



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



2024-3775

Officer Involved Critical Incident - 1055 East Avenue,
Akron, Ohio 44307, Summit County

Investigative Activity: Akron PD Use of Force Policy
Involves: Akron Police Department (O)
Activity Date: 12/24/2024
Activity Location: BCI Richfield
Authoring Agent: SA Jonathan Lieber

Narrative:

On Monday, December 23, 2024, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) Jon Lieber received the Use of Force Policy utilized by the Akron Police Department (APD) at the time of this incident. The document received is attached to this investigative report for further review.

References:

None

Attachments:

1. APD P-21-013 UOF Procedure

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CITY OF AKRON, OHIO
POLICE DIVISION
KENNETH R. BALL II, CHIEF OF POLICE

NUMBER P-2021-013	EFFECTIVE DATE January 4, 2021	RESCINDS P-20-013 issued 07-08-2020
SUBJECT Resisting Arrest/Use of Force Procedure		ISSUING AUTHORITY Chief Kenneth R. Ball II

I. POLICY

This policy provides guidelines on the use of force, reporting the use of force, and investigating a use of force incident. When dealing with an angry, agitated, or non-complaint subject, the objective is to utilize de-escalation techniques to calm the individual and obtain voluntary cooperation. However, when officers must use force to defend themselves or others, to prevent a subject's escape, or to overcome a subject's resistance to the officer's efforts to accomplish an arrest or detention, such force shall meet the "objectively reasonable" standard.

II. DEFINITIONS

- A. De-escalation – Using non-confrontational verbal skills, empathy and active listening to stabilize the incident. De-escalation may also incorporate the use of additional time, distance and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force.
- B. Force – Can be physical or nonphysical. Physical force is power exerted by an officer to control, subdue, or restrain another person. Nonphysical force is using an officer's presence or verbal commands to compel another person to do something, e.g. follow a lawful order.
- C. Reportable force – For purposes of this procedure, the following types of physical force require reporting and supervisory investigation: striking, kicking, tackling, taking a person to the ground forcefully, use of a chemical defense spray, use of a conducted electrical weapon, K-9 applications of force, whenever force of any type results in physical injury, and when the suspect complains of physical injury from a use of force.
- D. Deadly force – Any force that carries a substantial risk that it will proximately result in the serious physical injury or death of any person.
- E. Serious physical injury – Injury that carries a substantial risk of death; or physical injury that results in permanent incapacity, partial or total serious disfigurement (whether permanent or temporary), or long-term acute pain or substantial suffering.
- F. Involved Officer – Any officer who applies reportable force to a subject, or directs an officer to apply force to a subject. Any officer who assists in controlling/goes hands-on with a subject whom force has been used upon.

- G. Witness Officer – An officer on the scene where force has been used and only observes the force. If an officer goes hands on or controls a subject whom force has been used upon, they are not a witness officer but an involved officer.
- H. Objectively reasonable force – In determining the necessity for and the appropriate level of force, officers shall evaluate the totality of the circumstances known to the officer, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or is attempting to evade arrest by flight.¹
- I. Active resistance – A suspect's physical motions or movements, physical force, or show of force to counteract an officer's legal attempts to effect an arrest, or verbal hostility coupled with failure to comply with police orders.
- J. Passive resistance – A suspect's nonviolent opposition to an officer's commands that does not involve physical resistance or verbal hostility.

III. PROCEDURE

A. Use of Force – General

1. Officers may only use force when it is reasonably necessary to accomplish lawful objectives, including effecting a lawful arrest or overcoming resistance to a lawful arrest, preventing the escape of an offender, or protecting or defending themselves or others from physical harm.
2. The preservation of human life is of the highest value in the Akron Police Department. Therefore, officers must have an objectively reasonable belief that deadly force is necessary to protect life before the use of deadly force.
3. When responding to resistance, the response must be based on the actions and behaviors of the subject and be reasonable for the situation. Use of force should be discontinued when resistance ceases or when the suspect is under control.
4. Factors to be considered when determining the objective reasonableness of a use of force are:
 - a. The severity of the crime at issue;
 - b. Whether the subject poses an immediate threat to the safety of the officer or others;
 - c. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.

