

The Village of Moreland Hills

Department of Police

POLICY AND PROCEDURE: Policy #12

SUBJECT: Use of Force

EFFECTIVE DATE: March 24, 2017

REVIEW: Annually

AMENDS/SUPERSEDES: Previous Policy #12; Use of Force, Policy #12A; Use of Deadly Force, Policy #12B; Progressive Use of Force and Policy #36 Conducted Electronic Weapon (TASER)

DATE: March 24, 2017

DEFINITIONS RELATED TO THIS POLICY INCLUDE:

DEADLY FORCE

Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

FORCE

Any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing. (ORC 2901.01) Furthermore, the application of physical techniques or tactics used on another person, in response to resistance whether passive or aggressive. Use of force is not when a person allows him / herself to be searched, escorted, or providing balancing assistance.

SERIOUS PHYSICAL HARM

Any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing. (ORC 2901.01) Furthermore, the application of physical techniques or tactics used on another person, in response to resistance whether passive or aggressive. Use of force is not when a person allows him / herself to be searched, escorted, or providing balancing assistance.

PHYSICAL HARM

Any Injury, illness, or other physiological impairment regardless of its gravity or duration.

CEW – Conducted Electronic Weapon

PASSIVE RESISTANCE

A nonviolent opposition to authority, especially a refusal to cooperate with legal requirements.

ACTIVELY RESISTING

Those physical motions or movements used to counteract an officer's legal attempts to affect an arrest.

OBJECTIVELY REASONABLE

Determining the necessity for and the appropriate level of force, officers shall evaluate each situation in light of known facts, including but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject and the danger to the community.

PHILOSOPHY

- **USE OF FORCE <STANDARD 8.2015.1, BULLET A, POLICY STATEMENTS>Force< STANDARD 8.**

Officers may only use that amount of force which is reasonably necessary to affect a lawful objective 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.

USE OF DEADLY FORCE

The preservation of human life is of the highest value in the State of Ohio and the Village of Moreland Hills. Therefore, officers must have an objectively reasonable belief that 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 the U.S. and Ohio Supreme Court decisions, specifically, Tennessee vs. Garner, 471 U.S.1 (1985) and Graham vs. Connor, 490 U.S.386 (1989)

USE OF FORCE TO AFFECT AN ARREST

Any peace officer who has probable cause to believe that a person has committed a crime or public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance. A peace officer that makes or attempts to make an arrest, need not retreat or desist from their efforts by reason of resistance or threat of resistance by the person being arrested, nor shall a peace officer be deemed the aggressor or lose their right to self-defense by use of reasonable force to affect the arrest, prevent escape or to overcome resistance.

VERBAL AND VISUAL WARNINGS

Officers will make every attempt to make clear their intentions to place a subject under arrest. However, it is understood that in some situations, the element of surprise may be used to subvert the potential of injury to the person being arrested or bystanders, in which case officers may use deception, diversion or distraction to affect that arrest peacefully and reasonably. Officers of the

Moreland Hills Police Department are provided a variety of tools and are trained to use those tools which are at their disposal in dealing with the use of force. Should the officer determine that the display of these tools is appropriate and reasonable to seek compliance, they are permitted to do so. However, the use of warning shots will not be permitted.

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

1. When determining whether to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- a. The conduct of the person being confronted as reasonably perceived by the officer at the time.
- b. The officer's and subject's factor, including but not limited to: size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- c. The influence of drugs or alcohol and the subject's mental capacity.
- d. The proximity of weapons.
- e. The distance between the officer and subject.
- f. The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- g. The time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances).
- h. The seriousness of the suspected offense or reason for the contact with the individual.
- i. The training and experience of the officer.
- j. The potential for injury to citizens, officers and suspects.
- k. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officers or others.
- l. The prior knowledge of the subject's propensity for violence.
- m. Any other exigent circumstances or special knowledge.

PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed approved training. Officers utilizing any pain compliance technique should consider:

1. The degree to which the application of the technique may be controlled given the level resistance.
2. Whether the person can comply with the direction of the orders of the officer.
3. Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

USE OF FORCE-LESS THAN LETHAL (ASP BATON)

1. The use of less than lethal weapons shall be consistent with the Moreland Hills Police Department's use of force policy and the principal of objectively reasonableness. Officers are authorized to use departmentally approved, non-deadly force techniques and issued equipment when one or more of the following apply:
 - a. To stop, control and restrain individuals while causing less harm than deadly force.
 - b. To restrain or subdue a passive resistant individual.
 - c. To bring an unlawful situation safely and effectively under control.

