

## Austin Police Department

### Policy Manual

#### TASER Device Guidelines

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##### **208.7 FUNCTIONALITY CHECK**

After a Response to Resistance incident, supervisors shall download the firing data from an employees' TASER Device and comply with the reporting procedures outlined in Policy 211 (Response to Resistance Inquiry, Reporting and Review).

Officers shall download data from their assigned TASER Device when it is reassigned to another officer or retired from active police inventory:

- (a) One copy of the data report shall be filed with the officer's property inventory retained by Police Equipment.
- (b) One copy of the data report shall be retained by the officer.

##### **208.7.1 PROPER MAINTENANCE**

Officers shall be responsible for ensuring that their issued TASER device is properly maintained and in good working order.

- (a) The supervisor or designee will perform quarterly functionality checks. This check shall occur quarterly when notified by Risk Management to conduct quarterly CAD audits.
- (b) The results of the check will be documented on PD 0128A "Unit Quarterly Taser Functionality and CAD Audit Report" and will include all officers whose Tasers were checked, whether or not the internal clock was "reset" and if a Taser was found defective. If defective, the supervisor shall notate corrective action. Examples are:
  - 1. Turned into Police Equipment for repair or replacement
  - 2. Taser cartridge trap doors replaced
  - 3. Low battery replaced

##### **208.8 DEPLOYMENT RECORD RETENTION**

All TASER Device deployment information shall be maintained by the Department for a minimum of three (3) years.

## Response to Resistance Inquiry, Reporting, and Review

### 211.1 PURPOSE AND SCOPE

This directive sets forth Department policy and procedures for inquiring, reporting, and reviewing force incidents in response to resistance involving Department personnel. The specific required inquiry, reporting, and review of these incidents is determined by the force level, as defined in this policy.

Personnel may delay compliance with the provisions of this order if the scene is unstable, there is unrest, or other conditions make immediate compliance impracticable. The protection of the public, Department personnel, and maintenance of public safety shall remain a top priority. Compliance with this order shall occur as soon as practicable. The approving supervisor shall ensure the reason for the delay is documented in the supervisor's supplement or inquiry memorandum.

#### 211.1.1 DEFINITIONS

**Inquiry:** The preliminary review of the events surrounding a response to resistance incident, including the initial response to the scene and follow-up investigations.

**Reporting:** The process of documenting the information gathered in the inquiry of a response to resistance incident through written, oral and visual means and compiling that information into the appropriate packet for review.

**Review:** The process of evaluating all the given information obtained in the force incident inquiry and reporting stages to determine if the response to resistance was objectively reasonable and within policy guidelines.

#### 211.1.2 IDENTIFYING RESPONSE TO RESISTANCE DOCUMENTATION

The following Response to Resistance reports and forms are required as determined by the force level of the incident:

**Response to Resistance Incident Report:** The initial incident report written by the primary reporting employee for all force level incidents. Title Code 8400 shall be added to the incident report by the primary reporting employee to identify the incident as a response to resistance incident. The Use of Force section of the "Details" page shall also be completed.

**Response to Resistance Supplement:** A supplement written to the primary reporting employee's incident report.

**Response to Resistance SIU Inquiry Report:** A separate incident report written by the Special Investigations Unit (SIU) for all Level 1 incidents and in-custody deaths.

**Response to Resistance Level 2 Inquiry Control Sheet (PD0060):** A coversheet completed by the supervisor for all Level 2 incidents.

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**Response to Resistance Supervisor Inquiry Memorandum:** A memorandum completed by the supervisor reviewing all Level 2 incidents.

**Response to Resistance Case Note:** A note that is added to the Incident Report in Versadex.

**Response to Resistance Inquiry Packet:** A packet compiled in response to resistance inquiries to be handled by the appropriate person, unit, or chain-of-command.

- Level 1 inquiry packets are completed by the SIU.
- Level 2 inquiry packets are completed by the supervisor conducting the inquiry.
- Level 3 incidents do not require an inquiry packet as documentation is handled through Versadex case notes.

#### **211.2 DETERMINING THE CORRECT FORCE LEVEL**

Force levels are broken up into three types: Level 1, Level 2, and Level 3. Each level is defined below by the response to resistance used in the incident. These levels are established for inquiry, reporting, and review purposes only. If there is uncertainty about which level to designate a particular incident then the higher level shall be used.

