



OFFICE OF POLICE OVERSIGHT

P.O. BOX 1088, AUSTIN, TEXAS 78767
WWW.ATXPOLICEOVERSIGHT.ORG
POLICEOVERSIGHT@AUSTINTEXAS.GOV
PHONE: 512.974.9090 | TTY: 711 | FAX: 512.974.6306
COMPLAINT HOTLINE: 512-972-20PO

June 15, 2021

Joseph Chacon, Interim Chief of Police
Austin Police Department
715 E. 8th Street
Austin, TX 78701

RE: Response to Proposed and Approved Changes to the General Orders Received April 2021

Dear Chief Chacon:

On April 19, 2021, the Office of Police Oversight (OPO) received notification of approved changes to the Austin Police Department (APD) General Orders related to the following:

1. 350.2.2 Driving a Non-City Vehicle
2. 405.2.5 Arrest Warrant Service
3. 609.2 Language Interpreter Service
4. 804.5 Red Light Camera Citation
5. 902.2.3 Externally Initiated Complaints
6. 916.5 Reasonable Suspicion Testing for Sworn Employees
7. 942.8 Training Procedures
8. 958.3.1 RTW for Sworn Employees
9. 1000.5 Department Hardware and Software
10. 1002.4 Standardized Email Settings
11. 118.7.2 Destruction of CHRI
12. 206.5.2 Kinetic Energy Projectiles Verbal Warnings
13. 206.6 Pain Compliance Techniques
14. 208.7.1 Taser Proper Maintenance
15. 300.3.1 Use of Long Range Acoustic Device
16. 303.4.2 Copies of BWC Recordings
17. 306.5 Consent
18. 319.2.1 Warrant Service Guidelines
19. 346.6.1 Crash Required Reporting
20. 350 Vehicle Towing and Impound

On April 23, 2021, OPO received notification of proposed changes to the APD General Orders related to the following:

1. 202 Firearm Discharge Situations
2. 445 Mental Health Response
3. 902.3.1 Complaint Classification and Investigative Assignment Table
4. 211 Response to Resistance Inquiry Reporting and Review
5. 212 R2R Audit Group



OFFICE OF POLICE OVERSIGHT

P.O. BOX 1088, AUSTIN, TEXAS 78767
WWW.ATXPOLICEOVERSIGHT.ORG
POLICEOVERSIGHT@AUSTINTEXAS.GOV
PHONE: 512.974.9090 | TTY: 711 | FAX: 512.974.6306
COMPLAINT HOTLINE: 512-972-20PO

OPO has reviewed the approved and proposed changes. Attached to this memorandum you will find OPO's initial feedback on those changes, specifically the areas for which there remains room for improvement.

We look forward to working collaboratively with APD to address the issues identified by OPO to improve these policies to benefit the community and APD's sworn personnel.

Sincerely,

Farah C. Muscadin, JD
Director





OPO Response to Proposed GO Changes

202 Firearm Discharge Situations (Amendments)

Notifications to Internal Affairs

The proposed revisions to 202.9.1 and 202.9.2 would require notification to Internal Affairs “immediately or as soon as practical.” The phrase “as soon as practical” is vague and contradicts the use of the word “immediately.”

This provision should be revised to give a specific timeframe within which Internal Affairs must be notified. The policy will be more effective if officers are given clear expectations.

Factors Considered in Placing Officers on Restricted Duty

Revisions to 202.9.1 and 209.2.2 would permit employees to be placed on restricted duty for unintentional discharge of a firearm while not in training and when there is no injury or the injury is only to self. The revision does not include additional details about the factors that decision-makers would consider before placing an officer on restricted duty in such a situation. Additional information about this process should be provided.

Language in 202.9.2(c) is unclear

The language of 202.9.2(c) is unclear, particularly as it relates to the circumstances under which (C)(1)-(3) would apply versus when (c)(4) would apply.

