

# Warn Before Shooting



## Introduction

Campaign Zero's 8 Can't Wait initiative recommends that police departments adopt policies that require officers provide a verbal warning before employing use of deadly force when feasible.<sup>113</sup> Additionally, before using deadly force, officers should provide individuals an adequate amount of time to comply with any commands the officers have given.<sup>114</sup>

APD policy requires that officers issue a warning prior to the use of deadly force when "feasible."<sup>115</sup> While this is in alignment with 8 Can't Wait's model policy, it lacks sufficient specificity and detail to provide officers with a clear understanding of what is expected of them.

Adding clear directives about when and how warnings should be given will help officers to consistently give appropriate warnings before using of deadly force, potentially eliminating the need for officers to resort to the use of deadly force.<sup>116</sup> Policies that provide concrete guidance to officers will increase consistency (in behavior and accountability) and help ensure that officers' behavior reflects both community and APD goals.<sup>117</sup>

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## Policy review findings

### Without further detail in policy, feasibility language is ambiguous

The requirement for police officers to provide a warning prior to the use of deadly force if “feasible” was established by the United States Supreme Court in *Tennessee v. Garner*.<sup>118</sup> In alignment with this case, the majority of the police department policies that meet 8 Can’t Wait standards require warnings when “feasible.”<sup>119</sup> Other policies that meet the 8 Can’t Wait standard may use the terms “practical” or “possible.”<sup>120</sup>



APD’s current policy states that a warning should be given “if feasible” but provides no other direction. By allowing so much discretion, the policy fails to provide officers with guidance in life-or-death situations. In some of the most critical and consequential moments that officers may face, the policy leaves them without knowing exactly what is expected of them and what factors will be considered in the event of an administrative investigation into the incident.



### APD policy is more robust for less-lethal force warnings

APD policy is virtually silent regarding warning requirements for deadly force, particularly in comparison with the warning requirements for less-lethal force options.<sup>121</sup> The sections for both TASER and kinetic energy projectiles include the purpose of a warning, verbiage for the warning, and reporting requirements.<sup>122</sup> These specifics are missing from APD’s policy regarding warnings for deadly-force situations.<sup>123</sup> APD’s policy should provide the same, if not more, specificity and guidance as its policies governing less-lethal force options.

### APD policy does not specify how a warning should be given

Other police departments instruct officers to, as part of their warning, identify themselves and give a command.<sup>124</sup> APD doesn’t require a warning or provide any specifications about how warnings should be given.<sup>125</sup> Requiring officers to identify themselves prior to using deadly force would potentially decrease confusion thereby helping officers to gain or maintain control of the scene. Additionally, requiring that officers give individuals a clear command and an adequate amount of time to comply would increase the likelihood of gaining voluntary compliance, which could eliminate any, real or perceived, need to use deadly force.<sup>126</sup>

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## Current APD policies relevant to warning before shooting

The following APD policies chapters are relevant to warning before shooting:

- 202.1.1 Firearm Discharge Situations; and
- 200.4 Deadly Force Applications.<sup>127</sup>

To view the full excerpts of these chapters, please turn to Appendix F.

## Recommended policy changes

### Remove the last paragraph of 202.1.1 Policy, which currently includes the following language

Where feasible, a warning should be given before an officer resorts to deadly force as outlined (a), (b) or (c) above. A specific warning that deadly force will be used is not required by this order; only that a warning be given if feasible.

### Create a new policy section in General Order 202 adding the following language

#### VERBAL WARNINGS

Purpose: The purpose of a warning is to provide the individual being targeted with a reasonable opportunity to voluntarily comply with officer commands and to advise other officers and bystanders with a warning that deadly force will be deployed.

(a) A verbal warning must be given prior to the deployment of a firearm in all circumstances unless:

1. Use of deadly force is immediately necessary to prevent imminent death or serious bodily injury to officers or bystanders on scene; and
2. Giving a warning will place the officer or bystanders in additional danger.

(b) A warning must be given prior to each deployment of a firearm in all circumstances that don't meet the requirements identified in subsection (a). If an initial deployment of a firearm meets the requirements in subsection (a), a warning must be given prior to any subsequent discharges of a firearm.

(c) Any warning must identify officers as police officers and include a clear, specific command (e.g. "Austin Police! Drop the weapon or I'll shoot!").

1. The warning must be communicated in a manner that enables the targeted individual to perceive, understand, and comply with any issued commands. Officers shall take into account factors such as, but not limited to, the following: distance, environmental conditions, physical/mental condition of the targeted individual, language barriers, and whether the individual has any disabilities that would inhibit their ability to perceive, understand, or comply with any commands.

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2. Based on factors like the ones listed in subsection (c)(1) above, officers shall have a reasonable basis for believing that the warning was understood by the individual to whom it was directed.

3. Officers must give targeted individuals an adequate of time to comply with any request or command given as a part of the warning.

(d) Warnings shall not include disrespectful, profane, discourteous, harsh, or offensive language.

(e) The fact that a verbal warning was given, or the reasons it was not given, shall be documented in any related reports. Officers shall also document any responses by the targeted individual.

