



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



2022-1726
Officer Involved Critical Incident – 15266 Gilchrist Rd., Mt.
Vernon (L)

Investigative Activity: Document Review
Involves: Westerville Police Department (O)
Date of Activity: 09/27/2022
Author: SA John P. Tingley, #154

Narrative:

On Tuesday, September 27, 2022, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) John Tingley reviewed the Use of Force Policy and the Officer-Involved Shooting Policy utilized by the Westerville Police Department (WPD) at the time of the officer-involved critical incident. Both of the WPD policies are attached to this Investigative Report for further review.

Attachments:

Attachment # 01: 2022-1726 WPD USE OF FORCE POLICY
Attachment # 02: 2022-1726 WPD OIS POLICY

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Use of Force

300.1 PURPOSE AND SCOPE

Best Practice MODIFIED

This policy provides guidelines on the reasonable use of force. 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.

300.1.1 DEFINITIONS

Federal MODIFIED

Definitions related to this policy include:

Force - Any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing (ORC § 2901.01 A1).

Deadly Force - Any force that carries a substantial risk that it will proximately result in the death of any person (ORC § 2901.01 A2).

De-escalation - The application of verbal and non-verbal techniques or strategies to reduce the intensity of an interaction(s) and potential for physical altercation.

Public Safety/Criminal Justice Associates - Might include, but is not limited to, members of task forces with which the agency works, members from other agencies with shared or concurrent jurisdictions, agency volunteers, or representatives from support organizations within the broader criminal justice system.

Reasonable Belief – is similar to “probable cause,” in that it depends on the specific facts and circumstances of an incident as they are then known to an individual officer and which would warrant a “reasonable officer” to exercise the same or similar action.

Serious Physical Harm - One or more of the following (ORC § 2901.01 A5):

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

Qualified Instructor - A person currently certified to instruct others in the use of a specific skill, tactic, less lethal device, and/or weapon system.

300.1.2 CERTIFICATION STANDARDS

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This policy contains content that pertains to the Ohio Collaborative Law Enforcement Agency

Certification (OCLEAC) Standards.

300.2 POLICY

Best Practice | MODIFIED | OCLEAC - 1.1 OCLEAC - 8.2015.1 (a)

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

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

300.2.1 DUTY TO INTERVENE

Federal | MODIFIED | OCLEAC - 8.2015.1 (a)

Any employee present and observing another officer or public safety associate using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so and within the scope of authority and training, intervene to prevent the use of unreasonable force. An employee who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE

Federal | MODIFIED | OCLEAC - 1.1 OCLEAC - 8.2015.1 (a)

Officers may only use that force which is objectively reasonable under the totality of the circumstances and necessary to accomplish a legitimate law enforcement purpose, including: effecting a lawful arrest or overcoming resistance to a lawful arrest, preventing the escape of an offender, or protecting or defending others or themselves from physical harm.

The reasonableness of a particular use of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers 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 an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers should apply de-escalation techniques when practicable and reasonable to do so.

It is also recognized that circumstances may arise in which officers reasonably believe that it

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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 is objectively reasonable under the totality of the circumstances and 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 an officer to retreat or be exposed to possible physical injury before applying reasonable force. Certain circumstances, however, may require a tactical retreat to respond to an incident.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Best Practice MODIFIED OCLEAC - 1.1 OCLEAC - 8.2015.1 (a)

Any officer who has reasonable belief 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. Officers should tell arrestees they are under arrest prior to the application of force unless an exigency prevents such warning or notice being given.

Officers who make or attempt to make a lawful arrest need not retreat or desist from their 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 the right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance. When a subject is passively resisting or has stopped resisting altogether, significant force must be stopped.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

Federal MODIFIED OCLEAC - 1.1 OCLEAC - 8.2015.1 (a)

When determining whether to apply force and evaluating whether an officer has used reasonable force, the totality of the circumstances confronting officers at the time of their decisions should be taken into consideration, as time and circumstances permit. These circumstances include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) The physical condition of the subject.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which subjects have been effectively restrained and their ability to resist despite being restrained.

