



<b>Hilliard Division of Police</b> Policy Manual		<b>Policy</b> <b>300</b>
<b>Subject: Use of Force</b>		
<b>Standard Reference: OCLEAC 8.2015.1</b>		
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<b>Approved By:</b> Chief Robert A. Fisher		

## Use of Force

### 300.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines on the reasonable use of force. Every member of the division is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 COMPANION POLICIES:

Policy 302 *Handcuffing and Restraints*

Policy 303 *Control Devices and Techniques*

Policy 304 *Conductive Energy Device*

Policy 305 *Officer involved Shootings and Deaths*

Policy 306 *Firearms*

### 300.2 DEFINITIONS

**Serious Physical Harm** ([ORC 2901.01 \(A\) \(5\)](#)):

- A. Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- B. Any physical harm that carries a substantial risk of death;
- C. Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- D. Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;
- E. Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

**Deadly Force** means any force that carries a substantial risk that it will proximately result in the death of any person ([ORC 2901.01](#)).

**Force** for purposes of this policy, means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing ([ORC 2901.01](#)). Furthermore, the application of physical techniques or tactics used on another person, in response to resistance whether passive or aggressive. Minor hand to hand control techniques, such as those used in

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handcuffing, physically touching, escorting or gripping to overcome minor resistive tension are not considered a use of force.

**Imminent Threat** a threat that is mediate rather than immediate; impending; or on the point of happening. It may also be defined as impending rather than remote, uncertain, or contingent; that if circumstances remain unchanged, a result is reasonably certain (Black's Law Dictionary). As examples only, an imminent threat may exist if there is a reasonable belief that:

- A. The subject possesses a weapon, or is attempting to gain access to a weapon, or is indicating an intention to use a weapon against the officer or others;
- B. The subject is armed and moving to gain the tactical advantage of cover;
- C. A subject has the capability of inflicting death or serious physical harm, or otherwise incapacitating officers or others without a deadly weapon or is demonstrating an intention to do so.

**Active Resistance** is physical, confrontational behavior with a purpose of directly obstructing the lawful efforts of a law enforcement officer.

**Passive Resistance** is a non-violent opposition to authority, especially a refusal to comply with legal requirement, such as dead weight.

**Objectively Reasonable** the determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time force is used and upon what a reasonable officer would use under the same or similar situations.

### 300.2 POLICY

- A. It is the policy of the division to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonable officer would use under the same or similar circumstances.
- B. The decision to use force 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.
- C. The guiding principle of the **objectively reasonable** standard was established by U.S. Supreme Court Case [Graham v. Connor](#), 490 U.S. 386 (1989). Specifically, the court stated the Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their

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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, rather than with the 20/20 vision of hindsight, 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.

### 300.2.1 CERTIFICATION STANDARDS

This policy contains content that pertains to Ohio Collaborative Law Enforcement Division Certification (OCLEAC) Standards: 8.2015.1.

### 300.2.2 DUTY TO INTERCEDE

Any officer present and observing another officer/person 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. An officer who observes another officer/person use force that exceeds the degree of force permitted by law shall promptly report these observations to a watch commander.

## 300.3 USE OF FORCE

- A. Officers shall use only that amount of force which is reasonably necessary to accomplish a lawful objective, including:
1. To protect the officer, the individual, or others from immediate physical harm,
  2. To restrain or subdue an individual who is actively resisting or evading arrest, or
  3. To bring an unlawful situation safely and effectively under control.
- B. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the division. Officers may find it more effective or reasonable to improvise their response 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 and shall be articulated in the officer's report.
- C. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

### 300.3.1 GENERAL PROVISIONS

- A. The degree of force used is based upon the principle of the progression of force and is determined by the actions of the subject.

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- B. This progression of force normally begins with officer presence and verbal commands. Dependent upon the actions of the subject, force may evolve through physical contact, or use of less-lethal weapons, or when required in life-threatening situations, use of deadly force.
  - 1. It is recognized that officers encounter circumstances that affect the officer's chosen level of response. Therefore, officers are not obligated to start at the lowest level of response.
  - 2. The circumstances of individual situations dictate the level of force used by the officer.
  - 3. As a subject initiates resistance to arrest so must the officer escalate the level of force required to overcome the resistance offered and/or defend against an assault.
  - 4. Conversely, as a subject ceases resistance, the officer de-escalates the use of force to that degree required to gain control of an individual.
  - 5. Use of force should be discontinued when resistance ceases or when the incident is under control.
- C. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
- D. The use of choke holds, and vascular neck restraints are prohibited unless deadly force is authorized.
- E. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
- F. All uses of force shall be documented and investigated pursuant to this division's policies.

### 300.3.2 DE-ESCALATION

- A. An officer should use de-escalation techniques consistent with division training, whenever possible and appropriate, before resorting to using force.
- B. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer should allow an individual time and opportunity to submit to verbal commands before force is used.

### 300.3.3 USE OF FORCE TO EFFECT AN ARREST

Officers in the process of making a lawful arrest may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. An officer who makes or attempts to make an

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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 an officer 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.

