



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Farah Muscadin, Director - Office of Police Oversight

**DATE:** April 15, 2021

**SUBJECT:** Resolution No. 20200611-095 – Redefining “Resistance” and Considering Alternative Tactics and Tools to Prevent the Need for Lethal and Less-Lethal Munitions

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The purpose of this memo is to provide an update to [Council Resolution No. 20200611-095](#) (Resolution 95) regarding redefining the term “resistance” and considering alternative tactics and tools to prevent the need for lethal and less-lethal munitions.

In June 2020, Council adopted Resolution 95 which directed the City Manager to “to research and issue recommendations for amendments to the Austin Police Department (APD) General Orders on how to better define what constitutes “resistance” and alternative tactics and tools that can be used by officers to prevent the need for lethal or less lethal munitions, including a review of police techniques used in countries that use unarmed patrol forces.”<sup>1</sup> The General Orders are the policies governing Austin Police Department officers. In response to Resolution 95, the Office of Police Oversight (OPO) conducted research of 15 comparable police departments and offers its findings in the attached report.

The report has been organized into two distinct sections. Section I discusses APD policies related to the use of force and “resistance,” and compares APD’s policies to those of other domestic police departments. Section I also includes recommendations for amendments to the General Orders. Section II examines alternative tactics and tools utilized by domestic and international police forces, including police in nations that practice unarmed policing, to prevent the need for lethal or less-lethal munitions. The discussion in Section II compares these tactics and tools to APD’s current practices and, based on the comparison, recommends additional areas for research that should be considered in order to address the complexities inherent to law enforcement use of lethal and less-lethal munitions.

In summary:

- APD’s General Orders fail to define the term “resistance” or clearly identify behavior that constitutes “resistance.”
- Of the 15 other police departments examined, 10 departments have policies defining various levels of resistance. Four of those departments provide definitions for various degrees of

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<sup>1</sup> Resolution 20200611-095, “Use of Force,” Austin City Council (June 11, 2020). <https://www.austintexas.gov/edims/document.cfm?id=342177> (brackets added).

resistance while the other six provide similar definitions alongside use-of-force continua that pair permissible officer responses with different degrees of resistance.

- Both domestically and internationally, de-escalation tactics serve as the primary tactical alternatives to lethal or less-lethal munitions.
- While de-escalation tactics are the primary alternatives to the use of munitions, research shows that police academies generally spend fifty-eight hours on firearm training, forty-nine hours on defensive tactics, and only eight hours on de-escalation.<sup>2</sup> Furthermore, training in the United States traditionally emphasizes “officer safety above all else,” thereby creating a culture in which fear can dominate and the use of force becomes the first, rather than the last instinct.<sup>3</sup> APD’s training curriculum demonstrates a similar focus on the use of force.
- The fact that APD and other domestic police agencies use the same tactics and tools as international agencies but still have more use-of-force incidents presents opportunities for additional inquiry and research.

This report will be shared with Kroll & Associates as they begin Phase 2 of their assessment of APD use of force incidents and policies.

cc: Spencer Cronk, City Manager  
Nuria Rivera-Vandermyde, Deputy City Manager  
Rey Arellano, Assistant City Manager  
Joseph Chacon, Interim Chief of Police

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<sup>2</sup> United States Commission on Civil Rights, “Police Use of Force: An Examination of Modern Policing Practices,” 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

<sup>3</sup> See United States Commission on Civil Rights, “Police Use of Force: An Examination of Modern Policing Practices,” 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

# Redefining Resistance and Considering Alternatives

City of Austin | April 2021



OFFICE OF  
POLICE OVERSIGHT

*Redefining "Resistance" and  
Considering Alternative Tactics and  
Tools to Prevent the Need for Lethal  
and Less-Lethal Munitions*

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# Introduction

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In the wake of the 2020 protests responding to the killing of George Floyd, Austin City Council passed Resolution 95, which expressed a clear intent to reform APD's use-of-force policies and practices.<sup>1</sup> One of the provisions within Resolution 95 directed OPO to research and make policy recommendations on the following two topics: (1) how to better define what constitutes "resistance" and (2) tactics and tools that can serve as alternatives to lethal or less-lethal munitions.<sup>2</sup> This directive demonstrates Austin City Council's commitment to developing APD's use-of-force policies to provide officers with better guidance and reduce unnecessary uses of force. This memo responds to that directive.

## *The purpose of this memo is threefold:*

1. Compare the way APD discusses what constitutes "resistance" in its policies with the way other comparable police departments in the United States do the same;
2. Identify tactics and tools utilized by domestic and foreign police departments to avoid the need for lethal or less-lethal munitions and compare these findings with current practices outlined in APD's General Orders; and
3. Offer recommendations to address areas of concern.



COMPARE



IDENTIFY



RECOMMEND

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<sup>1</sup> Resolution 20200611-095, "Use of Force," Austin City Council (June 11, 2020).

<sup>2</sup> Resolution 20200611-095, "Use of Force."



# Methodology

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This memo is the result of two main forms of information gathering and analysis.

First, OPO examined the General Orders to determine how they discuss and define “resistance.” OPO then compared APD’s discussion and definition to that of fifteen other domestic police departments. The departments examined represent the following cities: Atlanta, Baltimore, Charlotte, Dallas, Denver, Fort Worth, Houston, Memphis, New Orleans, Portland, San Antonio, San Diego, San Francisco, San Jose, and Seattle. Factors that OPO considered in selecting these cities included: region; whether the cities or their police departments were of comparable size and/or budget to Austin; and whether the cities’ police departments recently demonstrated a significant shift in policy, either voluntarily or as the result of a federal consent decree.

Second, OPO drew from academic writing, news articles, books, policing manuals, and training resources to identify well-recognized tactics and tools capable of remedying the need for police to use lethal and less-lethal munitions. This research involves an examination of tactics and tools utilized by both domestic and foreign police departments with special attention given to nations that utilize unarmed policing. This memo compares the tactics and tools identified in this research to current practices discussed in the General Orders and APD training documents.

Based on the results of this research, OPO offers recommendations for improvement to relevant APD policies and practices. As the findings of this memo demonstrate, however, reducing APD’s use of lethal and less-lethal munitions will not be accomplished with the changes outlined in this memo alone. While this memo describes crucial next steps, what is required is a change in culture that is demonstrated through policy; training; and clear, consistent, and continuous messaging from the highest levels of the department down to, perhaps most importantly, the first-line supervisors. The findings from this memo should serve as a foundation to support further efforts to reform APD’s use-of-force policies and practices in order to improve APD’s relationship with the community it endeavors to serve.



## Austin Police Department

In 2008, APD began using the Dynamic Resistance Response Model (DRRM), which “combines a use-of-force continuum with an application of four broad categories of suspects.”<sup>3</sup> The four categories of suspects are as follows: not resistant, passively resistant, aggressively resistant, and deadly resistant.<sup>4</sup> The DRRM was developed, in part, with the goal of helping officers to prevail against allegations of excessive use of force.<sup>5</sup> Because the DRRM assumes all officers will not use physical force unless against an individual unless they encounter some form of resistance, the model focusses more on the public’s actions and less on officers’ actions in any given situation.<sup>6</sup> Thus the phrases “resistance response” or “response to resistance.”

*No information  
about the Dynamic  
Resistance  
Response  
Model*

The General Orders do not define or discuss the four levels of resistance outlined in the DRRM.<sup>7</sup> Rather, the General Orders categorize types of force into four levels, but do not tie those specific levels of permitted force.<sup>8</sup> As a result, while APD may use the DRRM, the General Orders neither reflect it nor discuss it.<sup>9</sup>

This is troubling. The absence of this information prevents officers, decision-makers, and the public from being similarly informed about how the DRRM is utilized in APD’s day-to-day operations and administrative investigations.

<sup>3</sup> See Manley, Brian. “Use of Force and De-Escalation Policies.” Received by Mayor and Council Members, Official Distribution Memoranda Search, City of Austin Communications and Public Information Office, 8 July 2020, <http://www.austintexas.gov/edims/pio/document.cfm?id=342897> (Note: APD erroneously referred to the Dynamic Resistance Response Model as the “Dynamic Response to Resistance Model” in its July 2020 memo); see also Charles Joyner and Chad Basile, J.D., “The Dynamic Resistance Response Model: A modern Approach to the Use of Force,” FBI Law Enforcement Bulletin 76, no. 9 (2007): 15, accessed March 12, 2021, <https://leb.fbi.gov/file-repository/archives/sept07leb.pdf>.

<sup>4</sup> Joyner and Basile, “The Dynamic Resistance Response Model: A Modern Approach to the Use of Force,” 15.

<sup>5</sup> See Joyner and Basile, “The Dynamic Resistance Response Model: A Modern Approach to the Use of Force,” 15. (“A major failing among current use-of-force models is the emphasis on the officer and the amount of force used. This places officers in a weak position during accusations of excessive force as the focus is on the officer’s actions, rather than on the suspect’s. The DRRM emphasizes that the suspect’s level of resistance determines the officer’s response and delineates suspects into one of four categories: not resistant (compliant), passively resistant, aggressively resistant, and deadly resistant.”)

<sup>6</sup> Joyner and Basile, “The Dynamic Resistance Response Model: A Modern Approach to the Use of Force,” 15.

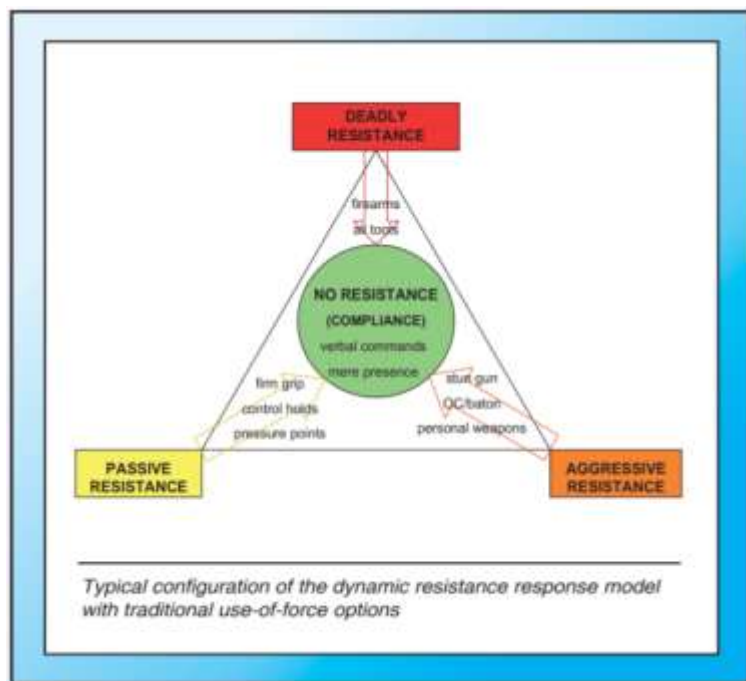
<sup>7</sup> See Austin Police Department. “211.2.4 Level 4 Force Incidents.” Austin Police Department General Orders. 3 March 2021.

<https://austintexas.gov/sites/default/files/files/General%20Orders.pdf> (describing individuals “actively resisting arrest beyond the initial or reflexive stiffening or pulling away of a person’s arm(s)”).

<sup>8</sup> By categorizing types of force into four distinct levels, APD’s policy meets the technical and academic definition of a force continuum. The DRRM, however, is a type of force matrix. A force matrix outlines both levels of force and levels of resistance and “instructs officers that they can use certain types of force against certain types of resistance.” Seth W. Stoughton, “The Regulation of Police Violence,” in *Critical Issues in Policing: Contemporary Readings*, ed. Geoffrey P. Alpert, Roger G. Dunham, and Kyle D. McLean (Waveland Press, 2021), 321-345.

<sup>9</sup> See Austin Police Department General Orders, 27 Jan. 2021, <https://austintexas.gov/page/apd-generalorders>. Accessed 12 Mar. 2021.

