

**DAYTON POLICE DEPARTMENT
GENERAL ORDER
RESPONSE TO CITIZEN RESISTANCE/
NON-COMPLIANCE**



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POLICY STATEMENT

Police officers are authorized to use reasonable force in response to citizen resistance/aggression/non-compliance when necessary to protect life, property and to maintain order. The responsible exercise of this authority is among the most critical aspects of law enforcement. Excessive or unjustified force in response to resistance/aggression/non-compliance undermines community confidence in the department and its officers and will not be tolerated. Ultimately, it may subject the officer, the department and the city to criminal and/or civil liability.

Police Officers will encounter circumstances, which require a response to resistance/aggression/non-compliance in the enforcement process. It is the policy of this department that any response to resistance/aggression/non-compliance will only be used to overcome resistance or stop aggression, and then only that amount of force which is necessary to overcome that resistance. Officers will respond to resistance or aggression in accordance with the objective reasonableness standard outlined in the Supreme Court case of *Graham v. Conner* 490 U.S. 386, 109 S. Ct. 1865.

Because of the impact that incidents involving the use of force in response to resistance/aggression/non-compliance have on the department and the community, it is important that all incidents be promptly and completely documented, and fairly and accurately investigated. Thorough documentation and investigation is necessary to protect the rights of the public, the officer, and the interests of the department and the city.

The Police Department has endorsed the use of Non-Lethal Chemical Agents, TASER and Non-Lethal Munitions to assist officers in handling violent or non-compliant suspects. Research and experience have shown those agents to be a viable and useful tool for officers in overcoming resistance or stopping aggression. Responsible use of chemical agents and TASERs can greatly reduce the risk of serious injury to both officers and suspects.

Officers may be required due to rapidly evolving situations and exigent circumstances to use non-traditional tools or means as force response options. This response will be in accordance with the objective reasonableness standard outlined in the Supreme Court case of *Graham v. Conner* 490 U.S. 386, 109 S. Ct. 1865 and the guidelines set forth in the Supreme Court case of *Tennessee v. Garner*, 471 U.S. 1 (1985).

Every incident will be reviewed on a case-by-case basis to determine the reasonableness of the officer's response.

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I. DEFINITIONS

- A. **AGGRESSION** - the behavior of a subject to exert himself so as to counteract or defeat an officer's commands.
- B. **COMPLIANT** - the subject is cooperative and voluntarily follows verbal commands.
- C. **NON-VIOLENT PASSIVE RESISTANCE** - a method of protest commonly used during nonviolent demonstrations where a subject does not respond to an officer's commands, refuses to move, becomes limp or dead weight (i.e., nonviolent protests against government entities, abortions clinics).
- D. **NON-COMPLIANT** - when placed under or being informed of their arrests, the subject refuses to cooperate and does not respond to verbal commands, but takes no verbal/physical actions against an officer.



- E. **ACTIVE RESISTANCE** - the subject actively resists arrest through their words and/or actions or takes aggressive action against an officer.
- F. **RESPONSE** - means physical power or compulsion used to affect the behavior of a subject. Physical power is any physical control technique used to coerce or restrain a subject. Compulsion includes the officer's presence and verbal commands that are used to influence the behavior of a subject.
- G. **NON-DEADLY RESPONSE** - means any response that is neither likely nor intended to cause death or serious injury.
- H. **NON-LETHAL WEAPONS** - are weapons that are used in a manner not intended to cause death or serious injury.
- I. **DEADLY/LETHAL OPTIONS** - means any response, which creates a substantial risk that it will proximately result in the death of any person.
- J. **SERIOUS PHYSICAL HARM** - means any physical harm that: carries a substantial risk of death, permanent partial or total incapacity; involves some temporary, substantial incapacity; involves some permanent or serious temporary disfigurement; involves acute pain of such duration as to result in substantial suffering; involves any degree of prolonged or unmanageable pain; or that involves any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment.
- K. **OBJECTIVELY REASONABLE RESPONSE** - means the level of response that is within the bounds of what an ordinary and prudent officer would use in a similar way under similar circumstances as outlined in the Supreme Court case of *Graham v. Conner* 490 U.S. 386, 109 S. Ct. 1865 and the guidelines set forth in the Supreme Court case of *Tennessee v. Garner*, 471 U.S. 1 (1985).
- L. **IN-CUSTODY DEATH** - The death of an individual while in custody or while attempts to effect custody are being made.
- M. **ACCIDENTAL DISCHARGE** - any unintentional discharge of an officer's firearm.

II. POLICE RESPONSE TO *CITIZEN RESISTANCE/AGGRESSION/NON-COMPLIANCE* (RTAR) REQUIRING INVESTIGATION AND DOCUMENTATION

For the purpose of this policy, reportable Police responses to citizen resistance/aggression/non-compliance include the following:

A. FIREARMS

Anytime an officer discharges a firearm at another person, regardless of whether that person is struck by the projectile, and regardless of whether the officer is on or off duty.