445 Mental Health Response (Amendments)

Revisions related to this General Order should take into account the recommendations from the Reimagining Public Safety (RPS) Task Force as well as community feedback gathered during the recent town hall event, “Town Hall on Public Safety: People with Disabilities and Policing,” hosted by OPO, the Mayor’s Office, the Equity Office, and the Mayor’s Committee for People with Disabilities. This event centered the voices of individuals with lived experiences and their lived experiences with public safety in Austin. Some of the feedback shared during this event was also related to mental health. Such feedback should be considered during the formulation of any new policy language.

Specific requests for mental health officers

The proposed revisions would state that “[p]atrol officers receiving a mental health request for assistance from a complainant will refer the individual to an on-duty CIT officer, the CIT Unit, or EMCOT.”

Language should be added to specifically state that patrol officers receiving a request for a “mental health officer” should follow these same procedures. While patrol officers may have completed mental health training through the academy, they should take requests for “mental health officers” to be specific requests for CIT officers, the IT Unit, or EMCOT as applicable.

De-escalation tactics for responding officers remaining on scene

Subsection (a) should discuss de-escalation. Responding officers who remain on the scene to wait for CIT should utilize de-escalation techniques and tactics to help prevent the use of force and keep the scene safe until additional units arrive.



Factors to be considered in determining whether EMCOT should be called

The proposed revisions state that an EMCOT employee will be called to the scene to assist when deemed necessary by an officer or the CIT Unit. Language should be added to outline the factors that officers should consider in making this determination, or the policy should refer back to 445.2 as examples.

Documenting efforts to contact Integral Care or Bluebonnet Community Services

The proposed revisions direct CIT officers to contact Integral Care (Travis County transports) or Bluebonnet Community Services (Williamson County transports) when determining where to transport someone on a Peace Officer's Emergency Detention. If officers cannot make contact with these providers, then officers can transport to the nearest appropriate Travis County Hospital Emergency Department.

Language should be added to require CIT officers to document their efforts to contact Integral Care or Bluebonnet Community Services in an incident report.

The use of "Emergency Detention" to refer to a person being detained under POED

The current language of subsection (b)(1)(b)(3) appears to refer to the person being transported or detained under POED as "the Emergency Detention." This language is inconsistent with other references in this section (i.e., subject). Further, as with the term "subject," referring to someone as "the Emergency Detention" tends to dehumanize the person being discussed. Language should be changed to refer to "person" or "individual."

Secondary transports

This was among the many issues discussed during the recent town hall event. Revisions related to secondary transports should consider and apply community feedback from the Town Hall on Public Safety: People with Disabilities and Policing. Revisions should also align with relevant RPS Task Force recommendations.

902.3.1 Complaint Classification and Investigative Assignment Table

Supervisor Referral—Minor Policy Violation

OPO does not support the continued use of SR-Minor Policy Violations as a complaint classification.

Background

Early last year, OPO voiced concerns about the potential for this classification to be abused by officers' supervisors. Our departments were still discussing these concerns when the chief preempted those conversations and approved the use of SR-Minor Policy Violations. See the OPO memo [here](#).

Current Use of SR-Minor Policy Violations

OPO's main concerns about SR-Minor Policy Violations were related to accountability. Specifically, OPO was concerned that supervisors would define "minor" in ways that would surpass even the most extreme interpretation, and that SR-Minor Policy Violations would become the default and a means of repeatedly avoiding



formal discipline. For example, APD has repeatedly not investigated potential violations related to body-worn camera (BWC). As stated in our objection from last year, BWC is a vital component of transparency and accountability to members of our community. See OPO's objection [here](#).

In the past year, OPO has seen these exact issues develop. What follows are just a few examples of the ways in which SR-Minor Policy Violations have been or could potentially be misused:

- Example 1: Internal Affairs found additional potential policy violations during its review of an external complaint. Rather than investigating these potential policy violations, and keeping them under the same number, IA (at the direction of Executive Staff) created a new case number and gave the officers SR-Minor Policy Violations. There was no communication with OPO regarding this outcome.
- Example 2: Initially, the proposed discipline for the subject officer was going to be an SR-Minor Policy Violation even though the officer had already received an SR-MPV for the same policy. When OPO objected, the response was that SR-MPVs are not listed in an officer's discipline history. As a result, it makes it possible for commanders to apply discipline inconsistently.

