

	<b>Response to Resistance and Violence</b>		
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## 1.0 PURPOSE

To establish policy and procedure regarding the appropriate and acceptable response to resistance and to provide for the treatment of any injury or complaint of injury as a result of the appropriate application of use of force.

## 2.0 POLICY

It is the policy of this department to utilize the amount of force that is objectively reasonable considering the totality of circumstances that are confronted in order to affect an arrest and/ or accomplish the lawful performance of duty while protecting the public.

## 3.0 OBJECTIVELY REASONABLE USE OF FORCE (MLEAC 3.3.1 a)

The United States Supreme Court has ruled that an officer's use of force will be judged in light of an objectively reasonable standard. This reasonableness shall be determined by balancing the nature and quality of the intrusions with the countervailing governmental interests. The standard takes into consideration: a) the severity of the crime, b) whether the suspect poses an immediate threat to the safety of officers or others, and c) whether the suspect is actively resisting arrest or attempting to evade arrest by flight (Graham "Three Part Test"). This reasonableness shall be judged on the scene and at the moment the force is used, rather than from 20/20 hindsight, and will take into consideration the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving.<sup>1</sup>

## 4.0 DUTY TO INTERVENE (MLEAC 3.3.1 b)

It is the obligation of each officer to intervene when witnessing another officer utilizing force that is inappropriate or excessive and to report this incident to their commanding officer. The Department's highest priority is the protection of human life. In all aspects of their conduct, Department members shall act with the foremost regard for the preservation of human life and the safety of all persons involved.

## 5.0 APPLICATION

This policy constitutes department policy, intended for internal use only, and is not

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Graham v. Connor, 109 S.Ct. 1865 (1989).

intended to enlarge the employee's civil or criminal liability in any way. It should not be construed as a creation of a higher legal standard of safety or care in the evidentiary sense with respect to third-party claims insofar as the employee's legal duty is imposed by law. Violations of this directive, if substantiated, can only form the basis for interdepartmental administrative review and action.

## **6.0 DEFINITIONS** (MLEAC 3.3.1 c; 3.3.2 b-d)

**CONTROL:** An officer's response to neutralize the unlawful actions of a subject, or to protect the subject from injuring him/herself or others.

**DEADLY FORCE:** Force that creates a substantial likelihood of death or serious bodily harm.

**RESPONSE TO RESISTANCE/FORCE:** The attempt to establish control through physical means in the presence of resistance given the totality of circumstances. All force is a means of control; however, control can at times be achieved without the use of physical force.

**LAST RESORT:** Those situations in which certain immediate and drastic measures must be undertaken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or objects not covered by this protocol; however, they remain to be measured by objectively reasonable use of force standards.

**NON-DEADLY FORCE:** Force that will not likely result in death or serious physical injury.

**REASONABLENESS:** Means within reason, moderate action suitable to the situation, consistent with department approved training and policies. The final decision as to the reasonableness of an officer's response shall be determined on a case-by-case basis by those members of the department called upon to review the appropriateness of those tactics or actions, based on what a "reasonable" officer would have done under like circumstances.

**RESISTANCE:** A subject's conduct or actions to prevent an officer's attempts to establish control.<sup>2</sup>

**PASSIVE RESISTANCE:** Non-compliance to Officer's lawful verbal direction but offering no actively resistive movement.<sup>2</sup>

**ACTIVE RESISTANCE** – A subject's physical actions intended to prevent an officer from placing the subject in custody and taking control. (breaking the officer's grip, pulling and pushing but not intending to injure the officer)<sup>2</sup>

<sup>2</sup> MCOLES, Control Continuum 2008

**ASSAULTIVE /ACTIVE AGGRESSION** - A subject's physical actions/assaults against the officer or another person with less than deadly force (e.g., advancing, challenging, punching, kicking, grabbing, wrestling, etc.).<sup>2</sup>

**LIFE THREATENING / SERIOUS BODILY INJURY** – Actions that may result in death or serious bodily injury.

**SERIOUS PHYSICAL INJURY:** Any injury that causes significant physical impairment.

**TOTALITY OF CIRCUMSTANCES:** Whether an officer's actions are "reasonable" in light of all the facts and circumstances confronting the officer at the time the force is used.

