



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



2023-2307

Officer-Involved Critical Incident- I-75 Southbound @ MM-110

Investigative Activity: Document Review; Records Received Use of Force Policy

Activity Date: 9/15/2023

Activity Location: BG Office

Authoring Agent: SA Chris Hamberg #69

Narrative:

On Friday, September 08, 2023, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) Chris Hamberg received the use of force policy utilized by the Ohio State Highway Patrol (OSP) at the time of this incident. The document received is attached to this investigative report for further review.

SUMMARY OF REVISIONS

Revisions are in red, bold, italicized text.

PURPOSE

The purpose of this policy is to provide Division sworn officers with guidelines for the use of less-lethal and deadly force and reporting of these incidents. The guidelines will establish uniform standards for responding to a suspect's resistance and will ensure a maximum level of protection for sworn officers responding to dangerous situations.

POLICY

A. STATEMENTS OF POLICY 4.1.1; OC 8.2015.1

1. **Use of Force to Respond to Resistance** – Division sworn officers may only use the amount of force that is objectively reasonable to effectively accomplish lawful objectives, including the following: affecting a lawful arrest or overcoming resistance to a lawful arrest, preventing the escape of a suspect or arrestee, or to protect or defend others or themselves from physical harm.

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." *Graham v. Connor*, 490 U.S. 386 (1989).

Division officers will follow all applicable federal, state, and local laws and case precedent regarding the appropriate use of force.

2. **Balance and Level of Response (CARA Model)** - Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances. The CARA Model will be used to evaluate the balance and level of response.
 - i. **CONDITION** – Verbal/non-verbal commands given by the officer to a subject in order to direct or control that subject for a law enforcement purpose.
 - ii. **ACTION** – Subject's response to the officer's condition.
 - iii. **RESPONSE** – Officer's required response to the subject's actions (based on the guidelines from case law, such as *Graham v. Connor* and *Tennessee v. Garner*, and this policy).
 - iv. **ASSESS** – Officer must assess whether the response gained compliance or brought the subject under control.

An officer must continually reassess the need to recycle the CARA Model in order to gain compliance or control.

The CARA Model is always dependent upon the subject's actions. The level of response is determined by the officer who assesses the action by the subject, including the level of threat posed to the officer, in order to determine the appropriate response based on the guidelines from case law, such as *Graham v. Connor* and *Tennessee v. Garner*, and this policy.

The CARA Model can, and often does, occur rapidly. Application of the CARA Model does not require a verbal condition when, to a reasonable person, it is implied by the

situation.

3. **Use of Deadly Force** – The preservation of human life is of the highest value in the State of Ohio. Therefore, officers must have an objectively reasonable belief that deadly force is necessary to (1) defend themselves from serious physical injury or death or (2) defend another person from serious physical injury or death. Serious physical injury is defined as an 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 (see also R.C. 2901.01(A)(5)). 4.1.2; 8.2015.1
4. **Use of Deadly Force to Prevent Escape** – Division officers may use deadly force to prevent the escape of a violent felon only if the officer has probable cause to believe the suspect poses an imminent threat to themselves or others if allowed to escape and deadly force is necessary to prevent the suspect's escape. When feasible, a verbal warning shall be given before the use of deadly force on a fleeing suspect (see the attachment to this policy on *Tennessee v. Garner* for additional information).
5. **Injuries due to an RTR Incident** 4.1.5 – Officers must make a reasonable attempt to limit injury to themselves, the suspect, the public, and other law enforcement personnel. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with Division training (including rendering first aid, see OSP-907.07 *Emergency Victim Care*) to any individual who has visible injuries, complains of being injured, requests medical attention, appears to be in medical distress or is unconscious. In addition, officers shall contact dispatch to request the appropriate emergency medical services.

When delivering a suspect to an institution, such as a detention facility, hospital, or mental health facility, the intake staff shall be informed of the method and extent of the officer's responses to resistance and any known or suspected injuries.

