



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



2022-1251

Officer-Involved Critical Incident- 2280 Stelzer Road, Columbus, OH
43215

Investigative Activity: Document Review; Records Received

Activity Date: 6/22/2022

Activity Location: BCI

Authoring Agent: SA John Butterworth

Narrative:

On Wednesday, June 22, 2022, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) John Butterworth received the use of force policy utilized by the Franklin County Sheriff's Office at the time of this incident. The document received is attached to this investigative report for further review.

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1. POLICY

- 1.1 It is the purpose of this directive to provide office guidelines for the use of firearms and deadly force. It is recognized and accepted that this office places the highest value on human life.

2. DEFINITIONS AND STANDARDS

- 2.1 "Deadly force," as defined by the Ohio Revised Code, means any force that carries a substantial risk that it will proximately result in the death of any person.
- 2.2 This policy is not to be construed to require deputies to assume unreasonable risks. In assessing the need to use force, the paramount consideration should always be the safety of the officer. The reasonableness of a decision to use force under this policy must be viewed from the perspective of the officer on the scene, who may be forced to make a split-second decision in circumstances that are tense, uncertain and rapidly evolving.
- 2.3 "Objective Reasonableness," as used in this policy, is the standard by which a deputy's use of force will be judged. A deputy's use of force will be judged from the perspective of a reasonable deputy, taking into consideration all of the facts and circumstances confronting the deputy at the time and in the moments before the use of force. Factors used to determine reasonableness may include: the severity of the crime at issue, whether the subject posed an immediate threat to the safety of the deputy or others, and whether the subject was actively resisting arrest or attempting to evade arrest by flight.
- 2.4 "Chokehold," as used in this policy means the use of a physical maneuver that restricts an individual's ability to breathe for the purpose of incapacitation.
- 2.5 "Vascular neck restraint," as used in this policy means the use of any technique that restricts the flow of blood to an individual's brain.

3. SPECIFIC AUTHORIZATION FOR USE OF FIREARMS / DEADLY FORCE

- 3.1 A firearm or deadly force may be used when there is an objectively reasonable belief there is an imminent threat of death or serious physical harm to the deputy or another human being.
 - 3.1.1 Discretion to use a firearm or deadly force rests with the deputy and proper justification and evaluation of the circumstances is required when a deputy uses a firearm or deadly force.
 - 3.1.2 Only in situations where an imminent threat of death or serious physical harm exists shall a deputy employ deadly force against a human being.

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3.1.3 All uses of deadly force shall be in accordance with U.S. and Ohio Supreme Court decisions, specifically, *Tennessee v. Garner* and *Graham v. Connor*.

3.2 The killing of an animal is justified:

- (1) For reasons of self-defense or defense of others;
- (2) To prevent substantial harm to the deputy, another person, a police canine, or a police horse;
- (3) When the animal is so badly injured that humanity requires its relief from further suffering; or
- (4) Where an animal is mortally wounded or injured, the animal may be killed and thereafter all reasonable attempts must be made to request assistance from an agency responsible for the disposal of animals

4. SPECIAL CONSIDERATIONS

- 4.1 Deputies are prohibited from firing warning shots.
- 4.2 In using deadly force, deputies must be aware of their backstop. A deputy may fire at or from a moving vehicle, near or around crowds, or across road traffic only if the risk posed by the subject outweighs the risk of harm to the public by the deputy's use of deadly force.
- 4.3 Deputies may fire into buildings or through doorways only if the risk posed by the subject outweighs the risk of harm to the public by the deputy's use of deadly force.
- 4.4 Deputies are prohibited from using chokeholds or vascular neck restraints in any situation unless deadly force is permitted by law.

