

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

Response to Resistance

Definitions2
Investigations8
Notification Procedures When Weapons are Fired7
Response to Resistance Continuum3
Response to Resistance Form4
Response to Resistance Involving Animals11
Review Procedures10
Use of Deadly Force Prohibited6
Use of Deadly Force Authorized5
 Use of Deadly Force in Defense of Self or Others5
 Use of Deadly Force to Affect an Arrest6

The following policy will govern *response to resistance* and the investigative procedures thereof.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

I. Definitions

- A. Violent Felony** - A felony in which the suspect has used, threatened to use, or attempted to use force that can cause death or serious bodily injury.
- B. Deadly Force** - That amount of force that is sufficient to, intended to, or may be reasonably expected to inflict serious bodily injury and/or death. This includes the discharge of any firearm at, near, or in the direction of any individual.
- C. Empty Hand Control** – A method of control employed by an officer without the aid of equipment or weapons. This physical force is employed when it is necessary to overcome a subject’s physical resistance to an officer’s lawful objectives. There are two subcategories: Soft and Hard Empty Hand Techniques.
- D. Soft Empty Hand Techniques** – This subcategory includes escort controls, touch pressure points, wrist or arm locks, and take down techniques that have a minimal chance of injury.
- E. Hard Empty Hand Techniques** – This subcategory includes kicks, punches or other striking techniques such as brachial stun or other strikes to key motor points that have a moderate chance of injury.
- F. Probable Cause** - *Probable cause* exists when facts and circumstances within an officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in believing that an offense has been, or is being committed, and that the suspect committed it.
- G. Exhaustion of all Other Reasonable Means** - All other reasonable means have been exhausted when an officer has tried to control conflict by using all alternate methods other than deadly force. However, all other reasonable means may be considered to have been exhausted when an officer analyzes a set of circumstances and honestly and reasonably concludes that any other means will be ineffective, useless, or hazardous to the officer or some innocent third party.
- H. Necessary Force** – *Necessary Force* or “reasonable force” is force that can be reasonably used by an officer to accomplish their duties in a timely manner; force that keeps both the officer and citizen as safe as possible. Members are permitted to use whatever force is necessary and reasonable to protect others or themselves from bodily harm.
- I. Excessive Force** – *Excessive force* is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances.
- J. Unnecessary Force** - *Unnecessary Force* is that force or violence that is unprovoked, needless, or not required when making an arrest or dealing with a prisoner or any person. Officers shall **NEVER** use Unnecessary Force.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

II. Response to Resistance Continuum

The Memphis Police Department has provided a **Response to Resistance Continuum** for its officers to use as a guide in the **Response to Resistance** in general and the use of Deadly Force in particular.

Officers should only use **THE NECESSARY AMOUNT OF FORCE** to safely accomplish their duties. Officers should react to the amount of resistance shown by a suspect and then determine the amount of force that is reasonable and necessary to safely take this person into custody during a lawful arrest. (1.3.1)

This idea of safety should include the officer(s) involved, the person(s) suspected of committing the offense, and any innocent third parties that may be involved as victims, witnesses, or bystanders.

Any time there is an injury or an alleged injury as the result of any level of force used, officers will, upon properly restraining the subject, examine any person appearing injured or claiming injury and render the appropriate medical aid. Officers will request paramedics to the scene as needed. Any officer on the scene of an incident wherein he/ she is made aware of an injury or a claim of injury must immediately notify a supervisor. The notified supervisor will ensure the incident is documented via the Response to Resistance Form and/or other appropriate documentation. (1.3.5)

The **Response to Resistance Continuum** uses an escalating/de-escalating format to determine how Officers should consider the response to resistance. Officers must quickly react and establish objective reasonableness according to circumstances and the totality of facts known to the officer at the time of the incident. Officers are allowed to escalate their response to resistance in reaction to a particular situation as their experience and training dictate. Officers should also de-escalate their response to resistance when the situation is safely under control and a higher level of force is no longer necessary or reasonable.

RESPONSE TO RESISTANCE CONTINUUM

1. Physical Presence
2. Verbal Warnings
3. Verbal Commands
4. Chemical Agents
5. Empty Hands Control (Soft and Hard)
6. Impact Weapons/Less Lethal Weapons/MPD Canine
7. Deadly Force

NOTE: Officers must be aware that this is a dynamic continuum where an officer can be justified in instantly escalating from the lowest level of force to Deadly Force without having to stop and utilize each and every step in between. The Officer can also de-escalate from a higher level of force to one of the lower levels without stopping at each lower level.

