

	SAN MARCOS POLICE DEPARTMENT	
	Policy 6.1 Response to Resistance and Aggression	
	Effective Date: May 1, 2019	Replaces: GO 200, 213
	Update Date: December 16, 2021	
	Approved:	
 _____ Chief of Police		
Reference: TBP 2.25, 3.01, 3.02, 3.04, 3.06, 6.01, 6.02, 6.03, 6.06, 6.07, 6.09, 6.10, 6.11		

I. POLICY

This department values the protection and sanctity of all human life. It is, therefore, the policy of this department that officers use only the force that is reasonably necessary to effectively bring an incident under control while protecting the lives of the officer and others. Additionally, de-escalation will be used to minimize risk of conflict or injury to officers and others. Furthermore, this policy serves as a guideline and expectation that all employees of this agency are accountable for monitoring themselves and their peers. The use of force must be objectively reasonable. Officers must use only the force that a reasonable officer would use under the same or similar circumstances. (TBP 6.01)

The officer’s actions shall be reviewed based upon the information known to the officer at the time the force was used. Information discovered after the fact shall not be considered when assessing the reasonableness of the use of force.

Officers are accountable for their actions and are prohibited from using any force as a means of punishment or in the process of an interrogation.

The department advocates and promotes a culture of mutual accountability. Procedural justice is ultimately about how the police interact with the public, and how the public perceives the police. Four principles for interacting with civilians will include fairness, transparency, impartiality, and providing the community a voice.

II. PURPOSE

The purpose of this policy is to provide law enforcement officers of this agency with guidelines for the use of deadly and non-deadly force. Nothing in this policy is intended to create any benefit for third parties, nor does this policy set forth a higher standard of care with respect to third party claims.

Officers may only use force to achieve lawful objectives. These objectives may include:

- A. To protect the officer or others from physical harm.
- B. To restrain or arrest an individual who is resisting a lawful arrest or detention.

- C. To bring an unlawful situation safely and effectively under control.

Officers may use deadly force to achieve lawful objectives. These objectives may include:

- A. To protect the officer or others from what is reasonably believed by the officer at that time to be an immediate threat of death or serious bodily harm. (TBP: 6.02)
- B. To prevent the escape of a fleeing violent person whom the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others.

Where practicable, prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.

III. DEFINITIONS

- A. **Deadly Force:** Any use of force that creates a substantial risk of causing death or serious bodily injury.
- B. **Non-Deadly Force:** Any use of force other than that which is considered deadly force.
- C. **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.
- D. **De-Escalation:** Techniques designed to stabilize and reduce the immediacy of the threat, so that more options and resources are available to bring about a successful and safer resolution. When feasible, the goal of de-escalation is to gain voluntary compliance, thereby eliminating the need to use force in response to resistance.
- E. **Force Options:** Options available to an officer include verbal commands, soft empty-hand techniques, oleoresin capsicum (OC) spray, hard empty-hand techniques, K-9, impact weapons, conducted electrical weapons, and deadly force.
- F. **Objectively Reasonable:**
 - 1. This term means that, in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to themselves and the community.
 - 2. In evaluating the reasonable application of force, officers may consider their own or the other person's age, size, strength, skill level, physical condition, and the number of officers opposing the number of suspects.
- G. **Drone:** An unmanned aircraft, watercraft, or ground vehicle or a robotic device that:
 - 1. Is controlled remotely by a human operator; or
 - 2. Operates autonomously through computer software or similar programming.
- H. **Autonomous Drone:** An autonomous drone means a drone that operates autonomously through computer software or other programming (Penal Code 9.54).

