



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



2022-0826

Officer-Involved Critical Incident - W. 46th Street, between Collins Blvd. and Valley View Blvd.

Investigative Activity: Ashtabula Police Department Use of Force Policy
Activity Date: 6/21/2022
Authoring Agent: SA Jon Lieber #50

Narrative:

On Monday, June 06, 2022, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) Jon Lieber received a copy of the use of force policy utilized by the Ashtabula Police Department at the time of this incident. The document received is attached to this Investigative Report for further review.

THE CITY OF ASHTABULA
DEPARTMENT OF POLICE

GENERAL ORDER: 0104
SUBJECT: Response to Threats
EFFECTIVE DATE: December 9, 2015
REVIEW: Annually
AMENDS/SUPERSEDES: May 1, 2009

I. POLICY

To only use force which is reasonable in order to accomplish lawful objectives.
All reasonable responses to threats by police officers shall be considered within policy whether or not the specific response/action is addressed in this policy.

II. PURPOSE

The purpose of this order is to establish guidelines for the response to threats by police officers of the Ashtabula Police Department.

III. GENERAL

For the purpose of this General Order, the following definitions apply:

Bodily injury. Physical damage to a person's body.—also termed physical injury. Cf. grievous bodily harm under harm. Black's Law Dictionary (7th ed. 1999)

Force, n. Power, violence or pressure directed against a person or thing. Black's Law Dictionary (7th ed. 1999)

Imminent danger. 1. An immediate, real threat to one's safety that justifies the use of force in self-defense. 2. *Criminal law.* The danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself. Black's Law Dictionary (7th ed. 1999)

Reasonable, adj. 1. Fair, proper, or moderate under the circumstances <reasonable pay>. 2. According to reason <your argument is reasonable but not convincing>. 3. (Of a person) having the faculty of reason <a reasonable person would have looked both ways before crossing the street>. 4. *Archaic.* Human <criminal homicide is traditionally called the unlawful killing of a "reasonable person">. – Reasonableness, *n.* Black's Law Dictionary (7th ed. 1999).

Reasonable force. Force that is not excessive and that is appropriate for protecting oneself or one's property. Black's Law Dictionary (7th ed. 1999).

Serious, *adj.* 1. (Of conduct, opinions, etc.) Weighty; important <serious violation of rules>. 2. (Of an injury, illness, accident, etc.) dangerous; potentially resulting in death or other severe consequences <serious bodily harm>. Black's Law Dictionary (7th ed. 1999).

Less Lethal Force. Force that is not likely to cause serious injury or death.

Less Lethal Munitions. Any munitions, when used, that is not likely to cause serious injury or death.

Defensive Baton. Refers the ASP expandable defensive baton

Chemical Aerosol. Refers to Def-Tech First Defense MK-VI: active ingredient approximately 10% Oleoresin Capsicum solution.

IV. PROCEDURES

A. When to Use Firearms Response

"The value of human life is immeasurable in our society. Law Enforcement Officers have been delegated in the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection of property must, at all times, be subservient to the protection of life. The police officer's responsibility for protecting life must include his own." (Governor's Law Enforcement Liaison Committee)

1. An Ashtabula police officer acting within the scope of his/her duty shall be justified in the use of Firearms Response when:
 - a. The police officer reasonably believes that firearms response is necessary to defend him/her against death or imminent danger of serious physical injury.
 - b. The police officer reasonably believes that firearms response is necessary to defend another person from death or imminent danger of serious physical injury.
 - c. The use of firearms response is necessary to prevent the escape of a suspected fleeing felon and the police officer reasonably believes that the suspected felon poses an immediate threat of death or imminent danger of serious physical injury to the police officer or others if his apprehension is delayed.
 - d. A police officer may also use a firearm in the following situations:
 - 1) To kill a dangerous animal or one that humanity requires its removal from further suffering and other disposition is impractical.
 - 2) For target practice at an approved range.

B. Prohibition of the Use of Firearms Response

1. A police officer may not use firearms response in any of the following situations:
 - a. Warning Shots - This order expressly prohibits the discharge of warning shots for the reason that there is always the risk that harm may result to an innocent person and the possibility that property will be damaged by the bullets fired.