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- (i) The nature of the officer's encounter with the subject.
- (j) The availability of non-force options and their possible effectiveness.
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

Best Practice **MODIFIED**

Officers may use force to lawfully seize evidence and to prevent the destruction of evidence when the use of force is objectively reasonable and necessary given the totality of the circumstances confronted by the officer. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. When force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts the airway or which creates a reasonable likelihood that blood flow to the head or the airway would be restricted.

300.4 PARAMETERS FOR THE USE OF FORCE

Agency Content

Force will not be used:

- As an investigative tool to threaten or attempt to gain information from a person
- Against a person already in custody, unless physical resistance must be overcome
- As retaliation

300.5 DEADLY FORCE APPLICATIONS

Federal **MODIFIED** **OCLEAC - 1.1 OCLEAC - 8.2015.1 (a)**

Deadly force may be used only when officers have an objectively reasonable belief, in light of the facts and circumstances confronting them that deadly force is necessary:

- (a) To protect or defend themselves or others from what they reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) 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

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infliction or threatened infliction of serious physical harm or death, and the officer reasonably believes that there is an imminent risk of serious physical harm or death to any other person if the subject is not immediately apprehended, and the use of deadly force is necessary to prevent the suspect's escape. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

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 an officer 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 officer or another.
2. The person is capable of causing serious physical harm or death without a weapon and it is reasonable to believe the person intends to do so.

300.5.1 SHOOTING AT OR FROM MOVING VEHICLES

Best Practice **MODIFIED**

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearms at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes the vehicle or its occupants pose such a threat that the use of deadly force is justified under the parameters for the use of deadly force.

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

300.5.2 WARNING SHOTS

Agency Content

Warning shots are prohibited.

300.6 REPORTING THE USE OF FORCE

Best Practice **MODIFIED** OCLEAC - 1.3 OCLEAC - 8.2015.1 (b)

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. Officers should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.

A Use of Force report shall be completed by the on-duty supervisor. All other officers involved in the incident shall complete the appropriate report/supplement.

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 agency policy, procedure or law.

If a firearm was discharged as a use of force, refer to policies #305 Officer-Involved Shootings and Deaths and #306 Firearms.

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300.6.1 NOTIFICATION TO SUPERVISORS

Best Practice MODIFIED OCLEAC - 8.2015.1 (b)

Supervisory notification shall be made as soon as practicable following the application of any force. This includes, but is not limited to, the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer 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 a conducted electrical weapon.
- (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.
- (j) Any action that results in, or is alleged to have resulted in, injury or death of another person.

The officers involved in the incident will make every attempt to locate and identify all witnesses to the incident. A Use of Force report will be completed as a result of the application.

An officer shall notify a supervisor in the case of any off-duty incident, where the officer acts under the color of law, within twenty-four hours or as soon as practicable.

300.7 MEDICAL CONSIDERATION

Best Practice MODIFIED

Officers who reasonably suspect a medical emergency should activate the emergency medical system by notifying Communications, as soon as practicable or have medical personnel stage away from the scene until safe to respond, if appropriate. Prior to booking or release, medical assistance shall be obtained for any person who:

- Has obvious severe injuries
- Exhibits signs of physical or medical distress
- Expresses a complaint of injury or continuing pain
- Was rendered unconscious at any time during the officer's contact
- Requests medical attention
- Was struck with a baton or other object
- Was sprayed with a chemical agent
- Was engaged with a conducted electrical weapon
- Is incapable of communicating their well being

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- Any time the officer determines, based on the circumstances, that an individual should be evaluated

Individuals exhibiting signs of physical distress after an encounter should be continuously monitored until they can be medically assessed.

Based upon the officer'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 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.

The on-scene supervisor or, if the on-scene supervisor is not available, 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).

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 officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies.

300.8 SUPERVISOR RESPONSIBILITY

Best Practice | MODIFIED | OCLEAC - 1.4 OCLEAC - 8.2015.1 (c)

When there has been a reported application of force, a supervisor should respond to the scene, if practical. 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:

- Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- Ensure that any injured parties are examined and treated.
- When possible, separately obtain a recorded interview with the subject upon whom force was applied.
- 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.
- Identify any witnesses not already included in related reports.
- Complete a Use of Force report.
- Review and approve all related reports.
- Determine if there is any indication that the subject may pursue civil litigation.

