

SECTION SMP

SMP-A RESPONSE TO RESISTANCE

SMP-A: RESPONSE TO RESISTANCE

Section SMP-A.10 PURPOSE

- A. The (Minn. Stat. 609.06, 609.065, 609.066, & 629.33) deals with the legal levels of force that law enforcement officers may use in the normal course of their duties, It should be emphasized that when consent or an emergency is not present, and there is not probable cause to make an arrest, the non-consents touching by a police officer may constitute a crime, as well as result in civil liability, When probable cause exists, criminal and civil liability may still occur if the limits of the law are exceeded.

- B. **REQUIRING THE DUTY TO INTERVENE AND REPORT (Minn. Stat. 626.8475):**
This section lays out that peace officers, regardless of tenure or rank, must intervene when (1) present and observing another peace officer using force, in violation of MS, Section 609.066, Subd. 2, or otherwise beyond that which is objectively reasonable under the circumstance to prevent the use of unreasonable force; and (2) is physically and verbally in a position to do so. Lastly, this section establishes a duty to report excessive use of force incidents in writing to the Chief Law Enforcement Officer of the agency that employs the reporting officer and provides that failure to comply with either duty is grounds for POST Board discipline under the Board's rules. (Effective August 1, 2020)

Section SMP-A.11 INTRODUCTION

General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.

2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the amount of force necessary to control the situation shall be used.

3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.

4. All uses of force shall be documented and investigated pursuant to this agency's policies.

- A. In a majority of cases, some level of physical force will be necessary to affect an arrest or to protect others. That amount of physical force may be as low as placing a hand on a subject's shoulder or arm and directing that subject to place his/her hands behind his/her back for handcuffing. Depending on the level of resistance offered, the officer may use techniques that may escalate to physically pinning the subject to respond to techniques that influence behavior by elicited pain in order to apply handcuffs using hand/leg strikes, impact weapons, or even the use of a firearm, if the resistance offered is severe.

In all cases, the Minnesota State Statutes, state that only "reasonable" or "necessary" force is justified. Any force above that act would be unjustified, and a criminal act by a police officer would then occur.

De-escalation:

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with their training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of another or the officer and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

Use of Other Than Deadly Force:

1. When de-escalation techniques are not effective or appropriate, an officer may consider the use of other than deadly force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved other than deadly force techniques and issued equipment in the following circumstances:
 - a. effecting a lawful arrest; or
 - b. the execution of legal process; or
 - c. enforcing an order of the court; or
 - d. executing any other duty imposed upon the public officer by law; or
 - e. defense of self or another.
- B. For the purposes of this policy, the use of force will be examined from two perspectives; resistance and control. Both control and resistance can be in the form of verbal directives or physical action.

1. Resistance is manifested by the subject who attempts to resist an officer's attempts of control, the amount and type of resistance will vary, based on a variety of factors.
2. Control is the force an officer uses to influence or neutralize the unlawful, physical actions of a subject under arrest. Generally, there are four times an officer is justified to using physical control methods. They are:
 - ✓ To stop potentially dangerous and unlawful behavior
 - ✓ To protect the officer or another from injury or death.
 - ✓ To protect subjects from injuring themselves
 - ✓ In the process of effecting lawful arrest when the subject offers resistance
3. JUSTIFICATION of the use of force in the judicial system is measured by two broad standards. First, the officer's use of control methods was initiated by a subject's resistance. Second, the level of physical force used by the officer was "necessary" and not excessive when considering the type of resistance offered by the subject.

Section SMP-A.12 Levels of Resistance

Resistance is defined as the force used by a subject under arrest against the officer(s) who is effecting the arrest. Although the resistance offered by a subject is usually physical, the type and amount of resistance an officer meets is determined by the subject's level of intent. The intent of the subject may range from passive resistance to an active, aggressive attack on the officer.

Resistance may be categorized into three broad areas:

1. VERBAL RESISTANCE (i.e., denial to lawful orders of arrest or commands, verbal threats or assaults)
2. PHYSICAL RESISTIVE ACTIONS (i.e., passive resistance, defensive resistance, active aggression)
3. AGGRESSIVE ACTS (i.e., against the officer, often leading to severe physical injury) the officer's actions to resistance will be based upon his/her perception of the level of resistance, The officer has been trained to use the necessary amount of force to control a subject offering any level of resistance.

A. PSYCHOLOGICAL INTIMIDATION

Nonverbal actions, often called "body language," often influence an officer's decision on how to approach a subject or what level of force to use if a subject starts to resist an arrest.

