

ERIE COUNTY SHERIFF'S OFFICE POLICIES AND PROCEDURES

20.02 RESPONSE TO RESISTANCE/AGGRESSION

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20.02 RESPONSE TO RESISTANCE/AGGRESSION POLICY

The Erie County Sheriff's Office acknowledges its authority and responsibility to enforce criminal statutes, traffic statutes, court orders, and to properly operate and manage the Erie County Jail. The inherent risk to the safety of this agency's employees in exercising this authority and carrying out these responsibilities is also acknowledged. The intent of this policy is to establish procedures and guidelines for responding to the actions of those who would, by force or otherwise, endanger this agency's employees or members of the general public while at the same time complying with state and federal statutes and court decisions.

POLICY STATEMENT TO COMPLY WITH THE "STATE OF OHIO STANDARD FOR "USE OF FORCE"

"Employees may only use the force which is reasonably necessary to affect lawful objectives including: affecting 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."

POLICY STATEMENT TO COMPLY WITH THE "STATE OF OHIO STANDARD FOR "USE OF DEADLY FORCE"

"The preservation of human life is of the highest value in the State of Ohio. Therefore, employees must have an objectively reasonable belief deadly force is necessary to protect life before the use of deadly force. Deadly force may be used only under the following circumstances:

1. To defend themselves from serious physical injury or death; or
2. To defend another person from serious physical injury or death; or
3. In accordance with U.S. and Ohio Supreme Court decisions, specifically, *Tennessee v. Garner* and *Graham v. Connor*."

EMPLOYEE – The Sheriff, a deputy sheriff, or a corrections officer, or any other member of the Erie County Sheriff's Office who may be required to respond to the resistance or aggression of another.

FORCE – Any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing. (ORC section 2901. (A)(1)).

RESPONSE – When an employee uses force in response to a subject's resistive and/or aggressive actions.

DEADLY FORCE – Any force that carries a substantial risk that it will approximately result in the death of any persons (ORC Section 2901.02(A)(2)). As used in this policy, "deadly force" is defined as that force which is intended to cause death or serious injury, or which is intended to cause death or serious injury, or which creates some degree of risk that a reasonable and prudent employee would consider likely to cause death or serious injury.

DEADLY RESPONSE – When an employee uses deadly force in response to a subject's life-threatening action.

PHYSICAL HARM TO PERSONS – Any injury, illness or other physiological impairment, regardless of its gravity or duration (ORC Section 2901.01(A)(3)).

SERIOUS PHYSICAL HARM – Any physical harm which 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 (ORC Section 2901.01 (A)(5)).

JEOPARDY – Hazard, danger, or peril.

IMMINENT JEOPARDY – Immediate hazard, danger, or peril.

PRECLUSION – To make impossible by necessary consequences, rule out in advance, or exclude.

REASONABLE BELIEF – Facts or circumstances that an officer knows, or should know, that would cause an ordinary and prudent employee to act or think in a similar way under similar circumstances.

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LESS LETHAL IMPACT PROJECTILES – Those munitions, which can be fire, launched, or otherwise propelled for the purpose of encouraging compliance, overcoming resistance, or preventing serious injury without posing a significant potential for causing death. Examples of less lethal projectiles include beanbags, launchable wooden, foam, or rubber batons, rubber pellets, and other like item.

PPC – Pressure point control techniques.

ELECTRICAL DEVICES – Include “stun guns” and Taser devices that may be utilized to introduce electrical current into the human body; either by direct contact with the device or the launching of darts or similar objects from the device into the human body, the electrical current then being transmitted through these darts into the body.

RESPONDING TO RESISTANCE/AGGRESSION

Employees should be objective when responding to resistance/aggression. Employees will respond in accordance with the objective reasonableness standard as outlined in *Graham v. Connor* (490 U.S. 386, 109 S. Ct. 1865).

The type of response used shall be based upon the principles of the Action-Response Continuum (hereafter referred to as ARC), which is incorporated into this policy as Appendix A. The type of response shall be determined by the actions of the involved subject and the environment in which the subject is encountered. The ARC provides employees with a graphic reasonableness guideline follow in applications of response.

Generally accepted methods of response are identified in the model, with the levels of response corresponding to levels of offender resistance or aggression.