**POSITIONAL ASPHYXIA:** Occurs when a person is immobilized in a position which impairs adequate pulmonary ventilation and thus, results in respiratory failure.

**STRANGULATION:** Intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person. Also includes headlock, chokehold, neck or carotid hold.

**DE MINIMIS FORCE:** Physical interaction meant to separate, guide, and/or control that does not cause pain or injury. Examples include; using hands or equipment to stop, push back, separate or escort, the use of compliance holds without the use of sufficient force to cause pain, and uncontested handcuffing.

**TYPE I FORCE:** Use of force that causes temporary pain, disorientation. This level of force includes the aiming of a firearm, less-lethal firearm, or Taser at a subject. Examples include; takedowns, a strike with sufficient force to cause pain or complaint of pain, and open hand techniques with sufficient force to cause complaint or indication of pain.

**TYPE II FORCE:** Use of force that causes physical injury (greater than temporary pain) or reasonably expected to cause physical injury, a complaint of injury, use of a Taser and the use of OC spray, use of an impact weapon causing less than a Type III injury, use of a bean bag shotgun or other less lethal weapon resulting in less than a Type III injury, canine deployment with less than a Type III injury or complaint of a less than Type III injury, vehicle tactics, PIT, hobble restraint. Examples include; force that results in injuries or with are likely to result in injuries less than great bodily harm (abrasions, bruising or sprains).

**TYPE III FORCE:** Use of force that causes loss of consciousness, substantial bodily harm, great bodily harm, and deadly force. Such acts include but are not limited to

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MCOLES, Control Continuum 2008

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strangulation, headlock, chokehold, neck and carotid holds, criminal conduct by officers, serious misconduct by officers, use of stop sticks against a motorcycle, and impact weapon strikes to the head. Examples of Type III injuries include broken bones, internal injuries, and excessive bleeding. Any discharging of a firearm to a person is a Type III use of force.

**RESPONSE TO RESISTANCE OFFICER:** The Response to Resistance officer is a Lieutenant or Sergeant appointed by the Chief of Police to retain and analyze the information documented in the Response to Resistance report. The information shall be published in an Annual Response to Resistance Report to identify trends and tendencies of individual officers and the department as a whole to identify areas for training in the future. The Annual report shall be completed no later than January 31st and turned into the Captain's office or as determined by the Chief of Police or their designee (MLEAC 3.3.1 L).

**HIGH-LEVEL USE OF FORCE:** Police actions resulting in death, great bodily harm, or extended hospitalization to anyone, whether or not the person harmed was the intended recipient. The intentional discharging of a firearm other than for training or to euthanize an animal.

### **7.1 CONSIDERATION OF CIRCUMSTANCES (MLEAC 3.3.1 d)**

The officer should consider the following circumstances when deciding the appropriate level of officer response (list is not all-inclusive):

- a. Type of crime committed or attempted;
- b. Relative size/stature;
- c. Exigent Conditions:
  - i. Number of officers;
  - ii. Number of subjects involved;
  - iii. Availability of backup;
- d. Reaction time (officers must consider that action is faster than reaction);
- e. Immediacy of danger;
- f. Relative strength;
- g. Subject(s)' access to weapons;
- h. Whether subject(s) is/are under the influence of alcohol or drugs;
- i. Exceptional abilities/skill (e.g., martial arts);
- j. Injury to, or exhaustion of, the officer;
- k. Distance from the subject;
- l. Special knowledge (e.g., subject's prior history of violence);
- m. Weather or terrain conditions;
- n. Relative security or safety of the scene and/or environment.