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

300.9 DISPLAY OF WEAPON TO GAIN COMPLIANCE

Agency Content

Officers should only point a firearm at a person when it is objectively reasonable. The most significant factor in establishing objective reasonableness when pointing a firearm at a person is a reasonable perception of the threat of death or serious physical harm to an officer or the public. Officers should consider the totality of the circumstances known at the time of the incident, including but not limited to the following factors:

- The severity of the call or offense and suspect's behavior
- Proximity of weapons
- Prior knowledge of the suspect's propensity for violence

Whenever an officer displays a weapon in order to gain or attempt to gain compliance from a subject, the following procedures shall be followed:

- An involved officer will notify a supervisor of the incident as soon as practicable
- A case report will be completed by the involved officer
 - The display of a weapon will be identified and documented in the appropriate field of the case report (e.g. Display of Weapon - Firearm, Display of Weapon - Chemical Aerosol, Display of Weapon - Impact Weapon, Display of Weapon - CEW)

During incidents where more than one officer displays a weapon in order to gain compliance from a subject, the primary officer will generally complete the case report and all other officers displaying a weapon to gain compliance will complete a supplement.

If the display of a weapon results in the use of force with that weapon, this subsection does not apply and all use of force procedures will be followed.

300.10 REVIEW RESPONSIBILITY

Agency Content

In addition to reviews conducted by the Use of Force Committee in accordance with policy #301, supervisors should review each use of force by any personnel within their command to ensure compliance with this policy and to address any training issues.

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300.11 TRAINING

Best Practice | MODIFIED | OCLEAC - 1.2, 1.1, 1.3, 1.4 OCLEAC - 8.2015.1 (d)

Officers will be assigned the agency's Use of Force policy and demonstrate their knowledge and understanding, at least annually, including de-escalation techniques, use of deadly force, use of force and use of deadly force reporting, and use of force and use of deadly force reviews/investigations, as well as any related legal updates. Definitions of conditional terms will be included and reviewed during annual in-service training.

In addition to training required for firearms qualification, officers shall receive agency-authorized and/or unit specific training designed to simulate actual use of force situations and conditions, and to enhance officers' discretion and judgment in using deadly and non-deadly force in accordance with this policy. Officers are required to demonstrate proficiency in approved skills, tactics, less-lethal devices, and/or weapon systems on a biennial basis. Training will be conducted and documented by qualified instructors. Only officers that have demonstrated proficiency in the use of authorized weapons and less-lethal devices shall be authorized to carry such weapons and devices.

300.12 USE OF FORCE ANALYSIS

Best Practice | MODIFIED | OCLEAC - 1.4

At least annually, the chief's designee should prepare an analysis report on use of force incidents. The report should be submitted to the chief. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members to include, but not limited to:
 - i. Date and time of incident
 - ii. Types of encounters resulting in use of force
 - iii. Race, age, and gender of subjects involved
 - iv. Patterns resulting in injury
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.13 DEADLY FORCE INVESTIGATIONS

Agency Content

For purposes of this policy, an officer-involved deadly force incident is defined as the involvement of an officer in the use of deadly force which may result in injury or death to an individual occurring during the course of the officer's performance of his or her official duties.

When an officer uses deadly force, the Division will respond in accordance with the policy and procedures outlined in #305 Officer-Involved Shootings and Deaths.

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In the event of a multi-jurisdictional operation involving the use of deadly force, the chief shall assign a designee to oversee the investigation.

Officer-Involved Shootings and Deaths

305.1 PURPOSE AND SCOPE

Best Practice **MODIFIED**

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer.

In other incidents not covered by this policy, the chief may decide that the investigation will follow the process provided in this policy.

