officers that have been trained, and have demonstrated proficiency in the use and deployment of the weapon.
3. Special Purpose Weapons shall only be used when authorized by the SWAT Commander or the Chief of Police.
4. The Chief of Police may authorize the use of additional special purpose weapons based on the needs of the SWAT team and the department.

### **K. Optics, Lights and Slings for Patrol Carbine Rifle**

1. Officers may elect to purchase, at their own expense, a rifle optic and/or tactical light for their patrol carbine.
2. The optic may only be installed on a rifle after it has been examined and approved by a range officer.
3. Any patrol carbine equipped with an optical sight must have back-up iron sights that can be used to attain accurate hits if the optic is non-functioning.
4. Once an approved optic has been properly installed, the officer shall qualify with the rifle to ensure proper functionality and sighting of the firearm prior to carrying it.
5. Officers electing to carry a personally owned patrol carbine on-duty must have a sling attached securely to the rifle in a single or two-point configuration.

### **L. Optics & Lights for Duty Pistols (Glock 17 & 45)**

1. Officers electing to carry an optic on their duty pistol must purchase it at their own expense, along with a duty holster that protects the optic and is designed by the manufacturer of the holster for the Glock 17 or 45 MOS Optic Ready Pistol.
2. The optic may only be installed on the pistol after it has been examined and approved by a range officer.
3. Any duty handgun equipped with an optical sight must have back-up iron sights that can be used to attain accurate hits if the optic is non-functioning.
4. Once the approved optic has been installed, the officer shall qualify with the pistol to ensure proper functionality and sighting of the firearm prior to carrying it.
5. All patrol officers will be issued a tactical light for their issued duty weapon. The light is required to be affixed to the pistol for duty use.

### **M. Back-Up Firearms**

1. Sworn officers are permitted to carry a back-up firearm while on-duty. The firearm carried must be a semi-automatic handgun in .380 or 9mm caliber.
2. Officers are responsible for the costs associated with the purchase and maintenance of the firearm and any retention device utilized to carry it on-duty.

## **N. Off-Duty Carrying of Firearms**

1. Sworn officers are authorized, not mandated, to carry a firearm off-duty subject to the guidelines and limitations imposed by law, policy, and training.
2. Officers may carry their agency issued firearm, approved back-up firearm, or may elect to carry a personally owned firearm.
3. Officers that choose to carry a firearm off-duty must have on their person their badge and agency issued identification.
4. While carrying off-duty, officers shall comply with all requests or demands from law enforcement personnel to show their badge and identification.
5. When carrying a firearm off-duty, officers are reminded that they have no arrest or enforcement powers outside the State of Ohio.
6. When carrying a firearm outside the State of Ohio, officers must comply with applicable federal law and the laws of the particular state they are in.
7. No officer shall carry a firearm while under the influence of alcohol and/or medication that would impair the officer's ability and performance.
8. No officer will carry their agency issued duty weapon off-duty while suspended, or when specifically ordered not to by a supervisory officer.

## **M. Authorized Ammunition and Less-Lethal Munitions**

1. Approved ammunition for the 9mm duty handgun will be Federal HST 147 grain, AR15 pattern rifle will be Federal 55 grain FMJ, standard shotgun rounds will be Federal Tactical 00 Buck 12-gauge, less-lethal shotgun bean bag rounds will be 12 gauge Combined Tactical Systems Super-Sock.
2. Annually, the SWAT Commander or their designee, shall submit a written report of all ammunition and less-lethal munitions to be utilized by the team to the Chief of Police for approval. The report shall also include a current count of the amount of ammunition and munitions in inventory.
3. Ammunition used in any personally owned back-up or off-duty firearms shall be provided by the individual officer. It must be jacketed hollow-point ammunition and not be "re-loaded" or "remanufactured".
4. While on-duty, uniformed officers shall carry the minimum number of rounds of ammunition needed to fully load their issued sidearm and two extra magazines.

5. Officers assigned to non-uniform positions are required to carry, at a minimum, their fully loaded department issued sidearm and one additional magazine.

6. New duty ammunition will be issued by the range officers for the duty sidearm annually or as needed.

#### **O. Knives**

1. Officers are authorized to possess and use a knife while on-duty. The knife may have a folding or fixed blade, with a blade length not to exceed 4 inches. A Leatherman tool is considered a knife for the purpose of this policy.

2. It is recognized that an officer may have the need for such a tool for general work duties. While not considered to be a weapon of choice in a deadly force situation, officers may use a knife as a defensive weapon during a situation where there is a risk of serious injury or death to the officer(s) or another person.

3. Knives may be carried by uniformed and non-uniformed personnel in an unobtrusive manner and shall be secured in a way that prevents them from falling off the officer's body during normal activities to include running.