1. Except as specified in Section II. (A.)(3.), investigations of discharges involving firearms will be reported and investigated as directed in General Orders 3.03-5 Officer Involved Shooting and 3.03-6 Firearms Discharges Involving Animals.
 - a. Regardless of the crime or the legal justification for a deadly force response towards a suspected offender, officers are reminded that their basic responsibility is to protect the public. Officers are to be particularly cautious when discharging their firearm under conditions that would subject innocent bystanders to substantial danger.
 - b. Officers will not discharge firearms except in the following circumstances, and then, ONLY AFTER ALL REASONABLE ALTERNATIVES HAVE BEEN EXHAUSTED, including verbal warnings where feasible:
 - (1) When it becomes **absolutely** necessary to protect themselves or other persons from death or serious physical harm.



- (2) To arrest a suspect who has committed a **serious felony, involving the infliction or threatened infliction of serious physical harm**, or to prevent the escape of such a felony suspect, or to recapture such a felon while he/she is attempting to escape when a substantial risk exists that a person sought will cause death or great bodily harm to others if apprehension is delayed. An officer must have **witnessed the crime or firmly believe and be convinced** that the suspect has committed a serious felony for which the use of deadly force is permissible.
 - (3) An officer will not discharge firearms from or at a moving vehicle unless they reasonably believe that such an action is in defense of human life.
 - Officers must use tactical positioning of vehicles and tactical vehicle approaches in order to minimize the danger presented by occupied vehicles.
 - Officers must not deliberately place themselves in the path of a moving vehicle. An officer will attempt to move from the path of the motor vehicle and/or seek cover when possible.
 - (4) To kill a **dangerous animal** or one so badly injured that humaneness requires an immediate end to its suffering.
 - (5) During target practice at an approved target range.
- c. FIREARMS WILL NEVER BE DISCHARGED AS WARNING SHOTS.
- d. Discharge of a shotgun or other weapon for the delivery of **Non-Lethal** munitions by a department member who has been trained and certified in their use by the Commander of the S.W.A.T. Team or the Range Staff and specifically authorized to deploy such weapons by the Chief of Police will be investigated as a Response to Aggression/Resistance incident.

2. ACCIDENTAL DISCHARGE OF FIREARMS

a. ON-DUTY OFFICER'S RESPONSIBILITIES

- (1) Whenever an on-duty officer accidentally discharges a firearm, or becomes aware of allegations that they have accidentally discharged a firearm, they must immediately notify an on-duty supervisor. In the event that a supervisory officer is involved in a use of firearms incident, a supervisor of higher rank will be notified of the incident.
- (2) In addition to any other reports submitted relating to the incident, the officer involved in the firearms discharge incident will complete a Special Report or other statement as directed by a supervisor or Professional Standards. That report will contain all information pertinent to the incident, including the names of all known witnesses to the incident. The report will be completed as soon as possible and not later than completion of the officer's tour of duty.
- (3) Any on-duty officer who witnesses or has knowledge of a discharge of firearms by another officer or becomes aware of allegations of discharge of firearms by another officer will immediately ensure that an on-duty supervisor is aware of the incident.

b. OFF-DUTY OFFICERS' RESPONSIBILITIES

- (1) Whenever an off-duty officer accidentally discharges a firearm, or becomes aware of allegations that they have accidentally discharged a firearm under those circumstances, they must notify the Regional Dispatch Center (RDC) of the incident as soon as possible and also request contact with an on-duty supervisor.
 - (a) If the incident occurred in the City of Dayton, an appropriate supervisor will be notified by the RDC and will respond to the scene to investigate the incident.



- (b) If the incident occurred outside the corporate limits of the City of Dayton, the off-duty officer must contact an on-duty supervisor. The supervisor will contact the officer and determine the facts of the incident. The supervisor will then notify the Command Staff to determine notification of the outside jurisdiction and further investigation.
 - (2) The involved officer(s) will completely and accurately report the details of the incident to the investigating supervisor.
 - (3) The officer should request that copies of any reports completed by any responding local police agency be forwarded to the investigating supervisor.
 - (4) The officer(s) involved in the incident will complete a Special Report as soon as possible and not more than 24 hours after the incident occurred. In the event the officer will be out of the city for a period of time on pre-approved leave or business travel, the report will be submitted within 24 hours of the officer's return to the city.
- c. The minimum disciplinary action for an accidental discharge of a firearm at a location other than the Training Academy range will be a Written Reprimand. The Chief of Police and/or their designee has the option of accepting the Written Reprimand or ordering the Use of Firearms Review Committee to convene for further investigation and recommendation.
 - d. If the accidental discharge occurs at the Training Academy range, an investigation will be completed and recommendations made dependent upon the severity of the incident. The Chief of Police and/or their designee has the option of accepting the recommendation of the investigating supervisor or ordering the Use of Firearms Review Committee to convene for further investigation and recommendation.