305.2 POLICY

Best Practice

The policy of the Westerville Division of Police is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

305.3 TYPES OF INVESTIGATIONS

Best Practice **MODIFIED**

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions
- A criminal investigation of the involved officer's actions
- An administrative investigation as to policy compliance by involved officers
- A civil investigation to determine potential liability

305.4 CONTROL OF INVESTIGATIONS

Best Practice

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

305.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

Best Practice **MODIFIED**

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Westerville Division of Police would control the investigation if the suspect's crime occurred in Westerville.

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Officer-Involved Shootings and Deaths

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the chief and with concurrence from the other agency.

305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

Best Practice **MODIFIED**

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this agency is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this agency to investigate a shooting or death involving an outside agency's officer shall be referred to the chief or designee for approval.

305.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Best Practice

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

305.5 INVESTIGATION PROCESS

Best Practice

The following procedures are guidelines for use in the investigation of an officer-involved shooting or death.

305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Best Practice **MODIFIED**

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved WPD officer will assume the following responsibilities until properly relieved by a supervisor. This officer should, as appropriate:

- Secure the scene and identify and eliminate hazards for all those involved
- Take reasonable steps to obtain emergency medical attention for injured individuals
- Request additional resources from the Division or other agencies
- Coordinate a perimeter or pursuit of suspects
- Check for injured persons and evacuate as needed
- Brief the supervisor upon arrival

305.5.2 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED**

Upon learning of an officer-involved shooting or death, the on-duty supervisor shall be responsible for coordinating all aspects of the incident until relieved by an officer of higher rank. If the on-duty supervisor is involved in the incident, the next most-senior officer on the scene will assume responsibility for the initial response until a bureau commander can be notified.

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Officer-Involved Shootings and Deaths

Upon arrival at the scene, the first uninvolved WPD supervisor should ensure completion of the duties as outlined above, plus:

1. Attempt to obtain a brief overview of the situation from any uninvolved officers.
 - (a) In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
2. If necessary, the supervisor may administratively order any WPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 - (a) Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
 - (b) The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
3. Provide all available information to command staff officers. If feasible, sensitive information should be communicated over secure networks.
4. Take command of and secure the incident scene with additional WPD members until properly relieved by another supervisor or other assigned personnel or investigator.
5. As soon as practicable, the on-scene supervisor should notify the current FOP president, who will in turn contact legal representation for the officer(s) involved. The supervisor should advise the FOP president of the location where the officer(s) will be taken to await meeting with their attorney.
6. CISM or other support group, if not activated by the FOP.
7. As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction. Involved officers should be paired up with another officer not involved and advised not to make any statements about the incident. Once the scene is secure, officers should shut off body cameras for two reasons: 1. Collection of evidence and, 2. Attorney client privilege. Officers should also ensure that when transporting involved officers to headquarters the in-car camera is turned off as well. It is important to remember that the officers involved should be seated in the front of the patrol vehicle when returning to headquarters, not in the back seat area.
 - (a) Each involved WPD officer should be given an administrative order not to discuss the incident with other involved officers or WPD members pending further direction from a supervisor.
 - (b) When an involved officer's weapon is taken or left at the scene for other than officer safety reasons (e.g., evidence), ensure that they are provided with a comparable replacement weapon or transported by other officers.

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- (c) It is recommended that once the involved officer(s) have returned to headquarters to await their legal representation, they contact their spouse or significant other to advise them that they had been involved in an incident.
- (d) Once the officer(s) have met with their legal representation, they will go back to the scene with their attorney to conduct a scene walk-through.
- (e) No formal statement will be given to investigators at the time of the incident. Typically formal statements will be given within a couple of days after the incident which will be coordinated by their legal representation and investigators.

305.5.3 NOTIFICATIONS

Discretionary **MODIFIED**

The following persons shall be notified as soon as practicable:

- Chief
- Assistant chiefs/bureau commanders
- Outside agency investigators (if appropriate)
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)
- Involved officer's agency representative (if requested)
- Community affairs administrator
- Division employees (group notification)

Please see #325 Major Incident Notification, Debriefing and After Action Reviews for additional information.

305.5.4 INVOLVED OFFICERS

Best Practice **MODIFIED**

The following shall be considered for the involved officer:

1. Any request for legal or union representation will be accommodated.
 - (a) Involved WPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
 - (b) Requests from involved non-WPD officers should be referred to their employing agency.
2. Discussions with licensed attorneys will be considered privileged as attorney-client communications.
3. Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information.