¹ *Graham v. Connor*, 490 U.S. 386 (1989)

B. Use of Force – Less-lethal force

1. An officer may use objectively reasonable less-lethal force to:
 - a. Protect the officer from the immediate threat of physical harm.
 - b. Protect any person(s) from the immediate threat of physical harm.
 - c. Restrain or subdue an individual who is actively resisting or evading arrest or detention:
 - i. Subjects may actively or passively resist the officer's lawful authority.
 - ii. The amount of force that is reasonable will depend upon the subject's actions, and the level of threat he/she presents to the officer or others.
2. Medical or mental health emergencies² – Where a police/citizen encounter does not fit within the *Graham* test because the person in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, an officer may use reasonable force if:
 - a. The person is experiencing a medical emergency that renders the individual incapable of making a rational decision under circumstances that poses an immediate threat of serious harm to the individual or others;
 - b. Some degree of force is necessary to quell the immediate threat; and
 - c. The officer does not use more force than is reasonably necessary under the circumstances.

C. Use of weapons

1. The use of weapons in the application of force must meet the objective reasonableness standard.
2. In certain circumstances, an officer may be forced to use any item or object as a weapon of opportunity or convenience.
 - a. Examples of this include, but are not limited to, cases where an officer cannot access a police weapon because of positioning, lack of time, or the officer has dropped the weapon in a scuffle.
 - b. In such cases, officers are authorized to use such items as a nontraditional weapon, e.g., portable radio, flashlight, a rock, a stick.

² *Hill v. Miracle*, (6th. Cir. 2017)

D. Use of Deadly Force - An officer may use force, up to and including deadly force to:

1. Protect the officer from the immediate threat of serious physical harm or death.
2. Protect any person(s) in immediate danger of serious physical harm or death.
3. Where feasible, the officer gives a verbal warning of the imminent use of deadly force.

E. Violent fleeing subject - An officer may use deadly force to apprehend or to prevent the escape of a violent fleeing subject when the officer has probable cause to believe:

1. The subject has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious physical harm;
2. The subject poses an imminent risk of serious physical harm or death to any person if the subject is not immediately apprehended; and
3. Where feasible, the officer gives a verbal warning of the imminent use of deadly force.³

F. Use of Force to suppress a riot: ⁴

1. An officer is justified in using force, other than deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters;
2. An officer is justified in using force, including deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons.

G. Deadly Force Restrictions

1. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
2. Shooting at or from moving vehicles:
 - a. Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
 - b. The officer has objective reason to believe that the vehicle is operated in a manner intended to strike an officer or another person, and all other reasonable means of

³ [*Tennessee v. Garner* 471 U.S. 1 (1985)]

⁴ (O.R.C. 2917.05)

defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

- c. An officer shall not discharge a firearm from a moving vehicle except in the immediate defense of life when there is no other reasonable alternative course of action.

3. Warning shots are prohibited.

H. Prohibited Acts – Use of Force. Force will not be used:

1. As an investigative tool to threaten or attempt to gain information from a person.
2. Against a person already in custody unless physical resistance must be overcome.
3. As retaliation for physical or verbal abuse.
4. Officers are not permitted to use weapons (e.g. OC Spray, Conducted Electrical Weapons) when the only action encountered is passive resistance (e.g. sit-ins).
5. No police officer shall use any choke hold, strangle hold, or neck hold pursuant to Section 35.17 of the Akron Code of Ordinances.

- I. No duty to retreat - During certain encounters, an officer may choose to retreat in order to de-escalate the situation or to gain a better tactical advantage. However, there is no obligation for an officer to retreat when faced with a threat that may require the officer to use force upon the threatening person(s), i.e., an officer need not retreat simply to avoid using force.
- J. Duty to Intercede – Any officer who observes another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. Officers shall promptly report these observations to a supervisor.

K. Officer's Responsibilities

1. An officer shall notify his or her immediate supervisor as soon as practicable when:
 - a. Any reportable force has been used against a person.
 - b. Any injury or alleged injury occurs to officers or civilians.
 - c. Any damage occurs to police or civilian property.
 - d. Any subject is charged with resisting arrest.
 - e. Any time an officer feels it is necessary.