## **8.0 DE-ESCALATION AND ESCALATION OF FORCE**

8.1 Officers shall utilize tactical options when time and circumstances permit, to enhance the safety of officers, offenders, and the public; to increase the likelihood of safely handling a potential Response to Resistance situation; and to attempt to reduce the need for physical force or the amount of force necessary. Tactical options include but are not limited to:

- Prior planning;
- Cautious approach
- Effective communication
- Utilizing time and distance
- Proper positioning
- Movement and repositioning
- Use of barriers
- Use of containment, cover, and concealment

8.1.1 Officers shall not knowingly place themselves into the path of a moving vehicle or into the likely path of a vehicle that is currently stopped but is under the immediate control of a driver. When reasonable, officers should attempt to move out of the path of any moving vehicle to a position of cover.

8.2 Escalation of force may be justified when an officer reasonably believes that the level of force being used is insufficient to stop or control the resistance.

8.3 Officers may escalate to the level of force that is objectively reasonable and necessary to control the situation, based on the level of resistance encountered. The officer shall take into consideration when the subject begins to de-escalate or lessen the resistance offered.

## **9.0 RESPONSE TO RESISTANCE PROCEDURES**

9.1 Officers should assess the totality of the circumstances in order to determine the appropriate response to gain control. When possible, officers should attempt to gain control by means of verbal directives or commands.

9.1.1 When reasonable and without compromising officer safety or public safety, sworn personnel shall provide a verbal warning prior to any force.

9.2 If verbal directives or commands are ineffective, or not feasible given the circumstances of the situation, the officer may escalate to control methods that involve the use of physical force. If force is necessary, the officer must decide what technique(s) or authorized equipment will best de-escalate the incident and bring it under control in a safe manner (MLEAC 3.3.1 f).

9.3 Officers are authorized to use department approved control techniques and

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authorized equipment for the resolution of incidents (MLEAC 3.3.1 f), as follows:

- 9.3.1 To stop potentially dangerous and unlawful behavior;
- 9.3.2 To protect a person or the officer from injury or death;
- 9.3.3 To protect subjects from injuring themselves, control methods and/or weapons shall not be used as punishment or retaliation.

9.4 Officers using force shall render assistance to the subject after control has been established. Officers shall observe the extent of any injuries and assess the need for medical assistance.

9.5 When a person is handcuffed, the officer shall “check for fit” to make sure the handcuffs are not too tight and that the handcuffs are double locked. If a person handcuffed complains the handcuffs are too tight the officer shall “recheck for fit” and adjust if needed.

### **10.0 WEAPONS OF LAST RESORT**

Situations may occur in which certain immediate and drastic measures must be taken by an officer in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered in this policy. These situations will also be judged by the objectively reasonable use of force standard (MLEAC 3.3.1 e).

### **11.0 DEADLY FORCE PROCEDURES**

11.1 The use of deadly force is authorized in either of the following situations (MLEAC 3.3.1 e):

- 11.1.1 To protect the officer or another person from what is reasonably believed to be an immediate threat of death or serious physical injury.
- 11.1.2 To prevent the escape of a subject who is fleeing from an inherently violent felony crime, and the officer has probable cause to believe that the subject poses an immediate threat of death or serious physical injury to others or the officer.

11.2 Officers are prohibited from firing “warning shots”.

11.3 Officers are prohibited from shooting at or from a moving vehicle, except as a “last resort” as defined in this policy.

11.4 Chokeholds may not be utilized except in situations where deadly force is authorized.

### **12.0 POSITIONAL ASPHYXIA**

12.1 Occurs when a person is immobilized in a position that impairs adequate pulmonary ventilation and thus results in respiratory failure.