- I. sUAS: small Unmanned Aircraft System

IV. PROCEDURES

- A. De-escalation tactics improve the safety of the officer and others, reduce likelihood of injury, improve community relations, reduce citizen complaints, and are consistent with the department's procedural justice philosophy. The application of force and force options will be based on the threat assessment made by the officer at the time of application. Except in emergency situations, an officer shall only apply force using authorized methods and weapons for which they have received proper training. Officer's threat assessments will dictate a response option capable of countering and overcoming any perceived threat. Once the threat has been mitigated, by means of arrest, detention or incapacitation, the response to resistance will end.
- B. Officers may discharge a firearm to kill any animal which presents an imminent danger of death or serious bodily injury to any person, or which is obviously suffering from a serious injury or illness, after first attempting, when feasible, to locate and receive permission from the animal's owner.
- C. Deadly Force Restrictions
 - 1. Warning shots shall not be fired. (TBP: 6.09)
 - 2. Officers shall avoid firing their weapons when it appears likely that an innocent person may be injured, except during dire and extreme circumstances which by doing so will save other lives.
 - 3. Officers shall not fire at a moving vehicle unless the continued operation of the vehicle presents an imminent danger of death or serious bodily injury to any person.
 - 4. Officers shall not voluntarily or recklessly place themselves in front of an oncoming vehicle where the need for deadly force is a likely outcome.
- D. Limitations on Use of Force by Drone (Penal Code 9.54)
 - 1. The use of an sUAS, drone or robot should not be considered an authorized use of force weapon except in emergency situations (see Section IV, A). Under such situations, a remote-controlled device may be used as a weapon of opportunity to stop an immediate threat of death or serious bodily injury.
 - 2. The use of force, including deadly force, involving a drone is justified if:
 - a. At the time the use of force occurred, the officer was employed by a law enforcement agency; and
 - b. The use of force:
 - i. Would have been justified under another provision of Chapter 9 of the Texas Penal Code; and
 - ii. Did not involve the use of deadly force by means of an autonomous drone.

V. LIMITATIONS ON FORCE

- A. Employees shall carry and use only those intermediate weapons on which they have been trained. This does not prevent an officer from using a weapon of opportunity if the situation dictates usage for prevention of bodily injury to the officer or another.
- B. Both chokeholds and vascular neck restraints create a substantial risk of death or serious bodily injury. Officers may not intentionally use a choke hold, or carotid artery hold, or similar neck restraint in searching or arresting a person unless the restraint is necessary to prevent serious bodily injury to or the death of the officer or another person. (TBP: 6.11)

VI. MEDICAL ATTENTION

- A. Officers who encounter an injured person while discharging their official duties shall request or provide medical assistance as soon as possible for anyone injured, reporting an injury, or rendered unconscious after use of force has been applied. Medical assistance may consist of examination by qualified medical personnel, including but not limited to fire personnel, paramedics, hospital staff or medical staff at the jail. (TBP: 6.07) While waiting for medical personnel to arrive, officers should provide first aid or treatment to the extent of their skill and training. Officers are not required to request emergency medical services or provide first aid or treatment if:
 - 1. Making the request or providing the treatment would expose the officer or another person to a risk of bodily injury; or
 - 2. The officer is injured and physically unable to make the request or provide the treatment.
- B. 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 should be examined by qualified medical personnel as soon as practical. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.
- C. If any individual refuses medical attention, such a refusal shall be fully documented in related reports or recorded interviews and, wherever practical, should be witnessed by another officer and/or medical personnel.

VII. TRAINING

- A. Prior to performing any law enforcement duties, new peace officers shall receive training in the use of their firearms and departmental issued less-lethal weapons, hands-on arrest and defensive tactics, as well as the "Response to Resistance and Aggression" policy.
- B. Officers shall receive training in the department's "Use of Force" policy and demonstrate proficiency at least annually. (TBP 3.02)
- C. Officers shall be trained and qualified with their firearms at least annually. (TBP 3.01, 3.02)
- D. Officers shall receive hands-on arrest and defensive-tactics training at least every two years. (TBP 3.06)

- E. Officers shall receive training in all less-lethal weapons issued to them by the department and demonstrate proficiency with those weapons at least every two years. (TBP 3.04)
- F. Use-of-force training shall, at a minimum, comply with the standards established by Texas Commission on Law Enforcement (TCOLE).