Additionally, APD has yet to respond to OPO's February 24, 2021 memo on this issue. In the memo, OPO flagged nine complaints from 2021 in which the SR-MPV process was used to resolve allegations that OPO maintains were not minor in nature. Four of those nine complaints involved body-worn camera or dashboard camera allegations. The other five allegations involved a family violence arrest, vehicle operation in response to a call for service, TASER use, personal conduct, and impartial attitude and courtesy. OPO has yet to receive a response to this memo.

Recommendations and Willingness to Engage in Further Discussion

Given the forms and frequency of misuse that we have seen in the year that SR-Minor Policy Violations have been in effect, OPO objects to their continued use.

OPO is open to reengaging in productive discussions to come up with an effective alternative to handling allegations between B and D classifications.

Supervisor Referral—OPO Request

OPO recommends changing some of the policy language.

Recommendations

- Remove the word "affidavit" to describe Notices of Formal Complaint
 - This is not an accurate description. OPO's Notices of Formal Complaint are not affidavits. Nor is an affidavit required to submit a complaint to the Office of Police Oversight.
- Replace the word "citizen" with "community member"
 - The word citizen is a non-inclusive term. It is the goal of both of our departments to be as respectful as possible to all members of our community.
- Take out "informal" in the right-hand column



- There is a lack of consistency between right and left columns. In the left-hand column, SR-OPO Requests are described as “complaints,” but in the right-hand column, they’re described as informal complaints.

211 Response to Resistance Inquiry Reporting and Review

The City of Austin hired Kroll Associates, Inc. to conduct a multi-pronged investigation of the extent to which forms of racism, bigotry, and discrimination are present in the protocols, practices, and behaviors of the Austin Police Department. This investigation includes, among other things, a review of use-of-force incident reports. Revisions to this General Order should be revisited once recommendations from Kroll Associates, Inc. become available.

Explicit mention of chokeholds and strangleholds

The current language of 211.2 Determining the Correct Force Level describes the four force levels and outlines specific maneuvers or actions that fall under each level. The policy should be revised to specifically discuss and categorize chokeholds and strangleholds.

Referrals to IA

The current language of 211.6.2 states that “[a] referral to IA may be initiated if SIU or the chain-of-command discovers credible evidence of a General Orders violation during their review of a Level 1 force incident.” Here, the word “may” should be changed to “shall” or “must” to make it clear that the discovery of credible evidence mandates referral to IA.

Synchronous testing of BWC and/or DMAV equipment

Language should be added to 211.6.1, 211.7.1, and 211.8 to require employees conducting R2R interviews to confirm that their BWC and/or DMAV system is working (e.g., by performing a synchronous test of the equipment or some other method of verification).

212 R2R Audit Group

Revisions to this General Order should be revisited once recommendations from Kroll Associates, Inc. become available.

Subsequent review after implementation

The current language includes details about how the R2R Audit Group will handle Department-related recommendations up to the point of implementation. The policy and operations could be improved by completing a review of any changes made after implementation. For example, the Chairperson could be tasked with reviewing any changes implemented at the three-month mark, six-month mark, etc.



OPO Response to Approved GO Changes

350.2.2 Driving a Non-City Vehicle (Amendments)

No immediate comments.

405.2.5 Arrest Warrant Service (Amendments)

No immediate comments.

609.2 Language Interpreter Service (Amendments)

Should vs. shall

Per GO 106.2.3(4)(b), “[t]he word “should” is advisory in intent. While not mandatory, an advised action should be followed if the situation permits and the action is deemed practical.”

Per 106.2.3(4)(a), “[t]he words “shall”, “will”, and “must” are mandatory in intent and are used to specify a required action.”