CEW: (Conducted Electronic Weapon)

The CEW is intended to control a violent or potentially violent individual while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

POLICY

The Moreland Hills Police Department will utilize Conducted Electrical Weapon's (CEWs) when it is objectively reasonable to do so as a use of force option. Only authorized CEWs will be used by those personnel who have successfully completed a training program. All CEWs shall be used in accordance with the manufacturer's specifications, as well as the Moreland Hills Police Department Use of Force Policy. Training will be provided by TASER certified instructors.

Officers will wear the CEW in an approved holster on their duty belt or vest carrier, opposite their firearm.

1. The CEW shall be clearly and distinctly marked to differentiate it from the duty weapon.
2. Officers shall be responsible for ensuring the CEWs are properly maintained and in

good working order.

3. All certified CEW instructors will be re-certified every two (2) years as required by the manufacturer.
4. All CEW certified officers will be re-certified annually during the calendar year or as required by the manufacturer.
5. Annual maintenance, inspection and downloads (i.e., data port records, or other downloads as necessary) will be conducted by the departments Taser Trainers / Instructors.
6. Any data downloaded from the CEWs shall be forwarded to records for retention.
7. Only departmentally issued CEWs will be authorized for use.
8. Officers should never hold both the CEW and their firearm at the same time.
9. Each discharge and/or stun use of a CEW will require Use of Force Policy and Procedure documentation.
10. Officers shall carry the CEW in an approved holster, on their non-dominant side.

APPLICATION OF THE CEW

Authorized personnel may use the CEW when the circumstances known to the officer at the time indicate that such application is reasonable to control a person in any of the following circumstances.

1. The subject is actively resisting.
2. A subject who, by words or actions, has demonstrated an intention to be violent or to actively resist and who reasonably appears to present the potential to harm officers, themselves or others.
3. Flight in order to avoid arrest or detention, in circumstances where officers would pursue on foot and physically effect the arrest. However, officer must consider that the subject will fall and where and what that person will fall on. It may or may not, based on the objective reasonableness standard, be appropriate to use the CEW while in flight.
4. When practicable, the officer should give a verbal warning of the intended use of the CEW followed by a reasonable opportunity for the subject to voluntarily comply.

Every application of the CEW must be justified under the objective reasonableness standard.

SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the CEW should be avoided in the following situations unless the totality of the circumstances indicate that other options reasonably appear ineffective, impractical or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the CEW:

1. Females suspected of being pregnant.
2. Elderly individuals or obvious juveniles: determined by amount of force needed to take custody and amount of resistance facing the officer; safer to go hands on or use CEW, which has best outcome for everyone.
3. Individuals handcuffed or otherwise restrained.
4. Individuals whose position or activity may result in collateral injury (falls from heights or vehicle operation).
5. More than 15 seconds of CEW application.
6. Passive resistance.
7. In an environment where flammable, volatile, or explosive materials are a concern.
8. Perception of mental illness alone, without the use of verbal commands, de-escalation techniques.

Because the CEW can be used in drive stun mode and relies on pain compliance and close proximity to the subject, caution should be used. This application should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

TARGET CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target the back of the individual-buttock to shoulder blades, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the CEW probes to the precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more of the probes strike the neck, head, breasts (female), or groin until the subject is released while targeting the front of the suspect.

MULTIPLE APPLICATIONS OF THE CEW

If the first application of the CEW appears to be ineffective in gaining control of a suspect and if circumstances allow, the officer should consider the following before additional applications of the CEW:

1. Whether the probes are making proper contact.
2. Whether the application of the CEW is interfering with the ability of the suspect to comply.
3. Whether verbal commands, other options or tactics may be more effective.

This, however, shall not preclude any officer from deploying multiple, reasonable applications of the CEW on an individual.

AFTER CEW DEPLOYMENT

1. Request a supervisor or ranking officer to respond to the scene.
2. Examine suspect after being handcuffed and request EMS (CHAGRIN FALLS FIRE DEPARTMENT) to respond to your location.
3. Determine if probes need to be removed prior to medical assistance.
4. Officers may remove probes if the probes have not hit vital areas.
5. Secure probes as evidence and photograph probe entry points / injuries.
 - a. Treat components of bio hazard and take proper blood born pathogen precautions.
 - b. Invert and re-insert the probes into the portals for transportation. Place tape over re-inserted probes to ensure they do not fall out of spent cartridge.
5. Complete property form and enter the cartridge and its components into property for evidence storage.
6. All suspects that have been exposed to an application of the CEW shall be transported by EMS to a medical facility for treatment and evaluation.