VIII. REPORTING USE OF FORCE (TBP 6.03, 6.06)

- A. Officers shall document any application of force, other than:
 - 1. The routine use of handcuffs or use of a firm grip to direct the movements of a subject, except for those arising in training.
 - 2. Departmental demonstrations.
 - 3. Off-duty recreational activities.
- B. Reports include any incident report and the electronic use-of-force and/or discharge firearm report. Photographs of the subject shall be taken as soon as possible after the use of force to document any injury or lack of injury.
- C. Officers should submit an electronic use-of-force form prior to the end of shift describing the incident, the force used, and any medical aid rendered. The use-of-force form shall be in addition to any other required reports.
- D. Supervisors should use discretion when delaying the form.
- E. A supervisor shall be notified and respond to the scene of a use-of-force in the following situations:
 - 1. When a firearm is discharged, excluding the permissible disposition of a wild, dangerous, or diseased animal and there are no other injuries or property damage.
 - 2. When the use of force by an officer results in death or serious bodily injury to any person; or
 - 3. When a person complains an officer has inflicted an injury that requires medical attention.
 - 4. When a hobble restraint or wrap restraint is applied.
- F. When the use of force results in serious bodily injury or death, the involved officer's supervisor shall ensure that immediate notification is made to the appropriate supervising commander via the chain-of-command. The commander shall notify the division assistant chief and chief of police as soon as practical.

IX. DEPARTMENTAL REVIEW

- A. In all cases involving the use of an intermediate weapon including the Taser, or reports of assault on a police officer or resisting arrest, the on-duty supervisor shall conduct a review of available recordings in conjunction with the Use of Force Report review. This review is to determine whether the use of force was acceptable and permissible under department procedures and policies.
- B. When reviewing use-of-force incidents, supervisors shall determine the following:
 - 1. If departmental policies were violated.

2. If the relevant departmental policy was clearly understandable and effective enough to cover the situation.
 3. If departmental training was adequate.
 4. If departmental equipment operated properly.
 5. If additional equipment is needed.
- C. Upon completion of supervisor's review, any deviations of policy shall be documented and reported to the appropriate commander.
- D. All uses of force shall be reviewed by the Event Review Board.

X. DEPARTMENTAL ANALYSIS

- A. By March 1st of the following year, the chief of police shall conduct an analysis of use of force incidents in the previous year. The purpose of this annual report is to determine if additional training, equipment, or policy modifications may be necessary, identify trends and assess use of force effectiveness. This report will be made available to the public electronically through the City's website, or in printed form upon request from the department (TBP: 6.10.).
- B. The department shall comply with all state mandated reporting requirements.

XI. REQUIREMENT TO STOP, INTERVENE AND REPORT UNNECESSARY OR UNREASONABLE USE OF FORCE

- A. Any employee who observes another employee using unnecessary or unreasonable force against any person shall immediately intervene. Intervention includes any action that is reasonable to stop the unnecessary or unreasonable force given the circumstances. (TBP 2.25)
- B. A peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:
- a. The amount of force exceeds that which is reasonable under the circumstances; and
 - b. The officer knows or should know that the other officer's use of force:
 1. violates state or federal law.
 2. puts a person at risk of bodily injury, as that term is defined in Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person.
- C. Any employee who intervenes or becomes aware of an unreported unnecessary or unreasonable use of force incident will notify a supervisor, who will immediately submit a memorandum within twenty-four hours. The memorandum is a separate document, and not a part of any arrest or incident report. The memorandum will include:
- a. Date, time and location of the incident.
 - b. Description of the incident, the force used, and the circumstances and conduct which constituted unnecessary or unreasonable force.
- D. The memorandum is to be submitted to the chief of police, via chain-of-command, the next business day, unless the alleged use of force resulted in death or serious bodily injury to any person, in which case, the chief of police shall be notified immediately.

- E. Department investigation and review of incidents involving an alleged use of unnecessary or unreasonable use of force shall be conducted pursuant to the policies and procedures in General Order 2.4 Internal Investigation Process.