MEMORANDUM

TO: Mayor and Council

FROM: Farah Muscadin, Director, Office of Police Oversight

DATE: January 29, 2021

SUBJECT: **8 Can't Wait Policy Review and Recommendations**

Today, the Office of Police Oversight released an analysis of Austin Police Department policies related to Campaign Zero's **8 Can't Wait policy recommendations.** 8 Can't Wait is an initiative that advocates for more restrictive policies to reduce the use of deadly force by police and save lives. The OPO policy review report is the first phase and deliverable outlined by Council in Resolutions 95 and 96.

In the summer of 2020, City Council passed a series of resolutions aimed at restricting the use of force by law enforcement and reimagining public safety in Austin. These resolutions included:

- Resolution 20200611-50 (Resolution 50);
- Resolution 20200611-95 (Resolution 95); and
- Resolution 20200611-96 (Resolution 96).

As a part of the above resolutions, City Council directed the City Manager to direct OPO to facilitate a rewrite of the Austin Police Department (APD) policy manual, known as the General Orders. This rewrite will cover all policies, including those surrounding issues like search and seizure, body worn cameras, dash cameras, mental health response, discipline, bias, language, and courtesy.

OPO will be using a three-phase approach to conduct the rewrite of APD's General Orders:

- In Phase I, OPO will conduct a preliminary analysis of APD's current policy language on specific topics. OPO will make the analysis publicly available on atxpoliceoversight.org.
    - The analysis will include a brief policy overview highlighting OPO's main concerns with existing policy language, an introduction to each policy, policy review findings, a comparison of APD's current policies and 8 Can't Wait policies, and recommendations for policy changes.
- In Phase II, OPO will work with community partners and stakeholders to gather input from the public about proposed changes to APD's policies. This outreach effort will include events, surveys, and other forms of community engagement.
- In Phase III, OPO will submit policy recommendations and community feedback to APD. APD, in consultation with the City Manager's Office, will review the recommendations and modify as appropriate prior to final incorporation. APD will subsequently bring the proposed modified General Orders to Council for feedback in accordance with Resolution 95.

Please see the attached report and contact Farah Muscadin at (512) 974-9090 with any questions.

cc: Spencer Cronk, City Manager
Nuria Rivera Vandermyde, Deputy City Manager
Rey Arellano, Assistant City Manager
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Brian Manley, Chief of Police

8 Can't Wait Policy Review and Recommendations

Recommended policy changes to reduce deadly use of force in policing

OFFICE OF
POLICE OVERSIGHT

Introduction

In June 2020, City Council passed a series of resolutions aimed at restricting the use of force by law enforcement and reimagining public safety in Austin. These resolutions included:

- Resolution 20200611-50 (Resolution 50);
- Resolution 20200611-95 (Resolution 95); and
- Resolution 20200611-96 (Resolution 96).[1]

These resolutions are at the center of Reimagining Public Safety (RPS), which is the City of Austin's multi-faceted approach for improving all facets of public safety in Austin.[2] RPS addresses issues like budget allocation, racial disparities in policing, use-of-force policies, and mental health response.[3]

As a part of the above resolutions, City Council directed the City Manager to direct the Office of Police Oversight (OPO) to facilitate a rewrite of the Austin Police Department (APD) policy manual, known as the General Orders.[4] This rewrite will cover all policies, including those surrounding issues like search and seizure, body-worn cameras, dash cameras, mental health response, discipline, bias, language, and courtesy.[5]

In addition, City Council also specifically directed OPO to issue recommendations on use-of-force policies.[6] Policies regarding use of force cover a wide range of topics, including de-escalation, exhausting all alternatives before using deadly force, impact munitions, TASER devices, chokeholds, and comprehensive reporting.[7]

This report will first provide a brief policy overview highlighting OPO's main concerns with existing policy language. The report also includes an introduction to each policy, policy review findings from the analysis, current related policies, and recommended policy changes.

OPO's Three-Phase Approach

OPO will be using a three-phase approach to conduct the rewrite of APD's General Orders.

In Resolutions 95 and 96, City Council further instructed that OPO conduct this rewrite through an open process, seeking feedback and input from the community.[8]

Introduction

In Phase I, OPO will conduct a preliminary analysis of APD's current policy language on specific topics. In Phase I, OPO will conduct a preliminary analysis of current policy language; all analysis will be made available on atxpoliceoversight.org.

In Phase II, OPO will work with community partners and stakeholders to gather input from the public about proposed changes to policies. This outreach effort will include events, surveys, and other forms of community engagement.

In Phase III, OPO will submit policy recommendations and community feedback to APD. APD, in consultation with the City Manager's Office, will review the recommendations and modify as appropriate prior to final incorporation. APD will subsequently bring the proposed modified General Orders to Council for feedback in accordance with Resolution 95.[9]

8 Can't Wait Policy Review

OPO's first step in facilitating the General Orders rewrite is an analysis of how current policies compare to the policy recommendations at the center of a project called 8 Can't Wait.

8 Can't Wait is an initiative by Campaign Zero that advocates for more restrictive policies to reduce the use of deadly force by police and save lives.[10]

In Resolution 95, City Council outlined the City of Austin's position on six of the eight policy issues at the center of 8 Can't Wait, including the following:

1. Restrict shooting at moving vehicles;
2. Exhaust all alternatives before using deadly force;
3. De-escalation;
4. Duty to intervene in cases of improper or excessive use of force;
5. Comprehensive reporting of uses of force; and
6. Ban chokeholds and strangleholds.[11]

In addition, City Council directed the City Manager to ensure that policies align with the City of Austin's Reimagining Public Safety efforts on these matters.[12] In Resolution 95, this was described as a "non-exhaustive list," and the two 8 Can't Wait policy recommendations that were not directly mentioned were:

7. Require a use-of-force continuum; and
8. Warn before shooting.[13]

Policy Overview

To comply with the directives from City Council, the Office of Police Oversight conducted research related to six of the eight policy issues at the center of 8 Can't Wait.[14] As part of this research, OPO conducted a comparative analysis of policies from police departments around the country which, according to Campaign Zero, align with model policies that, if implemented, can lead to a reduction in deadly use of force.[15]

OPO's research revealed that APD's policies in these areas require substantive revision to be effective and align with the City of Austin's position.

This policy overview highlights OPO's main concerns with APD's existing policy language.

1. Restrict shooting at moving vehicles

The City of Austin's position is that "[u]se of deadly force against individuals, including persons fleeing (in vehicle or on foot), shall be limited to situations where necessary for self-defense or defense of others against an imminent deadly threat or threat of serious bodily injury, and either there were no reasonable alternatives to prevent serious injury, or death or all reasonable alternatives have been exhausted."[16]

- Under current policy, shooting at moving vehicles is not sufficiently restricted.
- Current policy is silent on the issue of shooting from a moving vehicle.