Nonverbal intimidation actions may include clenching of fists, widening of foot stance, or a blank expression that may warn an officer of an individual's emotional state. These nonverbal intimidation actions often warn an officer of a subject's potential for violence, when the subject has offered no verbal threats. However, an officer's reaction to a subject's nonverbal intimidation signals should be used as information to mentally propose the officer's alternatives to possible attack, not as a justification for attack. An officer who reads the nonverbal signals and believes that physical control is necessary to prevent a subject from injuring himself, others, or the officer, may initiate action before any overt moves are made by the subject.

1. RESISTIVE DIALOGUE

A subject's dialogue that offers the threat of physical resistance to an officer's commands is not normally considered resistance until he or she physically resists an attack. However, dialogue in the form of threats of physical injury may influence an officer's opinion as to the amount of force required to effect control. An offender may boast of his/her fighting skill and his/her intention to injure the officer or assume a fighting stance such as raised hands or clenched fists. Verbal threats or psychological threats may influence the officer's judgment to attempt either empty hand control, impact weapons or even firearms if the subject has a weapon or has such great physical skills that threat to life is real.

The reactions to verbal threats made by a subject may differ from officer to officer. An officer's decision of the level of force necessary to control a subject will be based on his/her perception of the threat and the subject's ability to carry out that threat. An additional factor is the officer's knowledge of his/her own physical ability to manage the threat presented. If the officer believes that he/she does not have sufficient skill to establish control with empty hand methods, he or she has been trained to escalate the level of force.

2. PASSIVE PHYSICAL RESISTANCE

Passive resistance is the lowest level of physical resistance. The subject resists control through passive, physical actions. At this level, the offender never makes any attempt to defeat the physical contact of the officer. Passive resistance is usually in the form of a relaxed or "dead weight" posture intended to make the officer lift, pull, or muscle the subject to establish control.

3. DEFENSIVE PHYSICAL RESISTANCE

Quite often, officers find themselves confronting a suspect who is physically resisting the officer's attempt to control the subject by directing overt, defensive, physical actions. With this level of resistance, the offender attempts to push or pull away in a manner that does not allow the officer to establish control. However, the subject never attempts to strike the officer.

4. ACTIVE PHYSICAL AGGRESSION

Active physical aggression is when a suspect attacks the officer to defeat attempts of control. The attack is a physical assault on the officer in which the offender strikes or uses techniques in a manner that may result in injury to the officer or others.

5. AGGRAVATED ACTIVE PHYSICAL AGGRESSION

Aggravated active physical aggression is when a subject uses a level of physical force that the officer usually must use, or at least is justified in using deadly force. At this level, officers may not only face resistance to an arrest, but also overt; physical actions of force where the subject is assaulting the officer with a weapon, and/or uses techniques or objects which could result in death or bodily harm to the confronting officer.

Section SMP-A.13

Levels of Control

Force that an officer uses to gain control over a subject's resistant actions is divided into the following categories:

- ✓ Verbal direction
- ✓ Empty hand control
- ✓ Taser/OC Spray
- ✓ Intermediate weapons lethal force

Once an officer determines that he/she must use physical force, the level of force used will be dependent upon the officer's perception of the resistance and danger of that resistance, and whether that resistance is placing the officer or another in jeopardy of serious injury or death. It is important to note that each officer's perception of the danger of the level of resistance will be based upon his/her past training, experience, and knowledge of physical control techniques.

A. VERBAL DIRECTION

The majority of situations can be resolved by good communication skills or verbal direction. Often, the mere presence of an officer and proper verbal direction will be sufficient to persuade most individuals to follow an officer's direction. In any verbal confrontation~ fear and anger must be diffused before a suspect will be able to understand the officer's commands; this will require good communication skills.

B. HANDCUFFS AND RESTRAINTS

The purpose of handcuffs, flexcuffs, or transport handcuffs is to restrain the movements of a subject in a manner that provides a safe- means of transportation for officers. Restraints also prevent further physical resistance from a subject. The departmental policies for the use of restraints are as follows:

Rule 1 - All subjects taken into custody if handcuffed behind their back, the handcuffs should be double-locked. The exception to this rule is:

- ✓ When the arrest environment is tactically unsafe for the officer to double-lock the handcuffs.

Rule 2 - If a subject complains that the handcuffs are too tight, the transporting officer is to ensure that unnecessary tightness, which may prevent proper blood circulation, does not occur.