**Image 2. Visual Representation of the Dynamic Resistance Response Model<sup>10</sup>**



## *No definition of “resistance”*

The General Orders primarily discuss “resistance” within the use-of-force section: General Order 200 Response to Resistance.<sup>11</sup> However, despite frequent use of the word “resistance” within APD policy language, the term is not defined in General Order 200 or anywhere else in the General Orders.<sup>12</sup> General Order 200.3 directs officers to use “objectively reasonable” force that “appears necessary under the circumstances.”<sup>13</sup>

The phrase “objectively reasonable” in General Order 200 comes from *Graham v. Connor*, a 1989 U.S. Supreme Court case in which the Court determined that the question of whether a particular use of force is “reasonable” must be judged from the perspective of a reasonable officer “in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”<sup>14</sup> This standard comes from protections against unreasonable seizures in the Fourth Amendment to the U.S. Constitution.<sup>15</sup>

Read generously, the direction to officers in General Order 200.3 vaguely and indirectly identifies resistance as any behavior that, depending on the circumstances, an officer could reasonably view as necessitating the use of physical force.<sup>16</sup> This is the closest that the General Orders come to defining the term “resistance.”

<sup>10</sup> Joyner and Basile, “The Dynamic Resistance Response Model: A Modern Approach to the Use of Force,” 15.

<sup>11</sup> See Austin Police Department. “200 Response to Resistance.” Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>12</sup> See “200 Response to Resistance.” Austin Police Department General Orders.

<sup>13</sup> “200.3 Response to Resistance.” Austin Police Department General Orders.

<sup>14</sup> *Graham v. Connor*, 490 U.S. 386, 387 (1989).

<sup>15</sup> *Graham*, 490 U.S. at 387.

<sup>16</sup> See “200 Response to Resistance.” Austin Police Department General Orders.





## COMPARATIVE ANALYSIS – HOW OTHER POLICE DEPARTMENTS DEFINE RESISTANCE

Modern police departments generally use one of two approaches to formulate a use-of-force policy: **(1) the “just be reasonable” approach or (2) the “continuum” approach.**<sup>17</sup>

Departments that utilize the “just be reasonable” approach require officers to adhere to the constitutional standard outlined in *Graham v. Connor*.<sup>18</sup> As described above, this standard considers whether the force used by officers was objectively reasonable in light of the facts and circumstances confronting them at the time of the incident.<sup>19</sup> The General Orders reflect this approach.<sup>20</sup>

### *The “Just Be Reasonable” Approach*

A perceived benefit of the “just be reasonable” approach is its flexibility; officers can use their discretion. The lack of clear guidelines, however, is also the greatest weakness of this approach. In particular, this approach does not give officers any guidance about what constitutes “reasonable force” when confronted with varying degrees of resistance.<sup>21</sup> As the Police Executive Research Forum (PERF) stated in its 2016 report titled Guiding Principles on Use of Force, *Graham* “outlines broad principles regarding what police officers can legally do in possible use-of-force situations, but it does not provide specific guidance on what officers should do.”<sup>22</sup> In the same report, PERF stated that departments should “build on the legal foundation established by the Supreme Court and implement best policies, practices, and training that provide more concrete guidance to officers on how to carry out the legal standard.”<sup>23</sup>

Out of the fifteen domestic police departments studied by OPO for this memo, nine appear to follow the “just be reasonable” approach in structuring their use-of-force/response-to-resistance policies.<sup>24</sup> Four of those police departments (Baltimore, Charlotte, New Orleans,

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<sup>17</sup> Seth W. Stoughton, “The Regulation of Police Violence,” in *Critical Issues in Policing: Contemporary Readings*, ed. Geoffrey P. Alpert, Roger G. Dunham, and Kyle D. McLean (Waveland Press, 2021), 321-345.

<sup>18</sup> Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>19</sup> *Graham*, 490 U.S. at 397.

<sup>20</sup> See Austin Police Department. “200.3 Response to Resistance.” Austin Police Department General Orders. 27 Jan. 2021.

<https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>21</sup> See Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>22</sup> Police Executive Research Forum, “Guiding Principles On Use of Force,” *Critical Issues in Policing Series*, March 2016,

<https://www.policeforum.org/assets/30%20Guiding%20Principles.pdf>. The Police Executive Research Forum (PERF) describes itself as an independent research organization that focuses on critical issues in policing.

<sup>23</sup> Police Executive Research Forum, *Critical Issues in Policing Series*, March 2016.

<sup>24</sup> Cities following this approach include Atlanta, Baltimore, Charlotte, Houston, New Orleans, Memphis, Portland, San Jose, and Seattle. Here, OPO is using the “continuum” approach to refer to departments who pair specific levels of force with specific levels of resistance. This is sometimes called a “force matrix.” Importantly, “force continuum” and “force matrix” are often used interchangeably. See Stoughton, “The Regulation of Police Violence,” 321-345. While the Memphis Police Department asserts that it utilizes a use-of-force continuum, its use-of-force policy does not meet the definition of a “continuum” for purposes of this analysis; it instead falls under the “just be reasonable” approach.

and Portland) include definitions for varying degrees of resistance in their use-of-force policies.<sup>25</sup> The definitions are as follows:

## Passive Resistance

For all four departments, “passive resistance” is the lowest form of resistance.

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Baltimore</b>   | Passive Resistance is when a non-assaultive person fails to comply with the member’s commands without attempting to flee. Passive Resistance may include, but not be limited to, going limp, standing stationary and not moving based upon lawful direction, and/or verbally signaling an intention to avoid or prevent being taken into custody. <sup>26</sup>                                                                                                                                                                                                                                                                                                                                                    |
| <b>Charlotte</b>   | Non-violent, noncompliance to lawful orders when a subject does not pose a continuing threat to the safety of officers. This type of resistance creates little to no risk of immediate danger. Purely passive resistance may still support the use of some level of control of the subject. <sup>27</sup>                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>New Orleans</b> | Behavior that is unresponsive to police verbal communication or direction (e.g., ignoring or disregarding police attempts at verbal communication or control; going limp; or failing to physically respond or move) and verbal resistance (e.g., verbally rejecting police verbal communication or direction; telling the officer that he or she will not comply with police direction, to leave alone, or not bother him or her). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance. Passive resistance, including verbal statements, bracing, or tensing alone does not constitute active resistance. <sup>28</sup> |
| <b>Portland</b>    | A person’s non-cooperation with a member that does not involve violence or other active conduct by the individual. <sup>29</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

<sup>25</sup> San Jose Police Department. “L 2629.5 Limited Use of 37 MM Projectile Impact Weapon for Crowd Control.” San Jose Police Department Duty Manual: Policies, Rules, Procedures. 3 Feb. 2017 <https://www.sjpd.org/home/showpublisheddocument?id=314>. Accessed 12 Mar. 2021. The San Jose Police Department provides a definition for “assaultive resistance,” which it defines as “acts of violence against persons, or intentional destruction of property resulting in major property damage.” Given that San Jose only defines one type of resistance, it was not included in the tables with the departments that define multiple levels of resistance.

<sup>26</sup> Baltimore Police Department. “Policy 1115 Use of Force.” Baltimore Police Department Active Policies. 24 Nov. 2019. <https://www.baltimorepolice.org/1115-use-of-force>. Accessed 12 Mar. 2021.

<sup>27</sup> Charlotte-Mecklenburg Police Department. “Directive 600-019 Response to Resistance.” Charlotte-Mecklenburg Police Department Directives. 11 Sept. 2020. <https://charlottenc.gov/CMPD/Documents/Resources/CMPDDirectives.pdf>. Accessed 12 Mar. 2021.

<sup>28</sup> New Orleans Police Department. “Chapter 1.3 Use of Force.” New Orleans Police Department Operations Manual. 1 Apr. 2018. <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>. Accessed 12 Mar. 2021.

<sup>29</sup> Portland Police Department. “1010.00 Use of Force.” Portland Police Bureau Directives Manual. 19 Jan. 2020. <https://www.portlandoregon.gov/police/article/751998>. Accessed 12 Mar. 2021.

## Active Resistance

Baltimore and New Orleans define “active resistance” as the level of resistance that immediately follows “passive resistance.”

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Baltimore</b>   | Active Resistance is when a person moves to avoid detention or arrest but does not attack or attempt to attack the member or another person. Attempts to leave the scene, fleeing, hiding from detection, physical resistance to being handcuffed, or pulling away from the member’s grasp are all examples of Active Resistance. Verbal statements, bracing, or tensing alone do not constitute Active Resistance. A person’s reaction to pain caused by a member or purely defensive reactions to force does not constitute Active Resistance. <sup>30</sup> |
| <b>New Orleans</b> | Resistance exhibited by a suspect that is between passive resistance and aggressive resistance (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer’s grasp). Verbal statements, bracing, or tensing alone do not constitute active resistance. <sup>31</sup>                                                                                                                                                                                                                                                          |

## Defensive Resistance or Physical Resistance

In contrast, Charlotte and Portland use the terms “defensive resistance” and “physical resistance” to describe the level of resistance that follows passive resistance.

|                  |                                                                                                                                                                                                                                                                     |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Charlotte</b> | <b>Defensive Resistance:</b><br>Measures a subject is actively taking to prevent being taken into custody. These actions may include, but are not limited to, twisting, pulling, holding onto fixed objects, running away, or preventing handcuffing. <sup>32</sup> |
| <b>Portland</b>  | <b>Physical Resistance:</b><br>A person’s physical attempt to evade a member’s control that does not rise to the level of active aggression. <sup>33</sup>                                                                                                          |

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<sup>30</sup> Baltimore Police Department. “Policy 1115 Use of Force.” Baltimore Police Department Active Policies. 24 Nov. 2019. <https://www.baltimorepolice.org/1115-use-force>. Accessed 12 Mar. 2021.

<sup>31</sup> New Orleans Police Department. “Chapter 1.3 Use of Force.” New Orleans Police Department Operations Manual. 1 Apr. 2018. <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>. Accessed 12 Mar. 2021.

<sup>32</sup> Charlotte-Mecklenburg Police Department. “Directive 600-019 Response to Resistance,” Charlotte-Mecklenburg Police Department Directives, 11 Sept. 2020. <https://charlottenc.gov/CMPD/Documents/Resources/CMPDDirectives.pdf>. Accessed 12 Mar. 2021.

<sup>33</sup> Portland Police Department. “1010.00 Use of Force.” Portland Police Bureau Directives Manual. 19 Jan. 2020. <https://www.portlandoregon.gov/police/article/751998> Accessed 12 Mar. 2021.

## Active Aggression

Baltimore, Charlotte, and Portland define “active aggression” as the level of resistance that immediately follows “active resistance” / “defensive resistance” / “physical resistance.”

|                  |                                                                                                                                                                                                                                                                                                                                                     |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Baltimore</b> | Active aggression is when a person attacks or attempts to attack a member or another person. Strikes, kicks, or attempted strikes or kicks with hands, fists, the head, elbows, knees, or an instrument, constitute Active Aggression. <sup>34</sup>                                                                                                |
| <b>Charlotte</b> | At this level of resistance, the subject poses a risk of immediate danger to the officer, another person, or themselves. This aggression may manifest itself through punching, kicking, striking, or any other action when apparent that the subject has the immediate means to injure an officer, another person, or his or herself. <sup>35</sup> |
| <b>Portland</b>  | A threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is about to happen, unless intervention occurs. <sup>36</sup>                                                                       |

## Aggressive Resistance

Instead of active aggression, New Orleans uses the term “aggressive resistance” for the level of resistance that follows “active resistance.”

|                    |                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>New Orleans</b> | Is a subject’s attempt to attack or an actual attack of an officer. Exhibiting aggressive behavior (e.g., lunging toward the officer, striking the officer with hands, fists, kicks) are examples of aggressive resistance. Neither passive nor active resistance, including fleeing, pulling away, verbal statements, bracing, or tensing, constitute aggressive resistance. <sup>37</sup> |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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<sup>34</sup> Baltimore Police Department. “Policy 1115 Use of Force.” Baltimore Police Department Active Policies. 24 Nov. 2019. <https://www.baltimorepolice.org/1115-use-force>. Accessed 12 Mar. 2021.

<sup>35</sup> Charlotte-Mecklenburg Police Department. “Directive 600-019 Response to Resistance,” Charlotte-Mecklenburg Police Department Directives, 11 Sept. 2020. <https://charlottenc.gov/CMPD/Documents/Resources/CMPDDirectives.pdf>. Accessed 12 Mar. 2021.