#### **P. Firearms Records**

Records will be maintained on all agency issued firearms and approved officer owned back-up and off-duty firearms. Recorded information will include the weapons manufacturer, serial number, model, and to whom the weapon has been issued to, or approved for.

#### **Q. Weapons Inspection and Maintenance (Officer Responsibilities)**

1. Officers shall regularly inspect all issued weapons for residue, corrosion, and functionality. Officers are responsible for cleaning all issued firearms as needed, including after any use or prolonged exposure to weather.

2. If a weapon is found to be defective, inoperable or malfunctioning upon inspection, officers shall contact their immediate supervisor or a certified weapons instructor for the weapon in question.

#### **R. Weapons Inspection and Maintenance (Supervisors and Instructors)**

1. A certified weapons instructor will inspect all weapons intended for use by any employee prior to the weapon being issued and/or authorized. No weapon will be issued unless it is deemed functional and safe for use.

2. Weapons found to be defective, inoperable, or malfunctioning will be immediately taken out of service by the supervisor or certified weapons instructor and the officer will be provided a replacement weapon.

a. The supervisor or certified weapons instructor taking custody of the weapon will be responsible for ensuring that the weapon is repaired or, if necessary, is replaced.

b. If the weapon is repaired, a certified weapons instructor will ensure the weapon is functional prior to returning it for duty use.

3. All firearms inspected and approved for use by an officer will be documented in the Firearm's Qualification Report.

4. Supervisors shall periodically conduct weapons inspections of officers under their command to verify compliance with the requirements listed herein.

#### **S. Weapons Security and Responsibility**

1. When not in use, agency owned 12-gauge shotguns, AR-15/M-16 rifles, will be securely stored in the weapons locker located in the squad room armory and issued to officers by a supervisor for on-duty use.

2. Specialty Impact Munitions shotguns will be secured in the weapons rack of an assigned patrol vehicle, or in the weapons locker located in the squad room armory for issuance to officers for on-duty use.

3. Officers carrying a personally owned and approved patrol carbine or shotgun are responsible for securely storing their weapon when not in use. If stored at the police building, it will be secured in their assigned locker, or one of the departmental armories.

4. When carried in the passenger compartment of a police vehicle the patrol carbine or shotgun shall be secured in the locking weapons rack if so equipped, or secured in the trunk of the vehicle in a zippered nylon or hard-shell case.

5. Patrol carbines and shotguns carried in police vehicles will be loaded with ammunition in the magazine, or magazine tube, no round in the chamber, and the safety on.

6. When carried into the police building, patrol carbines and shotguns **must be secured** in a zippered nylon or hard-shell case, unloaded, with the magazine removed, no round in the chamber or tube, and the safety on.

7. All loading or unloading of a weapon will be performed by pointing the weapon in a safe direction and ensuring that the safety is on. A weapons loading/clearing device is located in the police garage for this purpose.

8. Officers who are permitted to drive their police vehicle to their residence and who park the vehicle in a private garage/driveway must secure all firearms by:

a. Placing them in a secure location inside their residence, or

b. Locking them in the trunk/rear area of the police vehicle, or locked/secured in a gun rack or weapon vault if so equipped.

9. Officers who are permitted to drive their police vehicle home and who do not park the vehicle in a private garage/driveway must secure all firearms inside their residence.

10. Officers will remove and secure all weapons from marked patrol vehicles at the end of their shift. The only exception is a Specialty Impact Munitions Shotgun assigned to the vehicle and secured in the weapons rack.

11. Officers will remove all weapons (lethal and less lethal) from a police vehicle when leaving it for maintenance or repair and place them in a secure location.

12. Special Response Team (SRT) weapons and ammunition not issued for use to team members will be stored in the secure SRT weapons room.

13. All other agency-owned weapons and ammunition not issued to officers will be secured in the Property Room.

14. Officers shall exercise all normal safety precautions and obey all written directives when handling weapons. Failure to do so is a violation of this policy and subject to disciplinary action.

#### **4.3.2 Demonstrating Proficiency with Weapons (CALEA LE-1)**

**A.** Only those employees who have demonstrated proficiency in the use of an agency-approved weapon are authorized to carry or utilize such weapons.

**B.** Demonstrating proficiency may include achieving qualifying scores on a prescribed course, demonstrating knowledge of laws concerning the use of authorized weapons and of agency written directives on the Use of Force, and being familiar with safe-handling procedures for the use of weapons.



### **4.3.3 Firearms Qualifications/Weapons Proficiency Training (CALEA LE-1)**

#### **A. Use of Force Policy Training**

All personnel authorized to carry deadly and non-deadly weapons will receive training and instruction on the Use of Force policy annually, and upon any revision to the policy after its initial release.