- f. In the case of an off-duty incident, and the officer is unsure if the incident involved police action under the color of the law, the officer shall notify a supervisor.
- 2. Medical attention shall be provided when:
 - a. There is any visible injury that may require treatment.
 - b. The individual requests medical attention.
 - c. The individual is incapable of communicating his or her well-being.
 - d. The individual becomes unconscious at any time while in the officer's care and control.
 - e. The officer determines based on the circumstances that an individual should be treated.
 - f. As required by the Conducted Electrical Weapon Procedure.
- 3. The officers involved in the incident will make every attempt to locate and identify all witnesses to the incident and obtain contact information if a witness is unable to remain at the scene. This information shall be forwarded to the responding supervisor
- 4. Complete all necessary paperwork.
 - a. All officers involved in a use of force/resisting arrest incident shall complete a Use of Force/Resisting Arrest report in BlueTeam.
 - 1) Officers using force shall articulate the factors perceived that gave rise to the application of force and why they believed the use of force was reasonable under the circumstances.
 - 2) Officers witnessing the incident shall complete a Use of Force Witness Statement form in BlueTeam, documenting the actions they observed from their perspective, including any relevant contributing factors.
 - b. An incident report shall be completed regardless of whether there are accompanying criminal charges to aid in tracking.
 - c. When there is damage to police or civilian property during a use of force/resisting arrest incident, officers shall complete a Lost/Damaged Property Report in BlueTeam.
 - d. When there are accompanying criminal charges, officers must note either in the Field Arrest Summons Form (for offenses not requiring a Report of Investigation) or the Report of Investigation that an investigative package exists to ensure the assigned prosecutor will be aware for discovery purposes.⁵

⁵ *Brady v. Maryland*, 373 U.S. 83 (1963)

L. Investigating Supervisor's Responsibilities

1. Upon being notified/assigned, determine the appropriate response/follow-up:

- a. If an officer has used reportable force against a person, or charges a person with Resisting Arrest, respond to the scene and complete an investigative package in BlueTeam.
- b. If damage to either civilian or police property has occurred during a use of force/resisting arrest incident, ensure it is documented on a BlueTeam Lost, Damaged Property Report.
- c. Some situations may require a supervisor to use his/her best judgment when it comes to determining if a situation meets the definition of a reportable use of force or when it is in all parties' best interest to conduct an investigation. Nothing in this section shall preclude a supervisor from conducting an investigation when he/she believes it to be necessary.

2. Investigative Actions

- a. Once the scene is deemed safe, ensure that any injured persons have received medical attention.
- b. Locate/interview witnesses and the subject of the use of force/resisting arrest. Interviews shall be recorded unless valid circumstances exist, and those circumstances shall be documented in the Supervisor's Resisting Arrest/Use of Force investigation.
- c. Ensure photographs are taken:
 - 1) Of the scene. (This can be helpful for anyone who must review the incident but was not on scene.)
 - 2) Of any person(s) injured, alleging injury.
 - 3) Of any person arrested for resisting arrest and of any person on which force has been used regardless of whether the person was injured.
 - 4) Of any visible injuries sustained by officers.
 - 5) Of any damage to police or civilian property (ensure officers complete a Lost/Damaged Property Report in BlueTeam).
- d. Determine whether any additional relevant information is available, e.g., radio traffic recordings, 911 calls, Body Worn Camera (BWC) videos, other videos, CAD notes, court records.

- e. Ensure that no involved/witness officers participate in the investigative process other than the limited involvement specified in this procedure.
3. Notify the shift commander of use of force/resisting arrest incidents prior to the end of the shift. The shift commander will then document the incident on the Commander's Report for tracking purposes.
 - a. If the supervisor's shift commander is not working, he/she must ensure the incident is documented on the Commander's Report.
 - b. If a subject is hospitalized or dies as a result or probable result of police action, or while in police custody, an on-duty shift commander shall be notified immediately.
 - 1) In the event of a death or serious injury to either the officer(s) involved or the suspect(s), the shift commander shall notify the Chief of Police, or designee.
 - 2) If a suspect is hospitalized with serious injuries or dies, and there is no on-duty shift commander, an off-duty shift commander shall be notified who shall then notify the Chief of Police, or his designee.
4. Complete a Supervisor's Injury Package whenever an officer is injured.
 - a. Ensure officer injury reports and witness statements are completed.
 - b. Complete a Supervisor's Report of Injury.
 - c. Print all reports on green paper.
 - d. Submit as soon as possible to the Services Sub-Division.
5. Blue Team Investigative packages shall include:
 - a. A Supervisor's Use of Force/Resisting Arrest investigation that documents:
 - 1) All investigative actions.
 - 2) Any allegations made by witnesses/suspects and how resolved.
 - 3) An assessment of statements made by officers, witnesses, and suspects (e.g., comparing/contrasting the various statements, noting other information that supports or contradicts statements made). Nothing in this procedure precludes the investigating supervisor from interviewing involved officers/witness officers if deemed necessary (in accordance with Article VII of the Collective Bargaining Agreement).
 - 4) Any injuries/alleged injuries.
 - 5) Whether medical treatment was provided or refused.