<sup>36</sup> Portland Police Department. “1010.00 Use of Force.” Portland Police Bureau Directives Manual. 19 Jan. 2020. <https://www.portlandoregon.gov/police/article/751998> Accessed 12 Mar. 2021.

<sup>37</sup> New Orleans Police Department. “Chapter 1.3 Use of Force.” New Orleans Police Department Operations Manual. 1 Apr. 2018. <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>. Accessed 12 Mar. 2021.

## Aggravated Aggression or Aggravated Resistance

Only Baltimore and New Orleans provide a definition for a level of resistance higher than “active aggression” / “aggressive resistance.”

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|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Baltimore</b>   | <b>Aggravated Aggression:</b><br>Aggravated Aggression is when a person presents an Imminent Threat of death or Serious Physical Injury to the member or another person based on the Totality of the Circumstances. Aggravated Aggression represents the least encountered but most serious threat to a member or other person. Even when confronted with Aggravated Aggression, the member is required to make every reasonable effort to de-escalate and to continuously assess the member’s Use of Force. <sup>38</sup> |
| <b>New Orleans</b> | <b>Aggravated Resistance:</b><br>When a subject’s actions create an objectively reasonable perception on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result of the circumstances and/or nature of an attack. Aggravated resistance represents the least encountered but most serious threat to the safety of law enforcement personnel or another person. <sup>39</sup>                                                                        |

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<sup>38</sup> Baltimore Police Department. “Policy 1115 Use of Force.” Baltimore Police Department Active Policies. 24 Nov. 2019.  
<https://www.baltimorepolice.org/1115-use-force>. Accessed 12 Mar. 2021.

<sup>39</sup> New Orleans Police Department. “Chapter 1.3 Use of Force.” New Orleans Police Department Operations Manual. 1 Apr. 2018.  
<https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>. Accessed 12 Mar. 2021.



## The “Continuum” Approach

The second approach is the “continuum” approach.<sup>40</sup> In addition to the constitutional standard expressed in *Graham*, this approach supplements this guidance “by providing more detailed guidance about the circumstances in which officers may use specific force options.”<sup>41</sup>

One of the strengths of the “continuum” approach is that it remedies the lack of guidance seen in the “just be reasonable” approach.<sup>42</sup> Some departments, however, find this method problematic because it does not take into account how an act of resistance can vary in its threat level depending on the physical traits of the person committing the act.<sup>43</sup> For example, an adult of good fitness and muscular build who is physically working to defeat an arrest presents a different kind of threat than a feeble, elderly adult performing the same actions.

While in practice APD reportedly follows the DRRM, the General Orders do not reflect this approach.<sup>44</sup> The General Orders categorize the use of force into four levels, but the levels only describe types of force.<sup>45</sup> The General Orders do not provide guidance about the circumstances in which officers may use specific levels or types of force.<sup>46</sup>

Out of the fifteen other police departments examined for this report, six departments (Dallas, Denver, Fort Worth, San Antonio, San Francisco, and San Diego) follow the “continuum” approach in structuring their use-of-force/response-to-resistance policies. All six departments include definitions for varying degrees of resistance in their use-of-force policies.<sup>47</sup> These definitions resemble the definitions of resistance utilized by Baltimore, Charlotte, New Orleans, and Portland. Furthermore, the departments integrate these definitions into force continua, often in the form of graphics, that incrementally pair levels of resistance with permissible police responses. The continua appear as appendices to this memo.

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<sup>40</sup> Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>41</sup> Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>42</sup> See Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>43</sup> See Stoughton, “The Regulation of Police Violence,” 321-345.

<sup>44</sup> See Manley, Brian. “Use of Force and De-Escalation Policies.” Received by Mayor and Council Members, Official Distribution Memoranda Search, City of Austin Communications and Public Information Office, 8 July 2020, <http://www.austintexas.gov/edims/pio/document.cfm?id=342897>; Austin Police Department General Orders, 27 Jan. 2021, <https://austintexas.gov/page/apd-generalorders>. Accessed 12 Mar. 2021.

<sup>45</sup> See Austin Police Department. “211.2 Determining the Correct Force Level.” Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021. (“Each level is defined below by the response to resistance used in the incident.”)

<sup>46</sup> See Austin Police Department General Orders “211.2 Determining the Correct Force Level.”

<sup>47</sup> See Appendices B through F.



## RECOMMENDATIONS

APD's use-of-force policy exists to "provide officers with guidelines on objectively reasonable response to resistance," yet the General Orders never define the term or give examples of behavior that constitutes "resistance."<sup>48</sup> To provide guidance to officers, decision-makers, and the public, the term "resistance" must be defined.

### ***Defining "resistance" based on a combination of both models***

Several of the police departments reviewed appear to combine both the "just be reasonable" approach and the "continuum" approach by defining various levels of resistance. APD should add definitions for different levels of resistance to its current policy.

Addressing the deficiencies in the Austin Police Department's current discussion of resistance not only benefits police officers, but also serves a public interest. APD is a governmental entity within a democratic system. In a democracy, the people have a say in how they are governed and policed.<sup>49</sup> Transparency is crucial. Anything that unnecessarily obscures governmental action or policy chips away at legitimacy.<sup>50</sup> To increase transparency and trust amongst the public, APD must be upfront about what is expected of its officers in their interactions with the public, especially on the use of physical force. Taking the simple step to define "resistance" in the General Orders would increase transparency and, as a result, help improve community relations and the public's perception of APD as an institution.



**Non-Compliance** – Behavior that is unresponsive to an officer's verbal directions but does not involve a threat or physical hindrance. Non-compliance does not justify use of force by an officer. Examples of passive non-compliance include, but are not limited to, the following:

- Ignoring an officer's attempt at communication;
- Failing to physically respond or move after being given lawful commands;
- Stating an intention to not comply with police direction; and
- Stating a desire to be left alone.

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<sup>48</sup> Austin Police Department. "200.1 Purpose and Scope." Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>49</sup> See Stoughton, "The Regulation of Police Violence," 321-345.

<sup>50</sup> See Stoughton, "The Regulation of Police Violence," 321-345.



**Passive Resistance** – Behavior that does not comply with an officer’s verbal commands and/or physical control techniques without using active conduct to combat the officer. Passive resistance does not justify use of force by an officer. Examples of passive resistance include, but are not limited to, the following:

- Going limp and refusing to support one’s own weight;
- Bracing;
- Tensing; and
- Linking arms.



**Defensive Resistance** – Behavior involving an active attempt to combat an officer’s physical control techniques. Examples of defensive resistance include, but are not limited to, the following:

- Twisting;
- Pulling;
- Holding onto fixed objects;
- Running away; and
- Preventing handcuffing.



**Aggressive Resistance** – Behavior involving an active physical assault against the officer. Neither passive nor defensive resistance, including tensing, bracing, running, or pulling, constitute aggressive resistance. Examples of aggressive resistance include, but are not limited to, the following:

- Striking;
- Kicking; and
- Punching.



**Deadly Resistance** – Behavior that, based on the totality of the circumstances, is capable of causing imminent death or serious bodily injury to the officer or a third person.

These five definitions reflect the training that cadets receive at the APD training academy.<sup>51</sup> The proposed definitions for “non-compliance” and “passive resistance” include policies that make the use of force against these levels of resistance unjustified. OPO recommends that APD seek community input to finalize the definitions for “defensive resistance,” “aggressive resistance,” and “deadly resistance” to include the types of force that are justified for each level of resistance.

On a related note, APD trains on what it calls “preparatory resistance,” which is said to occur when “[t]he suspect is preparing to offer greater resistance or launch an attack through behavioral cues (verbal, non-verbal, or physical). In response, the appropriate amount of force would depend on the specific and articulable threat perceived by the officer.”<sup>52</sup> Of the Texas police departments reviewed, APD appears to be the only one to

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<sup>51</sup> Austin Police Department. “17.3.0a APD Levels of Resistance Defined.” Austin Police Academy Force Options Lesson Plan. 12 May 2020.

<sup>52</sup> Austin Police Academy Force Options. “17.30a APD Levels of Resistance Defined.”

mention this level of resistance. Additionally, the APD training academy lesson plan refers to this and the five other levels of resistance as “APD levels of resistance.”<sup>53</sup> As a result, this level of resistance appears to be unique to APD and not required as part of police training required by the State of Texas.

Officers should be aware of verbal and non-verbal cues. What “preparatory resistance” proposes, however, is that officers maintain a combative, suspicious state of mind and act from there. APD has voiced a commitment to community policing, the goals of which are “to build mutual respect, collaborative partnerships, fair and impartial policing, and procedurally just behavior with the community....”<sup>54</sup> Community policing conflicts with the idea of “preparatory resistance.” OPO does not support the use of “preparatory resistance.” OPO recommends that APD seek community input on this topic as well.

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<sup>53</sup> Austin Police Academy Force Options. “17.30a APD Levels of Resistance Defined.”

<sup>54</sup> Austin Police Department. “105.1 Purpose and Scope.” Austin Police Department General Orders. 27 Jan. 2021.  
<https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.



# ALTERNATIVE TACTICS AND TOOLS TO LETHAL AND LESS-LETHAL FORCE

## DOMESTIC TACTICS

### ***De-escalation***

In the United States, police departments look to de-escalation strategies as the primary tactical alternatives to the use of lethal and less-lethal force. These tactics generally must be used in concert with one another to truly be effective.



### **Tactic One: Communication**

Also called verbal de-escalation or “Verbal Judo,” communication as a tactic focuses on officers talking and listening to individuals with the goal of defusing tense or dangerous situations.<sup>55</sup> Proponents of this tactic believe officers can establish trust with individuals by being kind and compassionate in stressful situations.<sup>56</sup> As a result, officers may easily obtain voluntary compliance from individuals and peaceful resolutions to tense situations.<sup>57</sup>

### **Tactic Two: Maintaining Distance**

As the name implies, maintaining distance involves officers keeping their distance from individuals in stressful or dangerous situations.<sup>58</sup> Maintaining one’s distance, often behind a source of cover such as the officer’s patrol car, can help officers feel safe in stressful or dangerous situations, thereby preventing potential uses of force stemming from fear.<sup>59</sup> Further, maintaining a safe distance gives officers the ability to slow down a situation with the goal of ultimately reaching a peaceful resolution.<sup>60</sup>

### **Tactic Three: Slowing Things Down/The Tactical Pause**

This tactic asks officers in stressful situations to wait before acting if an immediate response is not required.<sup>61</sup> Taking a step back and avoiding hasty action provides “a brief moment for everyone involved to think.”<sup>62</sup> This may allow cooler heads to prevail: officers and civilians get the opportunity to calm down and hopefully move towards a peaceful

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<sup>55</sup> George Fachner and Steven Carter. “Final Assessment Report of the Las Vegas Metropolitan Police Department.” Collaborative Reform Model. Accessed March 12, 2021.

[https://www.researchgate.net/publication/295072851\\_Collaborative\\_Reform\\_Model\\_Final\\_Assessment\\_Report\\_of\\_the\\_Las\\_Vegas\\_Metropolitan\\_Police\\_Department](https://www.researchgate.net/publication/295072851_Collaborative_Reform_Model_Final_Assessment_Report_of_the_Las_Vegas_Metropolitan_Police_Department); “Verbal Judo.” Verbal Judo Institute, Incorporated. Accessed March 12, 2021. <https://verbaljudo.com/>.

<sup>56</sup> George Fachner and Steven Carter. “Final Assessment Report of the Las Vegas Metropolitan Police Department.”; “Verbal Judo.” Verbal Judo Institute, Incorporated.

<sup>57</sup> George Fachner and Steven Carter. “Final Assessment Report of the Las Vegas Metropolitan Police Department.”; “Verbal Judo.” Verbal Judo Institute, Incorporated.

<sup>58</sup> Police Executive Research Forum, “Refining the Role of Less-Lethal Technologies: Critical Thinking, Communications, and Tactics Are Essential in Defusing Critical Incidents.” (2020): 4, <https://www.policeforum.org/assets/LessLethal.pdf>.

<sup>59</sup> Police Executive Research Forum, “Refining the Role of Less-Lethal Technologies.”