B. NON-LETHAL

Discharge of a shotgun or other weapon for the delivery of **Non-Lethal** munitions by a department member who has been trained and certified in their use by the Commander of the S.W.A.T. Team and/or range staff and specifically authorized to deploy such weapons by the Chief of Police will be investigated as an *RESPONSE TO CITIZEN RESISTANCE/AGGRESSION/NON-COMPLIANCE* incident. The use of **Non-Lethal** weapons will be consistent with the training received.

1. The use of **Non-Lethal** munitions is placed at the high intermediate level of the action-response continuum, akin to an extension of the impact weapon allowing extra distance between the officer and the individual. Their use will almost certainly result in injuries. As with any impact weapon, the potential exists for serious physical harm or death to result from its use or misuse.
2. Officers deploying **Non-Lethal** munitions may respond to resistance or aggression in accordance with the objective reasonableness standard and in compliance with applicable state law, department policies and training, as determined by the actions of the individual, the environment in which the individual is encountered and the totality of the circumstances.
3. It is the individual officer's responsibility to inspect the ammunition to ensure that **Non-Lethal** ammunition is in or carried with the **Non-Lethal** shotgun or other weapon prior to use.
4. Officers deploying Non-lethal munitions will communicate over the radio to on scene personnel, "**I have Non-Lethal, I have Non-Lethal, I have Non-Lethal**".
5. A cover officer armed with a lethal weapon must always remain with the officer using a **Non-Lethal** weapon.
6. Spent munitions and shell casings will be collected and tagged into the property room as evidence.
7. The following is a non-exclusive list of circumstances that may require the use of **Non-Lethal** munitions:
 - a. To subdue an actively hostile individual who has resisted other control means.



- b. To de-escalate a dangerous individual or situation to protect officers or others from harm, including an individual from serious self-inflicted injury.
- c. Individuals armed with blunt or edged weapons.
- d. Violent and/or combative, intoxicated or mentally disturbed individuals.
- e. Selective intervention in crowd control situations.
 - (1) To be employed only upon decision from the on-scene commander, preferably in consultation with the S.W.A.T. Commander.
 - (2) It is to be used only against individuals or small groups specifically identified as agitators or leaders and preferably by S.W.A.T. Team members only.
 - (3) Supervisors must authorize deploying Non-Lethal munitions ("beanbag" shotguns, 40mm foam rounds, Pepperball launchers) into a crowd. A verbal warning must be given unless it would present a danger to police officers or others to give such a warning.

Any deployment of the "beanbag" shotgun (Patrol Operations or SWAT Personnel), 40mm foam round, or PepperBall launcher (SWAT Personnel only) during crowd management/control requires:

- Specific targeting of a subject by the officer.
- Under no circumstances should any of these devices be deployed into a crowd without first identifying a specific target that represents an imminent risk of death or physical injury to the officer or others.
- The officer must be reasonably sure that the weapons will not strike other individuals in the crowd who pose no threat of violence.

C. ON DUTY NON-FIREARMS

Anytime an on-duty officer knowingly strikes, injures or uses Oleoresin Capsicum (OC Spray) or the TASER X-26 on another person.

1. The unmitigated or indiscriminate striking of an individual in the head with any flashlight, baton, or related safety equipment carried by any officer, is strictly prohibited.
 - Fist to face contact should be avoided due to the likelihood of incurring a cut/laceration and subsequent exposure to body fluids/infectious disease.
2. **OLEORESIN CAPSICUM (OC Spray)**

Dayton police officers that have been trained and certified by the Dayton Police Academy are authorized to carry and use Oleoresin Capsicum (OC Spray). The use of all other chemical agents is restricted to specially trained and authorized personnel and members of the S.W.A.T. Team.

- a. The following is a non-exclusive list of when the use of OC Spray is appropriate:
 - To subdue individuals engaged in active resistance who have ignored verbal commands and are being arrested.
 - When physical control techniques are warranted (physical resistance).
 - When officer injury is possible and/or anticipated.
 - OC may be used on animals when officers would be justified in shooting an attacking animal.
- b. Unless a substantial risk of injury and/or property damage exists, officers are not to use OC spray on a handcuffed person.



- c. Officers in a situation where use of OC spray is anticipated, will, if circumstances permit, verbally warn the individual they will be sprayed if they do not cease their actions.
- d. OC use is appropriate only to the extent needed to bring an individual under control/arrest.
- e. Replacement OC spray canisters can be obtained from the Academy during normal business hours, officers will be required to complete Form F-521 for replacement.

3. **TASER X-26**

Dayton police officers that have been trained and certified by the Dayton Police Academy are authorized to carry and use the TASER X-26.