##### **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 unintentional firearms discharge resulting in another person's injury or death.
- (e) 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).
- (f) Use of any impact weapon, including kinetic energy projectiles, and improvised weapons, that strikes the head of a subject.
- (g) **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.
- (h) 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.

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- (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 clothing or skin, or which results in any injury to a subject.
- (d) Any use of the Taser where the cartridge is fired at a subject and causes neuromuscular incapacitation.
- (e) 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 where there is no neuromuscular incapacitation (e.g. drive stun with or without cartridge attached)
- (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 complaint of pain beyond the temporary discomfort of unresisted handcuffing, but not rising to a Level 1 or 2 incident.
- (f) A weaponless technique is used with or without complaint of injury or pain. (A strike to the head is a Level 2). Examples of weaponless techniques include:
  - 1. Hand/palm/elbow strikes.
  - 2. Kicks or leg sweeps.
  - 3. Pressure points.
  - 4. Take-downs.

#### 211.2.4 ELEVATION OF A FORCE LEVEL INCIDENT

If information is uncovered during a response to resistance inquiry to indicate that the original force level falls into a higher category, the force level should be elevated to conduct the appropriate inquiry.

- (a) Supervisors have the discretion to elevate any Level 3 force incident to a Level 2 in order to conduct a more extensive inquiry and review of the incident.
- (b) An employee's lieutenant, with the approval of the commander or Duty Commander, may elevate any response to resistance incident to a Level 1 force incident.

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#### 211.3 VIOLATIONS OF LAW OR POLICY

Supervisors receiving a complaint regarding a response to resistance incident will review the available information regarding the incident to determine if any credible evidence a violation of policy or law may have occurred.

- (a) Supervisors making a determination based on objective evidence (e.g., MAV shows an allegation is false) that there is **no credible evidence** a violation of policy or law has occurred by the officer shall complete a *Complainant Contact Form* and forward it to IA.
  - 1. The incident shall be closed as information and tracked in the IA database for information purposes only.
  - 2. The force incident shall be handled based on the normal criteria as outlined in this policy and the initiation of an IA investigation is not required.
- (b) Supervisors discovering during the normal course of their review, or in response to a complaint, **any credible evidence** a violation of law or policy may have occurred concerning the officer's response to resistance shall follow the guidelines outlined below.

##### 211.3.1 CRIMINAL MISCONDUCT

Regardless of the original force level of the incident, if there is **any credible evidence** that criminal misconduct may have occurred by the officer then the incident shall be treated as a Level 1 force incident.

- (a) The supervisor shall immediately notify the SIU and IA. The supervisor shall document the time and date the SIU and IA were notified in the supervisor's supplement.
- (b) The Chief of Police shall be notified on all credible allegations of criminal conduct.
- (c) SIU and IA shall handle the concurrent investigation of criminal allegations as outlined in the Criminal Investigations and Administrative Investigations policies.

##### 211.3.2 POLICY VIOLATION

- (a) If there is **any credible evidence** a policy violation may have occurred by the officer then the incident shall be handled as follows:
  - 1. **Level 1 force incidents** - If the original incident would have been handled as a Level 1 force incident, supervisors shall notify the SIU and IA of the possible policy violation and handle the response to resistance inquiry as a Level 1 force incident. Supervisors shall document the date and time SIU and IA were notified in the supervisor's supplement.
  - 2. **Level 2 and Level 3 force incidents** - If the original incident would have been handled as a Level 2 or a Level 3 force incident, supervisors shall notify IA of the possible policy violation and handle the response to resistance inquiry as a Level 2 force incident. Supervisors shall document the date and time IA was notified in the supervisor's supplement.

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- (b) Internal investigations of policy violations shall be handled as outlined in Policy 902 (Administrative Investigations).