Rule 3 - Except under exceptional circumstances, officers should not handcuff a subject to fixed objects such as posts, vehicles, buildings, etc.

Rule 4 - It is not uncommon for an officer to arrest a subject, place him in restraints, and then have the subject start to resist. If an officer does encounter this type of resistance, the officer should utilize control techniques to prevent injuries to the officer or injuries to the subject. However, the control techniques should be limited to those which would not be construed as excessive force.

C. EMPTY HAND CONTROL

Empty hand control physical contact techniques cover a number of subject control methods. Some of these methods may be as subtle as gently guiding a subject's movements, to more dynamic techniques such as strikes, kicks, or neck restraints which may have a higher potential of injury to the subject. This policy divides empty hand control into two categories:

Soft Empty Hand Control - techniques that have minimal implications of injury; and Hard Empty Hand Control - techniques that have a higher probability for subject injury.

- ✓ Soft Empty Hand Control - this level of control is designed to control primarily low levels of resistance, but can be used to control any level of resistance. Empty hand control techniques are techniques that have a minimal or nonexistent possibility of injury. Generally, these techniques are used to control passive types or demonstrator types of resistance and defensive resistance. However, soft empty hand control techniques can be utilized for any level of resistance.
- ✓ Hard Empty Hand Control - this level of control is for high levels of defensive resistance, active aggression, or aggravated active aggression. These techniques are applied when lower forms of control have failed or when not applicable because the subject's resistance level was at a perceived dangerous level. Techniques that fall into this level of force have a probability of creating soft or connective tissue damage, skin lacerations that require medical attention, or bone fractures, although the use of these techniques may create some minimal injury to himself/herself or have to utilize higher levels of control (such as intermediate weapons) if hard empty hand control had not been used. Techniques that are considered as hard empty hand tactics are:

Striking Techniques - techniques that may be delivered with an officer's open hand, fist, forearm, leg or foot. Preferably, the target points for these types of strikes will be delivered to major muscle mass such as the legs, arms, shoulder, or side of the neck. If the targets are these, the strikes will create muscle cramping, thus inhibiting muscle action. However, it may be necessary for the officer to strike an area where there is a potential injury, such as the face or a very sensitive area of the body.

Medical Considerations: Any time an officer finds it necessary to strike a subject where an injury occurs, it is the policy of the department that the officer shall:

- ✓ Immediately contact the supervisor and advise the supervisor of the nature of the injury.
- ✓ The supervisor (or an officer in the event a supervisor is not available) shall transport the subject to the closest medical facility for medical attention.

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D. TASER

Taser CEWs: Taser CEW's may be deployed by any personnel of this department who are trained by a certified Taser instructor. This is an electronic gas fired weapon used to attack the nervous system of the suspect. It has an operating range up to 35 feet. (See Section 400 – Taser for specific Taser Policy)

E. INTERMEDIATE WEAPON CONTROL

This level of control employs the use of department approved tools that provide a method of controlling subjects when deadly force is not justified, but when empty hand control techniques are not sufficient in effecting an arrest. Whenever an officer uses an intermediate weapon for control, it should always be with the intent to temporarily disable an offender, and never with the intent of creating permanent injury. When intermediate weapons are used, it is quite likely that some form of skin irritation, bruising, soft or connective tissue damage or bone fractures may occur.

Impact Weapon - The department approved baton is a tool that can provide a means by which an officer can defend himself or another from injury and means of controlling offenders when an officer is facing resistance in the form of active aggression or aggravated active aggression. The policies for the carrying and use of impact weapons are as follows:

Rule 1 - No officer shall carry an impact weapon in which he/she has not had proper certified training.

Rule 2 - The impact weapon should be carried in the baton ring or in a low profile position when the baton is not being used.

Rule 3 - At no time shall an officer unnecessarily brandish or use the impact weapon as an intimidation device unless the officer is attempting to prevent the further escalation of force.

Rule 4 - All strikes with an impact weapon should be delivered to the following areas:

- ✓ Primary Targets, Major Muscle Mass: such as the forearms, thighs, or calves. These locations should be primary targets because of the low implications of subject injury.
- ✓ Impact weapon strikes to these locations normally create severe muscle cramping which inhibits a subject's ability to continue aggression.