<sup>60</sup> Police Executive Research Forum, “Refining the Role of Less-Lethal Technologies.”

<sup>61</sup> Christopher L. McFarlin, *Integrating De-Escalation Techniques into Policing*, Police1, Oct. 17, 2017.

<sup>62</sup> Andrew Bell, Policing When Faced with Resistance: When to Use De-Escalation Tactics, American Military University EDGE, Apr. 25, 2018.

resolution. Additionally, this tactic works to give officers more time to try and talk their way out of stressful or potentially dangerous situations.<sup>63</sup> The more time an officer has, the greater the officer's ability to bring additional resources and officers to the scene of the incident.<sup>64</sup>

### ***Supervisory response to critical incidents***

PERF recommends as one of its guiding principles that supervisors immediately respond to any scene where a weapon is reported, where a mental health crisis is reported, or where a dispatcher or other member of the department believes there is a potential for significant use of force.<sup>65</sup> Further, once on scene, supervisors should work with officers to develop a plan that emphasizes de-escalation.<sup>66</sup>

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<sup>63</sup> Police Executive Research Forum, "Refining the Role of Less-Lethal Technologies."

<sup>64</sup> Police Executive Research Forum, "Refining the Role of Less-Lethal Technologies."

<sup>65</sup> Police Executive Research Forum, "Guiding Principles On Use of Force," *Critical Issues in Policing Series*, March 2016, <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

<sup>66</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."



## DOMESTIC TRAINING

### ***Align training with agency values***

One of PERF's guiding principles for training is that "[t]he content of police training and the training academy culture should reflect the core values, attributes, and skills that the agency wants its personnel to exhibit in their work in the community."<sup>67</sup> PERF encourages police executives to audit their agency's classes to determine if changes need to be made.<sup>68</sup> However, to achieve alignment with the agency's core values, these efforts must be reflected in field training and in-service training.<sup>69</sup>

### ***Require more non-enforcement contacts***

In a Harvard Law Review article, former police officer turned law school professor and subject matter expert Seth Stoughton recommended that police departments require officers to initiate non-enforcement contacts with community members both during the academy and once they have graduated.<sup>70</sup> He wrote, "[t]he purpose for doing so is threefold: giving officers and community members the chance to get to know each other as individuals, emphasizing the agency's commitment to community policing for both internal and external audiences, and teaching officers the valuable communication skills that they will use countless times over the course of their careers."<sup>71</sup> For this to work, no enforcement means no enforcement—"no asking for identification, no running criminal history checks, no issuing tickets, and no making arrests."<sup>72</sup>

### ***Create more and better scenario-based training***

PERF has emphasized the importance of scenario-based training (i.e., roleplay) for both academy and in-service training.<sup>73</sup> In particular, PERF recommends that police departments teach more than "shoot-don't shoot" decision-making and incorporate communication, de-escalation, and less-lethal force options as part of the roleplay scenarios.<sup>74</sup> Additionally, PERF states that "[s]cenario-based training focused on decision-making should be integrated with officers' regular requalification on their firearms and less-lethal equipment."<sup>75</sup>

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<sup>67</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>68</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>69</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>70</sup> Seth W. Stoughton, "How the Fourth Amendment Frustrates the Regulation of Police Violence," *Emory Law Journal* 70, no. 3 (Fall 2013): 521, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3561238](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561238).

<sup>71</sup> Seth W. Stoughton, "How the Fourth Amendment Frustrates the Regulation of Police Violence."

<sup>72</sup> Seth W. Stoughton, "How the Fourth Amendment Frustrates the Regulation of Police Violence."

<sup>73</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

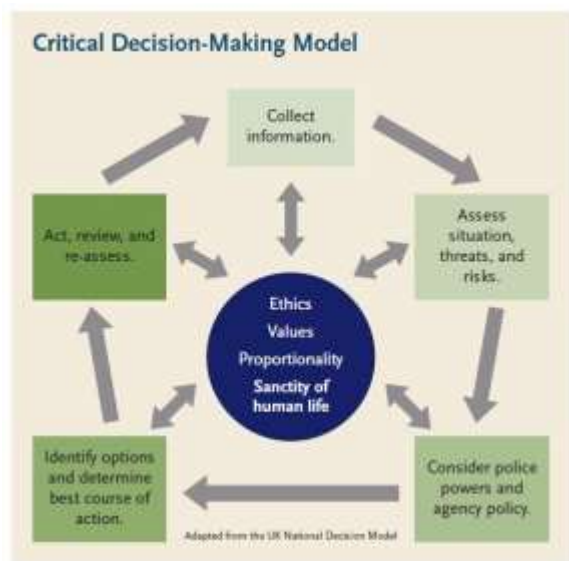
<sup>74</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>75</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

## DOMESTIC TOOLS

### PERF's Critical Decision-Making Model

Image 2. Police Executive Research Forum Critical Decision-Making Model<sup>76</sup>



In 2016, PERF introduced its Critical Decision-Making Model (CDM) for officers to “combine with the tactical concepts such as distance, cover, and time” to “more effectively and safely resolve many types of critical incidents.”<sup>77</sup>

PERF’s CDM is largely based off the National Decision Model (NDM) used by police in England, Scotland, Northern Ireland, and Wales to “support sound and accountable decision-making” during unplanned incidents and planned operations.<sup>78</sup> PERF describes the CDM as well-suited for “situations involving subjects who either are unarmed or have an edged weapon, rock, or similar weapon, as well as incidents involving persons experiencing a

mental health crisis or behaving erratically because of a developmental disability, a mental condition such as autism, substance abuse, or other conditions.”<sup>79</sup>

The CDM is a five-step thought process focused on ethics, values, proportionality, and sanctity of human life.<sup>80</sup> The following is a list of the five steps in sequential order:

- 1. Collect information;**
- 2. Assess situation, threats, and risks;**
- 3. Consider police powers and agency policy;**
- 4. Identify options and determine best course of action;**
- 5. Act, review, and re-assess.<sup>81</sup>**

<sup>76</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>77</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>78</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>79</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>80</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>81</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

Each of the five steps guides officers through a series of key questions.<sup>82</sup> All of the steps and questions asked should be considered in light of the department's core values, and officers should cycle through the five steps repeatedly until the incident is resolved, always beginning with the collection of additional information.<sup>83</sup>

PERF acknowledges that the CDM represents a thought process that many police officers already use but argues that the CDM is different because it provides structure to ensure that officers follow each step and ask all of the necessary questions.<sup>84</sup>

### ***Personal protection shields***

In its 2016 report, PERF recommends that officers, including patrol officers, be provided personal protection shields to use during critical incidents.<sup>85</sup> Shields enhance officer safety and can support de-escalation efforts in situations where someone is armed with an edged weapon or blunt object.<sup>86</sup>

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<sup>82</sup> Police Executive Research Forum, "Guiding Principles On Use of Force." When collecting information in Step 1, PERF instructs officers to ask themselves what they know, what else they need to know, and what their training and experience tell them about this type of incident. PERF also directs officers to ask the following of others: what more they can tell officers about this incident, what more they can tell officers about previous incidents involving the same people or location.

<sup>83</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>84</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>85</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>86</sup> Police Executive Research Forum, "Guiding Principles On Use of Force."

## INTERNATIONAL TACTICS

### ***De-escalation***

As a whole, the tactics employed by other nations' police departments to avoid the use of lethal and less-lethal force are not much different from those currently available and utilized by police departments in the United States.



For example, de-escalation tactics such as maintaining distance and slowing things down feature heavily in the training and day-to-day work of many European police departments.<sup>87</sup> In Germany, for example, police officers strive to resolve stressful or dangerous situations with their communication skills rather than with force.<sup>88</sup> This is true for officers in the United Kingdom as well. For example, Glasgow, Scotland was once called the “knife capital of Europe” because it had one of the highest murder rates and most murders were committed with edged weapons.<sup>89</sup> Still, in Scotland and elsewhere in the United Kingdom, “general patrol officers—typically equipped only with a baton, chemical spray, and handcuffs—would be expected to deal with the threat of a knife-wielding subject, primarily through de-escalation and tactical approaches, and without calling in specially trained Public Order officers or Firearms officers unless the threat is escalated.”<sup>90</sup>

While participating in a 2015 PERF conference, UK officials “acknowledged that they do not face the same threats from criminals with firearms as do officers in the United States,” but “pointed out that a person with a knife in Glasgow or Manchester is just as dangerous as a person with a knife in an American city.”<sup>91</sup>

### ***Unarmed patrol officers may call firearm-equipped response teams***

As described above, some international police agencies that practice unarmed policing have specialized firearm-equipped response teams.<sup>92</sup> While officers patrol their beats and interact with civilians unarmed, these firearm-equipped teams remain on standby until a situation arises in which their unarmed counterparts require their assistance.<sup>93</sup> The United Kingdom utilizes this practice.<sup>94</sup> Contrast this with the United States, where patrol officers carry firearms at all times, thus ensuring the presence of firearms in all community-police encounters.

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<sup>87</sup> See Miriam Berger and Rick Noack, “From Guns to Neck Restraint: How US Police Tactics Differ to Those Used in Europe and Around the World,” *Independent*, June 7, 2020, <https://www.independent.co.uk/news/world/americas/police-tactics-brutality-us-hong-kong-iceland-norway-uk-a9552886.html>; See also Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>88</sup> See Dennis Stute, “Why German Police Officers Rarely Reach for Their Guns,” *Deutsche Welle*, Aug. 27, 2014, <https://www.dw.com/en/why-german-police-officers-rarely-reach-for-their-guns/a-17884779>.

<sup>89</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>90</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>91</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>92</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/background/how-police-compare-different-democracies> (describing policies and practices in Ireland, the United Kingdom, and New Zealand); Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>93</sup> See Sara M. Llana, “Why Police Don’t Pull Guns in Many Countries,” *The Christian Science Monitor*, June 28, 2015, <https://www.csmonitor.com/World/2015/0628/Why-police-don-t-pull-guns-in-many-countries>; Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>94</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

## ***Martial arts***

De-escalation and specialized firearm-equipped backup teams are not the only tactics used by foreign police departments to avoid using lethal or less-lethal force. Japan, for example, trains its police officers to use a form of martial arts called *taiho-jutsu* to gain control of stressful situations.<sup>95</sup>

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<sup>95</sup> See Miriam Berger and Rick Noack, “From Guns to Neck Restraint: How US Police Tactics Differ to Those Used in Europe and Around the World,” *Independent*, June 7, 2020, <https://www.independent.co.uk/news/world/americas/police-tactics-brutality-us-hong-kong-iceland-norway-uk-a9552886.html>.

## INTERNATIONAL TOOLS

### ***PAVA Spray***

Some international police agencies, including those in the United Kingdom, use a chemical agent called PAVA spray.<sup>96</sup> PAVA stands for pelargonic acid vanillylamide and is a chemical agent that is “a structural analogue of capsaicin, the active ingredient of natural pepper.”<sup>97</sup> PAVA spray reportedly “comes out in a concentrated stream that is more accurate, minimizes cross-contamination, and is not flammable (meaning it can be used in conjunction with an Electronic Control Weapon).”<sup>98</sup> PERF recommended in 2016 that domestic police forces consider finding options like PAVA spray to replace CS gas (tear gas) or OC spray (pepper spray).<sup>99</sup>

Studies on the effects of PAVA have shown that it primarily affects the eyes, causing involuntary closure and severe pain.<sup>100</sup> The effects to the eyes have been found to be greater than that caused by CS gas, and effects can be more pronounced in people wearing contact lenses.<sup>101</sup> “PAVA must enter the eyes for it to work effectively,” and “it remains effective, with the eyes closed and extremely painful, for a longer time than CS gas before any recovery begins.” People have reported feeling the effects of PAVA spray in their eyes for hours after exposure.<sup>102</sup>

*The New Zealand Ministry of Health found that*

***“[e]ffects on the eyes include severe burning pain, involuntary closure, lacrimation (tearing), conjunctival inflammation, redness, swelling and blepharospasm (eyelid twitching). Skin contamination causes tingling, burning pain, edema, erythema and occasional blistering. Respiratory symptoms include nasal irritation, bronchoconstriction, a burning sensation in the throat, severe coughing and sneezing, shortness of breath...More systemic effects include disorientation, panic and loss of body motor control.”<sup>103</sup>***

Based on the reported effects of PAVA spray and the City of Austin’s position on the use of CS gas, OPO recommends that this not be a tool used or considered by APD.<sup>104</sup>

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<sup>96</sup> Police Executive Research Forum, “Guiding Principles On Use of Force”; Northern Ireland Human Rights Commission, Northern Ireland Prison Service Consultation on Policy and Guidance for the Operational Deployment of PAVA Hand-held Personal Incapacitant Spray: Response of the Northern Ireland Human Rights Commission, December 2006, <http://www.nihrc.org/documents/advice-to-government/2006/prison-service-policy-for-operational-deployment-pava-december-2006.pdf>.