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12.2 Certain factors that are not readily observable or known to responding officers may render some individuals more susceptible to positional asphyxia following a violent struggle, particularly when placed in a face-down position after the fact:

- Obesity.
- Alcohol and drug use.
- An enlarged heart (renders an individual more susceptible to cardiac arrhythmia under conditions of low blood oxygen and stress).
- Violent Struggle
- Excited Delirium

### **13.0 MEDICAL CONSIDERATIONS (MLEAC 3.3.1 j)**

13.1 Officers using force on a subject shall make medical treatment available to that subject when:

- 13.1.1 The subject requests medical treatment;
- 13.1.2 The subject complains of injury, continued pain, or respiratory distress;
- 13.1.3 The subject is or was rendered unconscious;
- 13.1.4 Any officer observes or suspects injury to the subject;
- 13.1.5 The subject does not substantially recover from the effects of an aerosol subject restraint (ASR) after following the manufacturer's decontamination instructions; and,
- 13.1.6 When directed to do so by a supervisor.

13.2 Officers providing a subject with medical treatment shall document the treatment given in an incident report.

13.3 Officers providing a subject with medical treatment shall notify their supervisor as soon as possible.

13.4 Should a subject be transported to a medical treatment facility, a supervisor shall be notified as soon as possible.

13.5 Officers providing a subject with medical treatment shall receive written authorization from the attending physician stating he/she is cleared for incarceration prior to removing the subject from the medical care facility.

### **14.0 REPORTING AND INVESTIGATION OF RESPONSE TO RESISTANCE: OFFICER RESPONSIBILITY**

14.1 All uses of force shall be immediately reported to a supervisor by the involved officer(s) and documented in the designated form and an incident report. This requirement includes firearm discharges for other than recreational or training purposes and accidental CEW or firearm discharges (MLEAC 3.3.2 a,e).

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14.2 The involved officer(s) in all levels of use of force shall complete an incident report (CR) in a timely manner. This includes investigative stops where subjects were handcuffed and later released. An incident report is sufficient for recording De Minimis force. When the Response to Resistance is Type I or greater, all officers at the scene shall complete an incident report (CR) describing their actions. Officers involved in a Type I use of force or greater shall also complete a Ferndale Police Department Response to Resistance Report and submit it to the OIC. The report should include the following documentation:

- 14.2.1 Legal basis for initial contact;
- 14.2.2 Amount of resistance encountered;
- 14.2.3 Control methods used: Handcuffing of subject detailed (Check for fit, double locked);
- 14.2.4 Injuries to any persons;
- 14.2.5 Treatment of injuries to parties involved;
- 14.2.6 Damage to property;
- 14.2.7 Identity of officers involved;
- 14.2.8 Identity of known witnesses;
- 14.2.9 Available supporting evidence (e.g., pictures of injuries);
- 14.2.10 Must be able to articulate their state of mind during the incident;
- 14.2.11 It is imperative to document their concerns, fears, what they saw, what they heard, what they felt, and their physical condition as the incident occurred.
- 14.2.12 Officers must account for how they established "officer's presence." For example, were they in full uniform, and/or did they utilize voice commands stating that they were police officers, etc.

### 14.3 **SUPERVISOR RESPONSIBILITIES** (MLEAC 3.3.1 k)

The supervisor shall review all Response to Resistance incidents. When reviewing a Response to Resistance incident, the supervisor shall (MLEAC 3.3.3):

- 14.3.1 Respond to the scene when practical.
- 14.3.2 Upon arrival, the supervisor should focus their attention on officer safety and public safety concerns. The supervisor will need to determine a brief accounting of what happened. However, this early stage should focus on what happened and what areas are to be included in the scope of the investigation. Detailed explanation or justifications of officer's actions are premature and not necessary at this point in time.