The Officer's experience and training are his guides as to which level of force to use in each

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

situation.

III. Response to Resistance Form

- A.** It is the responsibility of the officer utilizing force to complete a *Response to Resistance Form* on all incidents involving:
1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
 2. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 3. Chemical agent use. (1.3.6c)
 4. SL-6/IDS and CEW events. (1.3.6c)
 5. The use of an MPD canine to apprehend a suspect.
 6. The use of the Baton/Expandable Baton. (1.3.6c)
 7. Whenever a suspect is charged with **T.C.A. 39-16-602 Resisting Arrest**.
 8. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police action. (1.3.6b)
- B.** The *Response to Resistance Form* need not be completed for:
1. The mere presence of police officers, or the issuance of tactical commands; or
 2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk.

The *Response to Resistance* form will be submitted to the supervisor for approval prior to the end of the officer's shift. The Supervisor will ensure that the report has been completed, and will review the incident for any departmental concerns regarding policy and procedures, training, equipment and/or officer conduct. If the Supervisor recognizes that one of these areas needs to be reviewed and addressed by the Memphis Police Department, only then will he/she submit the concerns in a memo and forward the memo with a copy of the *Response to Resistance* form to the Accreditation Office. The original copy of the *Response to Resistance* form is forwarded to Inspectional Services. Copies of the *Response to Resistance* forms will also be forwarded to the appropriate Work Station/Bureau Commander, and the Firearms Training Unit. (1.3.7.c)

The *Response to Resistance Form* is prepared as an internal administrative instrument. The form will not be released to persons or agencies outside the Memphis Police Department without the prior approval of the Director of Police Services.

All reported *Response to Resistance* incidents will be reviewed by the Inspectional Services Bureau. The Inspectional Services Bureau will be responsible for the maintenance of the original *Response to Resistance* Forms, as well as the data generated by the forms. This review will examine the following elements of the incident: (1.3.7)

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Response to Resistance

- Was department policy and procedure adhered to?
- Is the applicable policy clearly understandable and effective in covering the incident?
- Is current departmental response to resistance training adequate?
- Is department equipment adequate?
- Are there tactical issues that should be addressed in training?

An annual analysis of response to resistance incidents will be submitted from the Commander of ISB to the Director of Police Services. This report will summarize the data extracted from reported response to resistance incidents and include written recommendations regarding any policy or training issues that need to be addressed by the department. All training issues should also be forwarded to the Commander of the Training Academy for review. (1.3.13)

IV. Use of Deadly Force Authorized

Officers shall use only the **NECESSARY** amount of force that is consistent with the accomplishment of their duties, and must exhaust every other reasonable means of prevention, apprehension, or defense before resorting to the use of deadly force (*if the situation allows time for this*). (1.3.2)

A. Use of Deadly Force in Defense of Self or Others

Officers are authorized to use deadly force:

1. In self-defense where the officer has been attacked with deadly force, is being threatened with the use of deadly force, or where the officer has probable cause and reasonably perceives an immediate threat of deadly force; **or**
2. In defense of others where a third party has been attacked with deadly force, is being threatened with the use of deadly force, is in danger of serious bodily injury or death; or where the officer has probable cause and reasonably perceives an immediate threat of deadly force to a third party.

B. Use of Deadly Force to Affect an Arrest

Officers are authorized to use deadly force to effect the arrest of a fleeing felon only when:

1. The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; **AND**
2. The officer has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the officer or to others unless immediately apprehended; **AND**
3. Where feasible, the officer has identified himself/herself as a police officer and given

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

warning such as, “**STOP--POLICE--I'LL SHOOT,**” that deadly force is about to be used unless flight ceases; **AND**

4. If all other means of apprehension available to the officer under the attendant circumstances have been exhausted.

V. Use of Deadly Force Prohibited

The use of **DEADLY FORCE** is prohibited in the following circumstances:

- A.** To apprehend or arrest a person for a misdemeanor offense; or
- B.** To effect the arrest of any person for escape from the commission of any misdemeanor offense; or
- C.** As warning shots [Warning shots will not be utilized under any circumstance (1.3.3)]; or
- D.** To apprehend or arrest a person known to be or believed to be a juvenile, unless the use of deadly force is immediately necessary in the defense of the officer's life or of another person's life after all other reasonable means have been exhausted [The officer's knowledge or belief of a person's age may be based upon factors such as the officer's previous knowledge of the person, his observations of the person's appearance, or upon reliable information given to him by other persons]; or
- E.** To apprehend or arrest a person fleeing from a felony which is not a violent felony [This includes, but is not limited to, felonies such as auto theft, larceny, embezzlement, fraud, burglary of an auto, or any other felony, which does not involve the use of deadly force, attempted use of deadly force, or threatened use of deadly force]; or
- F.** From or at any moving vehicle, except in a case where an officer has probable cause to believe that the suspect committed a violent felony and the poses a direct threat of serious bodily injury or death to other persons if not immediately apprehended [If the officer is in the path of the vehicle, the officer's first responsibility, if possible, is to move from the path of the oncoming vehicle, as shooting the driver of a moving vehicle raises the danger from an uncontrolled vehicle]; or
- G.** In any case, where the officer does not have a clear field of fire and cannot be reasonably certain that only the suspect will be hit and that the potential for harm to innocent persons is minimum.

VI. Notification Procedures When Weapons Are Fired:

When any officer of the Memphis Police Department discharges any firearm (with the exception of recreation or training purposes), whether on-duty or off-duty and regardless of the type of firearm, the officer will immediately report the incident to the dispatcher who will notify the proper supervisor. The appropriate supervisor will proceed to the scene of the shooting to begin an immediate investigation and notify the precinct or bureau commanders of the incident.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Response to Resistance

It will be the responsibility of the first Supervisor on the scene to secure the crime scene, separate and secure the witnesses (both civilian and police), and contact the following via the Communications Supervisor: Inspectional Services (ISB); Homicide; Felony Response, (after hours) and CSI. All weapons of officers involved in the initial incident are to remain holstered until a representative from Homicide, Inspectional Services **and** Crime Scene is prepared to check the weapon. Because of the chain of evidence, it is paramount that only CSI or ISB personnel take possession of any police weapon and this is to be done only after a representative from Homicide, ISB and CSI is present. An inner perimeter should be marked off with crime scene tape around the actual crime scene. No one should enter the crime scene area, unless an emergency exists, until the Homicide Bureau and Inspectional Services arrive. An outer perimeter should be established in order to assist with crowd control. The Supervisor will immediately notify the dispatcher and appropriate Deputy Chief or Duty Chief if the incident occurs after regular business hours or on a weekend.

The on-scene uniform commander will be responsible for returning uniform cars to service once it is determined they are no longer needed.

A. ISB, CSI, and Homicide Bureau will be notified and will respond for an on-the-scene investigation for all shooting incidents involving:

1. Any shooting by an officer, either on-duty or off-duty, regardless of the weapon, which involves death or injury to oneself, a suspect, other officers, or a citizen; or
2. Any shooting by an officer, either on-duty or off-duty, regardless of the weapon, where a suspect has been shot or there is evidence that the suspect was shot and has not been located; or
3. Any incident where an officer has been shot by a suspect.

Between 1600 hours and 0800 hours Felony Response will be notified and respond to the scene to provide a quick investigative response. The Felony Response Supervisors and Investigators will aid in scene security and containment of witnesses until relieved by the Homicide Bureau.

CSI will send a supervisor and two CSI officers to all police related shootings.

B. ISB, CSI, and Homicide will be notified for all shooting incidents involving:

1. Any shooting by an officer that occurs on-duty or off-duty, regardless of the weapon.
2. When an officer reports that they were attacked but not seriously injured.
3. When an officer has been shot at but not actually hit.
4. When an officer has fired their weapon at a suspect and there is no evidence that the suspect was shot.

ISB and CSI will respond for a scene investigation regardless of the time of occurrence. Homicide will respond during daytime hours. Between 1600 hours and 0800 hours Felony Response supervisors will be notified and respond to the scene with investigators to handle the preliminary investigation. Felony Response will assist with scene security and containment of witnesses.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Response to Resistance

C. ISB and CSI will be notified and respond for an on-scene investigation of all incidents involving:

1. Any shooting by an officer that occurs on-duty or off-duty, regardless of the weapon, resulting in property damage; or
2. Animal related shootings by an officer that occur on-duty.

This policy excludes recreational use of personal firearms and training on legitimate firing ranges unless injury or death occurs.

VII. Investigation

A. The Commander of the Homicide Bureau (or a designee) will be the overall on-scene commander.

The primary objective of the ISB is to investigate all shooting incidents involving police officers either on-duty or off-duty. This includes incidents where the use of deadly force is authorized, use of deadly force is prohibited or any accidental discharge(s).

