



ICMS: 2019-1086

November 15, 2019

**Complaint:** Officer [REDACTED] may have violated Austin Police Department (APD) policy during a call involving a teenage girl, [REDACTED], in crisis. Officer [REDACTED] may have violated departmental policy when, almost immediately upon his arrival at the scene, he grasped Ms. [REDACTED] wrist and positioned her face down on the concrete and held her down. This appeared to escalate the situation and [REDACTED] made loud, repeated complaints of pain due to Officer [REDACTED] actions.

The Office of Police Oversight (OPO) is the complainant.

**Additional Information:** This complaint originated from a YouTube video sent to the OPO detailing the incident above.

### **Administrative Policies to Review:**

#### **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.

##### **200.2.1 Assessment and De-Escalation**

As officer 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 believed 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
- (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 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).
  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.
    1. Treat the subject with dignity and respect, the way the officer would wish to be treated if they stood in the subject's shoes;
    2. Listen to the subject's side of the story and permit them to express frustration;
    3. Explain what the officer is doing, what the subject can do, and what needs to happen;
    4. Explain why the officer is taking a specific action, again permitting the subject to respond and acknowledging their perspective;
    5. If possible, provide the subject with alternatives, even though those alternatives may be limited;
    6. Advise the subject of the consequences for noncompliance;
    7. Offer reasonable, professional advice if it is expected to help; or
    8. Provide the subject with reasonably sufficient time within which to respond to directives.

### **200.3 Response to Resistance**

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.



- (e) Reporting Required – Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

### **200.3.1 Determining the Objective Reasonableness of Force**

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

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

### **200.5 Reporting the Response to Resistance**

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

#### **200.5.1 Notification to Supervisors**

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



### **200.5.3 Assisting Medical Professionals**

(a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in General Orders 211 and 200.5.1.

1. Medical personnel are:

- a. Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)
- b. Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties.

(b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to General Orders 211 and 200.5.1 Response to Resistance by:

1. Notifying their supervisor, and
2. Completing an incident report including the title code 8400.

### **211.4 Employee Responsibilities for all Force Level Incidents**

The following outlines the required responsibilities of involved employees, employees that witness an incident, and employees designated to assist at the scene of any response to resistance incident. If a juvenile is in custody related to the incident, the juvenile should not be interviewed unless the juvenile has been brought before a magistrate.

(a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.

#### **211.4.1 Employee Reporting Guidelines for All Force Level Incidents**

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

(a) AN incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.

(b) Supplements shall be completed by:

1. All other employees who are involved in a force incident.
2. Employees who witness a force incident.
3. Employees assisting at the scene of a force incident.
4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.

(c) The following information shall be included in each report and supplement:

1. The original reason for police presence on the scene.



2. The name and employee number of the supervisor notified of the incident.
  3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
  4. A detailed description of the force used.
  5. Subject and witness information.
  6. Reports shall not contain “boilerplate” or “pat” language (e.g., “furtive movement” or “fighting stance”) without descriptive details of the action.
  7. Involved employees shall also complete the force section of the “Details” page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. “Group reporting” is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

### **900.4.3 Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (e) Absence without approved leave.
- (f) Repeated poor evaluations.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties, However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

### **900.1.1 Responsibility to Know and Comply**

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD directives which pertain to their assigned duties.



- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

Recommended Classification: *The OPO is permitted to make a preliminary recommendation on the classification of administrative cases.*

***The OPO recommends that this allegation receive an A classification.***