2. Exhaust all alternatives before using deadly force

The City of Austin's position is that "[u]se of deadly force against individuals, including persons fleeing (in vehicle or on foot), shall be limited to situations where necessary for self-defense or defense of others against an imminent deadly threat or threat of serious bodily injury, and either there were no reasonable alternatives to prevent serious injury, or death or all reasonable alternatives have been exhausted."[17]

- Under current deadly force policy, there is no requirement to exhaust all alternatives.

3. De-escalation

The City of Austin's position is that "[u]se of force shall incorporate de-escalation tactics in all circumstances, and the response shall be proportionate to the seriousness of the offense and the threat of harm presented."[18]

- Under current policy, definitions for “de-escalation” and “de-escalation techniques” provide little detail and no examples.
- The term “potential force encounters” is not defined.
- Current policy does not adequately acknowledge or address factors outside of deliberate non-compliance that may affect someone's ability to comply with officer commands.
- Policy presents the potential for de-escalation efforts to fail but does not explain the reasons that may happen.
- The current policy makes treating people with dignity optional.

4. Duty to intervene in cases of improper or excessive use of force

The City of Austin's position is that APD policy “requiring officers to intervene to stop improper or excessive uses of force by their fellow officers should be appropriately enforced.”[19]

- Under current policy, terms used are vague or undefined.
- The policy does not specify the means for intervening.
- The policy’s scope is too narrow.
- Department hierarchical issues are not addressed.
- Reporting requirements are not defined.

5. Comprehensive reporting of use of force

The City of Austin's position is that APD policy should require “comprehensive reporting of uses of force and use of force threats.” [20]

- As a part of Resolution 20191205-066 (Resolution 66), the City of Austin has hired a consulting firm, Kroll & Associates, to conduct a comprehensive assessment of APD’s use-of-force practices. After this assessment is completed, OPO will use its findings, along with community feedback, to inform recommendations on the topic of comprehensive reporting.

6. Ban chokeholds and strangleholds

The City of Austin's position is that chokeholds and strangleholds are "strictly prohibited as a policing tactic."[21]

- Chokeholds and strangleholds are not categorically banned.
- Under current policy, the terms used are not defined.
- The policy's scope is too narrow.
- Directives are inconsistent.

7. Require a use-of-force continuum

In Resolution 95, Council directed that use-of-force responses "shall be proportionate to the seriousness of the offense and the threat of harm presented."[22] This language summarizes the goals of utilizing a use-of-force continuum. Additionally, in Resolutions 50, 95, and 96, Council directed OPO to make policy recommendations based on national best practices and campaigns such as 8 Can't Wait and Campaign Zero. One of the policies recommended by 8 Can't Wait is that police departments utilize a force continuum "that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic."

- As a part of Resolution 66, the City of Austin has hired a consulting firm, Kroll & Associates, to conduct a comprehensive assessment of APD's use-of-force practices. After this assessment is completed, OPO will use its findings, along with community feedback, to inform recommendations on the topic of use-of-force continuums.

8. Warn before shooting

In Resolution 95, Council directed that "[u]se of force shall incorporate de-escalation tactics in all circumstances."[25] One common de-escalation tactic is to provide a warning before using force.[26] Additionally, in Resolutions 50, 95, and 96, Council directed OPO to make policy recommendations based on national best practices and campaigns such as 8 Can't Wait and Campaign Zero.[27] One of the policies recommended by 8 Can't Wait is that police departments "[r]equire officers to give a verbal warning in all situations before using deadly force."[28]

- Without further detail in policy, feasibility language is ambiguous.
- Policy is more robust for less-lethal force warnings.
- Policy does not specify how a warning should be given.

Restrict Shooting at Moving Vehicles

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments restrict the circumstances under which officers may shoot at moving vehicles.[29] Shooting at a moving vehicle is regarded as a particularly dangerous and ineffective tactic, with a high risk of injuring bystanders.[30] Increasing restrictions on shooting at moving vehicles has been shown to contribute to a reduction in officer-involved shootings.[31]

Policy review findings

Shooting at moving vehicles is not sufficiently restricted

Current policy permits shooting at a vehicle when the vehicle is being used as a weapon against officers or others.[32] Shooting at a moving vehicle is difficult and can lead to innocent or uninvolved third parties being harmed.[33] In addition, when shooting at a vehicle results in the driver being wounded or killed, the threat presented by the vehicle is not necessarily eliminated.[34] APD's current policy fails to sufficiently restrict this practice in a way that effectively safeguards both officers and the public against its inherent risks.[35]

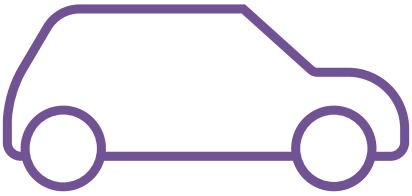
Restrict Shooting at Moving Vehicles

Furthermore, current policy creates a significant loophole by permitting shooting at moving vehicles in "extraordinary circumstances," while failing to define that term.[36] Effective policies require defined parameters in order to be enforced.[37]

APD policy should generally prohibit shooting except as a last resort in circumstances when a vehicle occupant is using deadly force other than the vehicle itself. The only other condition under which shooting may be appropriate is when the vehicle itself is being used as a weapon likely to cause a mass casualty incident.

APD policy is silent on the issue of shooting from a moving vehicle
Shooting from a moving vehicle presents some of the same risks (e.g. potential harm to innocent bystanders) and difficulties (e.g. reduction in accuracy) as shooting at a moving vehicle.[38] APD policy should explicitly prohibit this practice due to the inherent risks to officers, involved individuals, and uninvolved bystanders.

Current APD policies related to restricting shooting at moving vehicles



The following APD General Orders chapters are relevant to the restricting of shooting at moving vehicles:

- 202.1.1 Policy – Firearm Discharge Situations; and
- 202.1.3 Moving Vehicles.[39]

To view the full excerpts of these chapters, please turn to Appendix A.

Recommended policy changes

Add the following definition to General Order 200.1.2 Definitions:

Mass Casualty Incident – An incident in which the number of casualties exceeds the normally available local resources.

Change APD General Order 202.1.3 Moving Vehicles to the following:

202.1.3 MOVING VEHICLES

(a) Officers shall only discharge their firearms at a moving vehicle if, based on the totality of the circumstances, they have exhausted all possible alternatives and:

1. an occupant of the vehicle is using deadly force by means other than the vehicle itself; or
2. if the vehicle itself is being used as a weapon that will more likely than not cause a Mass Casualty Incident. An example of a situation that would constitute a Mass Casualty Incident would be a vehicle being driven into a crowd of people.

(b) Except as provided in subsection (a)(2) above, officers shall not discharge a firearm at a moving vehicle in any situation when the totality of the circumstances indicates that it is more likely than not that an innocent passenger or bystander could be injured.

(c) Officers shall exercise good judgment and shall not place themselves in the path of a moving vehicle.

(d) Officers shall move out of the path of any approaching vehicle unless it is impossible to do so.