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Officer-Involved Shootings and Deaths

4. A licensed psychotherapist shall be provided by the Division to each involved WPD officer. A licensed psychotherapist may also be provided to any other affected WPD members, upon request.
 - (a) Interviews with a licensed psychotherapist will be considered privileged.
 - (b) An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
 - (c) A separate fitness-for-duty exam may also be required (see the Fitness for Duty policy).
5. Although the Division will honor the sensitivity of communications with peer counselors, there is no legal privilege to such communications. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved WPD officer may be given reasonable paid administrative leave following an officer-involved shooting or death with the approval of the chief or designee.

305.6 CRIMINAL INVESTIGATION

Best Practice **MODIFIED**

The Division shall utilize an outside agency to conduct an independent criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this agency may be assigned to partner with investigators from outside agencies to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews.

The following shall be considered for the involved officer:

- (a) Division supervisors and command staff personnel should not participate directly in any voluntary interview of WPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- (b) If requested, involved officers will be afforded the opportunity to consult individually with a representative of their choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.

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- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

305.6.1 REPORTS BY INVOLVED DIVISION OFFICERS

Best Practice **MODIFIED**

In the event that suspects remain outstanding or subject to prosecution for related offenses, this agency shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Best Practice **MODIFIED**

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement personnel for the following:

1. Identification of all persons present at the scene and in the immediate area.
 - (a) When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
 - (b) Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, attempts to identify the witness prior to their departure should be made whenever feasible.
2. Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Division.

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- (a) A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
3. Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

305.6.3 INVESTIGATIVE PERSONNEL

Best Practice **MODIFIED**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigation Bureau supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Agency investigators will be assigned to work with those from an outside agency should the investigation be assumed by another agency, and may be assigned to separately handle the investigation of any related crimes not being investigated by the outside agency.

All related agency reports, except administrative and/or privileged reports, will be submitted following normal procedures for supervisory review and approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate bureau commander.

305.6.4 PROSECUTOR'S OFFICE

Agency Content

At the conclusion of the criminal investigation into officer(s)' actions, the case will be forwarded to the county prosecutor's office of jurisdiction for review, regardless of what the investigation concluded. The county prosecutor of jurisdiction will make the final determination if the case will be presented or tried.

305.7 ADMINISTRATIVE INVESTIGATION

Best Practice **MODIFIED**

In addition to all other investigations associated with an officer-involved shooting or death, this agency will conduct an internal administrative investigation of involved officers to determine conformance with agency policy. Any administrative investigation may run concurrent with the criminal investigation. The administrative investigation will be kept separate from any criminal investigation component and should not compel statements from officers under criminal investigation. This investigation will be conducted under the supervision of the assigned assistant chief and will be considered a confidential officer personnel file.

Interviews of members shall be subject to agency policies and applicable laws.

1. Any alcohol/drug screening will be done in accordance with the collective bargaining agreement. Absent consent from the officer, results of any such testing shall not be disclosed to any criminal investigative agency, except as required by law.

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2. If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 - (a) If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of their prior statement before proceeding with any subsequent interviews.
3. At the conclusion of the criminal investigation, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 - (a) Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 - (b) If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative collectively or in groups prior to being interviewed.
 - (c) Administrative interviews should be recorded by the investigator at the request of either party.
 - (d) The officer shall be informed of the nature of the investigation. Prior to taking any compelled statement, the investigator will read the IA Pre-interview Warning to the officer and order them to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally, except as otherwise authorized by law.
 - (e) The assistant chief shall compile all relevant information and reports necessary for the Division to determine compliance with applicable policies.
 - (f) Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
 - (g) Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

305.8 CIVIL LIABILITY RESPONSE

Discretionary **MODIFIED**

A member of this Division may be assigned to work exclusively under the direction of the legal counsel for the Division to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

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All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

305.9 AUDIO AND VIDEO RECORDINGS

Best Practice **MODIFIED**

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or legal counsel, as appropriate.

