



ST AUGUSTINE POLICE DEPARTMENT

CHAPTER: 2
NUMBER/TITLE: 1
DIVISION: Patrol

Response to Resistance

ORIGINAL ISSUE: 03-05-2003
REVISED: 9-27-19

CHIEF OF POLICE
Barry E. Fox

PURPOSE:

To establish guidelines under which the response to resistance by police officers is permissible; to establish policy governing the carrying and using of lethal and less-lethal weapons while on or off duty; to facilitate the documentation of essential facts relative to any alleged or actual response to resistance by a member of the Department; to establish policy in regard to training and certification and the keeping of training and certification records.

POLICY:

The St. Augustine Police Department and its officers are charged with a solemn obligation to protect life and property and with the enforcement of all States law and City ordinances. To carry out these lawful duties, officers shall use force only to the degree necessary to affect a lawful arrest, protect the officer or another person from bodily harm, or overcome resistance. When using force officers shall conform to State and Federal laws governing the response to resistance as well as the guidelines and restrictions set forth in this directive, which may be more restrictive than State and Federal laws.

The Department recognizes that officers must be properly armed to carry out their duties. To this end, the Department will regulate the use of ammunition as well as lethal and less-lethal weapons. The Department will continually train its members in the use of these weapons and munitions.

It must be clearly understood that this agency not only supports, but also expects all officers to defend themselves and others from physical attack while engaged in the performance of their official duties.

DEFINITIONS:

- ***Controlling restraint*** - physical force that is used to control a person's actions. It is beyond the physical contact used to coax or guide a person toward a particular action.
- ***Deadly force*** - any force that is reasonably likely to cause death or great bodily harm.
- ***Great bodily harm*** - a bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in the long-term loss or impairment of the functioning of any bodily member or organ.
- ***Imminent danger*** - an impending peril caused by a demonstrated threat to or wanton disregard for human life.
- ***Less-lethal*** - any force that is not likely to cause death or great bodily harm.
- ***Less-lethal impact munitions*** - These munitions were designed and developed to be launched or propelled for the purpose of encouraging compliance and/or overcoming resistance while lessening the likelihood of serious injury or death.
- ***Less-lethal impact weapon***- weapons designed to deliver less lethal impact munitions. 12 gauge shotguns converted to less lethal impact weapons and 40mm launchers
- ***Conducted energy weapon (CEW)*** - These devices are designed to emit an electrical pulse when fired at the subject's body. This pulse causes an electro-muscular disruption that temporarily incapacitates the target long enough to be taken control of.
- ***Probable cause*** - facts or circumstances known to the officer that would cause an ordinary and prudent officer to think that a crime was committed and a particular person committed it.

PROCEDURE:

Section A - DEPARTMENT AUTHORIZED WEAPONS AND MUNITIONS

(1) No person shall be assigned to a position that allows for the power of arrest, or the authority to carry a firearm, until that person completes the State of Florida requirements for certification as a law enforcement officer unless under the direct supervision of a Field Training Officer.

(2) No officer shall carry or use, in a law enforcement capacity, any firearm or other weapon, either on or off-duty, for which they have not shown proficiency, and qualified with according to Departmental guidelines.

(3) Members shall carry or use only weapons and munitions meeting agency authorized specifications, while in the performance of duty, either on or off-duty. The agency-authorized firearms and munitions are found in Appendix B.

(4) Upon being issued and prior to all qualification testing, each firearm will be inspected and certified as safe by an agency armorer. Any firearm found to be unsafe will be immediately removed from service. The officer assigned this weapon shall be issued a replacement until such time the unsafe firearm is declared safe.

(5) All firearms approved by the agency for official use will be recorded by the agency's Training Supervisor.

(6) All sworn members will carry the departmental issued handgun as their primary handgun while in uniform and may carry any agency-approved handgun as a secondary handgun. Sworn members assigned to plain-clothes assignments shall carry only agency-approved handguns as a primary or secondary handgun.

(7) Members not in uniform wearing business casual clothing may carry their handgun in either a concealed or unconcealed manner while on duty, but if unconcealed, they will have their badge conspicuously displayed unless otherwise authorized by the Chief of Police or his/her designee.

(8) Officers must have exhibited proficiency with their issued primary handgun and any alternate handgun they carry, as well as any less-lethal weapons they may use, either on or off-duty.

(9) All sworn members, when off duty, will keep issued and/or agency-approved handguns available when:

- (a) Operating a police department vehicle, whether in uniform or in civilian clothing; or
- (b) As a passenger in a police department vehicle.

