

	SAN MARCOS POLICE DEPARTMENT	
	Policy 6.1 Response to Resistance and Aggression	
	Effective Date: May 1, 2019	Replaces: GO 200, 213
	Update Date: June 22, 2020	
	Approved: _____ <i>Bob Klut</i> _____ Chief of Police	
Reference: TBP 2.25, 3.01, 3.02, 3.04, 6.01, 6.02, 6.03, 6.06, 6.07, 6.08, 6.09, 6.10. 6.11		

I. POLICY

This department values the protection and sanctity of 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. Furthermore, this policy stands 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 reasonably prudent officer would use under the same or similar circumstances.

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.

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.

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. Non-deadly force includes, but is not limited to handcuffing and any physical force, effort or technique used against another.

- 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. 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 age, size, strength, skill level with department weapons, state of health, and the number of officers opposing the number of suspects.

IV. PROCEDURES

- A. Use of Non-Deadly Force
 - 1. Where deadly force is not authorized, officers may use only that level of force that is objectively reasonable and necessary to bring an incident under control. (TBP: 6.01)
 - 2. Officers are authorized to use reasonable non-deadly force techniques when one or more of the following apply:
 - 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.
- B. Use of Deadly Force

Officers are authorized to use deadly force when one or more of the following apply:

 - 1. 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)
 - 2. To prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others.
 - 3. Where practicable, prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot.
- 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. Officers shall not voluntarily or recklessly place themselves in front of an oncoming vehicle where the need for deadly force is a likely outcome.

4. Officers threatened by an oncoming vehicle shall make a reasonable effort to attempt to move out of its path, if possible, before resorting to discharging a firearm at it or any of its occupants.
5. 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.

V. LIMITATIONS ON FORCE

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.

The department does not allow any of its employees to use choke holds or carotid artery neck restraints; the only exception shall be when the officer involved is justified in the use of deadly force. Any employee using such force will cease immediately upon control of the subject (normally when the person has been handcuffed or no longer actively resisting) and begin the application of an appropriate medical response if needed. (TBP 6.11)

VI. TRAINING

- A. Officers shall receive training in the use of their firearms and issued less-lethal weapons authorized by the department, hands-on arrest and defensive tactics, as well as the "Use of Force" policy prior to performing any law enforcement duties.
- B. Officers shall be trained and qualified with their firearms at least annually. (TBP: 3.01, 3.02)
- C. Officers shall receive training in the department's "Use of Force" policy at least annually. (TBP: 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).

VII. REPORTING USE OF FORCE (TBP: 6.03, 6.06)

- A. Officers shall document any application of force, other than the routine use of handcuffs or use of a firm grip to direct the movements of a subject, except for those arising in training, departmental demonstrations, or off-duty recreational activities. Reports include any incident report and the electronic use-of-force and/or discharge firearm report.
- B. Excluding the exceptions in paragraph A above, if officers have employed any use of physical force or used any impact, electrical, or chemical weapons, or pointed or discharged

any firearm, they shall first provide for appropriate medical aid for the subject (TBP: 6.07)

Then:

1. Photographs of the subject shall be taken as soon as possible after the use of force to document any injury or lack of injury.
 2. 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.
 3. Supervisors should use discretion when delaying the form. The chain-of-command understands the stress placed on an officer in a high-stress situation and its effects on the body. This includes understanding the Sympathetic Nervous System “fight or flight” response and the events that trigger it. One major concern is the Critical Incident Amnesia that results from a mass discharge of the stress hormone cortisol. Because of this reaction, an officer involved in a high stress incident shall first give a verbal report of the incident; which shall be titled preliminary report. The officer shall then be allowed up to two sleep cycles before giving a final or written report.
- C. A supervisor shall respond to the scene of a use-of-force in the following situations:
1. When a firearm is discharged other than on the firing range; 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.
- D. 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.

VIII. DEPARTMENTAL REVIEW

A. Review

1. In all cases involving the actual 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. The purpose of this review is to determine whether the use of force was acceptable and permissible and that department procedures and policies were followed. It is unnecessary to review all available recordings connected to the incident if a more limited review is sufficient to accomplish this directive.
2. When reviewing use-of-force incidents, supervisors shall determine the following:
 - a. If departmental orders were violated.

- b. If the relevant departmental policy was clearly understandable and effective enough to cover the situation.
 - c. If departmental training was adequate.
 - d. If departmental equipment operated properly.
 3. At least annually, the chief of police shall conduct an analysis of use-of force incidents to be made available to the public and to determine if additional training, equipment, or policy modifications may be necessary. (TBP: 6.10.)
 4. The department shall comply with all state mandated reporting requirements.
- B. Internal Investigations
 1. An internal investigation may be conducted on a firearms discharge (other than during training), and any other use of deadly force by any member of the department. An internal investigation may be conducted on other use- of- force incidents if a violation of law or department policy is suspected. In addition to the internal investigation, a criminal investigation shall also be conducted of any incident involving the discharge of firearms or any other use of force incident where an officer or other person is injured or killed and in any other circumstances where a violation of law is suspected. The criminal investigation may be conducted by another law-enforcement agency with concurrent jurisdiction, and the results may be presented to the grand jury for review. The results of the investigation shall be submitted to the office of the District Attorney.
 2. Procedures for officer-involved-shooting investigations are covered in General Order 6.4 Investigation of Officer Involved Shootings.
 3. Assignment
 - a. Pending administrative review, any officer whose actions have resulted in the death or serious bodily injury of another person, either through the intentional use of force or by accident involving a use-of-force weapon or action or a vehicle accident, shall be removed from line-duty assignment. This action protects both the interests of both the officer and the community until the situation is resolved. This re-assignment is not considered punitive in nature. (TBP: 6.08)
 - b. The chief of police will make the determination when to reassign the officer.

IX. REQUIREMENT TO STOP AND REPORT EXCESSIVE USE OF FORCE

- A. Any employee who observes another employee use excessive force against any person shall immediately intervene. Intervention includes any action that is reasonable given the circumstances intended to stop the excessive force. (TBP 2.25)
- B. The observing employee will notify a supervisor immediately and shall submit a memorandum within twenty-four hours. The memorandum will include:
 1. Date, time and location of the incident.
 2. Description of the incident, the force used, and the circumstances and conduct which constituted excessive force.

- C. The memorandum is a separate document, and not as part of any arrest or incident report relating to an incident.
- 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 excessive use of force shall be conducted pursuant to the policies and procedures in General Order 2.4 Internal Investigation Process. Command Staff shall review incidents that result in death or serious bodily injury to any person.