Given the importance of making services accessible to all members of the community, and the potential consequences of officers not being able to accurately communicate or understand what is being communicated to them, the word “should” ought to be replaced with the words “shall,” “must,” or “will” to indicate mandatory intent.

Define “Spanish-speaking officer”

The term “Spanish-speaking officer” should be defined to clarify that this is a reference to officers who are fluent in Spanish and not officers who have only taken Spanish courses offered at the Academy.

Provide factors to be considered in assessing when an interpreter is needed

Because this current policy is framed in the negative and officers receive some Spanish language training at the Academy, it is important that the policy list factors for officers to consider in determining whether an interpreter is needed.

“Other means”

Currently, the policy provides that the Language Interpreter Service should not be used “when other means are available, unless this would jeopardize the investigation.” The phrase “when other means are available” should be replaced with “when a Spanish-speaking officer is available.”

Currently, “other means” is not defined. The lack of definition leaves open the possibility that Spanish-speaking community members (including adult or juvenile family members) could be asked to interpret for a Spanish-



speaking individual who contacted police or who police suspect of a crime. Officers should not rely on bystanders, friends, or family members to interpret on behalf of a Spanish-speaking individual with whom they are interacting. First, officers will not have knowledge of the community member's level of proficiency in Spanish. Second, the fact that someone speaks or understand Spanish does not mean that they can interpret; interpretation must accurately reflect both the content and tone of what is being said. Third, the person interpreting may have a conflict of interest that the officer cannot be aware of due to language barrier As a result, interpretation requires an neutral party to avoid someone intentionally or unintentionally injecting their own bias into the interpretation.

804.5 Red Light Camera Citations (Deletion)

No comments.

902.2.3 Externally Initiated Complaints

Use of the word "citizen"

Any references to "citizens" should be replaced with "community members" to be more inclusive.

Examples of "minor policy violations"

The current examples of "minor policy violations" provided in subsection (b)(2)(b) include equipment violations. Equipment violations can include violations of General Orders covering body-worn cameras and dash cameras. For this reason, OPO does not agree that equipment violations should be considered minor policy violations.

No examples of "complaints of a serious nature"

The current policy language provides examples of minor policy violations but does not provide examples of serious policy violations. Examples of complaints that are "of a serious nature" should be described in further detail, particularly because complaints of a serious nature require officers to immediately notify an available supervisor. Without further detail, opinions could differ as to what is included in each category and the policy will not be effective in holding officers accountable.

Information taken but not provided

Currently, the policy language instructs officers to obtain a complainant's contact information if the complainant is not able to wait for a supervisor. In such circumstances, officers should also be required to provide the complainant with their names and badge numbers as well as information about where they can submit a complaint (e.g., OPO and Internal Affairs).

"Language use" is unclear

The reference to "language use" in subsection (b)(2)(b) is unclear. If this is a reference to profanity, that should be specified. In contrast, OPO disagrees with this categorization if it is meant to refer to any conduct falling under 301.2 Impartial Attitude and Courtesy.



916.5 Reasonable Suspicion Testing for Sworn Employees (Amendments)

No immediate comments.

942.8.1 Additional Guidelines (Amendments)

No immediate comments.

958.2 Definitions and 958.3.1 Sworn Employees (Amendments)

No immediate comments.

1000.5 Department Hardware and Software (Amendments)

Terms undefined

The following terms should be defined:

- "Facial recognition technology"
- "Facial recognition software"
- "Facial recognition services"

The inclusion of each of these three categories indicates that there is a difference between the three. Thus, each term should be defined. For these same reasons, the General Orders should also define the following:

- "law enforcement purposes"
- "criminal investigative purposes"
- "surveillance purposes"

Scope should be broadened

The current policy leaves room for the possibility that facial recognition technology, software, or services could be used by employees for purposes other than law enforcement, criminal investigation, or surveillance. Given that the intent of the policy appears to be a categorical ban of facial recognition technology, software, or services, the policy should state clearly that "no employee will use facial recognition technology, software, services, information, or content for any purpose in the course of their duties." This language will expand the scope of the prohibition. The policy language could go on to say that "examples of such duties include, but are not limited to the following: law enforcement, criminal investigative, or surveillance purposes." This would provide further guidance while not limiting the scope.