(10) The decision to be armed is the officer's discretion when off-duty and not in uniform, or not in a police department vehicle. If he/she decides to carry a firearm off-duty, then the firearm must be agency-authorized and must be hidden from view at all times, when not in use.

(11) H.R. 218 (The Law Enforcement Officers Safety Act of 2004) allows any qualified law enforcement officer to carry their weapons while off duty between states. Any officer who chooses to carry his/her firearm off-duty will carry their Department credentials, follow the regulations of H.R. 218 and will be responsible for knowing the laws in that jurisdiction.

Section B - RESPONSE TO RESISTANCE

- (1) The department will look at the totality of the circumstances in determining whether the decision to use force was objectively reasonable and, therefore, legally justified. The totality of circumstances includes consideration of the subject's form of resistance; all reasonably perceived factors that may have an effect on the situation, and the response options available to the officer.

(a) Resistance Levels By The Subject:

- (1) Presence** – Is a subject’s verbal and or physical refusal to comply with an officer’s lawful direction causing the officer to use physical techniques to establish control. Examples of passive resistance include the following:
 - (a)** The subject refuses to move at the officer’s direction.
 - (b)** The subject peacefully protests at a political event in a public location and refuses to move.
 - (c)** The subject refuses to take his hands out of his pocket or from behind his back.

- (2) Active Resistance** – Is a subject’s use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling to prevent the officer from establishing control over the subject. Examples of Active Resistance include the following:
 - (a)** The subject physically anchors themselves to a person or object to prevent themselves from being removed.
 - (b)** The subject braces or pulls away from the officer when the officer grips the subject’s arm.
 - (c)** The subject attempts to run when the officer touches or attempts to grab the subject’s arm or shoulder.

- (3) Aggressive Physical Resistance** – Is a subject’s attacking movements toward an officer that may cause injury but are not likely to cause death or great bodily harm to the officer or others. Examples of aggressive resistance include the following:
 - (a)** The subject balls up his fist and approaches the officers.
 - (b)** The subject pushes the officer back as the officer tries to take the subject into custody.
 - (c)** The subject grabs any part of the officer’s body.

- (4) Deadly Force Resistance** – Is a subject’s hostile, attacking movements with or without a weapon that create reasonable perception by the officer that the subject intends to cause and has the capability of causing death or bodily harm to the officer or others. Examples of deadly force resistance include the following:
 - (a)** A subject refuses to drop a knife when ordered by the office and moves toward the officer.
 - (b)** A subject shoots or points a gun at an officer or other person.
 - (c)** A subject tries to run an officer down in a vehicle.

(b) Response Levels By The Officer:

Officers should try to resolve a situation with the least amount of force necessary. Command presence and verbal communication often will defuse many volatile situations. Sometimes, however, these are not enough or officers may not have an opportunity to use them. An officer may have to use physical force to gain control of the situation. Physical force includes physical control, the use of nonlethal weapons, and deadly force. Officers need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Officers need to respond with the force reasonably necessary for the circumstances in each specific situation.

- (1) Physical Control** – Is achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices, takedowns and striking techniques.
 - (a)** Additionally, nonlethal weapons such as Conducted Energy Weapon (**CEW**) and chemical sprays may be used at this level of response depending on applicable subject/officer factors (see Section C).

- (2) Nonlethal Weapons** – Non lethal weapons that are primarily used to control a subject. Examples include, but are not limited to:

- (a) Batons (Straight or expandable)
- (b) Aerosol Sprays
- (c) Conducted Energy Weapon (**CEW**)
- (d) Less Lethal Munitions
- (e) Less Lethal Impact 12 Gauge Shotgun
- (f) 40 mm Launcher

(3) Deadly Force – Is force that is likely to cause death or great bodily harm. Use of deadly force may be an officer's first and only appropriate response to a perceived threat. The officer must base his or her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he or she, a fellow officer, or another person, faces imminent danger or great bodily harm. Examples of deadly force include:

- (a) use of a firearm
- (b) eye gouges
- (c) empty-hand strikes to the throat
- (d) impact weapon strikes to the side of the neck.
- (e) targeting the head and neck with a less lethal impact munition

Section C - TOTALITY OF CIRCUMSTANCES

(1) Totality of circumstances refers to all the facts and circumstances known to the officer at the time or reasonably perceived by the officer as the basis for the use of deadly force.

(2) The totality of circumstances includes consideration of the subject's form of resistance, all reasonably perceived factors that may have an effect on the situation and the response levels available to the officer. Situations factors may include the following:

- (a) Severity of the crime
- (b) Subject is an immediate threat
- (c) Subject's mental or psychiatry history if known
- (d) Subject's history of violence if known
- (e) Subject's combative skills if known
- (f) Subject's access to weapons
- (g) Innocent bystanders in the area
- (h) Number of subjects versus number of officers
- (i) Duration of confrontation
- (j) Subject's size, age, weight, physical condition
- (k) Environments factors, such as physical terrain, weather conditions.

