



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



2022-2016

Officer Involved Critical Incident - 5611 East Third Street, Mineral City,
OH, Tuscarawas County, 44656

Investigative Activity: Use of Force Review

Activity Date: 11/9/2022

Authoring Agent: Special Agent Joseph Goudy #83

Narrative:

On Wednesday, November 9, 2022, Ohio Bureau of Criminal Investigation (BCI) Special Agent Joseph Goudy received the use of force policy utilized by the Tuscarawas 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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Tuscarawas County Sheriff's Office

Law Enforcement Policies and Procedures

Subject: Response to resistance	Policy Number: 5.01
Issue Date: January, 1994	Revision Date: December 1, 2020
Approval Authority Title and Signature: Sheriff Orvis L. Campbell	

Response to Resistance (Use of Force)

A. PURPOSE AND SCOPE

This policy provides guidelines on the reasonableness of force when Deputies are engaging in their official duties as a member of this office. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this agency is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner. In all cases, Deputies must respond in accordance with the objective reasonableness standard as outlined in *Graham vs. Conner*. This Policy adheres to all applicable Federal, State and Local Laws.

B. DEFINITIONS

Definitions related to this policy include:

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

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

CERTIFICATION STANDARDS

This policy contains content that pertains to the following Ohio Collaborative Law Enforcement Agency Certification (OCLEAC) Standards: 8.2015.1

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C. POLICY

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

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

The Agency recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting deputies with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

D. DUTY TO INTERCEDE

Any deputy present and observing another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. A deputy who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

E. USE OF FORCE

Deputies shall use only that amount of force that is objectively reasonable given the facts and circumstances perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable deputy on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that deputies are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation a deputy might encounter, deputies are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which deputies reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods

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provided by the Agency. Deputies may find it more effective or reasonable to improvise their responses to rapidly unfolding conditions that they are confronting. In such

circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

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

F. USE OF FORCE TO EFFECT AN ARREST

Any deputy who has reasonable cause to believe that the person to be arrested has committed a crime or public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A deputy who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested, nor shall a deputy be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance.

G. FACTORS USED TO DETERMINE THE REASONABLNESS OF FORCE

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

- a) Immediacy and severity of the threat to Deputies or others.
- b) The conduct of the individual being confronted, as reasonably perceived by the deputy at the time.
- c) Deputy/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of deputies available vs. subjects).
- d) The effects of drugs or alcohol.
- e) Subject's mental state or capacity.
- f) Proximity of weapons or dangerous improvised devices.
- g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- h) The availability of other options and their possible effectiveness.
- i) Seriousness of the suspected offense or reason for contact with the individual.
- j) Training and experience of the deputy.
- k) Potential for injury to deputies, suspects and others.

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- l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the Deputy.
- m) The risk and reasonably foreseeable consequences of escape.
- n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the deputy or others.
- p) Prior contacts with the subject or awareness of any propensity for violence.
- q) Any other exigent circumstances.

H. PAIN COMPLIANCE TECHNIQUES

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

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

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

I. CAROTID CONTROL HOLD

Deputies will not use a carotid control hold or other “choke” style holds except in a deadly force situation.

J. DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances:

- a) A deputy may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- b) A deputy may use deadly force to stop a fleeing subject when the deputy has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the deputy reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

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Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if a deputy reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the deputy or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

K. SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Deputies should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy 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 deputy or others.

Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.

L. REPORTING THE USE OF FORCE

Any use of force by a member of this agency shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The deputy should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Tuscarawas County Sheriff's Office does require the completion of the "Action Response report – Response to Resistance" as specified in agency policy, procedure or law. A Deputy who used force shall be required to complete a Action Response reporting form in the agencies RMS software for any force (response) used by a Deputy in the green category or higher. Each Deputy that uses force shall complete his or her own Use of Force report form. Deputies who do not use force, but witness the incident, may document what they observed in a supplemental narrative report.

M. NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application

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of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable deputy to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the TASER device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges any of the above has occurred.

N. MEDICAL CONSIDERATION

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the deputy's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another deputy and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling deputy shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the deputy reasonably believes would be potential safety or medical risks to the subject (e.g. prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple deputies to be brought under control, may

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be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Deputies who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

O. SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved deputies. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following should apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
 - 2. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving

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the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

P. SHERIFF RESPONSIBILITY

The use of force instructors for both the road and jail, will review all use of force reports prior to them being forwarded to the Division Commander. After the Division commander reviews the report it shall be forwarded to the Sheriff for approval.

TRAINING

Deputies will receive periodic training on this policy and demonstrate their knowledge and understanding, at least annually, including use of deadly force, use of force and use of deadly force reporting, and use of force of deadly force reviews/investigations.

Q. USE OF FORCE ANALYSIS

At least annually, the use of force instructors will prepare an analysis report on use of force incidents. The report should be submitted to the Sheriff or designee. The report should not contain the names of deputies, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.

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