In addition to prohibiting the use of facial recognition technology, software, or services, the policy should also prohibit the use of information and content (e.g., images) collected from such software, technology, or services. "Information" and "content" should also be defined.

1002.4.1 Standardized Email Signature (Amendments)

No comments.



118.7.2 Destruction of CHRI (Amendments)

Tracking and logging

The revised policy states that “[t]he destruction and/or sanitization of electronic media shall be tracked and logged.” There are currently no details as to the tracking and logging procedures. As with other sections of the General Orders, this policy should provide details as to the tracking and logging procedures (e.g., forms to use, timeline to follow, maintenance of logs).

Authorized personnel

The revised policy states that “[t]he destruction and/or sanitization of all physical and electronic media shall be carried out or witnessed by authorized personnel in accordance with records retention schedules.” There are currently no details as to where records control/retention schedules can be found. The policy should state that records control schedules can be found through the Office of the City Clerk’s website and should provide links to the Office of the City Clerk and the City of Austin’s Public Records Access – Online Document Search. Alternatively, language could be added to refer readers to GO 116.9 Records Retention where this information is provided. Note, however, that the link provided in GO 116.9 is broken and leads to a message saying the site cannot be reached.

206.5.2 Kinetic Energy Projectiles Verbal Warnings (Amendments)

“Not practicable” should be removed

Currently, verbal announcements are required unless (1) it would otherwise endanger the safety of officers or (2) it is not practicable due to the circumstances. The phrase “not practicable” is vague and is made more vague by the fact that the policy makes practicability contingent upon “circumstances” which are also undefined.

The policy should only make an exception to the requirement for verbal announcement when it would endanger the safety of officers. This would provide clearer guidance for officers in the field and decision-makers reviewing administrative investigations.

“Reasonable opportunity” is vague and should be defined and accompanied by a list of factors to be considered

The phrase “reasonable opportunity” does not provide officers or decision-makers reviewing administrative investigations with sufficient guidance.

To hold officers accountable for violating this provision (e.g., by providing the verbal warning contemporaneously or within seconds of actually deploying a kinetic energy projectile), the phrase “reasonable opportunity” should be defined and accompanied by a list of factors. Examples of factors to consider may include:

- Officers gave clear commands for compliance (e.g., “Drop the weapon!” as opposed to “Stop!”)
- Officers have considered and accounted for issues that may affect an individual’s ability to hear a command
 - o Distance between the officer and the individual
 - o External noises
 - o Competing commands
 - o Language barriers



- Hearing impairments
- Officers have considered and accounted for issues that may affect an individual's ability to comply with a command
 - Distance
 - External noises
 - Competing commands
 - Language barriers
 - Hearing impairments
 - Vision impairments
 - Physical disabilities

The verbal warning used is unclear and should be replaced

While the term "impacting" may be understood by APD officers, it is unreasonable to believe that the public understands what it means. The less-lethal shotguns used by officers to deploy kinetic energy projectiles may not be readily identifiable as less-lethal weapons. As a result, hearing an officer say "impacting" while holding what may look like a regular shotgun does little to provide individuals "with a warning that a kinetic energy weapon may be deployed" as is the stated purpose of the warning. The policy should be revised to require a more

Does not address language access issues or procedures for those who are living with disabilities

The current policy does not address situations that may involve non-English speakers, those who are deaf or hard of hearing, or those who are blind or visually impaired. In these cases, the verbal warning "impacting" would not be appropriate. These should be factors that officers are directed to consider in determining whether the individual has had a reasonable opportunity to comply.

Further detail should be added with respect to voluntary compliance

Currently, one of the stated objectives of the verbal warning is to "[p]rovide the individual with a reasonable opportunity to voluntarily comply." There are no additional details provided. The policy should be revised to explicitly state that voluntary compliance would be related to lawful orders given by police officers.