C. General Guidelines

1. Police officers shall only use the amount of force which is reasonable to affect an arrest, overcome resistance to arrest, prevent escape, or defend themselves or another person from harm.
2. Police officers must weigh the circumstances of each individual case and employ only that amount of force which is reasonable to control the situation or persons.
3. Facts then unknown to a police officer, no matter how compelling, cannot be considered at a later date to justify or condemn the use of deadly force and firearms.
4. The department realizes and acknowledges that in tense, uncertain, and/or rapidly evolving confrontations a police officer may have to reasonably use technique(s), weapon(s), and/or improvised weapon(s):
 - a. That is not part of the Department's formal training program;
 - b. That may not be covered in this policy;
 - c. That a police officer may have to use a technique(s) or weapon(s) in a manner that is not in conformity to training/certification; and
 - 1) That due to the aggressor's actions, the police officer's technique(s) or weapon(s) used has an unintentional impact point or outcome that is not part of the Department's training curriculum.
5. After a response to threat incident, appropriate medical aid shall be provided when actions taken by departmental personnel may cause or be likely to cause injury. Appropriate medical aid may include, but not be limited to, the following:
 - a. Increased observation to detect obvious changes in condition;
 - b. Applying first aid;
 - c. Evaluation by paramedics; and
 - d. Immediate aid by medical professionals for more serious or life-threatening incidents.
6. Conducted Energy Device (Taser)

- a. Police officers trained in the use of the Conducted Energy Device (Taser) will be required to carry it while working in uniform unless otherwise approved by the Chief of Police.

7. Defensive Baton

- a. Police officers shall be permitted to carry and/or use an **ASP** expandable baton only after successful completion of a certified straight defensive baton course of instruction in the proper uses and concepts of the baton as a defensive means of control.
- b. No police officer shall give a demonstration to the public at any time. All requests for demonstrations shall be referred to the Chief of Police.
- c. The Police Department instructor has the authority to decertify any officer. If an officer is decertified, he/she shall be prohibited from carrying or using the defensive baton until he/she has been properly recertified by the instructor.

AVOID AN OPPONENT'S HEAD AND NECK AREA ENTIRELY AS A GENERAL RULE, UNLESS LETHAL FORCE IS NECESSARY.

8. Chemical Aerosol (Pepper Mace, O.C.)

- a. Police officers, matrons and jailers should carry and/or utilize chemical aerosol as necessary while engaged in official duties.
- b. Police officers and matrons shall be permitted to carry and use chemical aerosol only after successfully completing a chemical aerosol class from a qualified instructor.
- c. After contaminating a subject and handcuffing him/her, first aid procedures should be initiated within a reasonable amount of time.

First aid procedures are as follows:

- 1) Expose subject to fresh air/open windows in back of cruiser;
- 2) Flush subject with large amounts of fresh water;
- 3) Remove contaminated clothing;
- 4) Shower subject with lukewarm water and soap;
- 5) Issue clean clothing;
- 6) Observe subject every 15 minutes for one hour.

- e. **WARNING SIGNS FOR EMERGENCY CARE** - If any of the following apply after 30 minutes, the subject should be taken to a hospital for examination:
- 1) Shortness of breath or an audible wheeze (you can hear a whistling respiration pattern)
 - 2) Skin rash remote from the site of exposure, particularly hives - itching, red raised patches.
 - 3) Persistence of eye pain or eyelid spasm greater than thirty minutes after exposure;
 - 4) Complaints of chest pain, racing heart, or skipped heartbeats; and
 - 5) Prisoner requests medical care or Police officer believes medical care is indicated for any other reason.
- f. If subject receives medical treatment:
- 1) Advise the attending physician not to use salves or creams
- g. If subject is in respiratory distress, contact the rescue squad and start basic first aid procedures.
- h. Use the emergency eye wash station located in the shower near the booking area.
- i. Misuse of Chemical Aerosol (Pepper Mace, O.C.)

The following uses of Chemical Aerosol (Pepper Mace, O.C.) shall constitute misuse of the weapon:

- 1) Discharge of the weapon directly into the eyes of a subject at less than three (3) feet unless circumstances dictate such use.
- 2) Prolonged discharge at any effective distance into the face of an already incapacitated person.
- 3) Discharge of large quantities in a confined space, i.e. small room, closed automobile.