- a. The following is a non-exclusive list of when the use of the TASER X-26 is appropriate:
 - To subdue individuals engaged in active resistance who have ignored verbal commands and are being arrested.
 - When physical control techniques are warranted (physical resistance).
 - When officer injury is possible and/or anticipated.
 - Persons who have expressed the intent and have the means to commit suicide.
- b. Officers deploying a TASER will communicate their deployment to other on scene personnel if the situation permits.
- c. Except in extreme circumstances, officers should not use the TASER when it is reasonable to believe that incapacitation of the person may result in serious injury or death due to their physical location (i.e. on a ladder, roof, bridge, or in water more than several inches deep or deployment from a moving vehicle).
- d. Other unapproved uses:
 - (1) Against young children, pregnant women (known pregnancy), and elderly,
 - (2) Against persons who are contaminated with flammable liquids,
 - (3) Against persons that are operating a motor vehicle,
 - (4) Against anyone as a means of punishment,
 - (5) In horseplay of any kind.

Subsections (1), (2) and (3) may not apply if the use of the TASER can be justified as a means to reduce the chance of a higher level of response.

- e. TASER use is appropriate only to the extent needed to bring an individual under control/arrest. If, after a single application of the TASER, an officer is still unable to gain control of an individual, the officer should consider whether or not the TASER is making proper contact, whether the TASER is limiting the person's ability to comply, or if other tactics may be more appropriate or effective.

Except in extreme circumstances, after three (3) consecutive discharges, the officer will employ a different response tactic to bring the individual under control/arrest.

- f. Except in extreme circumstances, only one (1) officer at a time should discharge their TASER at a person. If more than one TASER is unholstered for potential use, officers should communicate with each other in order to avoid multiple or unintended discharges of other TASERs.
 - If practical, officers assisting the TASER operator will attempt to gain physical control of the individual while the TASER is being activated or immediately thereafter.
- g. Unless a substantial risk of injury and/or property damage exists, officers are not to use the TASER on a handcuffed person.



- h. Officers in a situation where use of the TASER is anticipated, will, if circumstances permit, verbally warn the individual to cease their actions.
- i. The TASER also has the ability to be used as a stun gun after the probe cartridge has been deployed or if the probe cartridge is removed.
- j. Discharges involving a suspect will be documented by the sergeant investigating the discharge.
 - (1) For any discharges where a suspect was struck with a probe or the TASER in stun mode, the report must be documented in a *BlueTeam Internal Investigation Incident Report (BTR)*.
 - (2) The investigation must include a description of any injuries - both initial and secondary and the circumstances surrounding the use of the TASER.
 - (3) For incidents where the TASER was deployed and missed the intended suspect and no other response occurred, the officer "Presented an *arc*" to gain compliance and no other response occurred or, the TASER was used on an animal, then the TASER use is to be documented in a *BlueTeam Internal Complaint Report*.
 - Supervisors will provide the officer with a copy of the *BlueTeam Internal Complaint Report* so that they can report to the Academy (during normal business hours) to replace their expended TASER cartridges. Supervisors may contact the Academy to obtain a stock of replacement cartridges for the Division. Any exchanges must be documented in a *BlueTeam Internal Complaint Report* and a copy sent to the Academy with the expended cartridge.
- k. Accidental discharges will be documented in a Special Report to the sergeant investigating the discharge.
- l. Anytime a discharge occurs, the serial numbers of both the TASER and any expended cartridge(s) will be documented in a *BlueTeam Internal Investigation Incident Report* or *BlueTeam Internal Complaint Report*.
- m. Personnel equipped with the TASER are required to test the device for operability once within the first 12-15 minutes of their work shift
 - Any malfunctions are to be reported to a supervisor immediately.
 - Officers are to discontinue carrying the inoperative TASER until it can be replaced.
 - Supervisors will contact the Academy during normal business hours to secure replacement TASERS.

D. OFF-DUTY NON-FIREARMS

Anytime an off-duty officer knowingly strikes or injures or uses Oleoresin Capsicum (OC Spray) or the TASER X-26 on another person under any of the following circumstances:

1. When in police uniform.
2. When taking or attempting to take law enforcement action (i.e. in the course of off-duty employment, making an off-duty arrest, etc.).
3. When the officer identifies themselves as a police officer and a *Response to Citizen Resistance/Aggression/Non-Compliance* incident results.
4. When the officer uses any issued Oleoresin Capsicum (OC Spray) or TASER.



III. ON-DUTY OFFICER'S RESPONSIBILITIES

Whenever on-duty officers are involved in, witness or are informed of a complaint regarding a *Response to Citizen Resistance/Aggression/Non-Compliance* incident (including chemical irritant or TASER accidental discharges), they must immediately notify an on-duty supervisor.

In the event that a supervisory officer is involved in a *Response to Citizen Resistance/Aggression/Non-Compliance* incident, a supervisor of higher rank will be notified of the incident. In the event that a Watch Commander or appropriate Division/Bureau Commander is not available, Professional Standards will be notified of the *Response to Citizen Resistance/Aggression/Non-Compliance*.