<sup>97</sup> Committee on Toxicity of Chemicals in Food Consumer Products and the Environment, *Statement on Combined Exposure to 2-Chlorobenzylidene Malonitrile (CS) and PAVA (Nonivamide) Sprays*, January 2006, <https://cot.food.gov.uk/sites/default/files/cot/cotstatementcspava0604.pdf>.

<sup>98</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.” An example of an Electronic Control Weapon is a TASER device.

<sup>99</sup> Police Executive Research Forum, “Guiding Principles On Use of Force.”

<sup>100</sup> Northern Ireland Human Rights Commission, *Northern Ireland Prison Service Consultation on Policy and Guidance for the Operational Deployment of PAVA Hand-held Personal Incapacitant Spray: Response of the Northern Ireland Human Rights Commission*; Committee on Toxicity of Chemicals in Food Consumer Products and the Environment, *Statement on Combined Exposure to 2-Chlorobenzylidene Malonitrile (CS) and PAVA (Nonivamide) Sprays*.

<sup>101</sup> Northern Ireland Human Rights Commission, Northern Ireland Prison Service Consultation on Policy and Guidance for the Operational Deployment of PAVA Hand-held Personal Incapacitant Spray: Response of the Northern Ireland Human Rights Commission; Committee on Toxicity of Chemicals in Food Consumer Products and the Environment, *Statement on Combined Exposure to 2-Chlorobenzylidene Malonitrile (CS) and PAVA (Nonivamide) Sprays*.

<sup>102</sup> Committee on Toxicity of Chemicals in Food Consumer Products and the Environment, *Statement on Combined Exposure to 2-Chlorobenzylidene Malonitrile (CS) and PAVA (Nonivamide) Sprays*.

<sup>103</sup> Broadstock, M. “What is the safety of ‘pepper spray’ use by law enforcement or mental health service staff?” New Zealand Health Technology Assessment, NZHTA Tech Brief Series 2002.

<sup>104</sup> See Resolution 20200611-095, “Use of Tear Gas,” Austin City Council (June 11, 2020). <https://www.austintexas.gov/edims/document.cfm?id=342177>. In this resolution, Austin City Council stated the City of Austin’s position that the use of tear gas by police is strictly prohibited.



## HOW DOMESTIC AND INTERNATIONAL TACTICS COMPARE TO CURRENT APD PRACTICES

The General Orders discusses de-escalation tactics as alternatives to force. General Order 200.2 De-escalation of Potential Force Encounters discusses such tactics as verbal persuasion and tactical repositioning.<sup>105</sup> Thus, APD directs its officers to use the tactics that, both at home and abroad, are seen as the primary alternatives to lethal and less-lethal force. As discussed below, however, APD should improve its de-escalation policies within the General Orders.

Additionally, APD has incorporated other PERF recommendations like the CDM into its curriculum.<sup>106</sup> Similarly, APD uses scenario-based training, though the precise percentage breakdowns for academy and in-service training are unclear.

APD also employs some of the other tactics utilized by foreign police departments. For example, APD trains its officers in arrest and control techniques that arguably function in a similar way to martial arts utilized by Japanese police. Essentially, both serve as alternative methods to the use of lethal or less-lethal munitions when an officer is confronted with resistance.<sup>107</sup> Further, APD's utilization of the SWAT team and other specialized units arguably functions in a way that is comparable to the well-armed response teams used by nations that practice unarmed policing (i.e., bringing in additional, specialized support when officers on scene determine that the situation calls for it).

### **In contrast, the following are areas in which APD may have room to improve:**

- Improving its de-escalation policies within the General Orders
  - In a recent OPO report titled *8 Can't Wait Policy Review and Recommendations*, OPO highlighted several issues with APD's current de-escalation policy and recommended improvements.<sup>108</sup> Some of the issues that OPO found include the following:
    - Lack of definitions for “de-escalation” and “de-escalation techniques;”
    - Use of, and failure to define, the term “potential force encounters;”
    - Failure to adequately acknowledge or address factors outside of deliberate non-compliance that may affect someone's ability to comply with officer commands; and
    - By over-emphasizing the likelihood for de-escalation efforts to fail and not properly addressing the reasons that might happen, the policy language tends to discourage de-escalation rather than incentivize it.<sup>109</sup>

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<sup>105</sup> See Austin Police Department. “200.2 De-escalation of Potential Force Encounters.” Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>106</sup> The tactical pause and the CDM are taught as part of PERF's ICAT (Integrating Communications, Assessment, and Tactics) training guide, which APD teaches as part of its training academy curriculum.

<sup>107</sup> Miriam Berger & Rick Noack, *From Guns to Neck Restraint: How US Police Tactics Differ to Those Used in Europe and Around the World*, Independent, June 7, 2020; See General Order 206.6, Austin Police Department General Orders, <https://austintexas.gov/page/apd-general-orders> (Last updated 12 Nov. 2020).

<sup>108</sup> City of Austin Office of Police Oversight, “De-Escalation,” *8 Can't Wait Policy Review and Recommendations* Jan. 2021, <https://alpha.austin.gov/police-oversight/policy-review-and-recommendations-8-cant-wait/>.

<sup>109</sup> City of Austin Office of Police Oversight, “De-Escalation.”



**APD should follow OPO's recommendations and revise the General Orders to address these issues.**

***Aligning its training culture and content with its reported values***

- APD regularly discusses its commitment to community policing but, according to the consulting firm hired by the City of Austin to assess APD's training academy, APD's training culture and content continues to reflect paramilitary values and the warrior mindset.<sup>110</sup> Community policing and training that teaches an "us versus them" mentality cannot exist in the same space.

***Required supervisory response to certain incidents***

- The General Orders do not require supervisors to respond to the scene when a weapon is reported, when a mental health crisis is reported, or when a dispatcher or other member of the department believes there is a potential for significant use of force as PERF recommends.<sup>111</sup> Supervisor presence at these scenes would provide officers with additional guidance and would emphasize (both internally and externally) APD's commitment to handling these incidents in a reasoned and considered manner.

***Requiring more non-enforcement contacts***

- General Order 105.5 includes a provision that instructs supervisors to promote and incentivize community policing, but rather than focusing on promoting non-enforcement encounters, it focuses on "responsibility for identifying community problems and formulating solutions that serve both the well-being of the community and crime prevention." In other words, the policy seems to focus only on the transactional benefits of community encounters. While APD has policies on community policing and provides cadets with some opportunities to engage with the Austin community, more can and should be done.

***Increasing the amount and type of scenario-based training***

- Experts commissioned by the City of Austin to assess APD's training academy have recently identified this as an area for improvement in the context of defensive tactics training.<sup>112</sup>

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<sup>110</sup> See Kroll Associates. "Preliminary Assessment of Austin Police Training Academy." Received by Office of Police Oversight Director and Deputy City Manager, 26 Feb. 2021, <https://www.austintexas.gov/edims/document.cfm?id=355805>; Villanueva, Sara. "APD Training Academy Review and Strategic Plan." Received by APD Chief of Police, 22 May 2020, <https://austintexas.gov/sites/default/files/files/Villanueva-APDAcademy-SWOTReport-52020.pdf>; Life Anew Restorative Justice, Incorporated. "Community Video Review Panel: Austin Police Department- Training Academy Videos Final Report." 14 Jan. 2021. <http://austintexas.gov/sites/default/files/files/Video%20Review%20Panel-Final%20Facilitator%20Report.pdf>.

<sup>111</sup> See Austin Police Department General Orders, 27 Jan. 2021, <https://austintexas.gov/page/apd-generalorders>. Accessed 12 Mar. 2021; Police Executive Research Forum, "Guiding Principles On Use of Force."

<sup>112</sup> See Kroll Associates. "Preliminary Assessment of Austin Police Training Academy." Received by Office of Police Oversight Director and Deputy City Manager, 26 Feb. 2021, <https://www.austintexas.gov/edims/document.cfm?id=355805>.



## RECOMMENDATIONS

The overarching purpose for researching tactics and tools that prevent the need for lethal and less-lethal munitions is to reduce the danger presented by some police-community encounters. The findings detailed in this report show that APD and other domestic police departments are already aware of and/or use tactics considered to be the primary methods for avoiding lethal and less-lethal force. Even with employing these de-escalation tactics, disparities still exist between the United States and other developed nations.

When it comes to the killing of civilians by police, the United States “far surpasses most wealthy democracies.”<sup>113</sup> Police shootings are a rarer occurrence outside the United States, even in countries where police officers carry firearms.<sup>114</sup> “Some countries, such as Finland and Norway, have gone years without police killings.”<sup>115</sup> In Canada, police-civilian encounters resulted in 224 deaths between the years 2013 and 2019.<sup>116</sup> Contrast that with the United States where, during that same span of time, over 7,000 civilians were killed by police.<sup>117</sup>

Combined with the findings in this report, this data demonstrates that tactics and tools alone cannot provide an answer for how best to reduce the number of incidents involving the use of lethal or less-lethal force. Therefore, OPO recommends that further research be conducted on other factors relevant to the discussion of police use of force. Suggested topics include:

***The extent to which peer intervention programs like EPIC and ABLE influence the effectiveness of tactics meant to reduce police use of force***

APD, like many other police departments, has a duty-to-intercede policy.<sup>118</sup> Under this policy, officers are required to step in and prevent fellow officers from using force that is not objectively reasonable.<sup>119</sup> While effective in theory, one of the issues that this policy faces in practice is combatting traditional policing culture, which conditions officers to always have their colleagues’ backs.<sup>120</sup> This mentality results in some officers hesitating to

<sup>113</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>.

<sup>114</sup> Sara M. Llana, “Why Police Don’t Pull Guns in Many Countries,” *The Christian Science Monitor*, June 28, 2015, <https://www.csmonitor.com/World/2015/0628/Why-police-don-t-pull-guns-in-many-countries>;

<sup>115</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>.

<sup>116</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>.

<sup>117</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>.

<sup>118</sup> Austin Police Department. “200.1.3 Duty to Intercede.” Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>119</sup> Austin Police Department General Orders. “200.1.3 Duty to Intercede.”

<sup>120</sup> John Hagedorn et al., “Crime, Corruption and Cover-ups in the Chicago Police Department.” *Anti-Corruption Report* 7, Jan. 17, 2013, [https://pols.uic.edu/wp-content/uploads/sites/273/2018/10/ac\\_policecorruptionb6e6.pdf](https://pols.uic.edu/wp-content/uploads/sites/273/2018/10/ac_policecorruptionb6e6.pdf).

intervene out of respect for their fellow officers' judgment and out of a desire to not get their colleagues in trouble.<sup>121</sup>

The New Orleans Police Department worked to counteract these issues by implementing a program known as Ethical Policing is Courageous (EPIC).<sup>122</sup> This program works to overcome the deficiencies of duty-to-intervene policies "by training officers to recognize potential triggers for themselves and others, and by teaching them effective intervention strategies."<sup>123</sup> Additionally, it serves to reform police culture by creating an atmosphere wherein intervention represents an act of loyalty that not only protects the public, but also protects officers from themselves.<sup>124</sup>

As a result of the program's success and the growing demand for training, the New Orleans Police Department has partnered with the Georgetown University Law Center to create a national police peer intervention program known as the Active Bystandership for Law Enforcement (ABLE) Project.<sup>125</sup> Additionally, EPIC was also adopted by the Baltimore Police Department.<sup>126</sup>

### *The ways in which mass gun ownership in the United States influences police use of force*

In places like Germany and Japan, where officer-involved shootings are rare occurrences, the police maintain "what Germans call 'a monopoly of force.'"<sup>127</sup> With fewer civilian-owned guns, police in these countries face less threats when performing their duties, thereby reducing the need for lethal force.<sup>128</sup> The United States, meanwhile, features more than 120 weapons for every 100 citizens.<sup>129</sup> Police departments argue that the prevalence of civilian gun ownership necessitates more armed police, while others argue that the influence of mass gun ownership increases the danger of civilian-police encounters.<sup>130</sup> State laws that, like in Texas, allow the open carrying and concealed carrying of firearms add another layer to the issue.

