



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



2024-1474

Officer Involved Critical Incident - 16100 Van Aken Blvd.,
Shaker Heights, OH

Investigative Activity: Records Received – EDGE Policies
Involves: Eastside Departments Group Enforcement (O)
Activity Date: 05/23/2024
Activity Location: 4055 Highlander Parkway, Richfield, Ohio 44286
Authoring Agent: SA Andrew J. Harasimchuk #170

Narrative:

On May 23, 2024, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) Andrew Harasimchuk (Harasimchuk) received the following policies from the Eastside Departments Group Enforcement (EDGE) which were utilized by EDGE at the time of this incident:

- Use of Deadly Force Policy for Marksman/Observer Teams
- Marksman/Observer Team Policy
- SWAT Team Activation/Call – Out Procedure
- Response to Resistance/Aggression Policy
- EDGE SWAT Officer-Involved Shooting Procedure

The policies have been attached to this report for further review.

References:

None

Attachments:

1. Eastside Departments Group Enforcement (EDGE) Policies

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USE OF DEADLY FORCE POLICY FOR MARKSMAN/OBSERVER TEAMS

Purpose

The purpose of this policy is to provide the members of the EST Marksman Observer TEAM guidance on the use of deadly force in hostage situations where Hostage rescue options have been ordered. This policy is specific for the Marksman Observer TEAMS. The current EST Policy and Procedure Guidelines will be followed for all other use of force incidents.

Policy

The Marksman Observer TEAM members during a hostage situation when necessary to rescue any hostages may utilize deadly force to preserve the life of any hostages or EST Members. They may utilize pre-planned deadly force with prior approval of the Unit Commander to initiate a hostage rescue.

Hostage Rescue Procedure

Whenever possible, reasonable efforts will be made to resolve hostage incidents peacefully and affect the safe release of the hostage(s) and apprehension of the suspect.

Often during hostage situations, suspect(s) have either injured or killed hostages, or threatened to do so. Given the dynamics of a hostage situation, EST Command Personnel cannot fail to respond in the hope that threatened acts won't be carried out.

To effectively manage hostage situations, EST Command Personnel must establish certain priorities concerning human life if hostage rescue capability is to exist. The EST philosophy shall dictate the priority of life as follows:

- Lives of hostages and lives of innocent persons in the area
- Lives of police/rescue personnel
- Lives of suspects/criminals

These priorities are not meant to infer that the life of a suspect is unimportant. It does establish that the lives of hostages and innocent persons will not be put at risk to avoid a deadly force resolution.

Based upon defined priorities of life and the on-going threat to hostages, citizens, and law enforcement personnel, it may become necessary for tactical personnel to resolve the incident through the use of lethal force.

Due to the ever-changing characteristics of a hostage incident, the window of opportunity for this method of resolution to take place may only exist for a matter of seconds. If the policy and procedures are not in place for action to be immediately taken, and the opportunity is lost, it may not re-occur. In this case failure to take decisive action may cost the life of a hostage.

Tactical experts nationwide, as well as the International Chiefs of Police Association and the National Tactical Officers Association, have long supported what has been described as the "open air option." Once specific criteria are met, any TEAM member with the opportunity and capability to resolve the situation with lethal force may, in fact, utilize that option.

Specific criteria:

- Does the suspect have a hostage?
- Does the suspect indicate or state he will kill the hostage(s)?
- Can it be reasonably verified the suspect is armed or has the potential for killing hostages?

If the above criteria are met, the EST Commander can then issue the "Order." The "Order" advises all personnel the open-air option is in effect and they are not required to obtain additional command authorization to utilize lethal force to resolve the incident.

The use of deadly force to prevent serious bodily harm or death to any person (Hostage or EST Members) may be used without any prior command.

The utilization of pre-planned deadly force to initiate a hostage rescue must be ordered. The EST Commander will issue this order with the City's senior on duty officer in charge and the EST Commanders agreement. This decision will be utilized only as a last resort when:

- Negotiations have broken down.
- Killing of the hostage(s) is imminent.
- Hostage taker has a means of carrying out their threat to kill.

When authorized to use deadly force to initiate a hostage rescue the Marksman shall retain the authority to not take the shot.

Review Boards may be required by the city in which the EST Marksman Observer TEAM has been deployed. In the event that a Board of Review is required by that city's Use of Force Policy any member that has been involved in the discharge of a weapon shall be subject to the Board of Review.

In the event that an EST Marksman Observer TEAM uses deadly force within the course of a EST call-out, the Critical Incident Stress Debriefing TEAM (CISD) will be contacted by the Unit Commander or designee.

Participation with the CISD TEAM is voluntary and open to all members of the EST that are present during a deadly force incident.

