



<b>Hilliard Division of Police</b> Policy Manual		<b>Policy</b> <b>300</b>
<b>Subject: Use of Force</b>		
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<b>Approved By:</b> Chief Michael Woods		<i>Michael A. Woods</i>

## 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.

The division's use of force policies adheres to all applicable federal, state, and local law.

#### 300.1.1 COMPANION POLICIES

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to companion policies:

- Policy 302 *Handcuffing and Restraints*
- Policy 303 *Intermediate Weapons*
- Policy 304 *Conductive Energy Weapons*
- Policy 305 *Officer involved Shootings and Deaths*
- Policy 306 *Firearms*

### 300.2 DEFINITIONS

**Serious Bodily Injury** means injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

**Deadly Force** means any force that creates a substantial risk of causing death or serious bodily injury.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Force** 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

## Hilliard Division of Police Policy Manual

those used in 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 bodily injury, or otherwise incapacitating officers or others without a deadly weapon or is demonstrating an intention to do so.

**Totality of the circumstances** - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

**Active Resistance** – is the subjects' physical motions or movements with the purpose to counter or obstruct an officer's lawful efforts. Since there are so many variables to this type of resistance, it is broken down into:

**Low level resistance** – when a subject exhibits resistive movements to avoid physical control (e.g., pulling away, holding onto a chair, steering wheel, etc.) or as a passive resistor, presents a credible threat to the officer (e.g., lying on hands and not responding to commands to make hands visible).

**Aggressive active resistance** – when a subject takes actions that could reasonably be perceived as threatening to the officer or others. This would include any assaultive behaviors (e.g., push, strike, grab, or tackle), and verbal and non-verbal pre-attack indicators.

**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.

# Hilliard Division of Police

## Policy Manual

### 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 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 DUTY TO INTERCEDE AND REPORT

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. Any officer who observes another law enforcement officer or member use force that is potentially beyond that which is objectively reasonable under the circumstances shall report these observations to a supervisor.

#### 300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should consider the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

### 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 bodily injury,
  - 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.

## Hilliard Division of Police Policy Manual

- B. Whenever possible, officers shall inform an arrestee they are under arrest before the application of force. Officer shall articulate this fact in subsequent incident, arrest, and related reports.
- C. 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 this 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.
- D. 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.
- 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. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with their training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting

## Hilliard Division of Police Policy Manual

emergency medical services, and/or arranging for transportation to an emergency medical facility.

- E. All uses of force shall be documented and investigated pursuant to this division's policies.

### 300.3.2 RESPIRATORY AND VASCULAR RESTRAINTS

The use of a respiratory restraint (also known as a choke hold), and/or a vascular neck restraint is limited to circumstances where deadly force is authorized.

### 300.3.3 ALTERNATIVE TACTICS - DE-ESCALATION

- A. An officer should use de-escalation techniques consistent with division training, whenever possible and appropriate, before resorting to using force.
- B. When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).
- C. 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.

### 300.3.4 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 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.

### 300.3.5 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 suspected drugs or alcohol use.

## Hilliard Division of Police Policy Manual

5. The individual's mental state or capacity.
6. The individual's ability to understand and comply with officer commands.
7. Proximity of weapons or dangerous improvised devices.
8. The degree to which the individual has been effectively restrained and their ability to resist despite being restrained.
9. The availability of other reasonable and feasible options and their possible effectiveness.
10. Seriousness of the suspected offense or reason for contact with the individual.
11. Training and experience of the officer.
12. Potential for injury to officers, suspects, and others.
13. Whether the individual appears to be actively resisting, attempting to evade arrest by flight or is attacking the officer.
14. The risk and reasonably foreseeable consequences of escape.
15. The apparent need for immediate control of the individual or a prompt resolution of the situation.
16. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
17. Whether the person is actively or passively resisting.
18. Prior contacts with the individual, awareness of any propensity for violence, and knowledge of special skills of the subject.
19. Any other exigent circumstances.

### 300.3.6 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 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 they reasonably believe is 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 individual 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 \(1989\)](#).

## **Hilliard Division of Police Policy Manual**

### **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 bodily injury or death unless the failure to do so would create a substantial risk of serious bodily injury or death to the officer or another person.
- B. When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify him/ herself as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.
- 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.

### **300.4.2 MOVING VEHICLES**

- A. When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- B. 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 imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

### **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 whether 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, Pepperball 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.

## Hilliard Division of Police Policy Manual

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 they 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 Munitions (SIM) and Pepperball Launching System, a *Firearms Report* (Form HPD-003) shall be completed in conjunction with a *Use of Force Report*.
  - F. Reports related to a use of force should be completed prior to the end of the officer's watch unless the Watch Commander grants an extension.
  - 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.
  - H. In the event an officer displays or points a firearm for the purpose of gaining compliance, detaining, or controlling a subject, a *Firearms Report* (HPD-003) shall be completed. This includes all firearms, Specialty Impact Munitions delivery systems, and Pepperball Launching Systems.
  - I. In the event an officer displays or points a CEW (Taser) for the purpose of gaining compliance, detaining, or controlling a subject, a *Use of Taser Report* (HPD-145) shall be completed. This includes display, pointing, spark warnings and/or laser display.

## Hilliard Division of Police Policy Manual

### 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. Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until they can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.
- 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. Individuals 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 officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies.

## Hilliard Division of Police Policy Manual

- H. 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 them incapable of making a rational decision under the circumstances which posed an immediate threat of serious injury 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 RESPONSIBILITIES**

- 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. When possible, separately obtain a recorded interview the individual upon whom force was applied. If this interview is conducted without the person having voluntarily waived their Miranda rights, the following shall apply:
    - a. The content of the interview should not be summarized or included in any related criminal charges.

## Hilliard Division of Police Policy Manual

- 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.
  1. If a watch commander or supervisor was directly involved in the use of force, an officer not involved in the incident shall assume the role of the watch commander for investigative purposes.
    - a. The officer shall forward the investigative work product to the Bureau Commander without findings or policy compliance recommendations. The Bureau Commander will review the facts of the incident and determine the findings and policy compliance recommendations.
- 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:

## Hilliard Division of Police Policy Manual

- 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, 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 bodily injury 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 acknowledge they have received and read the policy.
- C. Officers 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 and use of deadly force reviews/investigations.
- D. Subject to available resources, officers should receive periodic training on:
  1. Guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.
  2. De-escalation tactics, including alternatives to force.
  3. Legal updates related to the use of force.
  4. Simulated actual force situations.
- 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.

## Hilliard Division of Police Policy Manual

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 report should not contain the names of officers, suspects, or case numbers, and should include:

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