- 6) Whether the incident was captured on BWC, including the use of the audio recording feature. If not, the reason must be noted.
 - 7) Assessment of contributing factors/circumstances in relation to objective reasonableness standard.
- b. Any audio/video recordings, including BWC downloads.
 - c. Photographs.
 - d. CAD printout.
 - e. Officers' Use of Force/Resisting Arrest BlueTeam reports, Incident Reports, arrest paperwork, and any other relevant paperwork.
 - f. All supporting documents and media must be attached to the BlueTeam report.
6. Forward the completed investigation in BlueTeam to the shift/unit commander for review.
 7. The shift commander will forward the completed package in BlueTeam to the Office of Professional Standards and Accountability within 30 days of the date of occurrence. If extenuating circumstances exist that prevent an investigative package from reaching the Patrol Operations Office within 30 days, an extension may be requested through the subdivision commander.

M. Investigative Package Review Process

1. The shift/unit commander shall review the investigative package and ensure that it contains the required components.
2. The shift/unit commander shall then forward the investigative package to the Office of Professional Standards and Accountability for further review.
3. If an investigation is returned for additions or clarifications, the investigating supervisor will then have 14 days to address the issues and return the investigative package to the Office of Professional Standards and Accountability.

N. Supervisor Response Contingencies

1. In the event a Patrol officer's immediate supervisor is unavailable, a supervisor assigned to the officer's shift shall be assigned to respond to the scene, if supervisor response is required.
 - a. If no shift supervisors are available, an on-duty Patrol supervisor shall be assigned to complete the preliminary investigation (e.g., witness statements, photos). That supervisor will then forward the results of the preliminary investigation to the shift commander of the involved officer for assignment and completion.

- b. In all cases where a shift supervisor is unavailable, the shift's Commander's Report will indicate the reason why no shift supervisor responded.
 2. In the event the incident involves Investigative or Services personnel and requires supervisor response to the scene, a Patrol supervisor will be dispatched and will initiate the investigation until a supervisor from the officer's unit responds to the scene.
 - a. If no supervisor is available from the officer's unit to respond in a reasonable amount of time, or if the assignment of a supervisor would jeopardize a police operation, the Patrol supervisor will be responsible for the preliminary investigation. That supervisor will then forward the results of the preliminary investigation to the unit commander of the involved officer for assignment and completion.
 - b. In all cases where an officer's unit supervisor is unavailable, the unit's Commander's Report will indicate the reason why no unit supervisor responded.
 3. In the event a supervisor is involved in a use of force, a supervisor of higher rank shall be responsible for conducting the investigation.
 - a. Under no circumstance shall a direct subordinate of the supervisor conduct the investigation.
 - b. If a supervisor of higher rank is not available, a supervisor of equal rank or a lower level, non-subordinate supervisor may conduct the preliminary investigation in the field. That supervisor will then forward the results of the preliminary investigation to a higher ranking supervisor in the involved supervisor's chain of command for completion.
 - c. Any supervisor involved in, or witness to, a use of force shall not conduct any part of the investigation with the exception of locating witnesses and obtaining contact information for any witness unable to remain at the scene.
 4. Secondary Employment Incidents
 - a. Shall be investigated by a supervisor working in a supervisory capacity for that secondary employer. If there is no supervisor working in that capacity at the secondary employment, or the supervisor was involved in or witnessed the incident then;
 - b. A supervisor working at the secondary employment in a nonsupervisory capacity shall conduct the investigation. If there is no supervisor working at the secondary employment, or the supervisor was involved in or witnessed the incident then;
 - c. The involved officer/supervisor shall contact the Communications Center and request that a supervisor respond to the scene (if supervisor response is required). An on-duty Patrol supervisor will be dispatched and shall be responsible for completing an investigative package.

5. Off-duty incidents shall be investigated by an on-duty Patrol supervisor.
- O. Review and Testing – Sworn Agency personnel shall complete an annual review of this procedure and annual proficiency testing over the content to ensure awareness of departmental requirements. Review and testing may be conducted during roll calls.

By Order Of,



Kenneth R. Ball II
Chief of Police

Date JAN 4, 2021