(e) In situations when this policy applies, officers may leave a position of cover only:

1. to utilize an avenue of escape;
2. to move to a position of better cover; or
3. if the risk associated with not apprehending the suspect or stopping the threat outweighs the danger posed to the officer or any other person by leaving a position of cover.

(f) Officers shall not discharge their firearms from a moving vehicle.

Exhaust All Alternatives Before Using Deadly Force

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments "[r]equire officers to exhaust all other alternatives, including non-force and less-lethal force options, prior to resorting to deadly force."[40] In other words, under this recommendation, officers should only use deadly force as a last resort. Some alternatives to deadly force include: conflict avoidance, empty-hand techniques, and less-lethal force options (e.g. TASER devices).[41]

This policy recommendation is intended to eliminate the unnecessary use of deadly force. Currently, APD's deadly force policy does not require that officers exhaust all alternatives prior to using deadly force.[42]

Policy review findings

Under APD's current deadly force policy, there is no requirement to exhaust all alternatives

APD's General Orders consists of both introductory sections and conduct-specific sections. The introductory sections discuss ethics and APD's philosophy.[43] Following the introductory sections are the chapters and sections with specific directives.[44]

Currently, the only explicit language in the General Orders pertaining to the use of deadly force as a last resort is the section detailing APD's philosophy.[45] While articulating a police department's general philosophy is a valuable exercise, the policy sections with specific directives are what provide officers with substantive information about what is required of them.

While the rest of the relevant policies listed below may tangentially relate to the exhaustion of all alternatives, nowhere do any of them explicitly direct officers to use deadly force only as a last resort and only after all available alternatives have been employed.[46]

Current APD policies related to exhaustion of all alternatives

The following APD policies are relevant to the exhaustion of all alternatives:

- The Philosophy of the Austin Police Department, which is located in the introductory paragraphs to the General Orders:
- 200.1.1 Philosophy – Response to Resistance;
- 200.3 Response to Resistance;
- 200.4 Deadly Force Applications; and
- 202.1.1 Policy – Firearm Discharge Situations.[47]

To view the full excerpts of these policies, please turn to Appendix B.

Recommended policy changes

Add the following definitions to General Order 200.1.2 Definitions:

Unreasonable – Conduct which, given the totality of the circumstances, is irrational, not warranted, or not in accordance with practical realities.

Add the following section to APD General Order 200.4 Deadly Force Applications and 202.1.1 Policy-Firearm Discharge Situations:

(b) Deadly force shall only be used as a last resort after all alternatives have been exhausted or when, after analyzing the situation, alternatives have been rendered impossible by the totality of the circumstances.

1. Officers shall utilize appropriate tactical communication and decision-making as outlined in General Order 200.2 to ensure that they have the time, distance, and resources to properly respond to situations they encounter.
2. Officers shall not take unreasonable or unnecessary actions that escalate any situation to one that would require a deadly force response. Examples include, but are not limited to, the following:
   (a) Standing in front of a moving vehicle;
   (b) Giving unclear commands;
   (c) Giving an individual an insufficient amount of time to comply with commands;
   (d) Drawing weapons before the officer has an objectively reasonable belief that it will escalate to a deadly force situation; and
   (e) Using profanity while giving commands.
3. Officers shall document in an incident report all deadly force alternatives used during an encounter and what the involved individual's response was to each technique. If deadly force was ultimately used, officers shall document in detail why use of deadly force was necessary and objectively reasonable.

De-escalation

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments "[r]equire officers to de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force." [48]

De-escalation employs techniques designed to safely stabilize a situation, reduce the immediacy of a threat, and resolve an incident with the least amount of force necessary.[49] The main goals of de-escalation are to defuse tense situations or conflicts, obtain voluntary compliance, prevent unnecessary use of force, and use the least amount of force if force is required.[50]

The bedrock of de-escalation is communication.[51] Common forms of de-escalation include techniques like active listening, explaining one's actions, reducing the intensity of a situation by creating distance or maintaining cover, and engaging support from medical professionals or other specially trained individuals.[52]

Policy review findings

The definitions for “de-escalation” and “de-escalation techniques” provide little detail and no examples

While APD policy does define the terms “de-escalation” and “de-escalation techniques,” the definitions lack detail and fail to provide examples to help clarify their meaning.[53]

The term "potential force encounters" is not defined

APD's de-escalation policy uses the phrase "potential force encounters" but does not define it.[54] This term is ambiguous and unnecessary. First, it is possible that an officer may initially gauge any encounter with a member of the public as one that could potentially result in a use of force. Second, de-escalation techniques like maintaining a safe distance, active listening, and explaining one’s actions are things that can be applied to all encounters. These strategies need not be reserved only for potential use-of-force encounters.

The policy does not adequately acknowledge or address factors outside of deliberate non-compliance that may affect someone’s ability to comply with officer commands

Law enforcement interactions do not take place in a bubble, so it is important for policing policies to address the real-life factors that may be at play during any given encounter that officers have with the public. Variables like external noises, language barriers, mental health indicators, physical size, age, vision and hearing capabilities, and medical conditions are all factors that can play into an individual’s ability to both acknowledge and follow instructions from officers.[55] APD policy fails to address these issues.[56]

The policy discusses the potential for de-escalation efforts to fail but does not discuss the reasons that might happen

De-escalation efforts may indeed fail in some cases. APD’s de-escalation policy mentions this possibility but neglects to acknowledge or address some of the reasons why that might be the case.[57] Successful de-escalation cannot be accomplished by one person’s actions alone, but one person’s actions can be the reason that it fails. APD policy appears to put the onus of the success or failure of de-escalation efforts solely on the individual with whom they are being used.[58] The policy never reminds officers that their own actions can also impact de-escalation efforts.[59]

The current policy makes treating people with dignity optional

In 200.2.1(b)(3), the policy states that "to the extent possible and reasonable under the totality of the circumstances officers may use one or more of the following verbal techniques...."[60] The policy then goes on to list the techniques, the first of which being to "treat the subject with dignity and respect."[61] Placing this language after the word "may" has the effect of making it optional rather than mandatory.[62] While some techniques may only be appropriate for some situations, officers should always be expected to treat community members with dignity and respect, and APD's policy should reflect that. Communication is the bedrock of effective de-escalation, and that should be made more clear in APD's policy.

Policy language tends to discourage de-escalation rather than incentivize it

Officers may already fear that if they use de-escalation tactics, which often require pausing and waiting, they may be accused of neglecting their duties because they did not spring immediately into action. In order to encourage compliance, the policy should make it clear that officers will not be penalized for engaging in appropriate de-escalation techniques.

Current APD policies relevant to de-escalation

The following APD policies are relevant to de-escalation:

- 200.1.2 Definitions;
- 200.2 De-escalation of Potential Force Encounters ; and
- 200.2.1 Assessment and De-escalation.[63]

To view the full excerpts of these chapters, please turn to Appendix C.