5. REGULATIONS FOR CARRYING FIREARMS

- 5.1 Deputies, who are authorized to carry a firearm, shall carry an office-approved semi-automatic handgun.
- 5.2 A secondary or back up semi-automatic handgun may be authorized, but only upon meeting specific office guidelines with the approval of the Sheriff or his designee.
- 5.3 Deputies while operating an office or county-owned vehicle shall be armed with an approved semi-automatic handgun. An exception applies to deputies assigned to undercover operations where carrying a firearm may be detrimental to the operation.
- 5.4 Deputies are encouraged, but not required, to carry an approved semi-automatic handgun while off duty. A deputy who elects not to carry a firearm while off duty shall not

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be subject to a disciplinary action if an occasion should arise in which he could have taken police action if he were armed.

6. CERTIFICATIONS AND TRAINING

- 6.1 As part of annual in-service training, deputies shall review this regulation and instructors shall conduct a review of pertinent case law regarding deadly force (e.g., *Graham v. Connor*, *Tennessee v. Garner*). All deputies carrying a firearm are to successfully pass a written test on this material.
- 6.2 Deputies who attend a Basic Police Academy outside of the office shall be required to attend, while on duty, a skills development class at the Training Academy and successfully qualify with this office at the completion of the skills development class.
- 6.3 Deputies attending a Basic Police Academy at this office will not be required to complete a skills development class, as the subject matter will be covered in the basic academy class.
- 6.4 Each deputy, who is certified by the Ohio Peace Officer Training Commission as a peace officer/law enforcement officer, shall undergo firearms qualification at least once each calendar year at (a) date(s) and time(s) scheduled by the Training Academy. The course of fire will be the specified OPOTA courses of fire. The Training Academy will notify each Chief Deputy of the dates and times of qualifications. Chief Deputies will disseminate this information to their respective supervisors in order for them to schedule employees via EDOC's.
- 6.5 Deputies shall qualify annually with all firearms being carried.
 - 6.5.1 The Training Academy will schedule make-up dates for qualifications for those deputies who were on approved leave and not able to attend qualifications. The Training Academy will notify each Chief Deputy of the dates and times of make-up qualifications. Chief Deputies will disseminate this information to their respective supervisors in order for them to schedule employees via EDOC's.
 - 6.5.2 In the event of an accidental discharge of a semi-automatic handgun, the deputy shall undergo remedial training and re-qualification prior to returning to duty.
 - 6.5.3 In the event of an accidental discharge of a shotgun or rifle, the deputy shall not be permitted to carry or use a shotgun or rifle until they undergo remedial training and re-qualification with the shotgun or rifle.
 - 6.5.4 Deputies, who are in approved light-duty status, shall not be permitted to attend firearm qualifications, as scheduled by the Training Academy, but shall be required to notify the Training Academy, in writing through their chain of command, of their light-duty status. These deputies will be scheduled by their chain of command to attend a make-up qualification session, as assigned at a

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date and time determined by the Training Academy, once a medical release is submitted by the deputy to Human Resources and they have returned to full duty.

6.5.5 At no time will a deputy be permitted to attempt qualification while wearing durable medical equipment.

6.5.5.1 "Durable medical equipment" is defined as equipment which is suitable for use outside of a medical facility, which can withstand repeated use, which has a medical purpose, and which would not be useful to the client in the absence of illness, injury, or disability. Such equipment must meet the definition of medical necessity, may be recommended by an appropriate licensed practitioner, and must be prescribed by a doctor of medicine or a doctor of osteopathy. This definition covers both disposable and non-disposable wraps, bandages, splints, and other similar appliances.

6.5.6 The unexcused failure of deputies to attend their scheduled firearm qualification session(s) or their failure to attend their make-up qualification session, if one has been scheduled, may subject any such deputy to appropriate discipline and may cause them to be subject to an order requiring them to surrender their assigned weapon to the armory and/or prohibiting them from carrying a personally owned weapon.

6.5.7 Any deputy failing to qualify during the calendar year will be placed in non-law enforcement status and shall not be permitted to carry a firearm and shall be subject to any and all other limitations imposed by statute or the rules, regulations, policies and procedures of the Sheriff's Office.