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- 14.3.3 Ensure that the proper jurisdiction has been notified if the high-level use of force by a Ferndale police officer occurs outside the boundaries of the city of Ferndale.
  - 14.3.4 Require written reports from all officers present in a timely manner.
  - 14.3.5 Review all written reports submitted by officers for inconsistencies.
  - 14.3.6 Review all in-car audio and video
  - 14.3.7 Photograph all injuries and the alleged injuries; injuries may not be visible initially but develop over time.
  - 14.3.8 Supervise the collection of evidence.
  - 14.3.9 Canvass the area for private video that may have captured the incident.
  - 14.3.10 Review and obtain a copy of any available video.
  - 14.3.11 Interview all witnesses.
  - 14.3.12 Interview the subject of the use of force.
  - 14.3.13 Interview all of the officers involved.
  - 14.3.14 Complete the supervisor's review portion of the department Response to Resistance report. The shift commander will conduct all reviews where a Sergeant was involved in the incident. The Shift Commander shall complete a final review of all Response to Resistance reports completed by the Sergeant
  - 14.3.15 Upon completion of the Response to Resistance report, the shift commander shall forward the report to the captain for review.
  - 14.3.16 Conduct an AAR (After Actions Review) with the officer involved. Discuss whether or not the officer's tactics or decisions could be improved upon.
  - 14.3.17 If the Response to Resistance is a Type III, a policy or training violation, the supervisor shall email the captain a detailed review.
  - 14.3.18 The Chief of Police, Deputy Chief, and the Captain shall be notified immediately upon determining that the subject of the use of force has suffered great bodily harm.
  - 14.3.19 The Chief of Police will determine if the incident is investigated by another law enforcement agency to ensure objectivity.
- 14.4 A supervisor shall conduct a meaningful review of all incidents where force was used. The review shall document policy, training, equipment, and disciplinary issues related to the incident.
- 14.4.1 A supervisor shall not conduct a meaningful review of the use of force they were personally involved in at the incident level. The review shall be conducted by the shift commander, or if one is unavailable, the oncoming shift commander shall complete the review.

Exception: The annual response to resistance report, an aggregate review of incidents, shall be conducted by the Response to Resistance Officer or the Chief's designee as each incident has previously been meaningfully reviewed by a supervisor NOT involved

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in the incident. The annual review is focused on identifying trends, training issues, equipment needs or adjustments, and policy implications.

### **15.0 SUPERVISORY RESPONSE TO HIGH-LEVEL USE OF FORCE**

The fundamental supervisor responsibilities listed above remain consistent when responding to a High-Level Use of Force. However, there are additional concerns given the gravity of the situation, as well as the physical and emotional toll that these encounters take on the officers involved, as well as the witnesses. These additional measures must be taken by supervisory personnel:

15.1 Upon arrival, the supervisor should focus their attention on officer safety and public safety concerns. The supervisor will need to determine a brief accounting of what happened. However, this early stage should focus on what happened and what areas are to be included in the scope of the investigation, see Appendix A Public Safety Statement. Detailed explanation or justifications of officer's actions are premature and not necessary at this point in time.

15.2 Request additional officers to respond. To include the Chief, Captain, Evidence Technicians, Detectives, and additional patrol officers to properly secure the scene and investigate the incident.

15.3 After securing the scene and witnesses, the focus should be moved to the involved officers. The department recognizes that officers involved in shooting situations or other high-level uses of force are likely to experience one or more of the following physiological reactions:

- a. A sense of slow motion, caused by accelerated thought process
- b. A sense of detachment, including auditory blocking
- c. Tunnel vision
- d. A skewed sense of time and space relations
- e. Nausea or vomiting
- f. An increase in blood pressure
- g. Rapid heart rate
- h. Involuntary urination or defecation
- i. Speech impairment
- j. Uncontrollable crying
- k. Shock
- l. Guilt
- m. Anger
- n. Disbelief

15.4 The department's goal is to minimize the negative effects and potential threat to officers' health by these reactions.

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15.5 Remove the involved officers from the scene as soon as possible.

15.6 The officer involved shall be transported as soon as feasible to the hospital for evaluation. Assign a supportive peer officer to accompany and remain with the officer to provide assistance.

15.7 A supervisor shall secure all equipment of the involved officer. The equipment shall remain in the identical condition as when secured. No weapon shall be unloaded or changed in condition.