Recommended policy changes

Reformat the policies and add a new section to create a more linear and logical progression:

(a) Keep section 200.1.2 Definitions;
(b) Keep section 200.2. De-escalation (reformat the policy and remove the part of the title that reads "of Potential Force Encounters");
(c) Keep section 200.2.1 Assessment (reformat the policy and remove the part of the title that reads "and De-escalation); and
(d) Add a new section titled 200.2.2 Use of De-escalation Techniques

Replace the current policy language with the following:

200.1.2 DEFINITIONS
De-escalation – (1) The use of a range of techniques (e.g. communication, time, distance, cover, concealment, etc.) designed to create conditions that safely stabilize a situation and reduce the immediacy of a threat so that more time, options, and resources are available to resolve the situation using the least amount of force necessary. (2) Reducing or ending the use of force once a threat has diminished.

De-escalation Techniques – Tactics used by officers that are designed to increase the likelihood of gaining voluntary compliance and reduce the likelihood of using force during an encounter. Tactics may include, but are not limited to, the following: maintaining safe distance, active listening, clear communication, explaining what actions need to be taken and any alternatives, explaining the consequences of taking particular actions, and securing additional resources.

De-escalation

200.2 DE-ESCALATION

Officers shall safely incorporate appropriate de-escalation techniques in all circumstances, and shall approach all encounters with the goal of preventing or minimizing uses of force and, in situations where compliance is needed, gaining voluntary compliance.

(a) While de-escalation efforts may fail in some instances, officers are expected to recognize their ability to impact the direction and outcome of many situations through their own conduct and decision-making. Officers shall not engage in unnecessary conduct that could be expected to escalate a situation. Examples include, but are not limited to, the following:

1. Becoming unnecessarily combative or aggressive;
2. Using insults, slurs, or rude gestures;
3. Unduly compromising one's own safety or the safety of others by making inappropriate or misguided tactical decisions; and
4. Unnecessarily rushing the pace of an encounter.

(b) Officers shall follow this order in accordance with other portions of the General Orders and/or specific Department-approved training that addresses de-escalation.

(c) Officers who, in accordance with this policy, take actions to de-escalate an incident will not be found to have neglected their duty as a result of those actions.

200.2.1 ASSESSMENT

(a) Gathering Information – As officers arrive on the scene, observe conditions, and interact with the persons there, they should continue to gather additional information and facts to develop an understanding of the totality of the circumstances relevant to the incident. Pertinent information may include, but is not limited to, the following:

1. Factors that may impact an individual's ability to interact with officers, understand the nature of the situation, and/or voluntarily comply with instructions. Examples of such factors include, but are not limited to, the following:
    a. Medical conditions;
    b. Mental health diagnoses, Intellectual or Developmental Disabilities (IDD), or cognitive disorders;
    c. Mental health crises;
    d. Physical capabilities (taking into account factors like age, injury, or size);
    e. Hearing or vision capabilities;
    f. Language barriers;
    g. Effects of drugs (street or prescribed) or alcohol; and
    h. Conflicting noise or other distractions in the vicinity (e.g. multiple officers giving commands at the same time, traffic noise, lights and sirens, etc.).
2. The number of individuals involved in an incident and the number of people still at the scene; and
3. Events leading up to the call for service.

(b) Assessing Risks and Benefits – After an officer has gathered sufficient information to form an understanding of the totality of the circumstances, they shall identify appropriate de-escalation techniques and determine how to safely employ them during the encounter. Factors that officers shall consider include, but are not limited to, the following:

1. Whether a particular action is immediately necessary (e.g. search, detention, arrest);
2. What risks and benefits may be associated with delaying immediate action;
3. Whether the situation requires, warrants, or could otherwise benefit from a supervisor's presence;
4. Whether other officers may be needed on the scene, including special units, such as CIT or CINT; and
5. Whether other resources (e.g. less-lethal weaponry, special equipment, or other emergency professionals, interpreters or other persons) are needed.

200.2.2 USE OF DE-ESCALATION TECHNIQUES

(a) Acknowledging that communication is crucial to de-escalation, officers shall at all times treat individuals they encounter with dignity and respect, and in the way the officer would wish to be treated if they stood in the individual's shoes. Officers shall pay particular attention to the manner in which they communicate (verbally and non-verbally) with individuals and shall consider how the tone, volume, cadence, and gestures with which they are communicating may be impacting an encounter.

(b) De-escalation also may involve actions such as securing additional resources, tactical repositioning, and employing verbal persuasion.

1. Securing Additional Resources – When the circumstances of an incident make doing so feasible and appropriate, officers should request and utilize additional resources. Officers should request resources that they, through relevant training and experience, believe would aid in resolving the situation without the use of force, or would help to minimize the use of force. Absent an immediate need to do so, officers shall avoid physically confronting an individual until such time as additional resources have arrived to assist. Additional resources may include, but are not limited to, the following:
    (a) Officer swith special training, such as the Crisis Intervention Team or Critical Incident Negotiation Team;
    (b) Emergency medical professionals;
    (c) Mental health care providers;
    (d) Interpreters;
    (e) Supportive family members related to individuals involved;
    (f) Less-lethal weaponry; and
    (g) Additional officers.

2. Tactical Repositioning – When the circumstances of an incident make doing so feasible and appropriate, officers should employ any one or more of the following tactical repositioning measures to try to minimize or avoid physical confrontation:

(a) Maintain safe physical distance;

(b) Maintain cover behind existing or assembled physical barriers; or

(c) Communicate from a location that is concealed from the individual.

3. Verbal Persuasion – When the circumstances of an incident make doing so feasible and appropriate, officers should use one or more of the following verbal techniques to try to defuse tension and build rapport with individuals they encounter:

(a) Listen to the individual's side of the story and permit them to express frustration;

(b) Explain what the officer is doing, what other individuals can do, and what needs to happen;

(c) Explain why the officer is taking a specific action, again permitting the individual to respond and acknowledging their perspective;

(d) Provide the individual with alternatives, even if those alternatives may be limited;

(e) Advise the individual of the consequences for noncompliance;

(f) Offer reasonable, professional advice if it is expected to help; or

(g) Provide the individual with adequate time within which to respond to directives. In determining how much time is adequate, officers should consider factors such as those listed in General Order 200.2.1.

Duty to Intervene in Cases of Improper or Excessive Use of Force

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments"[r]equire officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor."[64] A duty-to-intervene policy creates an affirmative obligation on the part of police officers to stop other officers from engaging in certain conduct prohibited by law or department policy.[65]

Recently, this issue was brought to the forefront of public discourse as a result of the killing of George Floyd by an officer in the Minneapolis Police Department who knelt on his neck for nearly nine minutes while other officers on scene did not intervene.[66] This incident reinforced the dire need for police departments to require that officers hold each other accountable and stop the use of excessive force when they see it.