(3) The Force Guidelines recognizes that officers make response to resistance decision based on the totality of circumstances at the time of the incident. Circumstances are fluid and dynamic.

Section D - DEADLY FORCE

(1) Officers use three criteria for making deadly force decisions:

- (a) Ability
- (b) Opportunity
- (c) Intent

(2) Ability

Ability refers to the subject having the means to carry out his or her intent to cause death or great bodily harm. An officer must determine whether the subject has the necessary means to cause death or great bodily harm to the officer or others. A weapon is not required; a subject must only have the apparent ability to carry out his or

her intention. If the subject seems physically able to cause death or great bodily harm, then he has the ability. For example, a 6'4", 250-lb. muscular man threatening to do bodily harm to an officer does not necessarily need a weapon. By virtue of his size and physical condition, he has the apparent ability.

(3) Opportunity

Opportunity means the subject is capable of carrying out an intention to cause death or great bodily harm to the officer or others. The subject's weapon often determines opportunity. For example, a suspect armed with a knife may not be an immediate threat to an officer standing far away. However the same person standing closer or carrying a firearm has the opportunity to carry out his intent to cause death or great bodily harm.

(4) Intent

Intent is the reasonably perceived, imminent threat to an officer or another person based on the subject's action, behaviors, words, or other indicators. It is a perception derived from the totality of circumstances. Officers should use the amount of force necessary and reasonable for the situation. If ability, opportunity, and intent are present and the officer cannot control the threat using lesser means, then deadly force is justified. When resistance de-escalates, so must the officer's response.

(5) Any officer of the St. Augustine Police Department may use deadly force only under the following circumstances:

- (a)** In defense of human life, including the officer's own life, or in defense of any person who the officer reasonably believes is in imminent danger of great bodily harm.
- (b)** To apprehend a suspect fleeing from the scene of a felony where the officer has probable cause to believe the suspect committed the crime and has a reasonable belief that the suspect used or threatened the use of lethal force during the commission of the crime and the suspect's freedom represents an imminent danger to another person or the officer.
- (c)** To prevent the escape of an arrested suspect from the custody of a law enforcement officer when the escapee's freedom represents an imminent danger to another person or the officer.

(6) When feasible, officers will announce some warning to a subject such as: "Stop, Police!" or "Police! Don't move!"

(7) Deadly force shall not be used against misdemeanor or traffic violators unless the situation escalates to the point that the officer(s) must defend themselves or another person against death or great bodily harm.

(8) Firearms shall not be discharged from or at moving vehicles except under the following conditions:

- (a)** To prevent death or great bodily harm to another person or the officer.
- (b)** To prevent the escape of a fleeing felon if the officer has probable cause to believe the suspect committed the felony and the suspect's escape represents an imminent danger to another person or the officer.

(9) The use of deadly force will not be justified where the officer placed him/herself in the path of a moving suspect vehicle and thereby placed his/her life in danger.

(10) The firing of warning shots is prohibited.

Section E - LESS LETHAL FORCE

(1) Where lethal force is not authorized, officers may use only that level of force that is objectively reasonable to bring an incident under control. This force may take the form of, but is not limited to, physical restraint, chemical agent, electrically charged weapon or impact weapon.

Section F - ESCALATION, DE-ESCALATION, AND DISENGAGEMENT

(1) Force decision may change rapidly in relation to the perceived threat. An officer's goal is to achieve subject compliance. Officers should be prepared to:

- (a) De-escalate: Decrease the use of force or resistance.
- (b) Disengage: Discontinuing a command or physical use of force, i.e. breaking away from the subject.
- (c) Escalate: Increasing the use of force or resistance.

(2) The goal is to achieve subject compliance, which is the verbal and/or physical yielding to an officer's authority without apparent threat of resistance or violence. Once compliance is met, officers must de-escalate the response to resistance.

(3) Officers are permitted to escalate their response to resistance as the subject escalates his or her level of resistance.

Section G - UNAUTHORIZED RESPONSE TO RESISTANCE

(1) Tactics and/or actions that are not authorized to be used except in lethal force encounters include, but are not limited to:

- (a) Lateral Vascular Restraint (LVR).
- (b) Blows or strikes with an impact weapon to the face, head, neck, spine, solar plexus, or kidneys.