305.10 DEBRIEFING

Best Practice **MODIFIED**

Following an officer-involved shooting or death, the Division should conduct both a critical incident/stress debriefing and a tactical debriefing.

305.10.1 CRITICAL INCIDENT/STRESS DEBRIEFING

Best Practice **MODIFIED**

A critical incident/stress debriefing should occur as soon as practicable. The bureau commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order (ORC § 2317.02).

Attendance at the debriefing shall only include those members of the Division directly involved in the incident, which can include support personnel (e.g., dispatchers, other non-sworn). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Division, including supervisory and command staff personnel.

305.10.2 DEBRIEFING

Best Practice **MODIFIED**

A debriefing should take place to identify any training or areas of policy that need improvement. The chief or designee should identify the appropriate participants. This debriefing should not be

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conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

305.11 MEDIA RELATIONS

Best Practice **MODIFIED**

Any media release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. Releases will be available to the patrol supervisors, Investigations Bureau commander and the community affairs administrator in the event of inquiries from the media.

Involved officers shall not make comments to the media unless they are authorized by the chief or a bureau commander.

Division members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

All outside inquiries about the incident shall be directed to the designated PIO.

305.12 ADMINISTRATIVE LEAVE

Agency Content

Any officer directly involved in a deadly force incident shall be placed on “administrative leave” immediately upon completion of the preliminary report of the incident.

The assignment to administrative leave shall not be interpreted to imply or indicate the officer has acted improperly.

This leave shall be without loss of pay or benefits, pending the results of the grand jury.

While on administrative leave, the officer shall remain available at all times for official Division interviews and statements regarding the incident, and shall be subject to recall to duty at any time.

The officer shall not discuss the incident with anyone except the grand jury, prosecutor, personnel assigned to the investigation, the officer’s private attorney, the officer’s FOP representative, the officer’s psychologist, the officer’s chosen clergy and the officer’s immediate family.

These actions are designed to benefit the officer, the community and the Division while a thorough investigation is conducted.

305.13 POST INCIDENT TRANSITION AND RETURN TO DUTY

Agency Content

Upon returning to duty, the officer may be assigned to light duty for a period of time as deemed appropriate by the chief with input from healthcare professionals. The officer shall be afforded the opportunity for critical incident stress debriefing or other professional counseling as appropriate. Similar assistance is available for the officer’s immediate family, if necessary.

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The officer will attend at least one session with a contracted vendor who provides psychological services to the Division. This session is mandatory and the costs will be paid for by the Division.

The purpose of this debriefing will be to allow the officer to express their reactions and to deal with the moral, ethical and psychological after-effects of the incident.

The debriefing shall not be related to any Division investigation of the incident and nothing discussed will be reported to the Division. The session(s) will remain protected by the privileged client relationship.

The psychologist must recommend that the officer be allowed to return to work.

Based upon recommendations of the contracted vendor of psychological services and an administrative review of the incident, the chief will make the final decision as to when the officer returns to regular duty.

Post shooting trauma may cause a mental and/or physiological reaction after a fatal or serious injury shooting which is often internalized and results in delayed onset of stress. It is the intention of the Westerville Division of Police to take immediate action after such incidents to provide its employees with access to counseling assistance and to safeguard the good mental health of all affected employees through the following resources:

- **Care 24** (employee assistance program), 1-888-887-4114

An officer is eligible for three (3) Care 24 sessions which are at no cost to the officer. If the officer and the mental health professional agree to continue the sessions, the officer's United Health Care plan allows for an additional twenty (20) no cost mental health sessions. Family members who are covered under the officer's health care plan have the same coverage.

- **Mid-Ohio Critical Incident Stress Management Team (CISM)**, 1-800-367-6524

Chaplain services shall be made available at any employee's request and nothing discussed will be reported to the Division. The discussion will remain protected by the privileged relationship.

In transitioning back to regular duty, officers directly involved in a shooting incident shall be required to re-qualify with their replacement duty weapon as soon as practicable.

305.14 TRAINING

Agency Content

Training as to the administrative and criminal investigative procedures for these types of incidents will be at the discretion of the chief.