STANDARDS OF ARC APPLICATIONS

In applying techniques to gain legal compliance from subjects, employees will be held accountable to articulate the need to respond based on the elements of jeopardy (which include ability, opportunity, and intent) and preclusion.

ABILITY

Non-deadly response standard: Does the subject possess the capacity to resist the employee or to cause physical harm to the employee and/or a third party?

Deadly response standard: Does the subject possess the capacity to kill the employee and/or a third party, or to cause the employee and/or a third party serious physical harm?

OPPORTUNITY

Non-deadly response standard: Does the subject have the opportunity to resist the employee or to cause the employee and/or a third party physical harm?

Deadly response standard: Does the subject have the opportunity to kill the employee and/or a third party, or to cause the employee or a third party serious physical harm?

INTENT

Non-deadly response standard: Has the subject demonstrated the intent to resist the employee or to cause the employee or a third party physical harm?

Deadly response standard: Has the subject demonstrated the intent to kill the employee and/or a third party, or to cause the employee or a third party serious physical harm?

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PRECLUSION

Both non-deadly and deadly response standards: Have all reasonable options at that time, at that place, and under those circumstances been reasonably exhausted?

USE OF FORCE AGAINST PERSONS EXPERIENCING MEDICAL EMERGENCIES

Employees are authorized to use force which is objectively reasonable to control an individual who is experiencing a medical emergency and who is actively resisting necessary medical treatment. The following questions must be considered when determining whether force should be used, and whether that force is objectively reasonable:

1. Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
2. Was some degree of force reasonably necessary to ameliorate the immediate threat?
3. Was the force used more than reasonably necessary under the circumstances (i.e.: was it excessive)?

If the answer to the first and second questions is “Yes,” and the answer to the third question is “No,” then an employee will be found to have been objectively reasonable in using force against an individual experiencing a medical emergency and not charged with a criminal offense. (*Estate of Corey Hill v. Miracle; United States Court of Appeals, 6th Circuit; No. 16-1818*).

AN EMPLOYEE IS REASONABLE IN USING DEADLY FORCE WHEN HE/SHE:

1. Confronts an armed subject
2. In close proximity
3. Whose actions indicate intent to attack

In these circumstances the courts, cannot ask an officer to hold fore in order to ascertain whether the subject will, in fact, injure or murder the officer. (See *Martinez v. County of Los Angeles*, 47 Cal. APP 4th 334 1996).

RESPONSE TO RESISTANCE/AGGRESSION IN DEFENSE OF HUMAN LIFE

An employee may employ a deadly response when he or she has a reasonable belief that he or she, or another, is in imminent danger of death or serious physical harm, based upon the totality of the circumstances known to the employee at the time. ([See FindLaw | Cases and Codes: Tennessee v. Garner, 471 U.S. 1 \(1985\)](#)).

USE OF DEADLY FORCE TO APPREHEND A FLEEING FELON

An employee may employ a deadly response to stop a fleeing suspect if the employee has probable cause to believe **all** of the following (emphasis added):

1. The suspect has committed a felony; and
2. The force is necessary to prevent the escape of the suspect; and
3. The suspect poses a significant threat of death or serious physical harm to the employee or others should arrest be delayed; and
4. A warning to stop is given, if feasible.

PROHIBITED USES OF DEADLY RESPONSE

Deadly force **may not** be used in the following situations, except as specifically authorized previously in this policy.

1. To shoot at or from a moving vehicle, unless the guidelines in *Tennessee v. Garner*, 471 U.S. 1 (1985) have been met and the danger to the employee or others of not shooting is greater than the danger of shooting; or

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2. Solely because a subject fails to stop for a blockade or roadblock, or fails to obey a command to stop; or
3. For the purpose of firing a warning shot or shots. However, it is understood that in a worst-case scenario, the use of tactical shots, cover or suppressive fire may be necessary to protect the lives of employees or others. These tactics should be used when other options are not reasonable, and only to stop serious physical harm assaults, or to prevent offenders from initiating a serious physical harm assault.

RENDERING APPROPRIATE MEDICAL AID

- A. Whenever a response results in injury, appropriate medical aid will be administered.
- B. Responses require the use of emergency medical services
 1. Once the situation has been stabilized, the injured person will be treated, and if necessary, the appropriate emergency medical service will be requested to treat that person.
 2. If an arrested person has been injured as the result of use of force by an employee, that person will be kept under constant guard by this agency until released from custody.
 3. Whenever OC spray is used, the affected person will be moved to fresh air as soon as the circumstances permit, and if possible his or her eyes and skin will be flushed with water to provide more rapid decontamination.