- A. Unless hostile conditions or serious injuries dictate otherwise, officers should remain on the scene of the *Response to Citizen Resistance/Aggression/Non-Compliance* incident with suspects and witnesses until the arrival of the investigating supervisor.
1. Persons sprayed with a chemical irritant should be immediately removed from the scene for treatment, due to the level of discomfort that OC spray causes when it is properly used.
 2. In the event that immediate medical attention is required, someone other than the involved officer(s) should remove the person against whom a response was directed to the hospital, if possible.
 3. The person against whom a response was directed should be advised that they will receive medical treatment as soon as possible.
 - a. Chemical Irritant Medical Treatment - If possible, officers will commence cleansing techniques at the scene, prior to transporting the subject to the jail. All persons who have been sprayed with OC will be treated with the chemical agent neutralizer to have the OC residue removed from the skin, eyes, etc.
 - (1) Eyewash stations will be used prior to booking the person into the jail if they are having difficulties with their eyes (**Remember, water will wash away the chemical agent neutralizer**). An eyewash station is available in the MCSO jail salleyport.
 - (2) If a prisoner is having medical difficulties after first aid is rendered, then the supervisor will have the option of either having the prisoner transported to a medical facility or calling a paramedic from the Dayton Fire Department.
 - (3) The MCSO jail has medical staff that checks prisoners prior to booking and can make a determination if further medical intervention is necessary. If their staff determines that a prisoner needs to be removed to a medical facility, then the transporting officer will notify their supervisor and transport the prisoner to a medical facility immediately.
 - b. TASER Medical Treatment
 - (1) Persons that have been struck with the TASER X-26 probes should be immediately removed from the scene to a hospital if the probes are located in a sensitive area of the body (anything involving the head, neck, breast or nipples, groin or genitals), otherwise, an officer or supervisor may remove the probes and render first aid procedures.
 - If the probes are being removed at the scene, officers shall wear latex gloves when removing probes from the skin. A sanitizing spray or gel shall be administered to each puncture site along with a Band-Aid (if needed) as soon as practical.
 - TASER probes will be collected and safely stored in the TASER X-26 cartridge or other "Sharps" container and marked, tagged and placed in the property room as per the guidelines for submitting "Biohazard" evidence in General Order 1.06-1 Evidence and Impounded Property.



- (2) Persons that have been Tasered that show any signs of “**Excited Delirium**” or appear to be under the influence of drugs and/or alcohol to the point of being almost incoherent should be transported to the hospital for medical evaluation. (See Section B Below)
4. Every attempt should be made to contact and identify witnesses to the incident and to request that they remain on the scene until the investigating supervisor arrives.
- B. **Excited Delirium** - (ExDS) is a serious and potentially deadly medical condition involving psychotic behavior, elevated temperature, and an extreme fight-or-flight response by the nervous system. Failure to recognize the symptoms and involve emergency medical services (EMS) to provide appropriate medical treatment may lead to death.
1. Some of the signs of someone in Excited Delirium are:
- Incoherent or irrational speech
 - Aggressive, agitated or disorderly behavior
 - Extraordinary strength or resistance to pain
 - Profuse sweating
 - High heart rate
 - Public disrobing (partially or fully naked, even in the winter months)
 - Attraction to lights, mirrors, glass and water
2. If you suspect someone of being in Excited Delirium remember:
- Rapid control of the situation and timely execution of medical evaluation are important
 - Subjects with excited delirium often do not respond to verbal redirection
 - Attempts at physical control may not be as effective given extreme levels of strength and resistance to painful stimuli
 - Ongoing physical struggle can worsen a subject’s innate fight-or-flight system, which can raise a patient’s temperature, cause changes in the body’s acid-base balance, and increase the risk of sudden death
 - Call for EMS and get medical treatment as soon as possible
 - The safety of officers and the general public is paramount
- Even if you recognized someone in the condition of Excited Delirium, and you do everything you can to get them medical help, there is no guarantee that they will survive this condition.
- C. When the investigating supervisor arrives, the officer(s) involved in the incident will provide a complete and accurate description of the incident.
- D. In addition to any other reports submitted relating to the incident, a *BlueTeam Internal Investigation Incident Report* will be initiated for each individual against whom a response was directed or who has alleged a Response to Citizen Resistance/Aggression/Non-Compliance incident against them by the officer(s) employing the response or involved in the allegation.
- That report will contain all information pertinent to the *Response to Citizen Resistance/Aggression/Non-Compliance* incident and will indicate the type of incident. The report will be completed as soon as possible, and not later than the next business day.
 - The investigating supervisor may require additional information by requesting a Special Report from officers involved in or witnessing the incident.
 - All individual reports arising out of the same incident will be directed to the investigating supervisor.
- E. For OC spray accidental discharges where no non-departmental personnel were sprayed, the officer will fully describe the circumstances to his supervisor, who will then detail the incident in a *BlueTeam Internal Complaint Receipt*.
- F. Any on-duty officer who witnesses a *Response to Citizen Resistance/Aggression/Non-Compliance* incident by another officer or becomes aware of allegations of a *Response to Citizen Resistance/Aggression/Non-Compliance* incident by another officer will ensure that an on-duty supervisor is aware of the incident.