#### **211.4 EMPLOYEE RESPONSIBILITIES FOR ALL FORCE LEVEL INCIDENTS**

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

- (a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.
- (b) Involved employees shall request EMS as soon as practicable when a subject complains of injury, has visible injuries, or the circumstances indicate that an injury may have occurred. For purposes of this section "Injury" does not include TASER probe marks that are not in a sensitive area of the body. Officers will comply with section 208.5 in regards to post-TASER deployment medical treatment.
- (c) If a person not under arrest is transported for medical treatment as a direct result of an officer's response to resistance, an officer will accompany that person to the medical facility for monitoring unless or until a supervisor believes such monitoring is no longer necessary.
- (d) Employees not involved in the force incident may be directed by a supervisor to assist at a force incident scene. This may include locating and identifying witnesses to the incident.
  - 1. Employees shall notify a supervisor in the event a witness refuses to give a statement or provide identifying information.
  - 2. Employees shall not detain or delay a witness who refuses to remain at the scene.
    - (a) The witness' physical description, license plate, comments, or other identifiers shall be documented in the employee's supplemental report.
    - (b) Any photographs or videotape containing images of a witness who refused to remain at the scene shall be turned in with the response to resistance inquiry packet.

#### **211.4.1 EMPLOYEE REPORTING GUIDELINES FOR ALL FORCE LEVEL INCIDENTS**

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

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.
- (b) Supplements shall be completed by:
  - 1. All other employees who are involved in a force incident.

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2. Employees who witness a force incident.
  3. Employees assisting at the scene of a force incident.
  4. A supervisor is required to complete a supplement to the response to resistance incident report for Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.
- (c) The following information shall be included in each report and supplement:
1. The original reason for police presence on the scene.
  2. The name and employee number of the supervisor notified of the incident.
  3. A detailed description of the circumstances and subject actions that resulted in the use of force.
  4. A detailed description of the force used.
    - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
  5. Subject and witness information.
  6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
  7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.
- (e) A copy of the response to resistance incident report, any supplements, and any ancillary documents should be submitted to the reviewing supervisor prior to the end of the employee's tour of duty.

#### **211.5 DESIGNATION OF SUPERVISOR TO CONDUCT INQUIRY**

The supervisor of the employee involved in the force incident shall typically be the primary supervisor conducting the force inquiry. The following exceptions apply:

- (a) If an incident involves multiple employees with different supervisors, a lieutenant from the area where the incident occurred, or the Watch Lieutenant, shall assign one supervisor to be the primary inquiring supervisor. The responding supervisor will conduct the force inquiry. Additionally, the responding supervisor will notify the other involved employees'

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supervisor(s) of the force incident and their employee's involvement. This notification will be made by e-mail and will include the incident report number.

- (b) A supervisor involved in a force incident shall not review the incident. A supervisor who is at the scene and witnesses the incident, but is not directly involved in the force incident, may conduct the inquiry.
- (c) If an employee the rank of sergeant or lieutenant is involved in a Level 2 or 3 force incident, another supervisor the rank of the involved employee or higher shall conduct the inquiry.
- (d) If an employee the rank of commander or higher is involved in a level 2 or level 3 force incident, the employee will notify their immediate supervisor and the Duty Commander. At the direction of the Duty Commander, an on duty lieutenant may be designated to complete the inquiry.
- (e) Corporals may be designated as the inquiry supervisor as follows:
  - 1. Level 1 Incidents - Corporals may not act as the designated supervisor to conduct inquiries for Level 1 Force Incidents.
  - 2. Level 2 Incidents - As long as an employee is in their chain-of-command, or when responding as the acting sergeant to an incident occurring in their sector involving a Department officer working an off-duty LERE position, corporals may conduct the initial on-scene inquiry of a Level 2 incident when serving as acting sergeant or when the sergeant is not immediately available. The initial Level 2 packet shall be turned over by the end of the shift to the corporal's supervisor, lieutenant or other designated supervisor for final approval or further inquiry.
  - 3. Level 3 Incidents: Corporals may function as the designated supervisor to conduct inquiries for Level 3 force incidents.

#### **211.6 LEVEL 1 AND IN-CUSTODY INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

Level 1 force incidents and in-custody deaths occurring prior to or within 24 hours after booking require concurrent inquiries conducted by the SIU and IA. The following sections explain the responsibilities in Level 1 force incidents and in-custody deaths for:

- (a) Supervisors.
- (b) Special Investigations Unit (SIU).
- (c) Lieutenants.
- (d) Chain-of-command.
- (e) Internal Affairs (IA)



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##### 211.6.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY INCIDENTS

Supervisors shall respond to the scene of all Level 1 force incidents and in-custody deaths unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor.