6. **Duty to Intervene** – Division officers have a duty to intervene to prevent or stop the use of excessive force by another law enforcement officer when it is safe and reasonable to do so. If a Division officer observes or has reason to know that excessive force is being used in his/her presence by another officer, and he/she has the opportunity and the means to prevent the excessive force from occurring, the officer must intervene to prevent the harm. Division officers who witness an excessive use of force and/or who must intervene to prevent or stop the use of excessive force by another law enforcement officer, including Division officers or officers from other agencies, will immediately report the incident to a supervisor. 1.2.10
7. **Other Considerations on Uses of Force** – Officers must stop the application of physical force when the suspect no longer resists or when the incident is otherwise under control. In addition, the following considerations apply:
 - i. **Restrained Persons** – Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily harm 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.
 - ii. **Handcuffing** - Handcuffing is considered a use of force; therefore, the reason for applying handcuffs (e.g., investigative detentions vs. custodial arrest), the manner of restraint (e.g., handcuffing in the front vs. the back, use of a portable restraint device), and the degree of restraint (e.g., tightness of cuffs, forcefulness of the cuffing, position of the person handcuffed) must be evaluated based on the reasonableness standard of *Graham v. Connor* (see the attachment to this policy for additional guidance). The Division's policy on handcuffing is adaptable to any situation and is not a strict "no exceptions" policy (see OSP-203.26, *Custodial and Non-Custodial Care and Security* for additional guidance).

- iii. **Seizure at Gunpoint** – Pointing a loaded firearm at a subject is considered a use of force as it implies the potential for an imminent use of deadly force. The reason for pointing the weapon at a subject in a given situation must be evaluated based on the reasonableness standard of *Graham v. Connor* (see the attachment to this policy for additional guidance). In order to justify pointing a gun at someone, a Division officer must be able to show that the officer had an articulable belief that the person posed an imminent threat of serious injury or death to the officer or others.
- iv. **K-9 Seizures** – Canine deployment for the purpose of suspect apprehension is a use of force which requires an analysis consistent with this policy as well as the factors set forth by *Graham v. Connor*. The canine handler shall give a verbal warning to the suspect advising that the canine will be deployed if the suspect does not immediately comply with the handler's or other officer's order to stop or surrender (unless exigent circumstances exist such that giving a warning would endanger the handler and/or other officers. See policy OSP-203.39 *Canine Teams*).
- v. **Deadly Force Restrictions** – Deadly force shall not be used against persons whose actions are a threat only to themselves or property.
 - Firearms will only be used against moving vehicles as stated in policy OSP-203.20-002, *Motor Vehicle and Foot Pursuits*. Firearms shall not be discharged from a moving vehicle except when exigent circumstances exist and the officer must have an articulable reason for this use of deadly force.
 - Under no circumstances shall an officer discharge warning shots. 4.1.3
 - The use of neck restraints, chokeholds, or similar weaponless control techniques, intended to restrict a person's breathing, are prohibited unless deadly force would be considered reasonable. 4.1.6; 4.1.7

B. **DE-ESCALATION** – De-escalation is taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources may be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements and warnings (ASK, ADVISE, ORDER), verbal persuasion, and tactical repositioning.

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible, an officer shall allow a person the time and opportunity to submit to verbal commands before force is used and when such delay will not compromise the safety of the officer or others, and will not result in the destruction of evidence, escape of a suspect, or commission of a crime.

C. **LESS-LETHAL FORCE/WEAPONS** 4.1.4 (See **OSP-203.20-001 Attachment, Less Lethal Weapons Use and Maintenance**, for additional specific guidelines for training, issue, wear, use, and qualification) – When de-escalation techniques are ineffective or inappropriate, officers may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use Division-approved, less-lethal force techniques and issued less-lethal weapons to protect the officer or others from immediate physical harm, to restrain or subdue an individual who is actively resisting or evading arrest, or to bring an unlawful situation safely and effectively under control. **Use of less lethal devices by SRT and/or MFF with crowds or in response to protests, riots, or civil disturbances is governed by OSP-204.01 Response to Protests, Riots, and Civil Disturbances.** The Division employs the following types of less-

lethal weapons:

1. **Empty Hand Controls, Strikes, and Takedowns** – Empty hand techniques such as escorts, joint manipulations, pressure point control tactics, or controlled or assisted takedowns may be used on a subject who is non-compliant or non-combative in his or her resistance to the officer. If the subject is assaultive or combative, then striking techniques (hands, elbows, knees, kicks) and takedowns (double leg, body lock, ankle pick, or head and arm) may be used.
2. **OC Repellent** – The 10% oleoresin capsicum (OC) agent is authorized for use when a person is actively resisting arrest, attempting to evade arrest by flight, or otherwise assaultive/combative. Officers must use care to ensure they do not direct the stream of spray directly into a person's eyes at close range due to the intense pressure of the stream. In addition, the use of OC in crowded or enclosed areas is discouraged due to the effects to persons not involved in the incident.
 - i. ***SRT is issued hand-thrown, non-flammable OC and CS grenades. These devices shall not be thrown directly at a subject. OC/CS grenades shall not be used as an impact weapon.***
 - ii. ***SRT personnel are issued non-flammable, 40MM launchable OC/CS rounds. The OC/CS rounds shall only be used when there are no openings available for a hand thrown grenade device or approaching the structure is too dangerous, as determined by an SRT commander. These rounds shall be directed to an elevated position at an upward angle in the target area. They shall not be aimed directly at an individual or used as an impact round on a person. The round shall be directed above the target area so that the OC/CS may disperse throughout the area. Officers shall direct the round so that the chances of striking a person are minimized.***
3. **Expandable Baton/Wooden Baton/Flashlight** – The expandable baton, wooden baton, and the flashlight are authorized for use primarily as defensive weapons. Striking a suspect with a baton or flashlight is reasonable when an officer is protecting himself/herself or others from an assault or attempted assault. The primary target areas are large muscle groups or bones. When using any of these tools as impact weapons, avoid striking the head (including the temple), throat, and/or the back of the neck or spinal column unless deadly force is justified under the circumstances.
4. **Conducted Energy Weapon (CEW)** – The CEW is authorized for use, in probe or "drive stun" mode by those officers trained and certified in its use to control or otherwise subdue a person who is actively resisting arrest (including threatening violence or potentially violent behavior), attempting to evade arrest by flight, assaultive/combative, or engaging in self-destructive behavior.

Officers should always pause and re-evaluate the situation before using multiple deployments of the CEW. Each cycle of the CEW must be objectively reasonable under the circumstances. It is recommended that not more than three consecutive cycles of the CEW, in either mode, be used on a single suspect. This would not preclude, however, from using additional deployments after a sufficient time has passed and the suspect reengages the officer with assaultive or combative resistance. Care should be taken, however, to avoid repeatedly deploying the CEW on someone who is exhausted or shows signs of extreme uncontrolled agitation or hyperactivity, such as excited delirium both prior to and after the CEW exposure.

Any time a CEW is used, in either mode, the ***sworn officer is required to place the battery on a charger prior to the end of their shift to upload the usage log. Supervisors should review and verify the usage log was uploaded correctly. A link to the usage log shall be added*** in the EIR entry.

5. **Noise/Flash Diversionary Devices (NFDD) – Often referred to as “flash/bangs” or “distractionary devices,” these devices are only issued to SRT and MFF and consist of hand thrown NFDDs that emit light and sound. These devices are used to distract or disorient a subject(s) in high-risk situations. Officers shall not deploy any NFDD into an unknown area, a flammable environment, or directly at an individual. Officers must visually clear the area where the NFDD is to be thrown prior to deployment.**
6. **Impact Projectiles – Direct-fired impact projectiles shall only be used to control or otherwise subdue a person who is actively resisting arrest, attempting to evade arrest by flight, assaultive/combatative, or engaging in self-destructive behavior. Direct impact projectiles shall not be fired indiscriminately into a group of people. Officers may use direct impact projectiles as a defensive weapon to protect himself/herself or others from an assault or attempted assault. The primary target areas are large muscle groups or bones. Officers should avoid striking the head, throat, and/or the back of the neck or spinal column unless deadly force is justified under the circumstances.**