The misuse of Chemical Aerosol (Pepper Mace, O.C.) will result in disciplinary action.

9. Inert canisters of aerosol shall be provided for police officers to train. Range officers shall include aerosol training annually.

10. Less Lethal Munitions
 - a. As a general rule, only police officers trained in the use of less lethal munitions by a certified instructor shall use the munitions.
 - b. General patrol will have a specially marked shotgun to utilize the less lethal rounds and super sock bean bag rounds. The shotguns will be distinctively marked with blue stocks.
 - c. That a police officer may have to use a technique(s) or weapon(s) in a manner that is not in conformity to training/certification; and
 - d. That due to the aggressor's actions, the police officer's technique(s) or weapon(s) used has an unintentional impact point or outcome that is not part of the Department's training curriculum.

11. Conducted Energy Device (CEW Taser) - Police officers must be trained by a certified instructor prior to use.
 - A. Maintenance:
 - 1) As a general rule, police officers shall inspect their Conducted Energy Device (Taser) at the beginning of the shift to ensure it is in proper working order:
 - a. Spark test
 - b. Check battery power level. At 20% or below police officers shall turn in their Digital Power Magazine (D.P.M.) and they will be issued a new one by a supervisor.
 - 2) Conducted Energy Device (Taser)s that are not in proper working order should be turned over to an instructor. Police officers shall never disassemble, alter or modify their issued Conducted Energy Device (Taser) except to replace the Digital Power Magazine (D.P.M.) as mentioned above.
 - B. Use of the CEW Taser
 - 1) Use the CEW Taser to control actively resisting subjects, aggressive non-compliant subjects, or violent or potentially violent subjects. When possible, give the subject a verbal warning that the Taser is going to be deployed unless exigent circumstances exist that would make it imprudent to do so.

- a. Officers should avoid using the CEW Taser on obviously pregnant females and those under 70 pounds or over the age of 70, due to potential for these individuals to fall when incapacitated by the Taser, unless the encounter rises to the level of a deadly force situation.
 - b. Officers should never use the CEW Taser on a handcuffed prisoner unless the prisoner poses a threat to any other person through physical contact or active resistance which cannot be controlled by any other means.
 - c. Officers should avoid using the CEW Taser on individuals who are on elevated surfaces, unless the encounter rises to the level of a deadly force situation.
- 2) Officers should, if possible, obtain backup before using the CEW Taser to control a subject
- a. Deploy personnel in such a manner that will enable them to use other means to subdue the subject if the CEW Taser is ineffective.
 - b. Officers will use caution and avoid standing near the subject.
- 3) Depressing the trigger on the CEW Taser will propel two darts from the attached cartridge. Once the CEW Taser is fired, it will automatically cycle for (5) five seconds. The officer can turn it off before the five second cycle stops. However, it is recommended that officers let the CEW Taser cycle for the full five seconds to maximize its effectiveness. Officers should give commands to the suspect and attempt to gain compliance.
- a. It is necessary for both darts in a cartridge to hit some part of the suspect's clothing or body for total incapacitation. However, if only one dart penetrates the subject, the CEW Taser is only partially effective. Should this occur and the subject continues to act aggressively, place the CEW Taser against the subject's body to complete the circuit, causing complete incapacitation.
 - b. The CEW Taser has a red dot laser and a built in flashlight that activates as soon as the CEW Taser is turned on. Both of these features can be deactivated, if desired.

4) If a first shot does not make contact or is ineffective, the officer may reload and attempt a second shot. If the CEW Taser deployments do not make contact or are ineffective, it may be used in the drive stun mode. The CEW Taser can operate in the drive stun mode with or without the fired cartridge attached. You cannot use the CEW Taser in the drive stun mode on the neck or groin area with a non-fired cartridge attached to the Taser.

- a. While operating the CEW Taser in the drive stun mode, the carotid/brachial, groin, and common peroneal nerve are the preferred target areas of the body. A drive stun is described as pushing the CEW Taser aggressively against the subject's body while pulling the trigger. This will deliver a shock to that area of the body. A drive stun is intended to gain compliance from actively resisting subjects, aggressive non-compliant subjects, or violent or potentially violent subjects, and persons attempting to swallow evidence or contraband.
- b. Due to the high voltage electronic spark, of the CEW Taser, never fire the CEW Taser near flammable materials (such as chemical irritant with an alcohol-based propellant, gasoline, kerosene, or in a natural gas environment).
- c. After an officer has fired an CEW Taser cartridge, a new cartridge will be issued to the officer by their immediate supervisor.

