

200 Response to Resistance

200.1 PURPOSE AND SCOPE

This order recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this order is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This order is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee. Additionally, this order will provide directives and guidelines on the following:

- (a) De-escalation principals and techniques.
- (b) Parameters relating to the use of objectively reasonable force.
- (c) Reporting requirements.
- (d) Providing medical assistance to injured subjects.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

Officers should recognize that their conduct prior to the use of force may be a factor which can influence the level of force necessary in a situation.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(a)(8)).

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(a)(46)).

De-escalation - Using techniques to stabilize the situation and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful resolution to an encounter with a non-compliant subject. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, thereby eliminating the need to use force in response to resistance.

De-escalation Techniques - Communicative or other actions used by officers, when safe, and without compromising law-enforcement priorities, that are designed to increase the likelihood of gaining voluntary compliance from a non-compliant subject, and reduce the likelihood of using force in response to resistance.

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

200.1.3 DUTY TO INTERVENE

Any officer who observes another officer, regardless of rank, using force the officer knows or should know is not objectively reasonable shall immediately intervene to stop or prevent the use of force or further use of force if the officer has a reasonable opportunity to stop or prevent the use of force or further use of force.

- (a) Officers intervening shall take effective and escalating measures to stop or prevent the use of force or further use of force. These measures may include, but are not limited to, voice commands and physical contact with the officer using force.
- (b) Officers who witness the use of objectively unreasonable force by another officer must promptly make a detailed report of these observations to a supervisor. Any supervisor receiving such a report shall promptly conduct an initial fact gathering inquiry and forward all gathered information as outlined in General Order 900.2 Required Reporting of Violations.

200.31.34 NOTICE OF AUTHORITY AND IDENTITY

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.1.45 RESPONSE TO RESISTANCE RELATED ORDERS

- (a) General Order 200 (Response to Resistance).
- (b) General Order 202 (Firearm Discharge Situations).
- (c) General Order 204 (Leg Restraint Guidelines).
- (d) General Order 206 (Control Devices and Techniques).
- (e) General Order 208 (TASER® Guidelines).
- (f) General Order 211 (Response to Resistance Inquiry, Reporting and Review).
- (g) General Order 212 (Force Review Board).

200.2 DE-ESCALATION

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

Nothing in this de-escalation policy requires an officer to place themselves in harm's way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This discretion is subject to supervisory review. It is the duty of supervisors to ensure that subordinates utilize the tactics and techniques required by this order. This de-escalation order is intended to complement, not replace or supersede, other portions of the APD General Orders or specific officer training that addresses de-escalation.

200.2.1 ASSESSMENT AND DE-ESCALATION

As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional relevant information and facts. These assessments, along with reasonable inferences help to develop an understanding of the totality of the circumstances of the incident.

- (a) Assessing Risks and Benefits – After an officer has gathered sufficient information to ascertain anticipated threats at the scene, they shall consider whether de-escalation is appropriate. Factors that should be considered are:
1. whether the officer believes the search, arrest or transportation must be undertaken immediately;
 2. what risks and benefits may be associated with delaying immediate action;
 3. what contingencies may arise;
 4. whether the situation requires a supervisor's response;
 5. whether other officers may be needed on the scene, including special units, such as CIT or CINT;
 6. whether other resources (e.g. less-lethal weaponry, special equipment, or other emergency professionals, interpreters or other persons) are needed;
 7. whether effective communication can be achieved
 - (a) is the subject under the influence of drugs or alcohol?
 - (b) does the subject have hearing or vision capabilities?
 - (c) are there language barriers?
 - (d) are there conflicting noises or other distractions? (e.g. multiple officers giving commands at the same time, other loud noises); and
 8. other factor(s) relevant to assessing risks, benefits and contingencies.

Having completed the above outlined assessment the officers shall, if reasonable, identify and employ appropriate de-escalation techniques.