- (a) Supervisors are responsible for managing the scene until a higher ranking supervisor or the ranking SIU supervisor arrives.
- (b) Supervisors should secure and manage the scene upon arrival and:
  - 1. Take all reasonable steps to obtain emergency medical attention for all injured individuals.
  - 2. Ensure involved personnel, subjects, and witnesses are separated, identified and advised that communication regarding the incident with other people is prohibited.
  - 3. Obtain a brief overview of the situation from available sources.
  - 4. Involved personnel subject to a potential criminal investigation shall be able to speak with an APA union representative and/or their attorneys prior to speaking with a supervisor. If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information to secure the scene and pursue subjects.
    - (a) Public safety information shall be limited to such things as outstanding subject information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses, and similar information.
  - 5. Ensure a crime scene is established:
    - (a) Ensure a *Crime Scene Security Log* (PD0175) is maintained to record the time and identifying information of all persons entering and exiting the scene.
    - (b) Ensure the *Crime Scene Security Log* is delivered to the SIU investigator.
  - 6. Ensure an appropriate sized perimeter is established, if needed.
  - 7. Assess the need for additional resources and notify the Watch Lieutenant and appropriate lieutenant.
  - 8. Identify the number of subjects involved and coordinate the apprehension of subject(s) who are unaccounted for.
  - 9. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene investigators as soon as practical and shall be documented in the employee's supplement.
  - 10. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any information regarding sources of pertinent

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video should be provided to on scene investigators as soon as practical and shall be documented in the employee's supplement.

11. Coordinate the preliminary inquiry with the SIU and IA investigators to include, but not limited to:
  - (a) Identifying employees either involved in or witness to the incident.
  - (b) Designating the primary reporting officer for the response to resistance incident report.
  - (c) Ensuring the preservation of evidence.
  - (d) Assisting investigators to ensure statements are taken.
- (c) Once the scene has been cleared, supervisors shall be responsible for the following:
  - (a) Completing a supplement to the response to resistance incident report detailing their actions. SIU may direct a supervisor to complete a supplement to the SIU inquiry report as well.
  - (b) Reviewing the primary reporting employees' response to resistance incident report and change the 8400 title code to 8401 to indicate a Level 1 force incident.
  - (c) Identifying Department or individual equipment, training, and tactical issues.
  - (d) Making recommendations for corrective action when appropriate. Recommendations shall be documented in a memorandum forwarded through the chain-of-command.

#### 211.6.2 SPECIAL INVESTIGATIONS UNIT (SIU) RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The ranking SIU supervisor on-scene of a Level 1 incident shall assume command of the scene. SIU shall conduct a response to resistance inquiry and forward the inquiry packet to IA or the involved employee's chain of command within forty-five (45) calendar days, unless extended by an assistant chief.

#### 211.6.3 LIEUTENANT RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

On-duty lieutenants responsible for the area in which the response to resistance incident has occurred will respond to the scene to assume scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary inquiry. When appropriate, lieutenants may place the involved employees on restricted duty with the approval of the employee's commander or the Duty Commander.

#### 211.6.4 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 1 AND IN-CUSTODY DEATH INCIDENTS

The chain-of-command, up to and including the appropriate assistant chief, shall review the response to resistance inquiry packet for Level 1 force incidents. All reviewers shall:

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- (a) Document their review following IA administrative procedures relating to the IA investigation of the incident.
- (b) Review the inquiry packet and evaluate the report and supplements for compliance with law and Department policy. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.
- (c) Order further inquiry or additional resources when necessary.
- (d) Evaluate and comment on any training, tactical, or equipment issues.
- (e) Document any extension approvals for report deadlines. The employee's commander shall ensure SIU and IA are notified of any deadline extensions.
- (f) Forward the response to resistance inquiry packet to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within four work days from the time it was received for review.
- (g) Upon completion of the review, and the final disposition of any Administrative Investigation, if applicable, the commander shall:
  - (a) Forward all approved inquiry packet links via email to APD Training.
  - (b) Document any identified individual, command or Department-wide training issues:
    - 1. If an individual or command training issue is identified, the commander shall ensure training is conducted and a training memorandum is completed and forwarded to the commander of the Training Division for review and appropriate additional action, if any; and/or
    - 2. Request Department-wide training from the Training Division.
    - 3. Scan the final signed memorandum into the electronic folder.