5) When possible, avoid prolonged, extended, uninterrupted discharges or extensive multiple discharges.

- a. Use of the Taser should be combined with physical restraint techniques to minimize the total duration of the struggle and Taser use.
 - 1) Additional officer on the scene of a Taser deployment can attempt to restrain and handcuff a subject during an active Taser cycle.
 - 2) Officers should transition to a different force option if multiple Taser deployments fail to gain compliance or continued Taser applications are not making sufficient progress toward gaining compliance.

6) Discharging the CEW Taser at Animals

- a. The CEW Taser is an effective tool for stopping the aggressive behavior of wild or potentially dangerous animals. The CEW Taser is especially effective for vicious and/or dangerous dogs.
 - b. Officers using a Taser on an animal may need to adjust their aim to ensure contact is made with both probes.
- 7) Medical Treatment
- a. Officers will obtain appropriate medical treatment for suspects when necessary. After successful CEW Taser deployment, request local area ambulance to respond to evaluate the subject.
 - b. Officers may remove darts embedded in the subject's skin using the appropriate technique provided the darts are not embedded in soft body tissue, (i.e., genitals, breast tissue, or any area above the collar bone).
 - 1) If the darts are embedded in the soft body tissue described above, transport the subject to a local hospital for treatment and dart removal.
 - 2) Used CEW Taser cartridges and darts are considered a biohazard. Place the used cartridge and darts in a biohazard receptacle.
12. No police officer shall give a demonstration to the public at any time. All requests for demonstrations shall be referred to the office of the Chief of Police
13. The Police Department instructor has the authority to decertify any police officer. If a police officer is decertified, he/she shall be prohibited from carrying or using the issued equipment until he/she has been properly recertified by the instructor under a timeline authorized by the Chief of Police or his designee.
14. The department realizes and acknowledges that in tense, uncertain, and/or rapidly evolving confrontation, an officer may have to use reasonable technique(s), weapon(s), and/or improvised weapon(s):
- a. That are not part of the Department's formal training program;
 - b. That may not be covered in this policy;
 - c. That an officer may have to use a technique(s) or weapon(s) in a manner that is not in conformity to training/certification: and
 - d. That due to the aggressor's actions, the officer's technique(s) or weapon(s) used has an unintentional impact point or outcome that is not part of the Department's training curriculum.

15. All officers' actions deemed reasonable in retrospect will be considered to be within policy, even if the specific action and/or operation are not specifically addressed in this policy.

D. Reporting Procedures

1. When a police officer's actions result in or are alleged to have resulted in serious injury or death to another person, the police officer's action's will be documented in accordance with G.O. 0106 Critical Incidents.
2. Any response to threats, which involves the use of force by a police officer (other than described above in Section IV. D.1.) will be documented by the completion of a Report, prior to the end of the police officer's tour of duty.
3. Police officers shall complete a written report anytime they discharge a firearm for other than training or recreational purposes.
4. Copies of reports, concerning any response to threat shall be submitted to the Chief of Police.
5. When a police officer uses a Conducted Energy Device (Taser) in response to a threat, the officer will complete the Advanced Taser Use Report (Appendix A).
6. Copies of Advanced Taser Use Reports will be forwarded to the Operations Commander.

E. Training

1. Annually all members of the department shall be required to receive in-service training on the department's Response to Threats policy, and to demonstrate proficiency with any departmentally approved weapon that they are authorized to use.
 - a. Proficiency training shall be conducted by a certified instructor.
 - b. Training and proficiency shall be documented by the instructor.
 - c. Any police officer failing to show proficiency with any department issued weapon shall be scheduled for remedial training as prescribed by the Training Coordinator. Until the police officer demonstrates proficiency, he/she shall not be authorized to carry or utilize such weapon(s). Failure to show proficiency in the use of these weapon(s) after completion of a remedial training program shall result in disciplinary action.

Approved by the order of

A handwritten signature in black ink, appearing to read 'R.D. Stell', with a long horizontal flourish extending to the right.

Robert D. Stell
Chief of Police