REPORTING REQUIREMENT

Detailed reports will be completed in all instances of responses, beginning at the blue level of the ARC continuum. All injuries sustained by employees and/or subjects will be photographed. Reports will be completed as soon as practical by the involved employee(s). The report will include the following, in chronological order:

1. Employee's observations upon arrival at the scene or upon first becoming aware of the situation;
2. Initial contact with the subject – attempt to use direct, complete quotes;
3. Subject action – verbal, non-verbal, physical actions, aggression, resistance or other;
 4. Officer response to subject's actions – method(s) of control: de- escalation, methods used, duration of incident, and handcuffing method used.
5. Follow-up medical treatment for the subject and/or employee.
6. Identification of, and statements from, any witnesses to the incident.

Any Employee involved in an incident during which a reportable response to resistance did not involve death or serious physical harm to either the employee or subject will complete a report as outlined above and will ensure that the employee's supervisor is notified as soon as possible.

Any Employee involved in an incident during which a reportable response to resistance involved death or serious physical harm to either the employee or subject, or involved the discharge of a firearm, will—if possible—immediately ensure that the employee's immediate supervisor is notified. If that employee is unable to make the required notification due to physical injuries, or if the employee involved is the supervisor, any and all other employee(s) who become aware of the situation are equally responsible to make that notification. Upon receiving that notification, the supervisor will immediately ensure that the Sheriff and the Chief Deputy Sheriff are notified of the incident. If the supervisor is unable to make those notifications, any and all other employee(s) who become aware of the situation are equally responsible to ensure those notification are made

INVESTIGATIVE REQUIREMENTS

The Sheriff and/or Chief Deputy Sheriff will ensure that sufficient supervisory and investigative employees respond to the scene of any incident that involves response to resistance that resulted in death or serious physical harm.

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A criminal investigation will begin immediately, and the Sheriff—at his/her discretion—may make a mutual aid request for that investigation to be conducted by an outside agency, such as another Sheriff's Office.

Employees are hereby notified that criminal liability may attach to their actions at any time, including in situations in which response to resistance has resulted in serious physical harm and/or death. For that reason, employees who are directly involved in an incident that results in the commencement of a criminal investigation, may be immediately placed on paid administrative leave; they may be immediately removed from the scene of the incident; they will be allowed time to reflect on their actions and to speak with an attorney of their choosing if they desire prior to participating in any criminal proceeding; and they are not required to submit to an interview conducted as part of the criminal investigation and may assert their rights under the Fifth Amendment of the United States Constitution if they so choose.

Employees are also hereby notified that internal investigations may be instituted at any time to ensure that agency policies and/or procedures were followed during a response to resistance incident. Internal affairs investigations will be separated and distinct from any parallel criminal investigation being conducted into the same incident. Prior to an interview scheduled on conjunction with an internal investigation, the employee being interviewed will be advised of the Garrity and Piper warnings. Employees are reminded that, during an internal investigation interview, they are required to provide truthful information and are not afforded self-incrimination protections under the Fifth Amendment to the United States Constitution.

REVIEW OF INCIDENTS TO ENSURE POLICY COMPLIANCE

All response to resistance events involving serious physical harm or death will be reviewed for policy compliance by the Sheriff and/or the Chief Deputy Sheriff. All response to resistance events other than those involving serious physical harm or death will be reviewed for policy compliance by the employee's immediate supervisor and/or the Chief Deputy Sheriff and/or the Sheriff.

After such review(s) an internal investigation will be undertaken if there is reasonable cause to believe that this policy, or any other agency policy, was violated by any employee during the incident in question.

The Sheriff—at his/her discretion—may seek an outside agency to conduct an independent internal investigation into allegations of violations of this policy. Employees being investigated by that outside agency will cooperate with that investigation in the same manner as if the investigation was being conducted by the Sheriff's Office.

TRAINING

All employees will be issued a copy of this policy (either paper or electronically) immediately upon the commencement of their employment with the agency.

No less than every twelve (12) months, employees will be trained and tested on this policy.

Documentation of annual training and successful completion of training will be filed in each employees personnel file.