15.8 Assist the involved officer with contacting family, clergy, and/or legal counsel. Under no circumstances will an officer involved either directly or as a witness be placed in the rear seat of a police car. No officer shall be held or isolated in any area without a peer support officer.

15.9 The Chief of Police or their designee shall, when feasible, personally go to the home of the officer involved to make notification to family members and provide transportation to the hospital or other location as required. If the officer involved is injured, every reasonable effort shall be made to make the notification in person or cause the notification to be made in person by a member of another agency. If it is not feasible to make "in person" contact, only then shall telephone contact be initiated. Every effort shall be made to assist the family members with transportation and to provide the family members with a support person. Preferably one that the family is comfortable with.

15.10 After medical evaluation and treatment, the assigned support officer shall transport the officer home. Under no circumstances shall the officer involved be permitted to drive themselves home.

15.11 No investigative examination or interview of the officer shall take place until authorized by the Chief of Police or their designee.

15.12 Should the incident take place outside the jurisdictional boundaries of the city of Ferndale, the first responding Ferndale officer or supervisor shall immediately take charge and control of the involved officer. They shall remain with the officer at all times. The involved officer and the responding officers should take into consideration the direction or assistance of the officer of the jurisdiction in which the incident occurred. However, where directions or orders of another agency are contrary to the general orders or procedures of the Ferndale Police Department, the officers shall not be required to follow any without the express authorization of the Chief of Police or their designee. Every attempt shall be made by the supervisor, or senior officer on scene, to politely advise the ranking officer of the agency with jurisdiction of the existence of the conflict in orders and that the orders of that jurisdiction cannot be carried out by Ferndale police personnel.

### **16.0 RELEASE OF INFORMATION**

The Chief of Police, or their designee, shall be responsible for the issuance of any

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statements to the public, including the news media. No identification of the involved personnel shall be made without authorization from the Chief of Police or their designee. No member of the department shall make any comment or release any information to any person outside of the Ferndale Police Department without authorization from the Chief of Police.

### **17.0 ADMINISTRATIVE LEAVE**

17.1 Officers involved in the high-level use of force resulting in serious injury or death to any person shall be:

17.1.1 Temporarily removed from duty pending a documented meaningful review of the incident. (MLEAC 3.3.4)

17.1.2 Assigned to meet with a psychologist or social worker trained in counseling and treating officers involved in high-use-of-force incidents. The psychologist or social worker shall be determined by the Chief or their designee. A minimum of one counseling session shall be required before the officer is authorized to return to duty.

17.1.3 Ordered to take administrative leave at the discretion of the Chief of Police or their designee.

### **18.0 EVIDENCE**

Any firearms, less-lethal tools, other instruments, or items involved in the incident shall be identified and collected by evidence technicians and held for investigation. Firearms or other equipment not involved in the incident shall not be taken into evidence, unless there is a specific identifiable need to do so. In the event an officer's duty handgun is taken for evidentiary purposes, it shall be replaced with another department issued handgun as soon as feasible.



Dennis M. Emmi  
Chief of Police

## Appendix A

### PUBLIC SAFETY STATEMENT

**“Officer, I am ordering you to give me a Public Safety Statement. Due to the immediate need to take action, you do not have the right to wait for representation to answer these limited questions.”**

- Were you involved in an officer-involved shooting?
- Approximately how many rounds did you fire and in what direction did you fire them?
- Do you know if any other officers fired any rounds?
- Is it possible the suspect fired rounds at you?
- Is anyone injured? If so, where are they located?
- Are you aware of any witnesses? If so, what is their location?
- Approximately, where were you when you fired the rounds?
- Are there any outstanding suspects? If so, what is the description, direction, and mode of travel?
- How long have they been gone? What crime(s) are they wanted for? What weapons are they armed with?
- Are there any weapons or evidence that need to be secured/protected? Where are they located?

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