#### 211.6.5 INTERNAL AFFAIRS RESPONSIBILITIES IN LEVEL 1

- (a) If an Administrative Investigation is initiated due to alleged misconduct by an APD employee, at any stage of the inquiry or review process, the process established by Policy 902 (Administrative Investigations) will be followed.
- (b) Upon final disposition of the Administrative Investigation, IA will notify the involved employee's commander.
- (c) For in custody deaths and officer involved shootings, IA will forward the electronic link to the Force Review Board.

#### 211.7 LEVEL 2 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS

The following sections explain the responsibilities in Level 2 force incidents for:

- (a) Supervisors.
- (b) Chain-of-Command Review.

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##### 211.7.1 SUPERVISOR RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

Level 2 force incident inquiries are conducted by the designated inquiry supervisor. A supervisor shall respond to the scene of all Level 2 force incidents unless a hostile crowd or other conditions make such a response impracticable. In such incidents, an alternate safe location shall be designated by the supervisor. The reporting and review requirements for a Level 2 Precision Immobilization Technique will be completed as part of the Pursuit Critique. The review will be handled by the chain-of-command responsible for the Pursuit Critique up to and including the rank of Commander. Level 2 Precision Immobilization Techniques will not typically be reviewed by the Force Review Board.

(a) Supervisors should secure and manage the scene upon arrival and:

1. Ensure involved personnel, subjects, and witnesses are identified, separated, and advised that communication regarding the incident with other people is prohibited.
2. Verbally review the general circumstances of the incident individually with the involved personnel, subjects, and witnesses. Ensure the reporting level is consistent with the facts and assess whether injuries, if present, are consistent with the force applied.
3. Ensure a perimeter is established if needed.
4. Locate injured subjects and ensure medical services have been requested as needed.
5. Assess the need for additional resources and make appropriate notifications.
6. Identify the number of subjects involved. Coordinate the apprehension of subject(s) outstanding.
7. Personally interview the subjects upon whom the force was used, or alleged to have been used, and obtain a statement. The statement should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain the circumstances that prevented the recording.
8. Assign employees who were not involved with the force incident to conduct a reasonable canvass in an effort to identify witnesses in the proximity of the incident. Witness information should be provided to on scene supervisor as soon as practical and shall be documented in the employee's supplement. Witness information shall also be documented in the supervisor inquiry memorandum.
  - (a) Witness statements should be captured using a MAV recording system. If a statement is not obtained by video or audio, the supervisor shall thoroughly document the information in their inquiry memorandum and explain what circumstances prevented the recording.

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9. Assign employees who were not involved with the force incident to identify any possible sources of video of the scene, such as security cameras, and determine if they contain any pertinent video. Any sources of pertinent video should be provided to on scene supervisor as soon as practical and shall be documented in the employee's supplement.
  10. Ensure digital images or photographs are taken of:
    - (a) The physical condition of the subject and involved personnel to record the presence or lack of injuries.
    - (b) The scene where the response to resistance incident occurred.
    - (c) Other relevant evidence.
  11. Supervisors shall ensure all MAV media is turned in as evidence if it contains any information or statements related to the incident.
- (b) Once the scene has been cleared, supervisors shall be responsible for the following:
- (a) Send email notifications with the incident report number prior to the end of the tour of duty to the:
    - (a) Involved employee's chain-of-command up to the commander.
    - (b) Reviewing supervisor's chain-of-command up to the commander, if not already included.
    - (c) Commander of the area where the incident took place, if not already included.
    - (d) IA (Internal.Affairs@austintexas.gov) if the inquiry indicates there is any credible evidence a violation of law or policy may have occurred concerning the officer's use of force that may reasonably lead to formal discipline.
  - (b) Supervisors shall review the primary reporting employee's response to resistance incident report and change the 8400 title code to 8402 for Level 2 force incidents.
  - (c) Complete a response to resistance inquiry memorandum. The inquiry memorandum shall include:
    - (a) The incident number of the involved employee's response to resistance incident report.
    - (b) A description of any injury to the subject and/or APD personnel including the medical assistance that was provided.
    - (c) Any relevant information revealed in interviews with personnel, subjects involved, and witnesses at the scene.
    - (d) Information on the digital images or photographs that were taken. If none were taken then the reason why.