- (b) Use of De-escalation Techniques – Employing de-escalation techniques may involve securing additional resources, tactical repositioning, and employing verbal persuasion.
1. Securing Additional Resources -- Officers may utilize additional resources which are reasonably calculated to lessen or possibly eliminate the need to respond to resistance in a situation. To the extent possible and reasonable, in light of the totality of the circumstances, officers should avoid physical confrontation until such time as additional resources have arrived to assist. Additional resources may include:
 - (a) less lethal weaponry;
 - (b) additional officers;
 - (c) officers with special training, such as CIT or CINT; or
 - (d) any other persons whose presence may help de-escalate the situation (e.g., emergency medical professionals, interpreters, or supportive family members).
 2. Tactical Repositioning -- To delay or avoid physical confrontation, officers may wish to employ any one or more of the following tactical repositioning measures, to the extent possible and reasonable in light of the totality of circumstances:
 - (a) maintain safe physical distance from the subject;
 - (b) maintain cover behind existing or assembled physical barriers; or
 - (c) communicate from a location that is concealed from the subject.
 3. Verbal Persuasion - Communication is a crucial tool when attempting to de-escalate. Effectively communicating with the subject can lead to successful outcomes, and could be as simple as effectively communicating "why" to the subject. For example, explaining to the subject why he or she is being detained or placed under arrest. To the extent possible and reasonable under the totality of the circumstances, officers may-shall use one or more of the following verbal techniques when practicable to try to calm an agitated subject and promote rational decisions.
 - (a) Treat the subject with dignity and respect, the way the officer would wish to be treated if they stood in the subject's shoes;
 - (b) Listen to the subject's side of the story and permit them to express frustration;
 - (c) Explain what the officer is doing, what the subject can do, and what needs to happen;
 - (d) Explain why the officer is taking a specific action, again permitting the subject to respond and acknowledging their perspective;
 - (e) If possible, provide the subject with alternatives, even though those alternatives may be limited;

- (f) Advise the subject of the consequences for noncompliance;
- (g) Offer reasonable, professional advice if it is expected to help; or
- (h) Provide the subject with reasonably sufficient time within which to respond to directives.

200.3 RESISTANCE

200.3.1 GENERAL GUIDELINES

In any force encounter, and regardless of the tool/weapon/tactic chosen by the officer, the officer's decision to use the tool/weapon/tactic is dependent upon the suspect's level of resistance, the threat reasonably posed by the suspect to the officer or another, and the totality of the circumstances known to the officer at that time.

(a) Types of Resistance

1. **No Resistance (Compliant)** - A subject who does not resist and follows all commands is compliant. Only a law enforcement officer's presence and verbal commands are required when dealing with these subjects; no coercive physical contact is necessary.
2. **Passive Resistance (Non-Compliant)** - A passively resistant subject that fails to take voluntary physical action to obey officer commands yet do not offer physical resistance when officers are forced to take physical control of them due to non-compliance.
 - (a) An example would be a subject going limp during an arrest. Among other things, General Orders do not allow for the use of a Taser when the only resistance offered is passive resistance.
3. **Defensive Resistance** - Defensive resistance is voluntary physical movement and / or muscular tension resistance by a subject that attempts to prevent the officer's control.
 - (a) This is the most common type of resistance encountered by officers.
 - (b) The situational context (totality of the circumstances) must be considered when determining if a subject is defensively resisting or merely passively resisting. Likewise, the "totality of the circumstances" must be considered when choosing which level of force is necessary to control the situation, and prevent unnecessary harm.
 - (c) Examples of defensive resistance by a subject may include pulling away from the officer's grasp, locking arms under their body, resisting handcuffing/frisk, fleeing from an officer, or evading arrest by concealment.
4. **Aggressive Resistance** - Aggressive resistance is an offensive action by the subject who attempts to push, throw, strike, tackle, or physically harm the officer or another person.
 - (a) If the officer or members of the public are threatened by the subject's actions, the officer must respond with appropriate force to stop the attack and defend himself/herself or others.
5. **Deadly Resistance** - Deadly Resistance is an offensive action by the subject that could seriously injure or kill the officer or another person if immediate action is not taken to stop the threat.

(b) **Preparatory Actions Indicating Greater Resistance** - Although, on the surface, a suspect may offer or exhibit behaviors associated with not being resistant or a lower level of resistance such as "passive resistance," or "defensive resistance," the officer may also recognize the subject is preparing to offer greater resistance or launch an attack through specific, articulable behavioral cues (verbal, non-verbal and/or physical). Depending on the circumstances, certain forms of passive resistance, such as verbal non-compliance and/or verbal threats, may be indicators the subject is preparing for a higher level of resistance than is actually being displayed. The officer must be prepared to adjust tactics and/or defend themselves from such a sudden change or attack. Officers do not need to suffer an injury or wait for a physical attack to manifest itself before taking actions to protect themselves or others.