D. **DISPATCHING BACK-UP/MULTIPLE OFFICERS** 81.2.4 d, e, g

1. **Back-Up/Multiple Officers** - To ensure the effectiveness and safety of Division officers, some situations may justify a response by more than one officer. The following are some examples of situations when two or more officers will be dispatched to an incident (unless instructed otherwise by a supervisor):
 - i. Threat to an officer
 - ii. Officer has been physically assaulted
 - iii. Suspect is a known felon or known to be violent
 - iv. Arrest involves assaultive/combatative or non-compliant/non-combatative resistance with the potential for additional problems
 - v. An officer responded to resistance with a use of force
 - vi. Responding to actual or suspected criminal activity in progress
 - vii. Suspect fleeing from the scene of a crime or traffic crash
 - viii. When serving arrest or search warrants
 - ix. Emergency call for assistance via portable radio/vehicle radio that was not cancelled by the sending unit
2. **Dispatcher Responsibilities** – When any of the above, or similar, situations occur, the dispatcher shall immediately dispatch multiple or additional officers and notify a supervisor. If back-up is needed but a Division officer is not in a position to respond within a reasonable amount of time, the closest law enforcement agency with jurisdiction shall be contacted.
3. **Supervisor Responsibilities** – The final decision to send a back-up officer(s) rests with the on-duty supervisor. The supervisor must ensure that an adequate response is sent and that officers sent are not needed on their current assignments. Officers who are not needed at the incident scene shall remain available to respond to other incidents.

E. **REPORTING RESPONSES TO RESISTANCE** 4.2.1; 4.2.2 – When a Division officer uses

physical force, including lethal and less-lethal weapons, to effect an arrest, detention, or to otherwise accomplish a lawful objective, the officer shall immediately notify a supervisor and shall file a case report. The case report will detail the circumstances surrounding the response to resistance and will focus on the criminal acts of the suspect(s). Whenever possible, a supervisor shall respond to the scene of the response to resistance. A supervisor not directly involved in the RTR shall investigate and review the response to resistance (see the attachment to this policy, *Response to Resistance Investigations*, for additional guidance).

F. **RESPONSE TO RESISTANCE ADMINISTRATIVE REVIEW** 4.2.2; 41.2.2k – In addition to the policies below, the procedures detailed in the attachment to this policy, *Response to Resistance Investigations*, shall be followed for each incident.

1. **Post/OIU District Office Level Review** – Each response to resistance, including vehicular and foot pursuits, shall be investigated and administratively reviewed by appropriate supervisory personnel and submitted up the chain-of-command for review as soon as the preliminary investigation is complete. An entry shall be made into the Employee Incident Reporting system (EIR) to initiate the RTR administrative review. Post commanders and agents-in-charge shall attach an OHP 1166, *Response to Resistance Review Guide*, with their comments and findings. Any additional comments and findings may be listed on an IOC (the IOC is required for any RTR going to the Committee for review, see section (G) below). The OHP 1166, and the IOC (if applicable), shall be uploaded as artifacts into the RTR documentation in EIR. Additional documentation, such as in-car or body-worn camera audio/video, surveillance or private citizen video footage, or a completed OHP 1324 *Informal Counseling or Training* form shall be attached as well. The original case will remain at the post or OIU district until the investigation is complete.
2. **District/OIU Central Office Level Review** – The district commander or the OIU enforcement commander, or designee, shall conduct a comprehensive review for training needs and potential policy or rule violations (same as those outlined below in section (G)(1)). The district commander/enforcement commander, or designee, will decide whether an investigation will be forwarded to the Response to Resistance Review Committee for further consideration. Any RTR incidents where officers are suspected of significant violations of policies or training protocols, incidents where excessive force is suspected, or incidents that resulted in, or presented a high risk of, serious injury or death to any person, whether accidental or intentional, shall be sent to the Committee for review.
3. **Administrative Investigations Unit Review** – The district commander/senior enforcement commander will then forward the investigation to the Administrative Investigations Unit (AIU) for processing. The AIU Commander may forward an investigation to the Response to Resistance Review Committee if he/she disagrees with the findings of the district commander/senior enforcement commander.
4. **Modified Review Process** – In the event that Division officers are deployed to in-state or out-of-state special events, *i.e.*, riots, crowd control, large-scale security events, disaster relief, *etc.*, the review process will be modified to account for the change in reporting structure for such events. Each incident occurring at one of these special events would be reported through the specified chain-of-command for each event to the detail commander. The detail commander will review the incident as a post or OIU district office would do as indicated in section (F)(1) above. The Office of Field Operations, or other applicable section, would review the incident in the same manner as a district office or OIU Central Office as indicated in (F)(2) above. The remainder of the process would follow the same path as a conventional RTR incident under review.
5. **Physical Apprehensions by Division K-9s** – All RTR cases involving a canine apprehension (physical contact between the Division canine and any person) shall be reviewed by a Division Canine Training Sergeant and GHQ Criminal Patrol staff prior to