Section H – LESS-LETHAL WEAPONS

(1) Less-lethal weapons are designed to cause substantially less bodily harm than a firearm but are not considered to be non-lethal. These weapons may enable officers to utilize an intermediate range of force when and if the circumstances will allow.

(2) Only those less-lethal weapons issued by the S.A.P.D. are approved for on-duty use. These include but are not limited to the baton, chemical aerosols, electrically charged weapons, and less-lethal impact munitions. Department issued less-lethal weapons will not be carried or used off-duty.

(3) Prior to carrying and/or utilizing any of these approved less-lethal weapons, each officer will complete a certification course taught by a qualified instructor.

(4) All less lethal weapons will be annually inspected for function and expiration dates by either the training supervisor or a qualified instructor for each less lethal weapon.

(5) Anytime an officer uses any less-lethal weapon while carrying out a law enforcement function, the officer will:

- (a) Seek medical attention for the subject if there are injuries that warrant such attention.
- (b) Notify the on-duty supervisor.
- (c) Document the incident on a General Offense/Incident Report and/or an arrest and booking affidavit.
- (d) Document the incident on the Response to Resistance form.

(6) Impact weapons

- (a) The only impact weapon issued and approved by the Department is the baton (straight or expandable).
- (b) Officers will not strike an individual with anything other than an approved impact weapon except in extreme circumstances, and then the officer must justify his/her actions.
- (c) The flashlight is not intended to replace the baton as an impact weapon. If it is necessary to use the flashlight as an impact weapon, its use will be consistent with training and this policy.

(7) Chemical Agents

- (a)** Officers may carry only chemical agents that have been approved by the Department and only those officers who have been trained in their use may carry such chemical agents. Officers will attend yearly training.
- (b)** Anytime a suspect is exposed to a chemical agent, as soon as practical, that person will be escorted to an uncontaminated environment, exposed to fresh air, and allowed to flush the contaminated body areas with water.
- (c)** During periods of contamination, the contaminated person will be continuously monitored for valid signs of a medical complaint or the development of medical problems. If medical problems are detected, medical assistance will be sought immediately.

(8) 40 mm Launchers

- (a)** 40mm launchers are used to propel an approved chemical agent or impact munition.
- (b)** 40mm launchers that are used exclusively to deliver less lethal impact munitions or chemical agents will be equipped with an orange or yellow sling and stock color matching the sling.
- (c)** Only sworn members who have been trained in their use will utilize the 40mm launchers.
- (d)** Department members designated by the Training Supervisor will be trained on the use of and assigned a 40mm launcher to be carried while on duty.
- (e)** When a member who deploys the 40mm launcher will clearly communicate its deployment by using the terminology “40, 40, 40”.
- (f)** The 40mm launcher can be deployed in the following, but not limited to applications;
 - (1)** Restoration or maintenance of order during civil unrest
 - (2)** Safely overcoming violent subjects
 - (3)** Subduing vicious animals
- (g)** The 40mm launchers will not be aimed at the subject’s head or neck unless deadly force is justified.
- (h)** Persons impacted by a less lethal impact munition shall be examined by qualified medical personnel for injuries.
- (i)** Photographs of any injuries sustained by subjects impacted with a less lethal impact munition from a 40mm will be taken and submitted into evidence.
- (j)** Only under extreme conditions will less lethal weapons be deployed without lethal cover.

(9) Less-Lethal impact Weapon - 12 Gauge Shotgun

- (a)** Less lethal impact 12 gauge shotguns are used to propel less lethal impact munitions.
- (b)** The 12 gauge shotguns used exclusively for less lethal impact munitions will be equipped with an orange or yellow sling and matching stock and forend.
- (c)** Department members designated by the Training Supervisor will be trained and assigned a less lethal impact 12 gauge shotgun to be carried on duty.

- (d) When a member who deploys the less lethal impact 12 gauge shotgun they will clearly communicate its deployment by using the terminology “bag, bag, bag”.
- (e) The less lethal impact 12 gauge shotgun can be deployed in the following, but not limited to applications:
 - (1) Restoration or maintenance of order during civil unrest
 - (2) Safely overcoming violent subjects
 - (3) Subduing vicious animals
- (f) The less lethal impact 12 gauge shotgun will not be aimed at the subject’s head or neck unless deadly force is justified.
- (g) Persons impacted by a less lethal impact munition shall be inspected by qualified medical personnel for injuries.
- (h) Photographs of any injuries sustained by subjects impacted with a less lethal impact munition from a less lethal impact 12 gauge shotgun will be taken and submitted into evidence.
- (i) Only under extreme conditions will less lethal weapons be deployed without lethal cover.