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- (e) Whether statements were taken and in what format (e.g., MAV, written). If a statement was not taken, or if the statement was not captured on video or audio, the reasons should be documented.
  - (f) Detailed information on any circumstances that delayed or prevented response to the scene.
  - (g) Identify Department or individual equipment, training, and tactical issues and make recommendations for corrective action, when appropriate.
  - (h) Whether the response to resistance was objectively reasonable and within Department Policy.
- (d) Prepare a response to resistance inquiry packet that includes the following documents:
- (a) A Level 2 inquiry control sheet.
  - (b) Supervisor inquiry memorandum.
  - (c) CAD sheet of the incident.
  - (d) Any ancillary documentation (e.g. Taser downloads and audio wave files).
- (e) Electronically store the response to resistance inquiry packet in the Level 2 Response to Resistance Inquiry folder in the G drive (\\ausps.org\Data\Groups\R2R Level 2 Inquiry Packets) within a folder titled by the case number. A physical folder is no longer required.
- (f) Complete and forward the response to resistance inquiry packet link via email to the next level in the chain-of-command under which the involved employee was working when the incident occurred, within four work days from the time the incident occurred.

#### 211.7.2 CHAIN-OF-COMMAND REVIEW RESPONSIBILITIES IN LEVEL 2 FORCE INCIDENTS

The chain-of-command, up to and including the commander, shall review the response to resistance inquiry packet for Level 2 force incidents.

- (a) All reviewers shall:
1. Review the inquiry packet and evaluate the report and supplements for compliance with law and Department policy.
  2. Document whether the response to resistance was within Department policy:
    - (a) Add a notation at the end of the supervisor inquiry memorandum if you agree that the response to resistance was within Department policy.
    - (b) If necessary, each level of the chain-of-command may write a supplemental memorandum to be included in the inquiry packet.

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3. Evaluate and comment on any training, tactical, or equipment issues.
  4. Order further inquiry or additional resources when necessary.
  5. Any reports that are incomplete or inadequate shall be returned to ensure corrections are made.
  6. Forward the response to resistance inquiry packet link via email to the next level in the chain-of-command under which the involved employee was working when the incident occurred within four work days from the time it was received for review.
  7. Document any extension approvals for report deadlines. The commander shall ensure IA is notified of any significant deadline extensions, when applicable.
- (b) Upon completion of the review, the commander shall:
1. Forward all approved inquiry packet links via email to APD Training.
  2. Document any identified individual, command or Department-wide training issues:
    - (a) If an individual training issue is identified an Employee Success Plan may be implemented. If a command training issue is identified, the commander shall ensure training is conducted; and/or
    - (b) Request Department-wide training from the Training Division.
    - (c) Scan the final signed memorandum into the electronic folder .

#### **211.8 LEVEL 3 INCIDENT INQUIRY, REPORTING, AND REVIEW REQUIREMENTS**

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review.

- (a) Supervisors shall respond to the scene of any Level 3 incident involving:
1. Use of OC spray or other chemical agent on a subject.
  2. Use of a TASER Device. See the "Report of Use" section of Policy 208 (TASER® Guidelines) for specific information to be included in the report.
  3. Use of an impact weapon.
  4. Any incident resulting in injury or complaint of pain beyond the temporary discomfort of unresisted handcuffing. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on the facts.
- (b) Supervisors shall review the primary reporting employees' response to resistance incident report:

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1. Incomplete or inadequate reports shall be returned for additional details or clarification.
  2. Supervisors shall change the 8400 title code in the Versadex incident report and detail page to 8403 for Level 3 force incidents.
  3. Supervisors shall add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.
- (c) If a TASER Device is used in the force incident, the data report shall be downloaded and a copy scanned into the image section of the Versadex incident report or submitted into evidence with the spent cartridge for retention.
- (d) Supervisors shall conduct a thorough review of all documents including the response to resistance incident report and any supplements to ensure completeness, accuracy, and quality. Each level of the chain-of-command, up to the lieutenant, shall review the incident and complete a case note to document their review.
- (e) Level 3 incidents that involve the use of OC, Taser, or weaponless strikes on a restrained subject will be forwarded to the Force Review Board for their review.