6.6 The following procedure will apply to deputies who fail to meet qualification standards.

6.6.1 On the same day of the first-attempt failure, the deputy will, if necessary, be granted a second and a third attempt to meet the qualification requirements. The deputy will not be permitted any practice attempts before or between qualification attempts.

6.6.2 Upon failure to meet the qualification requirements after the first day's third attempt, the deputy will be ordered to surrender his/her weapon to the range deputy if they weapon is County-owned. If a personal weapon, it must be placed in the deputy's vehicle and transported in a lawful manner. County-issued ammunition must also be surrendered by the deputy to the range deputy. A deputy failing to meet qualification is not permitted to operate a county vehicle until qualification requirements are met.

6.6.3 A letter will be completed by the range supervisor and signed by the deputy to confirm that the deputy has failed to meet firearm qualification requirements. The letter will be forwarded to the deputy's Chief Deputy and a copy sent to the

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Sheriff or his designee and Human Resources. Deputies who fail the third attempt will be subject to an involuntary temporary transfer to the Training Academy. This transfer will be a non-disciplinary transfer and considered as a non-administrative transfer without any loss of pay and will continue for a period of up to thirty (30) days.

- 6.6.4 During the period of the temporary transfer, deputies shall remain in POTC status; however, they will not be permitted to wear a uniform or carry a firearm outside of the Training Academy. Deputies will be given on-duty remedial training and given the opportunity to practice on duty during the 30-day period. All remedial training and practice will be documented.
- 6.7 Prior to the end of the 30-day period, the deputy will be scheduled for another attempt to qualify. If the deputy fails the first attempt of that day, he/she will be given a second and final attempt on the same day. The deputy will not be permitted any practice attempts before or between qualification attempts.
- 6.8 If at the conclusion of the 30-day period the deputy has failed to qualify, the deputy will be removed from the POTC classification and will lose eligibility for inclusion in the PERS-LE retirement system. If, however, prior to conclusion of the 30-day period the deputy has qualified, the deputy will be returned to his/her original assignment and will remain in the PERS-LE retirement system.
- 6.9 If the deputy fails to qualify by the end of the 30-day temporary transfer they shall be transferred to a vacant non-POTC position within Corrections and be removed from the PERS-LE retirement system (or within the POTC classification after qualification is achieved at the next regularly scheduled firearms qualification for all POTC deputies). Once the deputy qualifies, the deputy will be returned to the POTC classification and will be included in the PERS-LE retirement system.
- 6.10 Any Sergeant who fails to qualify within the 30-day period shall be transferred to a vacancy within Corrections in their corresponding rank. Any Lieutenant or above who fails to qualify with the 30-day period shall be reclassified to a non-LE position of Sergeant and assigned to a vacancy with Corrections.

7. TRAINING

- 7.1 It is believed and understood that there is no substitute for adequate training and that, as a deputy is trained, so shall he act. Training in the proper use of firearms shall encompass this policy and shall be consistent with the following patterns of encounter:
- (1) Weapons encounters are close (90% less than 20');
 - (2) Usually in low level light;
 - (3) Usually suddenly and very quick (5-7 seconds);

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- (4) Often more than 1 assailant;
- (5) Deputy usually standing or exposed and usually assaulted before gunfire exchanged;
- (6) Usually outdoors near other persons;
- (7) Assailants usually moving toward deputy; and
- (8) Deputy usually caught unaware of the gravity of the situation.