IV. OFF-DUTY OFFICERS' RESPONSIBILITIES

- A. Whenever an off-duty officer is involved in a *Response to Citizen Resistance/Aggression/Non-Compliance* incident under circumstances described in Section II.C. of this policy, or becomes aware of allegations of a *Response to Citizen Resistance/Aggression/Non-Compliance* incident against them under those circumstances, they must notify the RDC of the incident as soon as possible. If the incident occurred outside the corporate limits of the City of Dayton, the officer involved will ensure the appropriate local police jurisdiction is notified and requested to respond to the scene.
1. If the incident occurred within the City of Dayton an appropriate supervisor will be notified by the RDC Supervisor and will respond to the scene to investigate the incident.
 2. If the incident occurred outside the corporate limits of the City of Dayton but within 15 miles of the city, the investigating supervisor will respond to the scene and proceed with the investigation to the extent that the investigation does not conflict with the policies and procedures of the outside police jurisdiction.
 3. If the incident occurred more than 15 miles from the City of Dayton, the involved officer will provide the RDC Supervisor with a telephone number where they can be contacted by the investigating supervisor as soon as is possible.
- B. The involved officer(s) will completely and accurately report the details of the incident to the investigating supervisor. In cases as described in Section IV.A.3. above, the officer(s) will make their report to the investigating supervisor by telephone as soon as is practical.
- C. If the incident occurred outside the City of Dayton, the involved officer will request that photographs be taken of the person against whom a response was directed or who made allegations of a *Response to Citizen Resistance/Aggression/Non-Compliance* incident against the officer. The officer should also request that copies of any reports completed by the local police agency be forwarded to the Dayton Police Professional Standards Bureau.
- D. The officer(s) involved in the incident will submit a Special Report to their supervisor as soon as possible and not more than 24 hours after the incident occurred. In the event the officer will be out of the city for a period of time on pre-approved leave or business travel, the report will be submitted within 24 hours of the officer's return to the city and a copy forwarded to the Professional Standards Bureau.

V. SUPERVISOR'S RESPONSIBILITY

- A. The prompt and thorough investigation of *Response to Citizen Resistance/Aggression/Non-Compliance* incidents, allegations of a *Response to Citizen Resistance/Aggression/Non-Compliance* incident and use of chemical irritants or a TASER require that an appropriate supervisor be immediately notified and respond to the scene, except as provided in Section IV.A.3. of this policy.
1. In the event the immediate supervisor of the officer(s) involved in the incident is not available to respond, the RDC Supervisor will dispatch another supervisor of appropriate rank to the scene, or notify the Professional Standards Bureau to respond.
 2. The supervisor who is dispatched to the scene will conduct and submit a full investigation of the incident, regardless of whether the involved officer(s) are under their command.
- B. Certain incidents may require the response of personnel from the Professional Standards Bureau or other specialized units, who will assume responsibility for completing the investigation. The supervisor who initially responds to the scene will submit a summary of their observations to personnel from the Professional Standards Bureau or other specialized units prior to clearing the scene.
1. The investigating supervisor will contact the involved officers and assess the seriousness of the incident. In the event that a *Response to Citizen Resistance/Aggression/Non-Compliance* incident has resulted in serious injury (requiring hospitalization) to a citizen or an officer, Professional Standards will be requested at the scene. In the event a citizen or an officer has received injuries, which are life



threatening or fatal, the Homicide Squad will also be requested at the scene.