Policy review findings

Terms used are vague or not defined

Some terms within the General Orders have specific meanings that may not be commonly understood. As a result, it is crucial to define these terms so that both officers and the public can clearly understand what APD requires of its officers.

"Intercede"

APD's current policy creates a duty to intercede rather than intervene.[67] OPO recommends replacing the term "intercede" with the term "intervene." While these words may appear to be interchangeable, they are not the same. The common meaning of the word "intervene" more precisely communicates an expectation that officers verbally or physically intervene when necessary to stop another officer from engaging in prohibited conduct.[68] Once adopted as the appropriate term, "intervene" should be defined within the General Orders to ensure that readers understand how it is applied to APD officer conduct.

"Promptly"

APD policy should define the term "promptly" as it relates to the reporting requirements of the duty to intervene. In the alternative, APD should replace "promptly" with language that precisely outlines the time frame within which officers must report their observations. As it stands, the term "promptly" is vague and does not provide officers with any actual guidance about what is required of them.[69]

"Objectively Reasonable"

The definition of "objectively reasonable" should be improved for clarity and conciseness. APD's current definition of "objectively reasonable" paraphrases the description of "reasonableness" from the United States Supreme Court case *Graham v. Connor*, but it does not actually define the meaning of the phrase "objectively reasonable."[70]

First, the definition should explicitly state that it is a legal standard. Second, the definition of "objectively reasonable" should not contain the word "objective." In other words, the word being defined should not be used in the definition. Third, the addition of the language "without the benefit of 20/20 hindsight" is redundant because the legal standard (and APD's definition) already makes clear that one must consider the totality of the circumstances presented at the time of the incident

Duty to Intervene in Cases of Improper or Excessive Use of Force

The means of intervention is not specified

APD's current policy lacks clarity because it does not specify how officers are required to intervene (e.g. verbally, physically, or both).[71] Clear policies allow officers to know exactly what is required of them.[72] Additionally, clear policies help to ensure appropriate enforcement by allowing decisionmakers to hold officers accountable in a consistent and predictable manner.[73] APD's current policy requires additional clarification about how officers should intervene when they observe conduct that would create a duty for them to do so.

The policy's scope is too narrow

APD's current policy only creates a duty in use-of-force situations and when "the officer knows that the force being used is not objectively reasonable" and "has a reasonable opportunity to prevent the harm."[75] APD's policy would be improved by broadening the parameters to create a duty in situations beyond those involving use of force. In particular, the General Orders should contain a centralized policy that sets forth a requirement for officers to intervene when they witness any conduct by another officer that would constitute a violation of state law, federal law, or APD policy.

Broadening APD's duty to intervene policy in this way would still create a duty to intervene in use-of-force situations, but it would also create a duty to intervene in cases involving dishonesty, bias-based profiling, harassment, and use of racial slurs or epithets, just to name a few. Ensuring that APD officers follow use-of-force policies is extremely important, and it is equally important for officers to follow all other APD policies as well. Adopting a policy that encourages officers to hold each other accountable in this way would benefit both APD and the community.[75]

The scope of duty is unclear

While APD's current policy says officers "shall intercede to prevent further harm," it does not clearly outline when that duty ends.[76] In particular, APD's policy should clearly articulate that, regardless of their original role on a call, every on-scene officer who witnesses a violation of state law, federal law, or APD policy has a duty to intervene unless and until the conduct in question has been stopped.

Department hierarchical issues are not addressed

APD's current policy does not address potential issues that could arise if an officer witnessed someone of higher rank (e.g. a corporal, sergeant, lieutenant, etc.) engaging in conduct that created a duty to intervene.[77] The policy should clearly articulate that the duty to intervene creates an affirmative duty on the part of all officers of all ranks, and that the duty is created despite APD's policies related to insubordination (General Orders 110.4.3 and 110.4.4)." This is necessary to relieve the fear officers may have about contradicting their superiors.

Reporting requirements are not defined

APD's current policy provides scant details about what is required of officers in terms of reporting when they witness conduct creating a duty to intervene.[78] Through Resolution 95, City Council clearly articulated a desire for data gathered from comprehensive reporting of incidents involving use of force and the duty to intervene.[79] APD's policy should be revised to provide detailed reporting requirements that increase accountability and transparency, and that memorialize important data related to the incident (e.g. who was present, the extent to which those present were involved, what occurred, when it occurred, and how it occurred).

Current APD policies relevant to duty to intervene

The following APD policies are relevant to the duty to intervene:

- 200.1.2 Definitions; and
- 200.1.3 Duty to Intercede.[80]

To view the full excerpts of these chapters, please turn to Appendix D.

Recommended policy changes

Move the policy out of the Response to Resistance chapter (General Order 200) and into the General Conduct and Responsibilities Chapter (General Order 900):
This move is necessary to support the creation of a duty to intervene in situations beyond use of force.

Create a definitions section within General Order 900 that includes the following definition:
Intervene – To verbally or physically interact with another officer in order to prevent, stop, or modify a result or sequence of events.

Change the following definition in General Order 200.1.2 Definitions:
Objectively Reasonable – A legal standard applied to use-of-force situations that judges whether force was justified from the perspective of a reasonable officer on the scene and considering the totality of the circumstances confronting the officer at the time of the incident.

Replace the current policy language with the following:
200.1.3 DUTY TO INTERVENE
Any officer who observes another officer use or prepare to use force that is not objectively reasonable or engage in any conduct that would constitute a violation of state law, federal law, or APD policy shall make every effort to safely intervene and stop the other officer. Any officer who fails to intervene in accordance with this policy shall be subject to discipline of the same severity as if they themselves engaged in the conduct in question.

(a) This policy creates a duty in instances when, after an initial use of force, a continued application of force is no longer required.

(b) Intervening officers shall make every effort to safely intervene by verbal and physical means as the situation requires; if verbal intervention is not enough to stop the act(s), intervening officers shall make every effort to safely intervene through physical means. Examples of physical intervention methods include, but are not limited to, the following:

1. Physically positioning oneself in between the officer(s) whose conduct is in question and the other involved individual(s);
2. Using physical force to remove an officer from a particular area; or
3. Using physical force to stop an officer's physical contact with an involved individual.