- ✓ **Secondary Targets, Joints, or Bones:** These targets, the elbows, wrists, and knees, have a high probability of creating soft or connective tissue damage or bone fractures when struck with an impact weapon. **Deadly Force Targets, head, neck, throat, and clavicle:** Impact weapon strikes to these areas should not be used unless the officer is justified in the use of deadly force. These striking points have high implications of creating severe injury in the forms of great bodily harm or death.

Rule 5 - Any time an officer finds it necessary to strike a subject with an impact weapon for purposes of control, the officer will immediately contact a supervisor and inform the supervisor of the incident.

Rule 6 - The supervisor (or an officer in the event a supervisor is not available) shall have the subject transported to the nearest medical facility for medical attention if possible.

Chemical Agents - The department approved chemical agent (such as mace or tear gas) is a tool that can provide a means by which an officer can defend himself/herself or another from injury and a means of controlling an offender when an officer is facing resistance in the form of active aggression. The policies of carrying and the use of department approved chemical agents are as follows:

Rule 1 - No officer shall carry any chemical agent unless he/she has had proper training.

Rule 2 - The chemical agent should be carried in an appropriate pouch and never displayed or pointed at another individual in the form of horseplay.

Rule 3 - At no time shall an officer unnecessarily brandish or use the chemical agent as an intimidating device unless the officer is attempting to prevent further escalation of force.

Rule 4 - Application of chemical agents against large groups of people will be at the command of the Chief of Police or his/her authorized designee.

Rule 5 - Any time chemical agents are used for controlling an offender, the application of the chemical agent will end when the offender discontinues resistance or aggression.

Rule 6 - Chemical agents are irritating to the eyes, nose and skin. Any time an officer uses a chemical agent for the purposes of subject control, the officer will ensure that the subject will receive adequate medical attention if possible.

Rule 7 - Any time an officer finds it necessary to use a chemical agent for subject control, the officer will immediately contact a supervisor and advise him of the nature of the incident.

Rule 8 - When an officer books a subject who has been exposed to chemical agents, the officer will advise the jail personnel to prevent the unnecessary contamination of other jail occupants or custody personnel.

Use of Less-Lethal Weapons - The policies of the use of less-lethal weapons are as follows:

Rule 1 – When reasonable, officers should give a verbal warning and opportunity to comply preceding the use of less-lethal weapons.

Rule 2 – Less lethal projectiles are intermediary weapon when deployed to areas of the subject's body that are considered unlikely to cause death or serious physical injury. Less lethal projectiles will be delivered in accordance with the following escalation:

- ✓ Major muscle group, motor points in the leg and forearm. These areas will be considered when incapacitation is necessary, and a minimal potential for injury is the appropriate response.
- ✓ Center of mass, chest or back. These areas will be considered when an escalation of force is necessary and appropriate, acknowledging and increase for the potential for serious physical injury or death.
- ✓ Head or neck. Intentional impacts to these areas will be avoided unless the use of deadly force is justified, necessary, and appropriate.

Rule 3 - When engaging a target, the officer should evaluate the effectiveness of each round during the volley. Compliance and/or incapacitation is the desired goal, and alternative target areas/response should be considered when rounds are not effective. Alternative target areas/response considerations will be based on the circumstances the officer is encountering, and the established department safety priorities.

Rule 4 – Only a designated less lethal projectile weapon will be used to deploy rounds.

Rule 5 – Prior to an officer's deployment of less lethal rounds, the officer must have received training from a qualified instructor.

Rule 6 – In addition each officer will be required to familiarize themselves with the less lethal ammunition annually.

Rule 7 - Application of less-lethal weapons against large groups of people will be at the command of the Chief of Police or his/her authorized designee.

Rule 8 – All subjects who are struck by a less lethal projectile shall be transported to a medical facility for examination if possible.

F. PROHIBITED ACTS

1. Except in cases where deadly force is authorized as articulated in Minnesota Statute 609.066 to protect a peace officer or another from death or great bodily harm, officers are prohibited from using:
 - ✓ Chokeholds
 - ✓ Tying all of a person's limbs together behind a person's back to render the person immobile, or;
 - ✓ Securing a person in any way that results in transporting the person face down in a vehicle.
2. Less than lethal measures must be considered by an officer prior to applying these measures.

Listed below are four policies of which an officer will be required to participate in order for the policy to be properly used:

1. An officer will receive any updates to the policy within 30 days of the changes.
2. An officer will be trained in the contents of the use of force policy and updates annually.
3. An officer will document in their narrative report any Use of Force. A copy of the report will be placed in the case file.
4. The chief law enforcement officer shall maintain records of the agency's compliance with use of force training requirements.

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