2. If serious physical harm or death results from **Non-Lethal** use, the Homicide Squad, Professional Standards, and the Range Supervisor will be notified. The Homicide Squad will have authority over any criminal investigation. Professional Standards will have authority over any administrative investigation. The Range Supervisor will assist and provide technical expertise specific to **Non-Lethal** munitions.
 3. The Professional Standards Bureau will be responsible for forwarding a copy of the *BlueTeam Internal Investigation Incident Report* to the Range Supervisor.
- C. The investigating supervisor will separately interview the officer(s) involved in the incident and any officers witnessing the incident; civilian witnesses to the incident; and the person against whom a response was directed or who has alleged a *Response to Citizen Resistance/Aggression/Non-Compliance* incident against them. Whenever possible, written statements should be taken from all civilians interviewed during the investigation and documented in the supervisor's summary and attached to their file.
- D. Supervisor Responsibilities when a TASER is Utilized:
1. The report must indicate if the TASER was deployed with the probes or as a stun gun and how many times the individual was shocked.
 2. Supervisors, only when needed, can contact the Academy for the TASER to be downloaded. Currently TASER's are only downloaded if there is a malfunction or in a use of force case or alleged case that requires it.
 3. If the supervisor is not a certified TASER operator, they are to have the dispatcher contact a certified TASER supervisor or officer to respond to their location to consult on the TASER usage and assist in downloading the unit's data.
- E. When a Response to *Citizen Resistance/Aggression/Non-Compliance* incident occurs against an individual, the supervisor will assure that the individual is conveyed to a hospital for medical treatment **if warranted** (i.e. no visible injuries, minor injuries requiring first aid only, etc.). If an individual refuses treatment to medical personnel at the hospital, officers must document the refusal and to whom they refused. In cases where a *Response to Citizen Resistance/Aggression/Non-Compliance* incident has been alleged, the supervisor will evaluate the need for medical treatment and make appropriate arrangements for such treatment if necessary.
- The transporting crew will advise intake personnel at the jail of the alleged injury and stand by until the jail paramedic examines the prisoner. For juveniles, refer to General Order 2.05-1 Juveniles, Section III.B.2.
- F. All actual or claimed injuries will be photographed by the investigating supervisor, a Crime Scene Investigator or Bureau of Identification personnel using a digital camera. In the event the incident occurred outside the City of Dayton, the supervisor will request that the outside police agency obtain those photographs.
1. Photographs of visible injuries should include a scale of measurement. The body area of claimed injuries or injuries that are not visible should be similarly photographed.
 - Photographs of the areas of the body where TASER probes connected will be taken.
 2. Injuries concealed by clothing should be uncovered when photographed.
 3. Photographs of injuries to private body areas will be taken and witnessed only by a supervisor or CSI of the same sex as the individual being photographed or by hospital personnel.
 4. Uncooperative individuals should be photographed "as is" without physical restraint to document their lack of cooperation.
 5. When no injuries are claimed, a full-length photograph will be taken of the individual.



6. The attending physician or head nurse should be notified prior to taking any photographs of a patient in the hospital.

G. GUIDELINES FOR USE OF DIGITAL CAMERAS IN ADMINISTRATIVE INVESTIGATIONS

1. The supervisor taking the photograph will document in their report the date/time, description of the subject of the photograph and the location where the photograph was taken.
 2. Do not rename photograph files when attaching them to a report.
 3. The camera disk is to be reused and not kept as the original. The photograph files in BlueTeam will become the original photographs.
- H. The investigating supervisor will prepare and submit a *BlueTeam Internal Investigation Incident Report* Administrative Investigation detailing their investigation, including a synopsis of:
1. The physical evidence available;
 2. Statements of officer(s) who were involved in or witnessed the incident;
 3. Statements of known witnesses to the incident; and
 3. The statement of the person against whom a response was directed or who has alleged a Response to Citizen Resistance/Aggression/Non-Compliance incident against them.
 5. The supervisor's conclusions based on the facts as submitted in their investigative summary. Conclusions are to be placed on a separate attached report with the word "CONCLUSIONS" placed in the center at the top of the report. The supervisor will also include a signature line at the end of the report and sign it before scanning it.
 - a. Conclusions as to what response was used by the officer(s), and whether allegations of a *Response to Citizen Resistance/Aggression/Non-Compliance* incident in addition to that reported by the officers are true;
 - b. Conclusions as to whether the response was justified by the circumstances (was the officer acting legally and appropriately when the incident began);
 - c. Conclusions as to whether the response was excessive, or more than was necessary to overcome resistance;
 - d. Conclusions as to whether the response was applied within the constraints of departmental policy and standards of training (authorized equipment utilized by the officer, officer properly trained and authorized to carry the equipment, etc.);
 - e. Conclusions as to whether this incident indicates the need for general or specialized training for any of the officers involved;
 - f. Conclusions as to whether disciplinary action is warranted against any of the officers involved in the incident. In the event disciplinary action is recommended, the officer's Performance History should be obtained from the Department Advocate along with the recommendation for appropriate discipline.
 6. In cases where a person was only pepper sprayed or received minor injuries (i.e. small shallow cuts, scrapes, abrasions, etc.) as a result of their apprehension (i.e. pushed, wrestled, tripped, tackled or having a limb twisted.) **and** there are no allegations of an excessive response, supervisors will need to complete a brief *BlueTeam Internal Investigation Incident Report* detailing the events, ensuring that they have an interview of the suspect, witness information if any and a synopsis of the incident.



- An investigating supervisor will seek witnesses and include their information and statements in the comments section of the addendum. Written witness statements will not be necessary unless the witnesses' statements do not corroborate the officer's statement about the apprehension/OC spray.
7. Any Disciplinary or Training issues should also be included with the investigation packet.
- I. The completed Administrative Investigation, including all attached reports (**EXCEPT Officer Injury Reports**), statements and photographs, are submitted via a *BlueTeam Internal Investigation Incident Report* entry to the originating Division Commander within 14 calendar days of the event. After review and approval, the reports are forwarded to the Professional Standards Bureau, which is the official repository for all such reports.