206.6 Pain Compliance Techniques (Amendments)

Factors to be considered when using pain compliance techniques

In addition to the factors currently listed, offices should also be required to consider factors such as: age, physical size, physical condition, mental health, number of officers assisting vs. the number reasonably necessary to assist. Officers should also be required to articulate their reasoning for using any technique used with particular attention paid to the factors listed.

Potential for injury

The current policy language instructs officers to consider whether "the potential for serious injury" to the individual being controlled. The "serious" qualifier should be removed and officers should be required to consider the potential for injuries generally.



208.7.1 Taser Proper Maintenance (Amendments)

Reporting defects

The policy change states that “[i]f a defect is found, the officer should report such to their supervisor.” The policy should be revised to require that the defect be reported to the supervisor immediately and preferably in writing. If the initial report to the supervisor is not made in writing, then there should be a requirement that any verbal report be followed by a subsequent report in writing before the end of the officer’s shift or, if a defect is found during the shift, then prior to the start of the officer’s next shift. The policy should indicate the specific form that the written report should take (e.g., email or a specific form). This written report will memorialize the conversation.

300.3.1 Use of Long Range Acoustic Device (Amendments)

No immediate comments on 300.3.1.

OPO does recommend that 300.3 Crowds, Events and Gatherings include more specific guidance related to time, place, and manner restrictions to assist with navigating First Amendment issues.

OPO also recommends that the last paragraph of 300.3 Crowds, Events, and Gatherings be stricken. The last paragraph currently states as follows:

Officers should consider enforcement of applicable state and local laws, such as Tex. Penal Code § 42.03 (Obstructing Highway or Other Passageway), when the activity blocks the entrance or egress of a facility or location and when voluntary compliance with the law is not achieved.

This appears to be the only provision of the General Orders that suggests a specific criminal charge and, as such, gives the appearance of a bias against the exercise of First Amendment rights.

303.4.2 Copies of BWC Recordings (Amendments)

Records retention

The policy currently states: “When a copy is made, it is the responsibility of the person receiving the copy to comply with records retention as outlined in General Orders.”

This language should outline the specific General Orders sections that reference records retention or should instead refer readers to the Office of the City Clerk and the City of Austin’s Public Records Access – Online Document Search.

306.5 Consent (Amendments)

Removal of requirement for supervisor consent absent relevant training

The requirements of subsection (a)(1) should not be removed. Requiring that consent searches be executed only by officers who (1) have received supervisor approval or (2) are assigned to specific units and have received specific training adds additional levels of review and consideration. These additional levels of review and



consideration help to prevent overuse and also ensure that warrantless searches under the consent exception are executed properly.

Capacity to give consent

The current policy language speaks about consent needing to be obtained as the product of free will but there are no explicit references to the importance of considering language access or an individual's mental capacity to give consent. The policy should explicitly cover these topics and describe elements that an officer must consider before conducting a warrantless search based on consent.

Synchronous testing of BWC and/or DMAV equipment

Language should be added to 306.5.1 Recording Consent that requires officers to confirm that their BWC and/or DMAV system is working (e.g., by performing a synchronous test of the equipment or some other method of verification).

319.2.1 Warrant Service Guidelines (Amendments)

Define "MRE"

The acronym MRE is used periodically throughout the General Orders but is never explained/defined. To increase transparency, an explanation of this acronym and what it presumably stands for (mobile report entry) should be added to the General Orders.

346.6.1 Crash Required Reporting

No immediate comments.

350 Vehicle Towing and Impound

"Items of value"

"Items of value" should be defined to help prevent confusion and ensure consistency.

Written inventory vs. BWC footage

The current policy allows officers to document vehicle damage and personal property located during inventory by stating it verbally on body-worn camera. OPO disagrees with this change because of the safeguard that a written record provides in the event of equipment failure or other issues with body-worn camera footage.