MARKSMAN/OBSERVER TEAM POLICY

Purpose

The purpose of this policy is to provide members of the Marksman/Observer TEAM with guidelines for their use and deployment.

Policy

The Members assigned to the Marksman/Observer TEAM participate in duties that are police long rifleman/marksman specific. These duties require the members to perform some duties that need specific procedures to ensure unit members safety as well as the effectiveness of the operation. The duties also require TEAM members to maintain or have access to equipment specific to the mission that they are assigned.

Procedures

Composition of the Marksman/Observer TEAM will consist of a TEAM Leader and one qualified Marksman from each city. The Marksman/Observer TEAM is herein after referred to as "TEAM".

TEAM equipment should consist of the following in addition to that specified in EST Personal Uniform and Equipment.

- Scoped rifle capable of 1.0 minute of angle groups @100 yards.
- Match grade ammunition for rifle.
- Case and cleaning kit for rifle.
- Optics, spotting scope, or binoculars.
- Ear protection.
- Date book for rifle.
- Pencil/pen and paper.
- Ground pad or poncho.
- Knife.
- Canteen and food to last without re-supply or relief for up to eight hours.

Incident deployment

Prior to initial deployment, all TEAMS (2-man TEAMS) shall be briefed on the incident and specific rules of engagement.

The Marksman/Observer Commander shall designate a side of the location that the TEAM is requested to have observation on and brief the TEAM. The TEAM will have the discretion of tactics to position themselves in the best obtainable position and location to accomplish their goal.

The individual TEAM shall locate a position that is at a sufficient distance from the location to avoid compromise. They also will be within range to positively identify targets and provide an effective use of lethal force if required.

Once the TEAMS are in position they will advise the Command Post of their exact location. The location of any inner perimeter TEAM members must also be relayed to the TEAMS so that cross fire is avoided.

Methods of target engagement

Protection of Life.

- If a marksman utilizes deadly force, he or his spotter shall immediately notify the Command Post and advise of the known results. This is required for the safety of any hostages and other TEAM Members.

Observation Mission

- Observation and intelligence gathering are the primary role of the TEAM.
- TEAMS shall keep the Command Post advised of any pertinent information that they gather. This will be communicated to the Command Post via radio using brief descriptions as to not tie up the radio. The use of cellular telephone by the Observer is permissible.

SWAT TEAM ACTIVATION/CALL - OUT PROCEDURE

It is the philosophy of the EST that any member department facing a crisis or planned operation that requires additional manpower and/or equipment may request the use of the TEAM at any time.

If the EST is desired, the highest-ranking officer on scene will place the request. Contact will then be made to the EST Commander. If for any reason contact is not made with the EST Commander, then Assistant TEAM Commander should be contacted. If for any reason contact could not be made, the request should be made with the Police Department the EST Commander is employed or the Police Department the Assistant Commander is employed. Notification procedures will be posted at respective EDGE cities dispatch centers by the SWAT Officer in Charge (OIC)/Commander. This service is available 24 hours a day.

Once the request for the EST is received, the appropriate number of SWAT Officers will be determined by the EST Commander or designee dependent on the specific type of incident. Every effort will be made to utilize on-duty personnel first, and then off duty personnel will be notified. The individual SWAT officer will contact each of the member departments OIC and make the appropriate manpower request. The member department OIC will notify the individual SWAT officer to respond accordingly.

Once the notification is completed, TEAM members will respond to the requesting agency's department or other designated location.

It is the individual member's responsibility to notify EST Commander or designee of any planned absence. This includes, but is not limited to the following: vacation, injury, and prolonged illness, work schedule, etc.

If the unit is needed for a planned operation, contact should be made through the TEAM commander. See Special Operations Functions section.

RESPONSE TO RESISTANCE/AGGRESSION POLICY

Purpose

The purpose of this policy is to provide members of the EST with guidance in the use of force in the response to resistance/aggression.

Policy

Members of the EST may affect the arrest of persons to ensure public safety during times the unit has been activated in an incident/situation. The degree of force used, depends upon what the member perceives as reasonable under the circumstances. Further, the member may escalate use of force to overcome either increasing resistance or an increasing danger to the officer's or the public's safety.

General Policy Statement

The 4th Amendment of the U.S. Constitution and U.S. Supreme Court decisions guide the development of the provisions of this policy. The 4th Amendment of the U.S. Constitution states:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In *Graham v. Conner*, the U.S. Supreme Court established that all use of force issues relating to an arrest or seizure are reviewed under the "objective reasonableness" standard of the 4th Amendment of the U.S. Constitution. The Court said: "The 'reasonableness' of 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." (*Graham v. Conner*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed 2d 443 (1989))

In *Tennessee v. Garner*, the U.S. Supreme Court established that deadly force may be used only when the officer has probable cause to believe that such force is necessary to protect him or herself or others from serious bodily harm. The most important circumstance in determining whether an officer's use of deadly force is reasonable is the officer's perception of immediate danger.