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<sup>121</sup> John Hagedorn et al., "Crime, Corruption and Cover-ups in the Chicago Police Department."

<sup>122</sup> "Ethical Policing is Courageous," New Orleans Police Department, accessed 12 Mar. 2021, <http://epic.nola.gov/home/>.

<sup>123</sup> New Orleans Police Department. "Peer Intervention for Officer and Community Safety," <http://epic.nola.gov/epic/media/Assets/EPIC-Overview.pdf> Accessed 12 Mar. 2021.

<sup>124</sup> Emily Lane, *In 'EPIC' Effort, New Orleans Police Work to Stop Officer Misconduct Before It Happens*, The Times Picayune, June 14, 2017.

<sup>125</sup> "Ethical Policing is Courageous," New Orleans Police Department, accessed 12 Mar. 2021, <http://epic.nola.gov/home/>.

<sup>126</sup> "Ethical Policing is Courageous," Baltimore Police Department, accessed 12 Mar. 2021, <https://epic.baltimorepolice.org/epic>.

<sup>127</sup> Katrin Bennhold and Melissa Eddy, "In Germany, Confronting Shameful Legacy is Essential Part of Police Training," The New York Times, June 23, 2020; <https://www.nytimes.com/2020/06/23/world/europe/germany-police.html>; See also Chris Weller, "Japan Has Almost Completely Eliminated Gun Deaths – Here's How," Business Insider, Feb. 15, 2018, <https://www.businessinsider.com/gun-control-how-japan-has-almost-completely-eliminated-gun-deaths-2017-10#:~:text=If%20Japanese%20people%20want%20to,during%20a%20shooting%20Drange%20test.&text=Toru%20Hanai%2FReuters%20Japan%20has,will%20result%20in%20fewer%20deaths..>

<sup>128</sup> Katrin Bennhold and Melissa Eddy, "In Germany, Confronting Shameful Legacy is Essential Part of Police Training," The New York Times, June 23, 2020; <https://www.nytimes.com/2020/06/23/world/europe/germany-police.html>;

<sup>129</sup> "How Police Compare in Different Democracies," Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>

<sup>130</sup> "How Police Compare in Different Democracies," Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>; Sara M. Llana, "Why Police Don't Pull Guns in Many Countries," The Christian Science Monitor, June 28, 2015, <https://www.csmonitor.com/World/2015/0628/Why-police-don-t-pull-guns-in-many-countries>.

## *The ways in which the militarization of police in the United States influences police use of force*

For a few decades now, police departments across the United States have utilized military-grade equipment and weaponry.<sup>131</sup> APD is among the departments benefiting from military surplus made available to police.<sup>132</sup> While the possession and use of military-grade weaponry poses its own problems, the training and culture change that comes with militarization proves equally troublesome, as some officers may begin “to confuse the role of police officers with a service orientation with that of military personnel engaged in a domestic war.”<sup>133</sup>

## *The ways in which the length and nature of police training in the United States influences police use of force*

APD’s training academy is made up of two programs: the Regular Academy and the Modified Academy.<sup>134</sup> The Regular Academy is for police officer candidates “who have no law enforcement experience, or who do not qualify for the Modified Academy.”<sup>135</sup> The Modified Academy is for police officer candidates with prior law enforcement experience.<sup>136</sup> The Regular Academy lasts for approximately thirty-two weeks.<sup>137</sup> While this training process runs longer than the national average of nineteen weeks, it falls far short of the length of training received by police in other democracies.<sup>138</sup> In many European nations, police training can last more than three years.<sup>139</sup>

In addition to the length of training, the nature of European police training greatly differs from police training in the United States. In Germany, officers essentially earn bachelor’s degrees before starting their careers.<sup>140</sup> Additionally, German police training places greater emphasis avoiding use of force and enhances focus on de-escalation techniques.<sup>141</sup> In contrast, the United States, largely due to the short length of training for officers, focuses on firearm and defense training leaving little time for de-escalation.<sup>142</sup> A 2015 survey

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<sup>131</sup> Steven C. Dowell, Jr., “Policing in America: How DOD Helped Undermine Posse Comitatus,” *National Defense University Press*, Apr. 1, 2017, <https://ndupress.ndu.edu/Publications/Article/1130666/policing-in-america-how-dod-helped-undermine-posse-comitatus/>.

<sup>132</sup> Austin Police Department. “800.5 Equipment Inventory Control.” Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

<sup>133</sup> Steven C. Dowell, Jr., “Policing in America: How DOD Helped Undermine Posse Comitatus,” *National Defense University Press*, Apr. 1, 2017, <https://ndupress.ndu.edu/Publications/Article/1130666/policing-in-america-how-dod-helped-undermine-posse-comitatus/>.

<sup>134</sup> “Academy,” Austin Police Department, accessed 12 Mar. 2021, <https://www.apdrecruiting.org/academy>.

<sup>135</sup> “Academy,” Austin Police Department, accessed 12 Mar. 2021, <https://www.apdrecruiting.org/academy>.

<sup>136</sup> “Academy,” Austin Police Department, accessed 12 Mar. 2021, <https://www.apdrecruiting.org/academy>.

<sup>137</sup> “Austin Police Department Recruiting Frequently Asked Questions,” Austin Police Department, accessed 12 Mar. 2021, <https://www.apdrecruiting.org/faq>.

<sup>138</sup> Sara M. Llana, “Why Police Don’t Pull Guns in Many Countries,” *The Christian Science Monitor*, June 28, 2015, <https://www.csmonitor.com/World/2015/0628/Why-police-don-t-pull-guns-in-many-countries>.

<sup>139</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>.

<sup>140</sup> Sara M. Llana, “Why Police Don’t Pull Guns in Many Countries,” *The Christian Science Monitor*, June 28, 2015, <https://www.csmonitor.com/World/2015/0628/Why-police-don-t-pull-guns-in-many-countries>.

<sup>141</sup> “How Police Compare in Different Democracies,” Amelia Cheatham and Lindsay Maizland, Council on Foreign Relations, last modified Nov. 12, 2020, accessed March 12, 2021, <https://www.cfr.org/backgrounder/how-police-compare-different-democracies>; Yasmeen Serhan, “What the World Could Teach America About Policing,” *The Atlantic*, June 10, 2020, <https://www.theatlantic.com/international/archive/2020/06/america-police-violence-germany-georgia-britain/612820/>.

<sup>142</sup> See United States Commission on Civil Rights, “Police Use of Force: An Examination of Modern Policing Practices,” 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

published by PERF revealed that police academies generally spend fifty-eight hours on firearm training, forty-nine hours on defensive tactics, and only eight hours on de-escalation.<sup>143</sup>

Furthermore, training in the United States traditionally emphasizes “officer safety above all else,” thereby creating a culture in which fear can dominate and the use of force by police become the first, rather than the last instinct.<sup>144</sup> APD’s training curriculum is no different; a sample of APD’s training curriculum shows a similar focus on the use of force. For example, the time allotted for APD’s de-escalation lesson plan is 10 hours and the tactical communication lesson plan is 16 hours.<sup>145</sup> In contrast, APD’s force options lesson plan is 32 hours and the arrest and control lesson plan is 40 hours.<sup>146</sup>

### *The ways in which the law regarding lethal use of force by police in the United States influences police use of force*

In the United States, the law considers a use of force by police justifiable so long as it proves objectively reasonable in light of the facts and circumstances confronting officers at the time of their action.<sup>147</sup> This is a very vague and forgiving standard.<sup>148</sup> It does not force police to utilize other tactics or tools before resorting to lethal force so long as the officer judges the need for lethal force reasonable under the circumstances.

Considering the danger and uncertainty faced by police officers, juries and judges are hesitant to question an officer’s judgement of what constitutes a reasonable use of force, particularly when that officer’s judgement falls in line with police policy.<sup>149</sup> Contrast this with the stricter European law concerning police use of force. In Europe, police may only use lethal force when it proves absolutely necessary to do so.<sup>150</sup> Thus, police in Europe are legally obligated to explore other possibilities for resolving stressful or dangerous situations before resorting to lethal force.

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<sup>143</sup> United States Commission on Civil Rights, “Police Use of Force: An Examination of Modern Policing Practices,” 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

<sup>144</sup> See United States Commission on Civil Rights, “Police Use of Force: An Examination of Modern Policing Practices,” 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

<sup>145</sup> Austin Police Department. “Integrating Communication, Assessment, and Tactics (ICAT).” Austin Police Academy De-Escalation Lesson Plan. 21 May 2020; Austin Police Department. “Tactical Communications (Verbal Judo).” Austin Police Academy Tactical Communications Lesson Plan. 17 Sept. 2019.

<sup>146</sup> Austin Police Department. “Force Options (Cadet Version)” Austin Police Academy Force Options Lesson Plan. 21 May 2020; Austin Police Department. “Cadet Skills Week” Austin Police Academy Arrest and Control Lesson Plan. 9 April 2020.

<sup>147</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989).

<sup>148</sup> Seth W. Stoughton, “How the Fourth Amendment Frustrates the Regulation of Police Violence,” *Emory Law Journal* 70, no. 3 (Fall 2013): 521, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3561238](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561238).

<sup>149</sup> Philip M. Stinson, “Charging a Police Officer in Fatal Shooting Cases is Rare, and a Conviction is Even Rarer,” *Special to the New York Daily News*, May 31, 2017, [https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1079&context=crim\\_just\\_pub](https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1079&context=crim_just_pub).

<sup>150</sup> Jim Murdoch and Ralph Roche, “The European Convention on Human Rights and Policing: A Handbook for Police Offices and Other Law Enforcement Officials.” *Council of Europe*. 2013. [https://www.echr.coe.int/Documents/Handbook\\_European\\_Convention\\_Police\\_ENG.pdf](https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf).

# Conclusion

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This memo does not resolve all the issues raised by Austin City Council in Resolution 95, but it is an important step forward toward improving APD's relationship with the community it endeavors to serve. OPO's research and findings provide the City of Austin and APD with opportunities for improving policy and exploring new areas of research that, with proper allocation of time and resources, could prove crucial to resolving some of the more troublesome issues at the center of discussions surrounding use of force. Still, the information contained within this report will be of little use if it is not properly utilized.

An important starting point must be addressing the disproportionate amount of time spent training officers to use force. De-escalation tactics are the primary alternatives to the use of munitions. APD, like other police academies across the country, emphasizes officer safety to such an extreme that it fosters a culture of fear that then guides officers' interactions and uses of force. To be clear, APD must use this information to implement demonstrable and meaningful change. Only when such change is achieved will societal wounds begin to heal, and police be able to properly fulfill their roles as servants, protectors, and leaders within the community.