8. WEAPONS REGULATIONS

- 8.1 An office-approved semi-automatic handgun (on duty, secondary, off duty) intended for official use by a deputy must meet the following requirements:
 - 8.1.1 The standard-issued semi-automatic handguns of the Franklin County Sheriff's Office are the Sig Sauer Model P226 and model P239 auto pistols;
 - 8.1.2 Those deputies trained and qualified with the semi-automatic handgun shall carry said semi-automatic handgun as their authorized sidearm, both on and off duty, as required by these rules and regulations;
 - 8.1.3 Fancy bone, pearl, or decorative grips are not acceptable for uniformed deputies;
 - 8.1.4 No aftermarket modifications or alterations shall be made to any holster used to secure on office-issued or office-approved personal semi-automatic handgun;
 - 8.1.5 Deputies are required to have successfully completed the office sanctioned and approved Skills Development Course prior to carrying a semi-automatic handgun. Deputies, upon placement in LE status and before being allowed to carry a semi-automatic handgun, shall be required to attend a skills development class to demonstrate the proper and safe operation of the auto pistol.

9. PERSONALLY OWNED SEMI-AUTOMATIC HANDGUN

- 9.1 Deputies who would like to carry a personally owned semi-automatic handgun, while on or off duty, must satisfy the following conditions:
 - 9.1.1 Request permission of the Sheriff or his designee, in writing, on an I.O.C. through their chain of command;
 - 9.1.2 The semi-automatic handgun must be in good, safe working order and must chamber and fire office-authorized ammunition;
 - 9.1.3 The firearm must be approved by the Sheriff or his designee and registered

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by make, model and serial number with the Training Academy range;

- 9.1.4 A deputy, who has been issued a county-owned semi-automatic handgun by the Training Academy and who receives permission to carry a personally owned semi-automatic handgun on-duty must surrender the county-owned semi-automatic handgun to a range deputy.

10. AMMUNITION

- 10.1 Only authorized factory-loaded ammunition will be carried in any weapon while on or off duty.
- 10.2 As the specific types of ammunition may change, the Training Academy will maintain a list of authorized ammunitions and post the list on the Training Academy bulletin board. If there are changes in office-specified ammunition, the changes will also be placed in the office bulletin.

11. PROCEDURE FOR FIREARMS DISCHARGE

- 11.1 Whenever a deputy discharges his authorized weapon, personal or issued (except during authorized range practice), on duty or off duty, either accidentally or purposefully, he shall report such action to the highest-ranking Patrol supervisor on duty.
- 11.2 The uniformed Patrol supervisor shall proceed immediately to the scene and conduct a preliminary field investigation. After completing the investigation, the supervisor shall notify the Sheriff, Chief of Investigations, Chief of Administration, and the affected division Chief. The supervisor shall notify the communication center supervisor to contact the Deputy Support Team to respond for the deputies involved.
- 11.3 The Sheriff shall have the discretion to decide which agency will conduct the investigation based upon the jurisdiction of the incident and if the jurisdiction has the resources and capabilities to conduct such an investigation.
- 11.4 If the Sheriff's office is investigating the incident, the Investigative Division's homicide investigators shall be activated in all instances of a firearms discharge, except for the humane destruction of an animal, as contained in section 3.2, and sent to the scene to conduct a complete and thorough investigation.
- 11.5 Internal Affairs investigators will have the opportunity to view the scene prior to homicide investigators releasing the scene.
- 11.6 Subject to section 11.6.1 in the event of an accidental discharge, the Chief of Investigations and the Chief of Administration or their designees will jointly determine if Internal Affairs investigators need to be part of the initial response.

- 11.6.1 If the accidental discharge occurs on the firing range during training or

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qualification, barring exigent circumstances, the highest-ranking Training Academy supervisor shall complete the investigation and forward the report through the chain of command with appropriate recommendations. If the Training Academy supervisor determines exigent circumstances exist or the investigation is of such nature that requires additional investigation, the Sheriff or his designee will determine the appropriate course of action.