(*Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985))

Procedures and regulations concerning less lethal and lethal response are not intended to enlarge an officer's criminal or civil liability in any way.

These rules are to be interpreted in accordance with the objective reasonableness standard, taking into account the particular circumstances faced by a member in a particular situation. Members may encounter unique circumstances requiring reasonable, prudent conduct in apparent contravention of the strict application of these rules. It is also acknowledged that each situation a

member may face is unique. It is not possible to have a specific written policy to cover every eventuality. Application of these rules requires consideration of the dynamics of each incident based on the unique circumstances of that incident.

These rules should not be construed to create a higher standard of safety or care in an evidentiary sense with respect to third party claims.

Definitions

“Control” is a perception based on officer’s training and experience

“Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

“Deadly Force” means any force which carries a substantial risk that it will proximately result in the death of any person.

“Less Lethal force” means any force employed which is neither likely nor intended to cause death or serious physical injury.

"Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

"Substantial Risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

"Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.

"Serious Physical Harm to Persons" means any of the following:

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

"Immediately" is to be construed to mean "as soon as possible and practicable".

"Display of Firearm" shall mean the pointing of a firearm at another person, as contrasted to the drawing and holding of a weapon in a ready position.

"Reasonable Belief" – Facts and circumstances the officer knows, or should know, are such to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Use of Deadly Force

Deadly force may be used in order to:

- Protect the member or others from what is reasonably believed at the time to be a threat of death or serious bodily harm; or,
- Prevent the escape of a fleeing felon whom the member has probable cause to believe will pose a significant threat to human life should escape occur.

Pre-planned deadly force may be employed to stop a subject when the subject presents an immediate threat to the lives of the officers or others.

- The decision to use pre-planned deadly force should be jointly made by the OIC of the EST and the senior officer in charge of the city in which the EST is deployed, whenever feasible.
- The order to use pre-planned deadly force shall only be transmitted by the OIC of the EST and shall be directed to specified marksmen that he shall designate.

Review Boards may be required by the city in which the EST has been deployed. In the event that a Board of Review is required by that city's firearms policy, any member of the EST who has been involved in the discharge of a weapon shall be subject to the Board of Review.

In the event that a member of the EST uses deadly force within the course of a EST call-out, the Critical Incident Stress Debriefing TEAM (CISD) will be contacted by the Unit Commander or designee.

Participation with the CISD TEAM is voluntary and open to all members of the EST present during a deadly force incident.

Use of Force Other Than Deadly

Where deadly force is not reasonable, officers may use only that level of force that is reasonable. Police officers are authorized to use approved non deadly force techniques and issued equipment for resolution of incidents as follows:

- To protect themselves or another from physical harm;

- To restrain or subdue a resistant individual; or to bring an unlawful situation safely and effectively under control.
- If other than deadly force is used by any EST member, a Response to Resistance Report **must** be completed by the Officers using force and submitted to the EST Commander for review.

EDGE SWAT OFFICER-INVOLVED SHOOTING PROCEDURE

EST Officer-Involved Shootings Occurring Within EDGE Jurisdiction

Officer Involved Shooting resulting in injury or death

- Ohio Bureau of Criminal Investigation(BCI) will be asked to conduct the evidence collection and investigation. The agency with jurisdiction will assign an officer to serve as a liaison with BCI

Shots are fired, but no one is injured OR accidental/negligent discharge

- The agency with jurisdiction will conduct the evidence collection and investigation

EDGE SWAT Officer-Involved Shootings Occurring Outside EDGE Jurisdiction

Officer Involved Shooting resulting in injury or death

- Agency with jurisdiction will be notified. EDGE members will follow the protocols in place of the city with jurisdiction

Shots fired, but no one is injured OR accidental/negligent discharge

- The agency with jurisdiction will be notified. EDGE members will follow the protocols in place of the city with jurisdiction. If the agency with jurisdiction fails to respond the community that employs the officer who discharged his weapon will conduct the evidence collection and investigation. If more than one officer discharged their weapon and those officers are from different communities, then a joint investigation of the employing communities will be initiated.

Notifications

The Chief(s) of the agency whom the officer(s) is/are assigned shall be notified directly so that personnel can be assigned for the internal investigation.

The EST Commander or his designee will make notification to all EDGE Chiefs as soon as practical after **any** EST involved shooting.