# APPENDICES

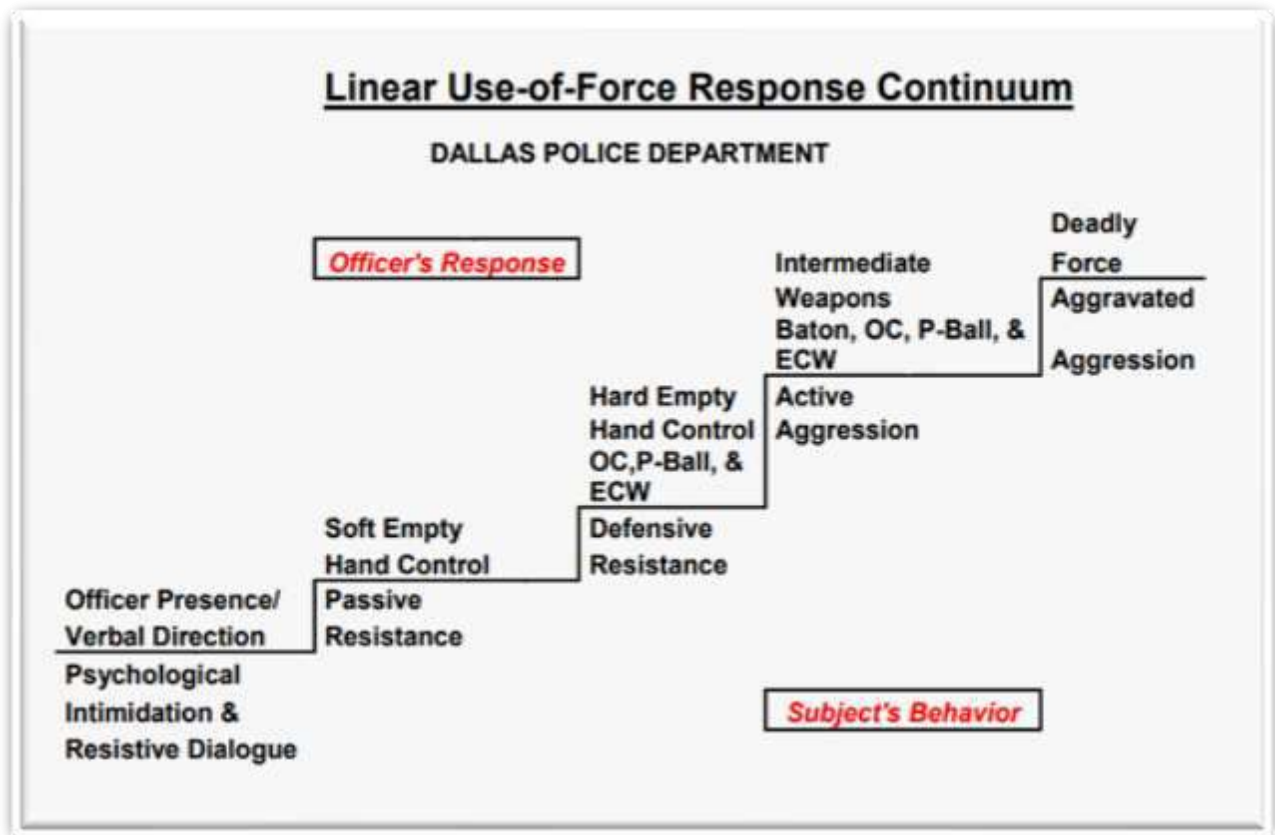
## Appendix A: APD's Description of Resistance Compared to 15 Other Departments

|                                                            | Austin | San Antonio | Houston | Dallas | Atlanta | Memphis | Fort Worth | New Orleans | Denver | Baltimore | Charlotte | Portland | San Diego | San Francisco | San Jose         | Seattle |
|------------------------------------------------------------|--------|-------------|---------|--------|---------|---------|------------|-------------|--------|-----------|-----------|----------|-----------|---------------|------------------|---------|
| Provides clear definition for resistance                   |        | X           |         | X      |         |         | X          | X           | X      | X         | X         | X        | X         | X             | X <sup>151</sup> |         |
| Provides clear examples of resistance                      |        |             |         | X      |         |         | X          | X           | X      | X         | X         |          | X         |               |                  |         |
| Uses a visual aid when discussing resistance               |        | X           |         | X      |         |         |            |             | X      |           |           |          | X         | X             |                  |         |
| Describes the use of force as a "response to resistance"   | X      | X           | X       |        |         | X       | X          |             |        |           | X         |          |           |               |                  |         |
| Pairs types of resistance with permissive police responses |        | X           |         | X      |         |         | X          |             | X      |           |           |          | X         | X             |                  |         |
| Discusses the "objectively reasonable" standard            | X      | X           | X       | X      | X       | X       | X          | X           | X      | X         | X         | X        | X         | X             | X                | X       |

<sup>151</sup> San Jose Police Department. "L 2629.5 Limited Use of 37 MM Projectile Impact Weapon for Crowd Control." San Jose Police Department Duty Manual: Policies, Rules, Procedures. 3 Feb. 2017 <https://www.sjpd.org/home/showpublisheddocument?id=314>. Accessed 12 Mar. 2021. The San Jose Police Department only provides a definition for "assaultive resistance."

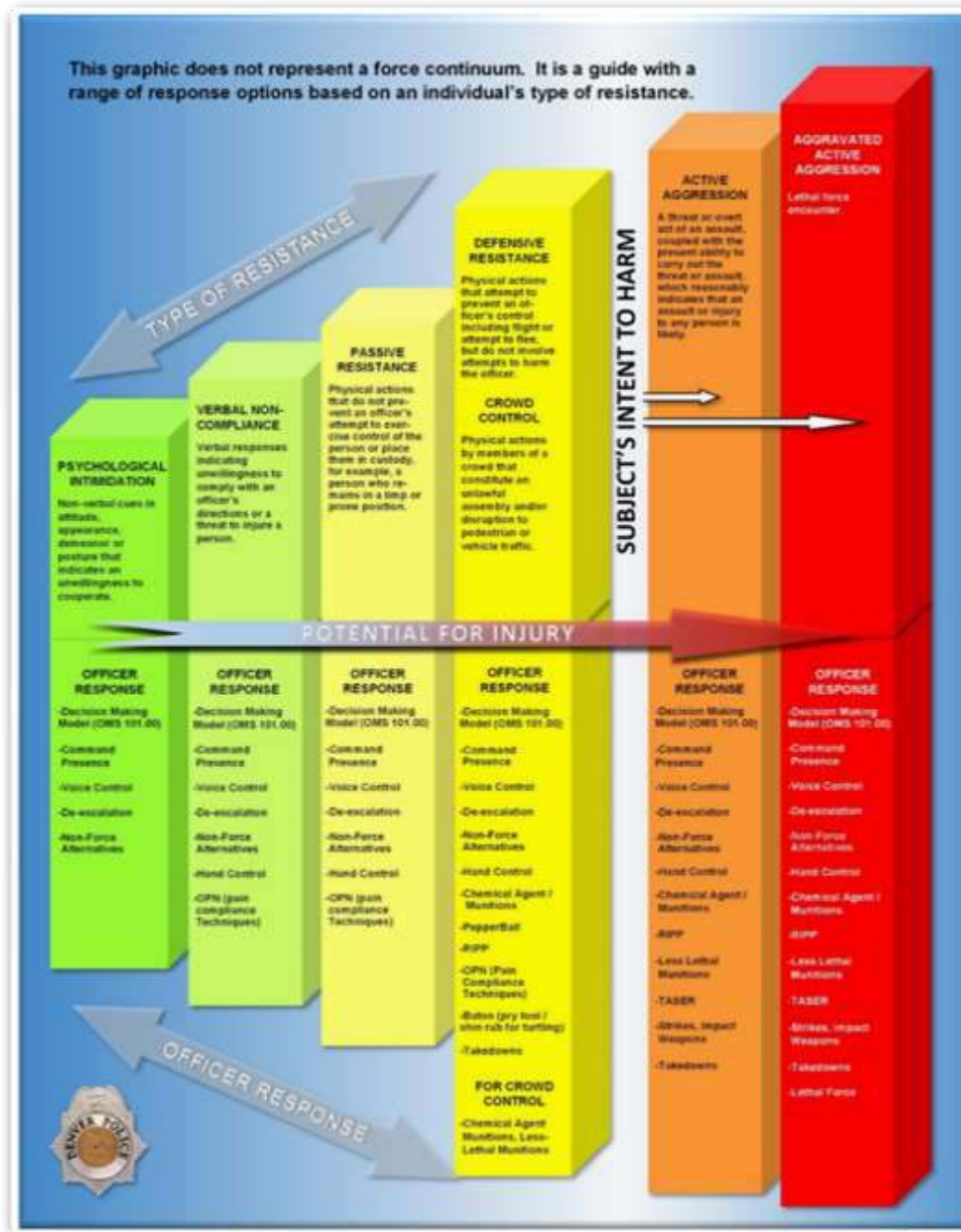


## Appendix B: Dallas Police Department Continuum Graphic <sup>152</sup>



<sup>152</sup> Dallas Police Department. "Linear Use-of-Force Response Continuum." <https://dallaspolice.net/reports/Shared%20Documents/response-continuum-model.pdf>. Accessed 12 Mar. 2021.

## Appendix C: Denver Police Department Continuum Graphic 153



<sup>153</sup> Denver Police Department. "105.01 Use of Force Policy." Denver Police Department Operations Manual. 1 Sept. 2020. [https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM\\_Book.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf). Accessed 12 Mar. 2021.

## Appendix D: San Antonio Police Department Continuum Graphic <sup>154</sup>

| OFFICER'S PERCEPTION OF SUSPECT'S ACTIONS |                            |                   |                  |                                     |                                            |
|-------------------------------------------|----------------------------|-------------------|------------------|-------------------------------------|--------------------------------------------|
|                                           | Compliant<br>(Cooperative) | Passive Resistant | Active Resistant | Imminent Assault<br>(Bodily Injury) | Imminent Serious<br>Bodily<br>Injury/Death |
| <i>Officer's Presence</i>                 | ✓                          | ✓                 | ✓                | ✓                                   | ✓                                          |
| <i>Verbal Communications</i>              | ✓                          | ✓                 | ✓                | ✓                                   | ✓                                          |
| <i>Open/Empty Hands<br/>Control</i>       |                            | ✓                 | ✓                | ✓                                   | ✓                                          |
| <i>Physical Force</i>                     |                            |                   | ✓                | ✓                                   | ✓                                          |
| <i>Intermediate Weapon</i>                |                            |                   | ✓                | ✓                                   | ✓                                          |
| <i>Deadly Force</i>                       |                            |                   |                  |                                     | ✓                                          |

<sup>154</sup> San Antonio Police Department. "Procedure 501.05 Application of Force." San Antonio Police Department General Manual. 18 Sept. 2020. <https://www.sanantonio.gov/Portals/0/Files/SAPD/GeneralManual/501.pdf>. Accessed 12 Mar. 2021.

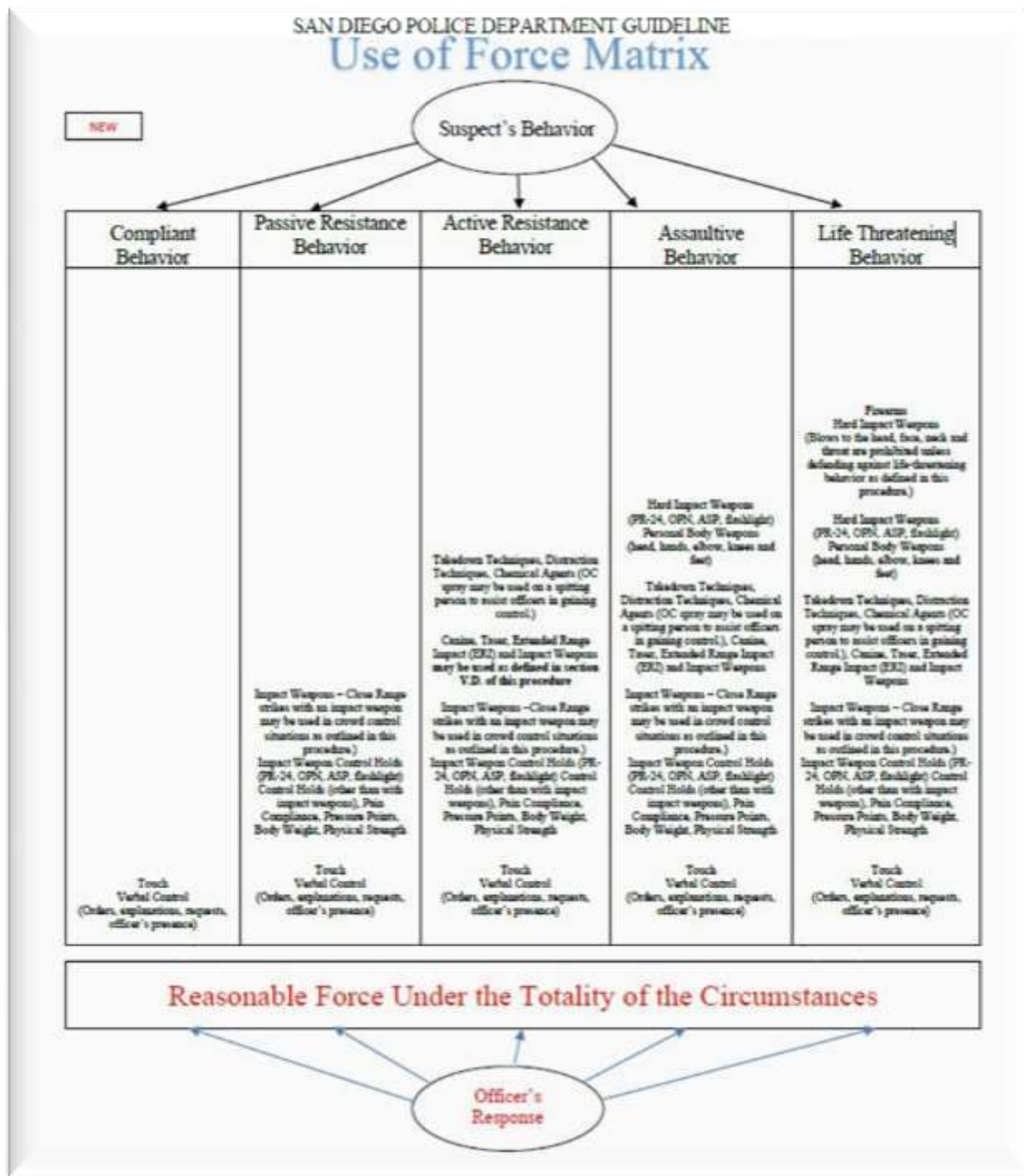
## Appendix E: San Francisco Police Department Continuum Graphic <sup>155</sup>