In situations where the CEW deployment is associated with an incident where there is serious physical harm or death of a suspect, ensure that the entire CEW is secured and tagged as evidence.

DEADLY FORCE APPLICATION

While the use of a firearm is expressly considered deadly force, other force might also be considered force of the officer that the officer reasonably anticipates and intends will create a substantial likelihood of causing death or very serious injury. An officer may use deadly force to protect him / herself or others from what he / she reasonably believes would be an imminent threat of death or serious physical harm. Other limitations in the use of deadly force are listed below.

USE OF DEADLY FORCE

1. Peace Officers are authorized to use deadly force when one or both of the following apply:
 - a. To protect the officer or others from what is reasonably believed to be a threat of death or serious physical harm.
 - b. To prevent the escape of a fleeing **VIOLENT** felon who the officer has probable cause to believe will pose a significant threat of death or serious physical harm to the officer or others.
2. Where practicable, the officer shall identify himself / herself as a police officer and warn of his or her intent to shoot.

DEADLY FORCE RESTRICTIONS

1. Warning shots are prohibited.

2. Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle being operated; the discharging of a firearm at a moving vehicle is prohibited if that discharge presents an unreasonable risk to the officer or others. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. Officers are not permitted to place themselves on front of moving vehicles then justify the use of deadly force. Remove yourself from the path of the vehicle instead of firing at the vehicle or its occupants.
3. Firearms shall not be discharged from a moving vehicle.
4. Where the use of force is not authorized, officers may use only the level of force that is objectively reasonable to bring the incident under control.

COMMAND RESPONSIBILITIES AFTER A SHOOTING

1. The Chief of Police, command officers and detectives will be immediately notified by any and all means when an officer's response to resistance causes serious physical harm to another or death.
2. The initial on scene investigation will be secured and preserved, awaiting for the arrival of the Chief of Police, a third party independent investigating agency and department investigators. The Moreland Hills Police Department will be responsible for the internal investigation, unless otherwise determined by the Chief of Police and the Mayor.
3. BCI&I and the Cuyahoga County Sheriff & Prosecutor will be notified. The Cuyahoga County Sheriff's Office and Cuyahoga County Prosecutor's Office will conduct the criminal investigation. BCI&I will conduct the crime scene investigation.
4. Suspect will be secured, whether alive or deceased. The weapon should be left where it lies if at all possible and the scene secured.
5. The officer involved in the shooting will be examined for injuries and offered an opportunity to provide a brief summary. In depth questioning will be permitted at a minimum of 72 hours after the incident. The officer will be referred for crisis de-escalation services.
6. The officer's firearm will be collected as evidence. The Moreland Hills Police Department will provide the officer with an off duty weapon should the officer not have one. The officer will be placed on paid administrative leave until the investigations are completed.

7. The officer will be required to submit to a drug test prior to concluding that shift. A supervisor will be required to take the officer to the appropriate testing facility.
8. The officer will be provided legal representation prior to questioning.
9. The officers shall be on paid administrative leave and re-instated to full active duty once a grand jury has found a no bill indictment and the Moreland Hills Police Department has completed its internal investigation and found that policy was followed.
10. Should the Moreland Hills Police Department determine that the policy was not followed or a crime was committed, the Chief of Police will send notification, in writing, to the officer, advising its intent to move to the disciplinary phase. The officer will be offered a pre-disciplinary conference before any action is taken against the officer.

REPORTING USE OF FORCE <STANDARD 8.2015.1,BULLET B, REPORTING>

A Use of Force Form shall be completed by all officers involved, along with a confidential report and other appropriate paperwork as necessary, under the following circumstances:

1. When a firearm has been fired in the direction of any person.
2. When a use of force results in injury or death.
3. When a subject indicates an injury has been inflicted.
4. When a less lethal weapon has been used on another person.
5. Whenever an officer from an another jurisdiction is involved in a use of force incident – either within or outside our Village – and is being directly assisted by an officer from the Moreland Hills Police Department.
6. When a bystander alleges excessive force or incorrect police conduct regarding the use of force.
7. Whenever any subject is charged with resisting arrest, obstructing.
8. The individual subjected to the force was rendered unconscious.
9. An individual was struck or kicked in any manner.
10. An individual alleges any of the above has occurred.
11. The pointing of a weapon at any subject.
12. The officer's use of force is the utilization of balance displacement techniques.