### 300.3.4 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether force is required, several factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

1. Immediacy and severity of the threat to officers or others.
2. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
3. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers involved vs. subjects).
4. The effects of drugs or alcohol.
5. Subject's mental state or capacity.
6. Proximity of weapons or dangerous improvised devices.
7. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
8. The availability of other options and their possible effectiveness.
9. Seriousness of the suspected offense or reason for contact with the individual.
10. Training and experience of the officer.
11. Potential for injury to officers, suspects and others.
12. Whether the person appears to be actively resisting, attempting to evade arrest by flight or is attacking the officer.
13. The risk and reasonably foreseeable consequences of escape.
14. The apparent need for immediate control of the subject or a prompt resolution of the situation.
15. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
16. Whether the person is actively or passively resisting.
17. Prior contacts with the subject, awareness of any propensity for violence, and knowledge of special skills of the subject.
18. Any other exigent circumstances.

### 300.3.5 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers shall not intentionally use any technique that restricts blood flow to the head, restricts

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respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted.

### 300.4 USE OF DEADLY FORCE

- A. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified in the following circumstances:
1. To defend themselves or another from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
  2. To prevent the escape of a fleeing subject when the officer 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 officer 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.
  3. In accordance with U.S. and Ohio Supreme Court decisions, specifically, [\*Tennessee v. Garner\*, 471 U.S. 1 \(1985\)](#) and [\*Graham v. Connor\*, 490 U.S. 386 \(1989\)](#).

#### 300.4.1 SPECIAL CONSIDERATIONS REGARDING DEADLY FORCE

- A. Officers should not discharge a firearm under conditions that would subject bystanders or hostages to the risk of serious physical harm or death unless the failure to do so would create a substantial risk of serious physical harm or death to the officer or another person.
- B. When feasible, officers shall identify themselves as a law enforcement officer and warn of his/her intent to use deadly force.
- C. Deadly force should not be used against a person whose actions are a threat only to themselves or property.
- D. The use of warning shots is prohibited.
- E. Firearms shall not be discharged at a moving vehicle unless:
1. A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
  2. The vehicle is operated in a manner deliberately intended to strike an officer or another person, or the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

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- F. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must be able to articulate reasonableness of his/her actions and the use of deadly force.

### 300.5 REPORTING THE USE OF FORCE

- A. Watch commander notification shall be made as soon as practicable following the application of force. If an officer is unsure if an incident rises to the level of a reportable use of force, the officer should contact the on-duty watch commander for direction. For the purposes of this policy, an application of force that requires reporting includes:
  - 1. Discharging a firearm, other than training, recreational or the humane destruction of an injured animal.
  - 2. Taking action that results in, or alleged to have resulted in, injury or death of another person or animal.
  - 3. The use of less-lethal weapons such as Taser®, Specialty Impact Munitions, Baton, and OC spray.
  - 4. Striking or kicking an individual.
  - 5. The application of a balance displacement technique to gain compliance which causes a subject to be forcibly shoved or thrown to the ground or against an object.
  - 6. The application of joint manipulation techniques to gain control of an individual.
  - 7. The application of a pain compliance technique which would lead a reasonable officer to conclude that the subject may have experienced more than momentary discomfort.
  - 8. Whenever an officer from another jurisdiction is involved in an application of force and is being assisted or assisting an officer from this division.
- B. Any use of force by a member of this division shall be documented promptly, completely and accurately on a "Use of Force" report (Form # HPD-005), and other applicable reports when a firearm or less-lethal weapon is used. The officer shall articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances, and what de-escalation techniques, if any, were used. Each application of force must be articulated individually in the officer's statement.
- C. To collect data for purposes of training, resource allocation, analysis and related purposes, the division may require the completion of additional report forms, as specified in division policy, procedure or law.
- D. When an officer discharges a Taser as a result of a use of force, a Use of Taser report (Form # HPD-145) shall be completed in conjunction with a Use of Force report.
- E. When an officer discharges a firearm as a result of a use of force, including a Specialty Impact Muniton (SIM), a Discharge of Firearms Report (Form # HPD-003) shall be completed in conjunction with a Use of Force report.

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- F. All reports related to a use of force shall be completed prior to the end of the officer's watch unless unusual circumstances exist, as determined by the Bureau Commander.
- G. In the event that the involved officer requests legal counsel, is incapacitated, or otherwise incapable of filing the reports, the officer's immediate supervisor will initiate these reports, with a written statement to be completed by the involved officer when appropriate.

### **300.6 MEDICAL CONSIDERATION**

- A. If a subject is injured, or complains of an injury, because of an officer's use of force, it shall be the officer's responsibility to ensure that appropriate medical care is made available to the injured party as soon as safe and practical.
- B. 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.
- C. Medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.
  - 1. For an aerosol exposure, standard chemical decontamination steps including facing the subject into the wind, flushing with water (if available), instructing the subject not to rub their eyes and to breathe through the mouth, may be considered basic medical assistance.
- D. 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 officer 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.
- E. Officers should not sign any document that incurs liability (fiscal or legal) when seeking medical care for an injured suspect.
- F. The primary handling officer 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 officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).
- G. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness

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to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as it is safe and practicable.