(10) Conducted Energy Weapon (CEW)

- (a) Only Departmentally approved electronic control device will be used while on duty.
- (b) This device may be issued and/or used only to those officers who have been trained in their use. Officers will attend yearly training.
- (c) When a CEW has been deployed and the probes penetrate the subject’s skin, photographs of the probes will be taken prior to removal by Fire/Rescue personnel.

Section I – RESPONSE TO RESISTANCE INCIDENTS; WRITTEN REPORTS

(1) When the use of physical force is limited to soft controlling techniques, as defined on the *Response to Resistance Form*, the option to arrest or not arrest shall remain with the member.

(2) Officers are required to submit an Incident Report **and** a Response to Resistance Report when any of the following occur:

- (a) The officer applies force to overcome active physical resistance, aggressive physical resistance, and/or aggravated physical resistance as defined in *Section B* of this policy.
- (b) Officers using minimum force, i.e. holding a subject by the arm while escorting the subject away from an area, are not required to complete a *Response to Resistance Form*. However, force used during a struggle with a subject, physically placing a resisting subject on the ground, or using any part of the body to strike a suspect (i.e. knee spike) are some examples of force requiring the submittal of a *Response to Resistance Form*.
- (c) The officer employs take down, pain compliance or counter-move techniques, intermediate weapons, incapacitating control techniques or lethal force, as defined in *Section B* of this policy.
- (d) The officer discharges a firearm for any reason other than training or recreational purposes.
- (e) The officer takes action that results in, or is alleged to have resulted in, injury or death of another person.
- (f) The officer applies force through the use of any lethal or less-lethal weapon.
- (g) Anytime an officer encounters a citizen while having his/her firearm drawn.
- (h) The officer draws and activates his/her CEW.

(3) The original Response to Resistance report shall be forwarded to the Training Supervisor as soon as possible.

(4) The Training Division supervisor will provide to the Chief of Police, quarterly records of completed *Response to Resistance Reports*. The Chief (or designee) will use these records to document an annual administrative review.

(5) Incident Review Board will be convened when deemed necessary per policy 1-17.

Section J – APPROPRIATE MEDICAL AID

(1) If an officer uses lethal or less-lethal force against a subject that results in an injury to the subject, as soon as possible, the officer will:

- (a) Request a Medical Unit.
- (b) Begin the appropriate first aid.
- (c) Notify the immediate supervisor.

(2) When pepper spray is used on a subject, the arresting officer will, as soon as practical and reasonable, allow the subject an opportunity to flush the affected area thoroughly with cold tap water. Adverse effects of the pepper spray should wear off in approximately 45 minutes. If adverse effects of the pepper spray continue for an hour, or if the subject requests it, he/she will be provided medical attention.

(3) When the CEW is used on a subject and the prongs have penetrated the skin, the St. Augustine Fire Department will be notified to remove the prongs.

Section K – ADMINISTRATIVE LEAVE

(1) Any member, whose actions result in the death of another person, shall be immediately placed on administrative leave pending completion of a preliminary administrative review of the incident. This review shall involve an examination of all available information in order to arrive at an opinion as to whether or not the incident is believed to be in conformance with Department Policy and Procedures and State and Federal Laws. This shall in no way be construed to imply or indicate any improper actions by the member. The member shall continue to receive all pay and benefits. While on administrative leave, the member shall remain available during business hours (8:00am – 5:00pm) for official interviews and statements regarding the incident.

(2) If the use of lethal force results in the serious bodily injury or death of a person, the St. John's County Sheriff's Office or the Florida Department of Law Enforcement shall be requested to respond to the scene and conduct an investigation in addition to any investigation conducted by the Department.

(3) The officer(s) involved in the incident shall be removed from the scene by a supervisor to a quiet area as soon as practical. At the request of the officer, a family member, clergy, or other person of the officer's choosing will be called and be allowed to remain with the officer.

(4) If an officer uses force, which results in serious bodily injury or death to another, the officer shall be required by the Chief of Police to consult with a psychiatrist or psychologist of the Department's choosing.

(5) If an officer is involved in a critical incident, the Chief of Police may require the officer to consult with a psychiatrist or psychologist of the Department's choosing.

Section L-POLICY TRAINING

(1) No officer shall be issued any Department weapon or firearm, be allowed to carry any weapon or firearm, or be authorized to use lethal or non-lethal force until that officer has been issued a copy of and instructed in this

policy.

(2) The information in this directive will be given to each new officer during Phase I of the Field Training Program and shall be documented by the officer's Field Training Officer.

Your electronic signature in Power DMS acknowledges you have read this policy and understand it.

Approved by:  Barry E. Fox - Chief of Police	Date of Approval 09-27-19
---	----------------------------------