Not required for reporting are balance placement techniques:

- Restraint for self-injurious behavior, unless an injury is reported.
- Balance assistance for a sick or intoxicated subject.

In the case of an off-duty use of force incident and the officer is unsure if the incident is a police related incident (i.e. "color of law"), the officer will request a supervisor respond to the scene to make that determination.

NOTE: No documentation is necessary if a weapon is merely removed from a holster for ready access, unless any of the above conditions apply.

DUTY TO REPORT USE OF FORCE / INTERVENTION < STANDARD 8.20.15.1, BULLET B,REPORTING>

Any use of force by a member of the Moreland Hills Police Department shall be documented promptly, completely and accurately in the departments "Use of Force Report". The officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances, to collect data for purposes of training, resource allocation, analysis and related purposes.

MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE

Prior to booking or release, medical assistance shall be obtained for any person who has sustained visible injury, expressed a complaint of injury or continuing pain, or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and , whenever practicable, should be witnessed by another officer and / or medical personnel. If any audio recording is made of a contact or an interview with the individual, any refusal should be included, if reasonably possible. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and seems impervious to pain (sometimes called "excited delirium") or who require a protracted physical encounter with multiple officers to be brought under control may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Medical personnel should be advised of the relevant behavior of the subject.

Any individual exhibiting signs of distress shall be medically cleared prior to being brought to the jail for booking.

• **SUPERVISOR RESPONSIBILITIES < STANDARD 8. 2015.1, BULLET C, REPORT**

Whenever an officer is involved in a use of force requiring the generation of the Use of Force form, a Supervisor is responsible for filling out and compiling the items specified on the Supervisor's Checklist on the Use of Force form. The Shift Supervisor should:

1. Obtain the basic facts from the involved officer. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
2. Ensure that any injured parties are examined and treated by EMS.
3. Once any initial medical assessment or first aid has been completed, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. (These photographs should also be retained until all potential civil litigation has expired).
4. The Detective Bureau will consult with the respective county prosecutor's office on preparing court orders to obtain copies of all medical reports (i.e. EMS report, treatment forms / summaries, etc.) pertaining to the treatment of the suspect. If the suspect is transported, the attending hospital personnel should be identified in the investigation so that the Detective Bureau can obtain all hospital documentation by court order. If the suspect is willing to sign a

voluntary release of medical records, the Shift Supervisor or Senior Officer will make certain that documentation is submitted with the paperwork.

5. Ensure all witnesses are located, identified, interviewed, and witness statements are collected.
 6. Obtain any and all video and audio recordings (i.e. cruiser recordings, booking recordings, audio recordings, body camera) available, and enter as evidence into the Property Room.
 7. Review and approve all related reports.
 8. In the event an officer is injured, the Shift Supervisor or Senior Officer shall, ensure that the officer receives medical attention. The Chief of Police and Executive Lieutenant shall be notified as soon as possible about the incident. The supervisor should then complete the required Worker's Compensation Forms and make certain the injury is documented in the Use of Force form.
 9. Ensure that the "Use of Force" form is completed by those involved, reviewed by the supervisor including completing those tasks indicated in the "Supervisors Checklist" section of this policy. Once the form is completed the supervisor will ensure that the form is forwarded to the Chief of Police. The supervisor shall initiate a separate internal administrative investigation if it is reasonable to believe that an application of force by an officer was not within policy. The investigation or complaint form will then be directed to the commanding officer of the accused employee, via the chain of command. The commanding officer will forward a copy to the Chief of Police, take any appropriate action and / or forward the investigation to the Chief of Police for disciplinary review. **<Standard 8.2015.1, Bullet C>**
 10. In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances reasonably permit.
- **TRAINING <STANDARD 8. 2015.1, BULLET D, ANNUAL READ AND SIGN & TESTING>**

Officers will receive a copy of this policy and will be required to acknowledge that they have read the policy. Officers will receive annual training and will be tested on their understanding of this policy. Furthermore, officers will receive annual scenario / judgement training with the CEW & firearms, above and beyond the requalification standards required by the State each year.

This order is for departmental use only and does not apply in any criminal or civil proceeding. This departmental policy should not be construed as a creation of higher legal standard or safety or care in an evidentiary sense with respect to third party claims.

Any deviation of this policy shall be addressed in writing to the Chief of Police

Approved by order of:

Chief K. Wyant
Kevin M. Wyant
Chief of Police