(c) Upon witnessing an incident creating a duty to intervene, officers shall immediately activate their body-worn camera systems if they are not already activated, and shall radio to dispatch that they have observed an incident requiring them to intervene to stop the actions of another officer.
(d) Once intervention is no longer required, officers who witnessed or intervened in the incident must also immediately report their observations and involvement to a supervisor.
(e) In situations when an incident report would already be required, officers who witnessed or intervened in the incident must include a detailed description of their involvement and the events surrounding the incident. In situations that would not otherwise require an incident report, this section creates a requirement. A detailed description includes, but is not limited to, the following information:

1. Who was present (officers and civilians);
2. The extent to which those present were involved;
3. What occurred, when it occurred, and how it occurred.
    (a) Detailed description includes, but is not limited to, the following information:

(f) Notwithstanding General Orders 110.4.3 and 110.4.4, this policy creates an affirmative duty to intervene regardless of rank or whether the intervening officer is of higher or lower rank than the officer(s) whose conduct is in question.
(g) Regardless of their role during a call or original purpose for being in the vicinity, it is the duty of every on-scene witness officer to intervene unless and until the conduct in question has been stopped.
(h) Examples of scenarios creating a duty to intervene include, but are not limited to, the following:

1. Use of physical force that is not objectively reasonable;
2. Escalating an encounter without a lawful, necessary purpose;
3. Stops, searches, and arrests that are unconstitutional or violate APD policy;
4. Theft or fraud;
5. Use of racial slurs or epithets;
6. Racial or bias-based profiling;
7. Sexual assault;
8. Harassment or sexual harassment;
9. Misrepresentation or dishonesty; and
10. Document falsification.

Ban Chokeholds and Strangleholds

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments restrict officers from using chokeholds or strangleholds on individuals, as use of these techniques may lead to "unnecessary death or serious injury."[81]

Neck restraints generally fall into two categories: vascular and respiratory.[82] Vascular neck restraints affect blood flow and are colloquially referred to as "strangleholds," while respiratory neck restraints affect air intake and are referred to as "chokeholds."[83] According to APD, chokeholds and strangleholds are not part of APD training curriculum and are not approved tactics for restraining or arresting an individual.[84]

In a memo to the Mayor of Austin and City Council on July 8, 2020, APD's Chief of Police stated that, as of June 11, 2020, APD's General Orders were updated to "explicitly ban the use of such techniques."[85] The revisions that APD's Chief of Police was referring to went into effect on July 3, 2020.[86] Furthermore, APD's policy does not explicitly ban these techniques.[87] Rather, using equivocal language, it limits the use of chokeholds and strangleholds to situations in which deadly force would be authorized.[88]

Policy review findings

Terms are not defined

There are terms and maneuvers referenced in the current policy that are not defined. The purpose of the General Orders is to make officers aware of their responsibilities, and to make the public aware of APD officers' responsibilities. As a result, it is important to define key terms that are not commonly known or that have specific meaning within this context.

Here, there are six terms left undefined: vascular neck restraint, carotid neck restraint, stranglehold, chokehold, pressure, and reasonably likely.[89] While officers and the public may be familiar with these terms, their technical meanings may not be commonly understood, and each term has a specific meaning in this context.

To improve clarity, the term "reasonably likely" should be removed, and the remaining five terms should be defined. In addition, the General Orders should explicitly list and define "respiratory neck restraints" to clearly demonstrate that the policy applies to both the respiratory and vascular categories of neck restraints.

The policy's scope is too narrow

Another issue with APD's current policy is that it is too narrow in scope. On the topic of respiratory restraints, APD's policy only restricts actions that "apply direct or indirect pressure to an individual's throat, windpipe or airway in a manner that is reasonably likely to prevent, reduce, or hinder the intake of air..."[90] This wording excludes a wide range of conduct, including those actions that, even if not actually executed in a manner that is "reasonably likely" to impact air intake, are intended to do so.

In addition, including language like "reasonably likely" invites an inquiry into the technicalities of how a maneuver was performed and the amount of pressure used. Based on Council's goals and the policy of the City of Austin as outlined in Resolution 95, these kinds of inquiries do not matter. The purpose of Resolution 95 is to unequivocally ban APD's use of chokeholds as a policing tactic, and it broadly defines them to include not only all maneuvers that involve choking or cutting off blood flow, but also all maneuvers that involve holding the neck in general.[91] In light of Resolution 95, the fact that the determination of whether APD's chokehold policy was violated is solely based on whether the maneuver was performed in a manner making it reasonably likely that air intake or blood flow would be affected contradicts both the intent and letter of the Resolution.[92]

APD has said that it does not train officers on the use of neck restraints.[93] As a result, it is possible that subject officers being investigated for using a neck restraint will not have received relevant training. It is similarly possible that the Internal Affairs investigators reviewing the incident will not have received training on the use of neck restraints. It does not make sense to maintain a policy standard that invites an inquiry into the technicalities of how a neck restraint was performed when APD does not train on these maneuvers.

Ban Chokeholds and Strangleholds

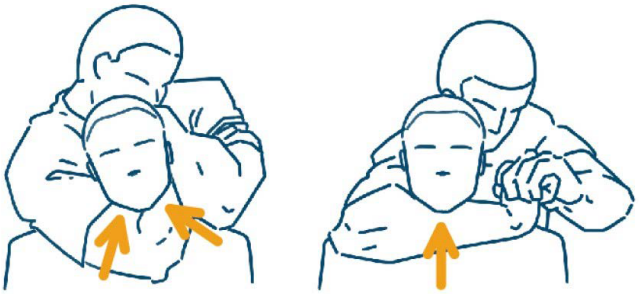


Image 1: Visual Depiction of Carotid Neck Restraint (left) and Chokehold (right). [94]

The question of whether pressure was applied in a manner "reasonably likely" to impair air intake or blood flow also requires some threshold determination about how much pressure is needed before such a risk is realistic. As it applies to respiratory restraints, "[t]here is no way to determine the amount of pressure needed not to cause airway injury. The potential for injury exists whenever pressure is applied."[95] Furthermore, even if there were a threshold amount of pressure, an investigator would not be able to determine the level of pressure used in a given incident. As a result, it would be best for policy language to involve a simpler inquiry with clearer, more objective standards.

The current policy language also fails to consider whether the effects of a vascular or respiratory neck restraint can be achieved without the application of "pressure." While APD policy does not define "pressure," the common meaning of the word relates to the use of physical force by one thing against another.[96] While vascular and respiratory functions can certainly be impacted by the use of physical force, the policy should also account for other scenarios where force may not be used but where these types of functions are also impaired (e.g. blocking someone's nose or mouth).

Directives are inconsistent

APD's current policy only addresses intent in the subsection related to vascular neck restraints.[97] The subsection on respiratory neck restraints does not address the subject of intent.[98] It is unclear why intent would only be a factor for one type of neck restraint and not the other. Intent should be considered for both respiratory and vascular neck restraints.

Chokeholds and strangleholds are not categorically banned

While APD has stated otherwise, APD's current policy does not explicitly ban the use of neck restraints.[99] Rather, the policy prohibits the use of vascular neck restraints, carotid neck restraints, and strangleholds except where deadly force would be authorized.[100] In other words, APD policy allows for the use of these maneuvers in some situations. APD's position that neck restraints are an acceptable tactic in certain circumstances is further demonstrated by the language of General Order 200.3(d), which allows officers to improvise when they "...reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the APD."[101]

Ban Chokeholds and Strangleholds

The use of neck restraints as a policing tactic is inherently dangerous to both officers and the individuals being restrained.[102] Importantly, using chokeholds and strangleholds requires officers to engage in close-quarter hand-to-hand combat, which can put officers in danger.