#### **211.9 INCIDENTS DURING SECONDARY LAW ENFORCEMENT RELATED EMPLOYMENT (LERE)**

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this policy. Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the review.

#### **211.10 INCIDENTS OCCURRING OUTSIDE THE CITY OF AUSTIN**

Employees involved in a Level 1, 2, or 3 force incident while taking police action outside of the City of Austin shall notify the proper law enforcement authority having jurisdiction, contact their supervisor, and follow the reporting procedures outlined in this policy.

#### **211.11 SPECIAL CIRCUMSTANCES**

Any deviation from the above reporting requirements must be approved by an assistant chief and only for special circumstances (e.g., mass arrest situations, emergency crowd control). Commanders may approve a Level 3 incident to be documented in an after-action report for tactical situations arising from a search warrant, SWAT call-out, or other incident requiring an approved operations plan. The after-action report must comply with the reporting and review requirements for a Level 3 incident. An electronic copy of the after-action report shall be forwarded to the Inspections Unit.



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## **Force Review Board**

### **212.1 PURPOSE AND SCOPE**

The Austin Police Department is charged with the important responsibility of objectively evaluating an Officers Response to Resistance. The Force Review Board (FRB) shall identify any policy, training, tactical, equipment, or other improvements related to the force incident that may be needed. The Board shall also review the quality and timeliness of the response to resistance reporting, investigation, and chain-of-command review, and take appropriate action. The Chief may direct the Board to review any Response to Resistance incident.

The FRB is empowered to conduct an administrative review of the following types of incidents:

- (a) Level 1 and Level 2 force incident.
- (b) In-custody death.
- (c) Vehicle pursuits resulting in the serious bodily injury or death to any person.
- (d) Any incident causing serious injury or death as a result of an employees actions.
- (e) Any firearms discharge other than those in the course of authorized training, practice, legal recreational activities, during an organized competitive event, or the authorized discharge against an animal.
- (f) Any incident where an officer uses OC Spray, Taser, or weaponless strikes on a restrained subject.
- (g) Any commander may request that an incident occurring within their area of responsibility be reviewed.

#### **212.1.1 AUTHORITY OF FORCE REVIEW BOARD**

When a FRB is convened, the Board may:

- (a) Direct Department personnel to appear before the Board.
- (b) Request any private person to appear as a witness.
- (c) Access all relevant documents, records, recordings, including any video, audio, text messages, and transcripts of interviews of all involved personnel, including non-departmental witnesses, as provided by law.

The Board shall make recommendations concerning any policy, training, tactical, equipment, or other improvements but does not have the authority to recommend discipline. Recommendations shall be determined by a majority vote of the Board. Any approved recommendations shall be referred to the Chief of Police or designee.

#### **212.1.2 CONFIDENTIALITY OF INFORMATION**

Documentation provided to the FRB necessary to perform its function has the same legal character as documentation in the possession of Internal Affairs. No member of the FRB may release any

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### Force Review Board

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information regarding its review of a specific incident to anyone not authorized to review the information without the authorization of the Chief or designee.

#### **212.2 FORCE REVIEW BOARD COMPOSITION**

The FRB consists of Voting Members, Non-Voting Members and Presenters. Current Board membership shall be outlined and updated in Policy 111 (APD Standing Committees and Boards).

##### **212.2.1 BOARD MEMBER TRAINING**

The Training Division Commander shall ensure all FRB members receive continuing professional training in the following subjects:

- (a) Departmental force policies, force application, and practices including demonstrations of training techniques.
- (b) Departmental force investigation procedures.
- (c) Criminal and administrative investigation techniques, practices, and standards presented and/or coordinated by the Training Academy.
- (d) Legal updates on force case law presented by representatives from the City Law Department and/or the District Attorney's Office.
- (e) Officer-involved shootings, vehicle pursuit-related matters, and in-custody death investigations.

#### **212.3 FORCE REVIEW BOARD INQUIRY PACKETS**

##### **212.3.1 INQUIRY PACKET PREPARATION**

A FRB shall not be convened if any Response to Resistance, In-Custody Death or Vehicle Pursuit incident is being investigated by IA until the internal investigation is completed. IA shall provide the completed investigative report packets to the Chief of Staff and FRB Chairperson. The FRB Chairperson shall convene a FRB within 30 days of receipt of the investigative files from IA.