| Subject's Actions      | Description                                                                                                                                                                                                                  | Possible Force Option                                                                                                                                                                                                             |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Compliance             | Subject offers no resistance                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>• Mere professional appearance</li> <li>• Nonverbal actions</li> <li>• Verbal requests and commands</li> <li>• Handcuffing and control holds</li> </ul>                                    |
| Passive non-compliance | Does not respond to verbal commands but also offers no physical form of resistance                                                                                                                                           | <ul style="list-style-type: none"> <li>• Officer's strength to take physical control, including lifting/carrying</li> <li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize</li> </ul>   |
| Active resistance      | Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody | <ul style="list-style-type: none"> <li>• Use of personal body weapons to gain advantage over the subject</li> <li>• Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject</li> </ul> |
| Assaultive             | Aggressive or combative; attempting to assault the officer or another person, verbally or physically                                                                                                                         | <ul style="list-style-type: none"> <li>• Use of devices and/or techniques to ultimately gain control of the situation</li> </ul>                                                                                                  |

| Subject's Actions | Description                                                                                    | Possible Force Option                                                                                                                                                                                        |
|-------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   | displays an intention to assault the officer or another person                                 | <ul style="list-style-type: none"> <li>• Use of personal body weapons to gain advantage over the subject</li> </ul>                                                                                          |
| Life-threatening  | Any action likely to result in serious bodily injury or death of the officer or another person | <ul style="list-style-type: none"> <li>• Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat</li> <li>• Vehicle intervention (Deflection)</li> </ul> |

<sup>155</sup> San Francisco Police Department. "General Order 5.01 Use of Force." San Francisco Police Department General Orders. 21 Dec. 2016. <https://www.sanfranciscopolice.org/sites/default/files/2018-11/DG05.01%20Use%20of%20Force.pdf>. Accessed 12 Mar. 2021.

## Appendix F: San Diego Police Department Continuum Graphic<sup>156</sup>



<sup>156</sup> San Diego Police Department. "1.04 – Administration, Use of Force." San Diego Police Department Procedure. 8 Jul. 2021. [https://s3-us-west-2.amazonaws.com/themis2.datasd.org/policies\\_procedures/Procedures/1.0%20Administration/104.pdf](https://s3-us-west-2.amazonaws.com/themis2.datasd.org/policies_procedures/Procedures/1.0%20Administration/104.pdf). Accessed 12 Mar. 2021.



## **Appendix G: Fort Worth Police Department Continuum Language<sup>157</sup>**

### **306.05 FORCE OPTIONS**

It is important to note that actions by an officer shall be predicated by the actions of the subject. Under no circumstances will the force used by an officer be greater than necessary to make an arrest or a detention or to protect oneself or another, nor will the force be used longer than necessary to subdue the suspect, and deadly force shall not be used except as specifically provided in this directive. The Department's training materials on use of force are hereby incorporated as if fully set forth herein. TBP 6.01

#### **A. During a police contact a subject may be:**

**1. Compliant:** A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance.

#### **2. Non-Compliant**

a. **Passive Non-Compliance:** The subject is not complying with an officer's commands and is not physically hindering or threatening in a harmful manner to physically hinder an officer from placing the subject in custody and taking control. Examples include: standing stationary and not moving upon lawful direction, falling limply and refusing to use their own power to move. Reasonable force options to passive noncompliance include low level force options.

*NOTE: Regarding civil protests, also refer to General Order 328.06*

b. **Active Resistance:** The subject displays behavior that consists of refusal to comply with an officer's commands and conveys a threat to physically hinder or is physically hindering the arrest/detention process that is not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip pulling away or a subject lying on their arms. Reasonable force options to active resistance may include, but are not limited to, low level and intermediate force options.

*NOTE: When responding to resistance involving a grounded subject, officers are discouraged from using closed fist strikes to the head as this increases likelihood of injury to the officer and subject.*

c. **Aggressive Resistance:** The subject displays the intent to harm the officer, themselves or another person and prevent an officer from placing the subject in custody and taking control. The aggression may manifest itself through a subject taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions that present an imminent threat of physical harm to the officer or another. Reasonable force options for aggressive resistance

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<sup>157</sup> Fort Worth Police Department. "306.05 Force Options." Fort Worth Police Department General Orders. 17 Feb. 2021. <https://police.forthworthtexas.gov/Public/general-orders>. Accessed 12 Mar. 2021.

include, but are not limited to, low level and intermediate force options. However as an incident involving aggressive resistance is prolonged, the likelihood that it becomes aggravated aggressive resistance also increases which may necessitate greater force options.

- d. Aggravated Aggressive Resistance: The subject's actions are likely to result in death or serious bodily harm to the officer or another person. These actions may include a firearm, use of blunt or bladed weapon, and extreme physical force. Any force option is permissible when an officer is responding to aggravated aggressive resistance.

*NOTE : Whenever an officer applies a use of force option upon a subject that results in an injury or complaint of injury, the officer will monitor the subject, render first aid to the best of their skill level, and immediately summon medical attention. TBP 6.07*

**B. In response to the above situations, officers shall be guided in the use of force as follows:**

1. Low Level Force - a level of force or control that is neither likely nor intended to cause injury, i.e., handcuffing a compliant arrestee for transport to jail or placing a subject in a prone position on a high-risk vehicle stop. Low Level Force includes:

- a. Officer Presence - Recognition of authority through a uniformed presence, marked police vehicle, identifiable police markings, logo, badges, police credentials, or verbal identification. Excludes physical force.

- b. Verbal Commands - Commands of direction or required compliance such as directions to drop a weapon, get on the ground, stop running, etc.

- c. Weaponless Strategies - Techniques designed to gain compliance through open hand control techniques (such as takedowns with no injury or handcuffing).

- d. Control Strategies - Techniques designed to gain compliance through the use of a departmentally-approved control device such handcuffs or use of an approved restraint device.

2. Intermediate Force - a level of force that has the potential to cause injury or substantial pain, and is greater than Low-Level Force.

- a. Weaponless Strategies - Techniques designed to gain compliance through empty hand control techniques such as strikes, takedown with injury, or pressure points.

- b. Weapon Strategies - Techniques designed to gain compliance through the use of a departmentally-approved control device such as impact weapons,



chemical agents, or conducted electrical weapons.

3. Deadly Force is any force that is reasonably likely to cause or create a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, firing firearm in the direction of another person. Depending on the circumstances, deadly force can result from a less-lethal force option being improperly applied or the use of other potentially lethal tactics, such as:

a. Examples include but are not limited to:

(1) Intentional baton strikes to head, neck, sternum, spine, groin or kidneys

(2) Low or less lethal option such as the 40 mm or less-lethal shotgun fired in a manner not consistent with training or policy.

(3) Firing of a firearm at a vehicle, building, or structure in which another person is believed to be; or

(4) Applying a chokehold or neck-restraining technique

4. An officer may use deadly force upon another person only when it is objectively reasonable and immediately necessary to:

a. Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury.

b. Prevent the escape of a fleeing felon who the officer has probable cause to believe has committed a violent felony crime and is an imminent threat to human life if escape should occur such as in an active shooter situation where the fleeing suspect has access to more victims.

c. When feasible, officers shall provide a warning prior to the use of deadly force, i.e., "Police! Stop or I will shoot!"

## **Appendix H: Austin Police Use-of-Force Language<sup>158</sup>**

### **211.2.1 LEVEL 1 FORCE INCIDENTS AND IN-CUSTODY DEATHS**

- (a) Any force resulting in death.
- (b) Any force that resulted in a substantial risk of death.
- (c) Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
- (d) Any intentional firearm discharge at an animal that results in injury to another person.
- (e) Any unintentional firearms discharge resulting in another person's injury or death.
- (f) Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g., serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
- (g) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.
- (h) In-Custody Deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as Level 1 incidents and require concurrent inquiries conducted by SIU and IA, regardless of whether force was used on the subject.
- (i) The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.

### **211.2.2 LEVEL 2 FORCE INCIDENTS**

- (a) Any strike to the head by an employee with any weaponless technique.
- (b) Use of any impact weapons, including kinetic energy projectiles (other than a Taser), and improvised weapons, to strike a subject and contact is made, regardless of injury. (A strike to the head is a Level 1).
- (c) Any deployment of a police canine resulting in a bite to a subject's skin, or which results in any injury to a subject.
- (d) The utilization of the Precision Immobilization Technique, unless serious bodily injury or death occurs.

### **211.2.3 LEVEL 3 FORCE INCIDENTS**

- (a) Use of Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent on a subject.
- (b) Any Taser application.
- (c) Use of any impact weapon, including kinetic energy projectiles or any other similar object, in an attempt to strike a subject but no contact is made.
- (d) Use of a baton for a non-striking purpose (e.g., prying limbs, moving, or controlling a subject).
- (e) Any force resulting in injury or a continued complaint of pain, but not rising to a Level 1 or 2 incident.

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<sup>158</sup> Austin Police Department. "211 Response to Resistance Inquiry, Reporting, and Review." Austin Police Department General Orders. 27 Jan. 2021. <https://austintexas.gov/sites/default/files/files/General%20Orders.pdf>. Accessed 12 Mar. 2021.

- (f) Any weaponless technique that causes an impact to the body with or without a complaint of injury or pain. (A weaponless strike to the head is a Level 2). Examples of weaponless techniques include:
  - 1. Hand/palm/elbow strikes.
  - 2. Kicks or leg sweeps.
  - 3. Take-downs.
- (g) Any deployment of a police canine for the purpose of biting a subject whose location is known to the handler which results in no injury to the subject.

#### **211.2.4 LEVEL 4 FORCE INCIDENTS**

- (a) A level of force utilizing empty hand control techniques that does not result in injury or continued complaint of pain and does not rise to a Level 3 response to resistance. Examples include, but are not limited to:
  - 1. Restricting a subject's movement by strength or body weight (to include resisted escorting or handcuffing of a subject who is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of a person's arm(s) that officers commonly encounter during handcuffing).
  - 2. Using leverage or strength to bring a subjects arms or legs together for the purposes of controlling, handcuffing, or hobbling the subject (to include resisted control, handcuffing, hobbling when the subject is actively resisting arrest beyond the initial or reflexive stiffening or pulling away of the subject's arm(s) or leg(s) that officers commonly encounter during efforts to control, handcuff, or hobble a subject).
  - 3. Pressure point control tactics