During a chokehold, pressure applied with the forearm causes the individual's airway to collapse and, as a result, can cause fractures to important structures like the laryngeal cartilage or hyoid bone.[103] Moreover, "[a]s with a drowning swimmer, the procedure sometimes precipitates resistance as the person fights for air."[104]

During a stranglehold, pressure applied to the individual's neck can cause them to lose consciousness and go limp within seconds.[105] Serious medical consequences can occur both at the onset and period following loss of consciousness.[106] Indeed, even in controlled training situations, police officers have developed stroke symptoms after being restrained with a stranglehold.[107] Unlike in roleplay scenarios that are used during training, when officers use a chokehold or stranglehold in real life, the environment is not controlled. As Image 1 demonstrates, there is very little difference in how one's arms are positioned in a stranglehold (carotid neck restraint) versus a chokehold. As a result, "[w]hen there is a restraint happening, what could start as a carotid take-down could end up with a bar-arm chokehold, or vice versa, because it's a dynamic process where the suspect is trying to escape the restraint and the police officer is supplying the restraint, and there are other factors, which could play a role in the suspect's actions."[108] In other words, "[t]he dynamic fact that the person is struggling could result in pressure being applied in different parts of the neck even if it's not intended to by the officer."[109]

The dangers of using these maneuvers are increased when officers do not receive frequent training on how to perform them properly.[110] In order to align with Resolution 95 and the City's policy that chokeholds and strangleholds be strictly prohibited as a policing tactic, APD policy should be revised to categorically ban their use in all situations.[111]

Current APD policies relevant to chokeholds and strangleholds

The following APD General Orders chapters are relevant to neck restraints:

- 200.1.2 Definitions; and
- 200.3 Response to Resistance.[112]

To view the full excerpts of these chapters, please turn to Appendix E.

Recommended policy changes

Replace the current policy language with the following:

200.1.2 DEFINITIONS

Vascular Neck Restraint – A neck restraint that restricts, or may restrict, blood flow in the person being restrained by compressing the carotid arteries (blood vessels on the sides of the neck that deliver blood to the brain and head). This maneuver may also be referred to as a sleeper hold, carotid restraint, or stranglehold.

Respiratory Neck Restraint – A neck restraint that restricts, or may restrict, air supply to the person being restrained when pressure is applied to the front portion of the neck and throat. A respiratory neck restraint may also be referred to as a chokehold, bar arm hold, guillotine choke, or bar hold. This maneuver may also be performed with an inanimate object such as a baton or stick. When performed with a baton or stick, the maneuver may be referred to as a mechanical hold.

Pressure – The physical application of force against a thing by something else in contact with it.

Replace the current chokehold and stranglehold policy in General Order 200.3(c) Response to Resistance with the following:

(c) Negative Impact to Air Intake or Blood Flow—Performing any action that could, or is intended to, prevent, reduce, hinder or otherwise negatively impact an individual's blood flow to the brain or intake of air is considered a use of deadly force and is categorically prohibited.

1. Examples of specific actions that are prohibited include, but are not limited to, the following:

(a) Applying direct or indirect pressure by any means to an individual's chest, back, torso, head, face, neck, throat, windpipe or airway;

(b) Performing a Vascular Neck Restraint, carotid neck restraint, or any other variation thereof;

(c) Performing a Respiratory Neck Restraint, chokehold, or any variation thereof;

(d) Kneeling, standing, sitting, or placing any body part on any area referenced in 200.3(c)(1)(a) (e.g. kneeling on a person's back while they are in the prone position);

(e) Using an inanimate object to apply pressure to any area referenced in 200.3(c)(1)(a); and

(f) Causing an individual's nose or mouth to be blocked regardless of whether pressure was used. The Department shall ensure that any device utilized by officers in the course of their duties meets established safety requirements and does not restrict breathing (e.g. ensuring that spit hoods are made of porous, breathable materials).

2. This section is not applicable to situations in which an employee is applying pressure to a wounded area to provide first aid or lifesaving measures.
3. Notwithstanding any other section of the General Orders and regardless of a subsequent determination that use of such techniques was objectively reasonable under the circumstances, it is a violation of Department policy to use any form of neck restraint or to otherwise engage in any action that could, or is intended to, impede an individual's normal breathing or blood flow by applying pressure to the individual's throat, neck, head, back, chest or torso, or by blocking the individual's nose or mouth.

Remove General Order 200.3(d) Response to Resistance, which currently includes the following language:

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.

Warn Before Shooting

Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments adopt policies that require officers provide a verbal warning before employing use of deadly force when feasible.[113] Additionally, before using deadly force, officers should provide individuals an adequate amount of time to comply with any commands the officers have given.[114]

APD policy requires that officers issue a warning prior to the use of deadly force when "feasible."[115] While this is in alignment with 8 Can't Wait's model policy, it lacks sufficient specificity and detail to provide officers with a clear understanding of what is expected of them.

Adding clear directives about when and how warnings should be given will help officers to consistently give appropriate warnings before using of deadly force, potentially eliminating the need for officers to resort to the use of deadly force.[116] Policies that provide concrete guidance to officers will increase consistency (in behavior and accountability) and help ensure that officers' behavior reflects both community and APD goals.[117]

Policy review findings

Without further detail in policy, feasibility language is ambiguous

The requirement for police officers to provide a warning prior to the use of deadly force if "feasible" was established by the United States Supreme Court in *Tennessee v. Garner*.[118] In alignment with this case, the majority of the police department policies that meet 8 Can't Wait standards require warnings when "feasible."[119] Other policies that meet the 8 Can't Wait standard may use the terms "practical" or "possible."[120]

APD's current policy states that a warning should be given "if feasible" but provides no other direction. By allowing so much discretion, the policy fails to provide officers with guidance in life-or-death situations. In some of the most critical and consequential moments that officers may face, the policy leaves them without knowing exactly what is expected of them and what factors will be considered in the event of an administrative investigation into the incident.

APD policy is more robust for less-lethal force warnings

APD policy is virtually silent regarding warning requirements for deadly force, particularly in comparison with the warning requirements for less-lethal force options.[121] The sections for both TASER and kinetic energy projectiles include the purpose of a warning, verbiage for the warning, and reporting requirements.[122] These specifics are missing from APD's policy regarding warnings for deadly-force situations.[123] APD's policy should provide the same, if not more, specificity and guidance as its policies governing less-lethal force options.

APD policy does not specify how a warning should be given

Other police departments instruct officers to, as part of their warning, identify themselves and give a command.[124] APD doesn't require a warning or provide any specifications about how warnings should be given.[125] Requiring officers to identify themselves prior to using deadly force would potentially decrease confusion thereby helping officers to gain or maintain control of the scene. Additionally, requiring that officers give individuals a clear command and an adequate amount of time to comply would increase the likelihood of gaining voluntary compliance, which could eliminate any, real or perceived, need to use deadly force.[126]

Current APD policies relevant to warning before shooting

The following APD policies chapters are relevant to warning before shooting:

- 202.1.1 Firearm Discharge Situations; and
- 200.4 Deadly Force Applications.[127]

To view the full excerpts of these chapters, please turn to Appendix F.