For all in custody deaths and officer involved shootings, IA shall present a detailed summary of the investigation to the FRB.

The FRB Chairperson may request additional information from Internal Affairs and/or the Vehicular Homicide Unit (if the incident is a pursuit resulting in serious bodily injury or death), as needed.

Inquiry Packets that are not subject to an IA investigation are forwarded to APD Training by the chain-of-command. APD Training shall prepare the Packets for presentation to the FRB.

##### **212.3.2 INQUIRY PACKET DISTRIBUTION**

The Chairperson shall ensure FRB participants are provided a list of all cases that will be reviewed, as well as the Response to Resistance Inquiry Packet Control Sheet and any supervisor memoranda, at least (7) calendar days prior to the FRB. The FRB participants may review the incident report and any case notes via Versadex.

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All other ancillary documents, reports and recordings shall be made available at the FRB, including:

- (a) Ancillary documents such as supplement reports and written statements.
- (b) Communications Division audiotapes, if necessary.
- (c) MAV media, if available.
- (d) CAD records.
- (e) Medical reports or summary of injuries, if available.
- (f) Digital Images or photographs.
- (g) Training and force incident records of involved personnel.
- (h) Applicable Department policies and procedures.

#### **212.4 FORCE REVIEW BOARD PROCEDURES AND RESPONSIBILITIES**

The Chief of Staff shall track the status of all FRB's to include:

- (a) Date of the Board.
- (b) Date the FRB Report is submitted to the Chief.
- (c) Findings and recommendations of the Board.
- (d) Implementation of the approved recommendations in accordance with this order.

##### **212.4.1 CONVENING A FORCE REVIEW BOARD**

The FRB Chairperson shall contact IA within twenty-four (24) hours of the scheduled Board to ascertain whether a force complaint is pending. If a complaint is pending relating to the incident, the FRB Chairperson shall notify the Chief of Staff and reschedule the Board after the completion of the internal investigation.

If no investigation is pending, the FRB Chairperson shall preside over the review of the incident to include, but not limited to, the following:

- (a) A presentation and review of the Inquiry Packet and all relevant documents and materials.
- (b) A discussion regarding:
  - 1. The quality and timeliness of the reporting, investigation, and chain-of-command review.
  - 2. Applicable policy.
  - 3. Relevant tactics.
  - 4. Current practices and training.
  - 5. Any equipment issues.
  - 6. Additional follow-up by the supervisor conducting the inquiry, IA, and/or SIU.

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7. Questions from Board members.
- (c) If additional inquiry or other follow-up is recommended, the FRB Chairperson shall advise the Chief of Staff, who may direct the supervisor conducting the inquiry, IA, or SIU of the specific issues to be addressed and assign a due date not to exceed thirty (30) calendar days.
- (d) Deliberate on the possible need for:
  1. Policy revision or the promulgation of new directives.
  2. Changes in equipment.
  3. Changes in tactics.
  4. Changes in practices and training.
  5. Additional training:
    - (a) Individual.
    - (b) Specialized, including training for Response to Resistance investigators.
    - (c) Department-wide.
  6. Improvements in the quality and timeliness of the reporting, investigation, and chain-of-command review of the force incident.

#### 212.4.2 ATTENDANCE BY THE OFFICER(S) INVOLVED

For incidents involving the discharge of a firearm, the involved officer and their chain-of-command may be requested to appear before the Board.

For all other incidents reviewed by the Board, the involved officer(s) and supervisor(s) may appear, or the Chairperson may order their appearance.

#### 212.4.3 FORCE REVIEW BOARD REPORT

The Chairperson shall ensure a FRB Report is prepared. The original shall be hand delivered by the Chairperson to the Chief or designee within thirty (30) calendar days after the Board adjourns. The FRB Report shall contain the following, as appropriate:

- (a) A summary of the incident.
- (b) A summary of the Board's deliberations.
- (c) A draft Departmental publication identifying training or equipment issues (e.g., Officer Safety or Information Bulletin).
- (d) Recommendations concerning equipment.
- (e) Recommendations concerning tactics.
- (f) Recommendations to develop or revise Departmental policy and procedures.