#### **B. Firearms Qualifications for Sworn Police Officers**

1. All sworn officers must demonstrate proficiency with the duty firearm, any back-up firearm(s) and off-duty firearms on an annual basis.
2. Sworn officers electing to carry a patrol carbine or shotgun while on-duty, must demonstrate proficiency with the weapon on an annual basis.
3. Sworn officers assigned to the SWAT team must demonstrate proficiency with any specialized firearms on an annual basis.
4. Proficiency is demonstrated when an officer completes a qualifying course of fire approved by the Ohio Peace Officer Training Commission (OPOTC).
5. Schedules for firearms training will be established by the range officers and made available to all affected employees.
6. Firearms training will be monitored by instructors certified by the Ohio Peace Officer Training Academy (OPOTA).

#### **C. Less-Lethal Weapons Training**

1. All personnel authorized to carry the X26P TASER will be required to demonstrate proficiency with the weapon on an annual basis.
2. Training for all other less-lethal weapons and weaponless control techniques shall occur at least biennially.
3. Training will be monitored by a certified weapons and/or tactics instructor.

#### **D. Safety Requirements**

1. Instructors are responsible to ensure that the necessary safety equipment for weapons/tactics proficiency training is available to all personnel.
2. All personnel are responsible for wearing the appropriate safety equipment required by the instructor(s) in all weapons/tactics training.

3. Firearms qualifications will be conducted at the Firearms Range unless dictated otherwise. The safety rules and directions issued by the Firearms Instructor(s) **will be strictly enforced** for the safety of all.

4. All personnel on the firing line conducting live training shall be equipped with hearing and eye protection. Other specific dress and/or equipment requirements may be required by the Firearms Instructor(s).

5. Any law enforcement personnel failing to comply with the rules set forth by the instructor(s) may be requested to leave the range/training facility and be subject to disciplinary action by their agency.

6. Any injuries sustained during weapons/tactics training shall be immediately reported to the instructor(s) or training staff.

#### **E. Remedial Training**

1. Any sworn officer who fails the training requirements for their duty firearm will not be permitted to carry the weapon and will be assigned to remedial training. Officers failing to fulfill remedial training requirements for the duty firearm will be reassigned and have their sworn status reviewed by the Chief of Police.

2. Any employee who fails the training requirements for an approved firearm or less-lethal weapon shall be assigned to remedial training. The employee will not be returned to duty with that weapon until remedial training has been completed and proficiency is demonstrated and documented.

#### **F. Special Circumstances**

Any employee who is injured or has mitigating circumstances (military service, pregnancy, etc.) that prohibit them from participation may be allowed to waive or delay weapons/tactics training requirements at the discretion of the Chief of Police. Training will be accomplished at the earliest time following their clearance and/or return to work.

#### **G. Law Enforcement Safety Act of 2004 (HB 218)**

1. The Law Enforcement Safety Act of 2004 (HB 218), permits current and retired law enforcement officers to carry concealed firearms (other than machine guns, silencers or other destructive devices) throughout the United States.

2. Officers who have retired in good standing from the Middletown Division of Police, and who are not disqualified from carrying a firearm, shall be permitted to re-qualify annually with a certified firearms instructor.

3. Schedules for firearms training will be established by the range officers and made available to the retirees who wish to qualify at least annually.

## **H. Qualification and Training Documentation**

Firearms, less-lethal weapons and weaponless control techniques training and proficiency will be documented by the certified training instructors. All completed documentation shall be forwarded to the Patrol Division Commander to be stored and maintained in Police Administration with the employee training records.

### **4.3.4 Prerequisite to Carrying Deadly/Less-Lethal Weapons (CALEA LE-1)**

**A.** All personnel authorized to carry lethal and/or less lethal weapons will receive all use of force policies and related instruction before being authorized to carry a weapon during the field training program and thereafter, annually for firearms and Taser, or biennially for expandable baton, chemical agent & weaponless control techniques.

**B.** Receipt of policy issuance and any related instruction will be documented via a read and sign in PowerDMS, or by other documented means as indicated:

1. Upon initial employment;
2. Upon any revised issuance of this directive.

### **4.3.5 Firearms Range**

#### **A. Use of Range**

1. The use of firearms at the Police Range may occur when:
  - a. A range officer or firearms instructor is present and in charge of the range.
  - b. By a sworn police officer or reserve officer for practice or recreational shooting.
2. Other persons or law enforcement agencies may use the range when approved by the Chief of Police or their designee, and after having signed a waiver of responsibility.
3. Friends and family members of sworn officers may fire at the range under the supervision of the officer and after signing a waiver. The officer must be present during such firing.

4. Range keys are maintained in the lockbox located in the Sergeants office. Officers who wish to use the range, must get with a supervisor to sign the range key out and back in.