Recommended policy changes

Remove the last paragraph of 202.1.1 Policy, which currently includes the following language

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible.

Create a new policy section in General Order 202 adding the following language

VERBAL WARNINGS

Purpose: The purpose of a warning is to provide the individual being targeted with a reasonable opportunity to voluntarily comply with officer commands and to advise other officers and bystanders with a warning that deadly force will be deployed.

(a) A verbal warning must be given prior to the deployment of a firearm in all circumstances unless:

1. Use of deadly force is immediately necessary to prevent imminent death or serious bodily injury to officers or bystanders on scene; and
2. Giving a warning will place the officer or bystanders in additional danger.

(b) A warning must be given prior to each deployment of a firearm in all circumstances that don't meet the requirements identified in subsection (a). If an initial deployment of a firearm meets the requirements in subsection (a), a warning must be given prior to any subsequent discharges of a firearm.

(c) Any warning must identify officers as police officers and include a clear, specific command (e.g. "Austin Police! Drop the weapon or I'll shoot!").

1. The warning must be communicated in a manner that enables the targeted individual to perceive, understand, and comply with any issued commands. Officers shall take into account factors such as, but not limited to, the following: distance, environmental conditions, physical/mental condition of the targeted individual, language barriers, and whether the individual has any disabilities that would inhibit their ability to perceive, understand, or comply with any commands.

2. Based on factors like the ones listed in subsection (c)(1) above, officers shall have a reasonable basis for believing that the warning was understood by the individual to whom it was directed.
3. Officers must give targeted individuals an adequate of time to comply with any request or command given as a part of the warning.

(d) Warnings shall not include disrespectful, profane, discourteous, harsh, or offensive language.
(e) The fact that a verbal warning was given, or the reasons it was not given, shall be documented in any related reports. Officers shall also document any responses by the targeted individual.

Appendix A: Current APD policies relevant to shooting at moving vehicles

202.1.1 Policy - Firearm Discharge Situations (Excerpt)

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

(a) 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)):

1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
    (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
    (b) 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.

202.1.3 Moving Vehicles

This order is not intended to restrict an officer's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

(a) Officers shall exercise good judgment and will not place themselves in the path of a moving vehicle since doing so may increase the likelihood of having to resort to the use of deadly force.

(b) Unless it reasonably appears that it would endanger officers or the public, officers will move out of the path of any approaching vehicle.

(c) When encountering a vehicle being operated in a threatening manner, officers may leave a position of cover only:

1. to utilize an avenue of escape
2. move to a position of better cover, or
3. if the need to apprehend the suspect or stop the threat outweighs the danger imposed to the officer or any other person.

(d) Disabling a vehicle by use of a firearm will only be attempted under extraordinary circumstances. Officers who utilize a firearm against a vehicle or operator of a vehicle must meet the same standards established in 202.1.1(a) above.

Appendix B: Current APD policies relevant to exhausting all alternatives

Philosophy of the Austin Police Department (Excerpt)

The protection of life is the primary core value and guiding principle of the Austin Police Department. As such, all employees will strive to preserve human life while recognizing that duty may require the use of deadly force, as a last resort, after other reasonable alternatives have failed or been determined impractical.

200.1.1 Philosophy - Response to Resistance (Excerpt)

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. 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.

200.3 Response to Resistance (Excerpt)

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.

200.4 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 himself or others from what he reasonably believes 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.

Appendix B: Current APD policies relevant to exhausting all alternatives

202.1.1 Policy - Firearm Discharge Situations (Excerpt)

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

(a) 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)):

1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
    (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
    (b) 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.

Appendix C: Current APD policies relevant to de-escalation

200.1.2 Definitions (Excerpt)

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.

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.

200.2 De-escalation of Potential Force Encounters

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 de-escalation policy is intended to complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

Appendix C: Current APD policies relevant to 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; and
7. 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).

Appendix C: Current APD policies relevant to de-escalation

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 -- To the extent possible and reasonable under the totality of the circumstances officers may use one or more of the following verbal techniques 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.

Appendix D: Current APD policies relevant to the duty to intervene

200.1.2 Definitions (Excerpt)

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 Intercede

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

Appendix E: Current APD policies relevant to chokeholds and strangleholds

200.1.2 Definitions (Excerpt)

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.

Appendix E: Current APD policies relevant to chokeholds and strangleholds

200.3 Response to Resistance (Excerpt)

(c) Vascular Neck Restraints, Carotid Neck Restraints, and strangleholds are prohibited in all cases except where deadly force would be authorized. Unless engaged in a lethal force encounter, officers will not:

1. Apply direct or indirect pressure by any means to an individual's throat, windpipe, or airway in a manner that is reasonably likely to prevent, reduce, or hinder the intake of air (e.g., apply a chokehold); or
2. Apply 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 within the 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

Appendix F: Current APD policies relevant to warning before shooting

202.1.1 Firearm Discharge Situations

It is the policy of this department to resort to the use of a firearm when it reasonably appears to be necessary under the circumstances.

(a) 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)):

1. Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
2. Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
    (a) The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
    (b) 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.

(b) To stop a dangerous and aggressive animal:

1. In circumstances where officers encounter any animal which reasonably appears to pose an imminent threat of bodily injury to officers or others, officers are authorized to use objectively reasonable force up to and including deadly force (when lesser means would be impractical) to neutralize the threat. If time and distance permit, an officer may consider using the following less-lethal options:
    (a) Fire Extinguisher
    (b) Oleoresin Capsicum spray
    (c) TASER Device
    (d) Assistance of Animal Control
2. In circumstances in which officers have sufficient advanced notice that a potentially dangerous domestic animal (e.g., dog) may be encountered, such as in the serving of a search warrant, officers should develop reasonable contingency plans for dealing with the animal without the use of deadly force (e.g., fire extinguisher, TASER Device, oleoresin capsicum (OC) spray, assistance of animal control). Nothing in this order shall prohibit any officer from resorting to deadly force to control a dangerous animal if circumstances reasonably dictate that a contingency plan has failed or becomes impracticable.

3. In the event force is used against an animal by an officer and the animal is injured or there is a reasonable belief the animal was injured, regardless of whether visible injury exists, officers shall make a reasonable attempt to ensure the animal receives care for its' injuries. This may include but is not limited to:

(a) Contacting the owner to arrange private treatment in an appropriate time frame.

(b) Contacting Animal Control to have the animal collected and treated

(c) Arranging transport of the animal to a veterinary facility

(d) Transporting the animal to a veterinary facility

(c) With the approval of a supervisor, an officer may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impracticable.

(d) Omitted; Irrelevant

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible.

200.4 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 himself or others from what he reasonably believes 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.

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