The Professional Standards Bureau will also maintain reports of Chemical Irritant usage and reports of TASER usage. The Professional Standards Bureau will report these usages as separate from other *Response to Citizen Resistance/Aggression/Non-Compliance* incidents and note that the incident was a use of OC spray or a TASER usage.



**USE OF FORCE CRITERIA
REFERENCED U.S. SUPREME COURT CASES**

**TENNESSEE v. GARNER, 471 U.S.1 (1985)
GRAHAM v. CONNOR, 490 U.S. 386 (1989)**

These two U.S. Supreme Court cases are the basis of the current federal guidelines on using force. They are the primary, but not the only, guidelines on which our policy is based. The information is provided to assist officers in understanding the relationship between our policy and the U.S. Supreme Court's requirement to adhere to the Fourth Amendment standards during their use-of-force decision making process.

TENNESSEE v. GARNER

The case:

In 1974 a Tennessee police officer shot and killed a suspect as, after being told to stop, the suspect fled over the fence in the backyard of a house he was suspected of burglarizing. The officer was "reasonably sure" the suspect was unarmed. The officer acted under the authority of a Tennessee statute providing that if after a police officer has given notice of an attempt to arrest a criminal suspect, and the suspect flees or forcibly resists, "the officer may use all the necessary means to effect the arrest." The suspect's father brought an action in Federal District Court seeking damages under 42 U.S.C. 1983 for asserted violations of his son's constitutional rights.

The U.S. Supreme Court majority opinion (excerpts):

This case requires us to determine the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. We conclude that such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

- Whenever an officer restrains the freedom of a person to walk away, he has seized that person. While it is not always clear just when minimal police interference becomes a seizure, there can be no question that apprehension by use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.
- To determine the constitutionality of a seizure" we must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. "We have described the balancing of competing interests" as "the key principle of the Fourth Amendment." Because one of the factors is the extent of the intrusion. It is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out.
- The same balancing process applied...demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The fact is a majority of police departments in this country have forbidden the use of deadly force against nonviolent suspects. Petitioners and appellant have not persuaded us that shooting non-dangerous fleeing suspects is so vital as to outweigh the suspect's interest in his own life.
- The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.



- It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction of threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster.
- While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force.

The U. S. Supreme Court decision (excerpts):

- The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.
- Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonable requirement. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interest in effective law enforcement. This balancing process demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.
- The Fourth Amendment, for purposes of this case, should not be construed in light of the common-law rule allowing the use of whatever force is necessary to affect the arrest of a fleeing felon.
- While burglary is a serious crime, the officer in this case could not reasonably have believed that the suspect-young, slight, and unarmed- posed any threat. Nor does the fact that an unarmed suspect has broken into a dwelling at night automatically mean he is dangerous.

GRAHAM v. CONNOR

The case:

In 1984, Officer Connor became suspicious after seeing suspect Graham (a diabetic) hastily enter and leave a store. An investigative stop was made of Graham and his driver. Back-up officers arrived, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. Graham sustained multiple injuries. He was released when Officer Connor learned nothing had happened in the store. Graham filed suit in the District Court under 42 U.S.C. 1983 alleging excessive force in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983."

The U. S. Supreme Court majority opinion (excerpts):

This case requires us to decide what constitutional standard governs a free citizen's claims that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We hold that such claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

The four-part substantive due process test derived from *Johnson v. Glick* (1973) used by lower courts in this case looked at:

- The need for the application of force
- The relationship between that need and the amount of force that was used
- The extent of the injury inflicted
- Whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm



- Today we make explicit what was implicit in Garner's analysis, and hold that all claims that law enforcement officers have used excessive force- deadly or not – in the course of an arrest, investigatory stop, or other "seizure" of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard, rather than a "substantive due process" approach.
- Determining whether the force used in a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it. Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.
- The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable office on the scene, rather than the 20/20 vision of hindsight. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgements- in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation.
- As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. (..."*it is imperative that the facts be judged against an objective standard.*") An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

U.S. Supreme Court decision (excerpts):

All claims that law enforcement officials have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

- The notion that all excessive force claims brought under 1983 are governed by a single generic standard is rejected. Instead, courts must identify the specific constitutional right allegedly infringed by the challenged application of force and then judge the claim by reference to the specific constitutional standard, which governs that right.
- Claims that law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are most properly characterized as invoking the protections of the Fourth Amendment, which guarantees citizens the right "*to be secure in their persons ... against unreasonable seizures,*" and must be judged by reference to the Fourth Amendment's "reasonableness" standard.
- The Fourth Amendment "reasonableness" inquiry is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.
- The Johnson v. Glick test applied by the lower courts is incompatible with a proper Fourth Amendment analysis.