1. Preparatory actions indicating greater resistance may be exhibited or observed during any of the preceding types of resistance. In response, the appropriate degree of objectively reasonable force would depend on the articulable and specific threat actually perceived by the officer at that time and the totality of the circumstances surrounding the interaction.

2. Officers shall articulate the specific observations and the actions displayed by the subject which would lead a reasonable officer in their position to believe the subject was preparing to offer a higher level of resistance than previously observed.
3. For example, a subject who has been told they are under arrest who then tells the officer they are not going to jail as they ball their hand into a fist and raise their arm could be perceived as displaying preparatory aggressive resistance by taking physical actions in preparation to resist arrest by striking the officer (balling their fist and raising their arm as if preparing to throw a punch).

200.3-4 RESPONSE TO RESISTANCE

All responses to resistance must be objectively reasonable. In other words, another reasonable officer, faced with the same circumstances, could believe that the officer's response to resistance was reasonable based on the threat, level of resistance, and totality of the circumstances.

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

- (a) Assessment shall be ongoing – As the circumstances of a situation change, the force necessary to affect a detention, arrest, search, or transportation of a subject or to protect officer or other persons from imminent harm may also change. Officers will therefore need to re-evaluate their determination of the appropriate response to resistance as circumstances change.
- (b) Officer Discretion - Understanding that no order can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the objectively reasonable response to resistance in each incident.
- (c) Unless engaged in a lethal force encounter, officers are prohibited from using any of the following techniques: chokeholds, strangleholds, vascular neck restraints, or carotid neck restraints.
 1. 1. Chokeholds and strangleholds are defined as applying direct or indirect pressure by any means to an individual's throat, windpipe, trachea, or airway in a manner that is reasonably likely or intended to prevent, reduce, or hinder the intake of air, block the ability to breathe, or compress the airway.
 2. 2. Vascular and carotid neck restraints are defined as applying direct or indirect pressure to an individual's neck in a manner that is reasonably likely or intended to prevent, reduce, or hinder the blood flow to the brain through the vascular system or carotid arteries.
- (d) Improvising Permitted - Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- (e) Injury to Officer Not Required - While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (f) Reporting Required - Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.34.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
1. Reasonable opportunity for the officer to engage in de-escalation;
 2. The conduct of the individual being confronted as reasonably perceived by the officer at the time;
 3. Officer and subject factors such as age, size, relative strength, skill level, injury/ level of exhaustion and number of officers versus subjects;
 4. Influence of drugs and alcohol or mental capacity;
 5. Proximity of weapons;
 6. The degree to which the subject has been effectively restrained and their ability to resist despite being restrained;
 7. Time and circumstances permitting, the reasonable availability of other resources to the officer;
 8. Seriousness of the suspected offense or reason for contact with the individual;
 9. Training and experience of the officer;
 10. Potential for injury to citizens, officers and subjects;
 11. Risk of escape;
 12. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
 13. Other exigent circumstances.

200.34.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful;
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful; or
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

~~200.3.3 NOTICE OF AUTHORITY AND IDENTITY~~

~~If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).~~

200.45 DEADLY FORCE APPLICATIONS

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

- (a) Protect themselves or others from what they reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
 1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
 2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.56 REPORTING THE RESPONSE TO RESISTANCE

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by General Order 211 (Response to Resistance Inquiry, Reporting, and Review).

200.56.1 NOTIFICATION TO SUPERVISORS

Supervisor notification shall be made as soon as practicable following any force incident or allegation of force.

200.56.2 DUTY TO GIVE AID AND MEDICAL CARE

Prior to booking or release, medical assistance shall be obtained for any subject 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.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain, or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and shall be examined by qualified medical personnel as soon practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any 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 an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.56.3 ASSISTING MEDICAL PROFESSIONALS

- (a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in General Orders 211 and 200.5.1.
 - 1. Medical personnel are:
 - (a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)
 - (b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties
- (b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to General Orders 211 and 200.5.1 Response to Resistance by:
 - 1. Notifying their supervisor, and
 - 2. Completing an incident report including the title code 8400.