### **300.7 DEALING WITH MENTALLY ILL/DIMINISHED CAPACITY**

- A. When dealing with an unarmed person whom officers have reasonable belief to be mentally ill or of diminished capacity, officers should employ de-escalation techniques. When practical, an officer trained in Crisis Intervention Team (CIT) concepts should respond to the scene.
- B. When de-escalation techniques are not effective or appropriate, officers may use an objectively reasonable amount of force to resolve the incident.
- C. When a situation does not fit with the Graham test, such as medical emergencies, because the person in question has not committed a crime, is not resisting arrest and is not directly threatening the officer, officers may use an objectively reasonable amount of force to resolve the incident if the following apply ([\*Estate of Corey Hill v. Christopher Miracle, 2017 WL 1228553 \(6<sup>th</sup> Cir.2017\)\*](#)):
  - 1. The person was experiencing a medical emergency that rendered him/her incapable of making a rational decision under the circumstances which posed an immediate threat of serious harm to himself/herself or others.
  - 2. Some degree of force was reasonably necessary to address the immediate threat.
  - 3. The force used was reasonably necessary under the circumstance.

### **300.8 WATCH COMMANDER RESPONSIBILITY**

- A. Upon being notified that force has been used by an officer, the on-duty watch commander shall ensure that appropriate medical care has been summoned and provided.
- B. When practical, the on-duty watch commander should respond to the scene of reported use of force incidents and complete a preliminary investigation. The on-duty watch commander should;
  - 1. Ensure scene security;
  - 2. Obtain the basic facts from the involved officers.
  - 3. Ensure that any injured parties are examined and treated.
  - 4. Separately interview the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:

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- a. The content of the interview should not be summarized or included in any related criminal charges.
  - b. The fact that an interview was conducted should be documented in the watch commander's personal report for the administrative review.
5. 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.
  6. Ensure all witnesses are located, identified, interviewed and witness statements collected.
  7. Ensure all video and audio recordings (i.e. cruiser recordings, jail recordings, private surveillance cameras, etc.) are marked for retention and a hard copy attached to the use of force report.
  8. Review and approve all related reports to include a memorandum outlining the investigative process, findings and policy compliance recommendation.
- C. If a watch commander is unable to respond to the scene of an incident involving the reported use of force, the watch commander is still expected to complete as many of the above items as circumstances dictate.
- D. Bureau Commanders shall review each use of force by personnel within their command to ensure policy compliance and to address any training issues.
1. Bureau Commanders will review each Use of Force report and forward the report along with recommendations to the Chief of Police.
- E. The Chief of Police or designee shall review all use of force incidents.
1. The Chief of Police may concur with supervisor or watch commander's findings and recommendations.
  2. The Chief of Police may disagree with determination.
  3. The Chief of Police may determine the use of force was not in compliance with division policy. Under this finding the following action may be taken:
    - a. The Chief of Police or designee may take appropriate corrective action in accordance with established disciplinary procedure and collective bargaining agreement.
    - b. The Chief of Police or designee may initiate an internal administrative investigation.
  4. The Chief of Police may determine there was a Policy Failure. If the matter is determined to be a "Policy Failure" (i.e. the officer's actions were reasonable; however,

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not address or in conflict with policy) the matter shall be referred for Policy Revision pursuant to Policy #106 - Policy Manual.

- F. If the use of force resulted in serious physical harm or death, the on-duty watch commander shall follow the procedures under Policy #311 - Post Incident Response and any other applicable Policy.

### **300.9 TRAINING**

- A. All officers, before being permitted to carry or use a division issued or authorized firearm or any issued intermediate, less-lethal weapons, shall receive a copy of this policy and receive instructions on its implementation and use. The issuance and training of this policy shall be documented and retained by the Training Unit.
- B. Officers shall receive a copy of this policy and shall be required to acknowledge they have read the policy.
- C. Officers shall receive annual training and shall be tested on their understanding of this policy.
- D. In addition, officers shall receive annual training designed to:
  - 1. Understand legal updates related to the use of force
  - 2. Provide techniques for the use and reinforce of the importance of de-escalation
  - 3. Simulate actual force situations and conditions
  - 4. Enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy
- E. Officers shall demonstrate proficiency in the use of firearms, less-lethal weapons, and weaponless control techniques annually. Proficiency will meet or exceed OPOTC standards for each weapon or weaponless technique. Training shall be conducted by OPOTC certified instructors.
- F. All training shall be documented, and the records retained by the Training Unit.

### **300.10 USE OF FORCE ANALYSIS**

Before January 31 of each year, the Professional Standards Unit shall conduct a documented analysis of all Use of Force Reports and Discharge of Firearm Reports from the prior year. The analysis shall be submitted to the Chief of Police. The analysis shall attempt to identify:

- 1. Any trends in the use of force by members.
- 2. Training needs recommendations.
- 3. Equipment needs recommendations.
- 4. Policy revision recommendations.