a review by district staff. The review shall include an examination of the OTIS case, witness statements, officer notes, in-car/body-worn camera video and any other available evidence pertaining specifically to the use and control of the Division canine. The review shall be documented on an IOC and shall determine whether or not Division canine policies and training protocols were followed in using the canine for as a response to resistance. The IOC shall be uploaded to EIR and used in the determination by district staff, AIU, and the RTR Committee, when applicable. See also OSP-203.39, Canine Teams.

G. RESPONSE TO RESISTANCE REVIEW COMMITTEE

1. **Committee Structure** – The committee will consist of the following personnel:
 - Assistant Superintendent – Chairperson
 - AIU Commander – Coordinator
 - Field Operations Commander
 - Personnel Commander
 - Criminal Investigations Commander
 - OIU Unit Commander (when an OIU case is being considered)
 - Academy Commandant
 - Risk Manager
2. **Committee Process** – The committee will convene as necessary to review response to resistance investigations, whether criminal, administrative, or both. The committee will review incidents involving Division employees where officers are suspected of significant violations of policies or training protocols, incidents where excessive force is suspected, or incidents that resulted in, or presented a high risk of, serious injury or death to any person, whether intentional or accidental. This includes, but is not limited to, officer-involved shootings, intentional vehicle contacts, etc.
3. **AIU Commander** – The AIU commander will coordinate, with the chair, the agenda for scheduled meetings along with a case-by-case summary of the facts of each incident. The AIU commander, or person designated by the Chair, will serve as the facilitator and a resource while presenting the case summaries to the committee. The AIU commander will be responsible to record the recommendation for disposition in each case.
4. **Committee Responsibility** – The committee’s primary responsibility is to determine the following and report any findings to the Superintendent on a case-by-case basis:
 - i. **Were policy deficiencies identified that warrant formal training or review?**
 - ii. Were officer safety issues identified that warrant **formal** training **or review?**
 - iii. Should an administrative investigation be conducted to investigate any policy violations, performance deficiencies, or training needs?
 - iv. Other recommendations that may include positive feedback, recognition, etc.
5. **Reporting by the Committee** – A report of the committee’s findings and any recommendations will be drafted on the OHP 1166, *Response to Resistance Review Guide*, signed by the committee members and chair before being forwarded to the Superintendent. If an administrative investigation was ordered by the committee, the AIU commander will forward it to the respective district for an investigation before final submission to the Superintendent.
6. **Annual Committee Training** – In April of each year, the RTR Committee will receive training that will include a review of policy and training changes or updates, current

case law regarding uses of force, and any other topic that will assist the Committee in its review process. Additional training may be done on an as-needed basis at the direction of the Committee Chair.

H. **REQUIRED POLICY REVIEW** 4.3.4

1. **Policy Revisions** – Following the release of a revision to this policy, all sworn officers, auxiliary officers, and dispatchers shall be assigned this policy, without delay, for review and electronic read and sign.
2. **Roll Call Training** – Whenever changes to this policy occur, all sworn officers, auxiliary officers, and dispatchers shall be trained on the policy with a focus on the updates or changes. The training may be accomplished by reviewing the policy and taking a quiz, commanders may schedule roll call training sessions, or training may be conducted at the Division's annual in-service training. In any case, refresher training on responses to resistance will be conducted at least once every two years for all sworn officers and auxiliary officers.
3. **Annual Review and Training** – All sworn officers and dispatchers will review this policy and be tested on its provisions at least once every calendar year. All auxiliary officers will review this policy at least once every calendar year. All sworn officers and auxiliary officers will receive annual in-service training on this policy. All new sworn officers and auxiliary officers will receive this policy for review before being authorized to carry lethal or less-lethal weapons. 4.3.3; OC 8.2015.1/D
4. **Biennial Training** – At a minimum, all sworn officers will receive in person in-service training on weaponless control techniques, including the prohibitions in this policy on neck restraints and chokeholds, biennially. 4.1.6; 4.3.3
5. **Cadets** – The Academy shall provide all cadets with specific training on the scope and contents of this policy.