### **B. Care of Range and Facilities**

1. Whenever the range facility is used for any purpose, the person in charge who has requested use of the range will be held responsible for cleanup and security of the facility after use to include:

- a. Buildings are to be locked and secured;
- b. Grounds and buildings policed and trash placed in proper receptacles;
- c. All fires completely extinguished;
- d. Gates secured and locked upon leaving; and
- e. If tables/benches are moved from under the shelter, they are to be returned prior to leaving.

2. Violation of these rules and conditions for use are a basis for denial of subsequent use.

## **USE OF FORCE CRITERIA REFERENCED U.S. SUPREME COURT CASES**

These two U.S. Supreme Court cases are the basis of the current federal guidelines on using force. The information is provided to assist officers in understanding the relationship between our policy and the U.S. Supreme Court's requirement to adhere to the Fourth Amendment standards during their use-of-force decision making process.

### **TENNESSEE v. GARNER, 471 U.S.1 (1985)**

#### **The case:**

In 1974 a Tennessee police officer shot and killed a suspect as, after being told to stop, the suspect fled over the fence in the backyard of a house he was suspected of burglarizing. The officer was "reasonably sure" the suspect was unarmed. The officer acted under the authority of a Tennessee statute providing that if after a police officer has given notice of an attempt to arrest a criminal suspect, and the suspect flees or forcibly resists, "the officer may use all the necessary means to effect the arrest." The suspect's father brought an action in Federal District Court seeking damages under 42 U.S.C. 1983 for asserted violations of his son's constitutional rights.

#### **The U.S. Supreme Court majority opinion (excerpts):**

This case requires us to determine the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. We conclude that such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

- Whenever an officer restrains the freedom of a person to walk away, he has seized that person. While it is not always clear just when minimal police interference becomes a seizure, there can be no question that apprehension by use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.
- To determine the constitutionality of a seizure" we must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. "We have described the balancing of competing interests" as "the key principle of the Fourth Amendment." Because one of the factors is the extent of the intrusion. It is

plain that reasonableness depends on not only when a seizure is made, but also how it is carried out.

- The same balancing process applied...demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The fact is a majority of police departments in this country have forbidden the use of deadly force against nonviolent suspects. Petitioners and appellant have not persuaded us that shooting non-dangerous fleeing suspects is so vital as to outweigh the suspect's interest in his own life.
- The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.
- It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction of threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster.
- While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force.

**The U. S. Supreme Court decision (excerpts):**

- The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.
- Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonable requirement. To determine whether such a seizure is

reasonable, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interest in effective law enforcement. This balancing process demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.

- The Fourth Amendment, for purposes of this case, should not be construed in light of the common-law rule allowing the use of whatever force is necessary to affect the arrest of a fleeing felon.
  
- While burglary is a serious crime, the officer in this case could not reasonably have believed that the suspect, young, slight, and unarmed - posed any threat. Nor does the fact that an unarmed suspect has broken into a dwelling at night automatically mean he is dangerous.

## **GRAHAM v. CONNOR, 490 U.S. 386 (1989)**

### **The case:**

In 1984, Officer Connor became suspicious after seeing suspect Graham (a diabetic) hastily enter and leave a store. An investigative stop was made of Graham and his driver. Back-up officers arrived, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. Graham sustained multiple injuries. He was released when Officer Connor learned nothing had happened in the store. Graham filed suit in the District Court under 42 U.S.C. 1983 alleging excessive force in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983."

### **The U. S. Supreme Court majority opinion (excerpts):**

This case requires us to decide what constitutional standard governs a free citizen's claims that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We hold that such claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

The four-part substantive due process test derived from *Johnson v. Glick* (1973) used by lower courts in this case looked at:

- The need for the application of force;
  - The relationship between that need and the amount of force that was used;
  - The extent of the injury inflicted; and
  - Whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm.
- Today we make explicit what was implicit in *Garner's* analysis, and hold that all claims that law enforcement officers have used excessive force- deadly or not – in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than a "substantive due process" approach.
- Determining whether the force used in a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it. Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,



however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

- The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments- in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation.
- As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (...“it is imperative that the facts be judged against an objective standard.”) An officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional.

### **U.S. Supreme Court decision (excerpts):**

All claims that law enforcement officials have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other “seizure” of a free citizen are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard, rather than under a substantive due process standard.

- The notion that all excessive force claims brought under 1983 are governed by a single generic standard is rejected. Instead, courts must identify the specific constitutional right allegedly infringed by the challenged application of force and then judge the claim by reference to the specific constitutional standard, which governs that right.
- Claims that law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other “seizure” of a free citizen are most properly characterized as invoking the protections of the Fourth Amendment, which guarantees citizens the right “to be secure in their persons ... against unreasonable seizures,” and must be judged by reference to the Fourth Amendment’s “reasonableness” standard.

- The Fourth Amendment “reasonableness” inquiry is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

The Johnson v. Glick test applied by the lower courts is incompatible with a proper Fourth Amendment analysis.