- 11.7 The Patrol supervisor and any responding uninvolved deputies shall within 24 hours complete an informational summary of their activities at the scene and forward it to the investigator.
- 11.8 The involved deputy or deputies shall secure the weapon for examination and release it to the investigative supervisor in charge of the scene or his designee.
- 11.9 The release of the weapon to investigators will take place in a private environment not visible to the general public. The released weapon will be replaced by an office-issued weapon.
- 11.10 Any deputy(s) that is/are issued a replacement weapon as a result of a firearms discharge will be required to qualify with the firearm as soon as possible and before returning to duty.
- 11.11 The deputy shall not discuss or make any statements regarding the incident to anyone except the investigators, supervisory personnel, legal counsel, FOP representative, clergy, psychologist or immediate family.
- 11.12 The assigned investigators shall prepare a thorough and detailed case file of the incident and forward a complete copy to Internal Affairs.
- 11.13 Internal Affairs will conduct a complete and thorough administrative review of the incident based upon the case file submitted by the investigating detectives and prepare an executive summary of the incident without making conclusory statements.
 - 11.13.1 The preferred investigative interview process will be to conduct one interview with those involved in a firearms discharge with that interview being conducted by the homicide investigators. If Internal Affairs investigators have the need to clarify pertinent issues not answered in the original interview they may re-interview witnesses or deputies in accordance with the current collective bargaining agreement.
 - 11.13.2 The Internal Affairs investigator shall forward their executive summary and a complete copy of the case file to Human Resources who will schedule a firearms review board.
 - 11.13.3 If there are ancillary rule violations not related to the actual discharge of a firearm discovered through the administrative review of the incident, a separate

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summary will be completed by Internal Affairs and routed as usual through their chain of command to Human Resources.

12. FIREARMS REVIEW BOARD

12.1 In all discharges of a firearm, except on the range in training or qualification, the Firearms Review Board will be convened to review all facts and statements pertinent to the firearms discharge, the Firearms Review Board shall make a recommendation to the Sheriff as to whether the discharge of the firearm was:

- (1) Lawful and within office guidelines and policy;
- (2) Outside office guidelines and policy; or
- (3) Accidental.

12.1.1 If there is an accidental discharge of a firearm occurring during training or qualification, the Sheriff or his designee may waive the requirement of the review of the Firearms Review Board based upon the circumstances.

12.2 The Firearms Review Board shall be composed of the following persons:

- (1) The Director of Administrative Services; and
- (2) Chief Deputies (Divisions whose member(s) are not involved in the incident).

12.3 The deputy shall be afforded due process rights prior to and during the inquiry by the Firearms Review Board. Such rights shall include notice of the nature of the inquiry including specifications of any violations, if applicable, and an opportunity to respond or make a statement.

12.4 The procedures contained in the Administrative Regulation applicable to the procedural aspects of pre-disciplinary hearing shall apply to hearings before the Firearms Review Board.

12.5 Appropriate disciplinary action, if any, shall be determined by the Sheriff upon the factual determination(s) made by the Firearms Review Board.

13. ADMINISTRATIVE LEAVE

13.1 Any deputy directly involved in a deadly force incident that results in death or injury to a person must be placed on administrative leave for three days. In any other circumstance, a deputy directly involved in a deadly force incident may be placed on administrative leave or may be assigned to "administrative duty" for a period of time deemed appropriate by the Sheriff.

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- 13.1.1 Administrative leave under this section 13 shall be without loss of pay or benefits.
- 13.1.2 The assignment of administrative leave shall not be interpreted to imply or indicate that the deputy has acted improperly.
- 13.1.3 While on administrative leave, the deputy shall remain available at all times for official office interviews and statements regarding the shooting incident and shall be subject to recall to duty at any time.

14. PSYCHOLOGICAL SERVICES

- 14.1 In all cases where any person has been injured or killed as a result of a firearm discharge, the deputy shall be required to undergo a debriefing with a psychologist selected and paid for by the office as soon as practicable.
- 14.2 The purpose of this debriefing will be to allow the deputy to express his/her feelings and to deal with the moral, ethical and/or psychological effects of the incident.
 - 14.2.2 The debriefing session shall be protected by the privileged physician-patient relationship and nothing discussed in the debriefing will be reported to the office.