ISB will provide an on-scene debriefing area for the officers involved in discharging their weapons. This area may be a room, van or any other location deemed appropriate by the ISB Commander. This area will serve as a central point for filling out reports, checking weapons, issuing replacement weapons, and any other task necessary to complete the on-scene investigation. An ISB member will be provided at this location to assist the officers with any issue that may arise. No walk-through will be performed before ISB arrives. The walk-through will be done under the supervision of an ISB member. The purpose is to insure the integrity of the scene.

When a squad car is involved in an accident during a shooting incident, the Traffic Bureau will make the scene and take all necessary accident reports.

B. ISB will only investigate compliance with the department's policy on the use of deadly force. Any officer involved in a shooting incident where a suspect has been shot or there is evidence that the suspect was shot will be routinely relieved of duty with pay pending the outcome of the investigation. (1.3.8)

C. The Homicide Bureau will be responsible for the criminal investigation. The Homicide Bureau will be called to handle the investigation of the incident including obtaining statements, supplemental reports, state reports and presentation to the Shelby County Attorney General. It will be at the discretion of the lead scene investigator whether additional bureaus will be contacted for assistance in the investigation.

The following procedures shall be followed on all police related shootings where a police officer has been shot, a citizen has been shot or there are substantial facts to believe a suspect or citizen has been shot, regardless of their condition. These procedures will also apply to all in-custody deaths.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Response to Resistance

- The Homicide Bureau will be responsible for the on-scene investigation, because this is a procedure conducted by the Homicide Investigators on a regular basis. The oversight of Inspectional Services reinforces the integrity of the process.
- The only evidentiary photographs to be taken on the scene of a police shooting are by CSI, under the direction of the lead Homicide investigator and the Inspectional Services investigator. Photos will include both 35mm and digital photographs. A photo log will also be completed. CSI will tag all evidence, including the officer's weapon. The officer's weapon is evidence and is to be treated as such. The lead Homicide investigator will be responsible for ordering all evidentiary testing. A copy of the CSI report will be made available for the Inspectional Services' file along with a copy of the photographs.
- The scene will be described in writing, evidence documented and procedures taken by the lead Homicide Investigator or Felony Response investigator.
- Entrance into a contained scene shall be limited to the Lead Homicide/Felony Response investigator and one investigator to assist if necessary, one Inspectional Services investigator, for observation and note taking for internal investigation only, CSI Officers, and Medical Examiner staff. After the scene has been completely processed, the Homicide Supervisor and Inspectional Services Supervisor will review the scene with the lead Homicide Investigator to ensure that all investigative measures have been taken. Inspectional Services should then conduct a walk-through.
- The Inspectional Services Bureau, Homicide or any other Investigative Bureau will not interview officers who have been involved in a critical incident until at least 48 hours has passed since the time of the critical incident. This 48-hour provision will not preclude conducting interviews at the discretion of the Director of Police Services, his designee or the ISB, Homicide or any other Investigative Bureau Supervisor when circumstances dictate such. Inspectional Services will retain the original officer's statements and a copy will be provided to Homicide.
- Homicide Investigators, with Inspectional Service Investigators, will take live statements from all witnesses, including officer witnesses. The original statement will remain with the lead Homicide Investigator and a copy retained by Inspectional Services for their file.
- Within **five (5)** days of the scene investigation, a debriefing will take place with the lead investigator from Inspectional Services, Homicide, the Supervisor/**Commander** from both bureaus, and the **Commander or assistant Commander** of Investigative Services. This debriefing will cover the initial facts gathered and direction needed for a successful completion of the case. This debriefing will take place at Inspectional Services office. This can also be an opportunity for the involved investigating bodies to discuss problems and develop solutions to these problems. It will be the responsibility of the Commander of Inspectional Services and the **Commander or assistant Commander** of Investigations to brief the command staff.

Homicide Bureau or Felony Response will handle criminal charges placed against a suspect wounded during the commission of a crime.

VIII. Review Procedures

Date: 09-11-13

Section 8: Response to Resistance

Chapter II

Page 9

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Response to Resistance

- A. Two Attorney General's Homicide advisors will review the case independently at the conclusion of the initial investigation. The initial investigation is concluded when all crime scene work is completed and all known statements, including officer statements, have been taken. At the conclusion of this review, the Attorney General may recommend further investigative action, completion of the case and presentation to the grand jury for criminal prosecution, or indicate in writing that at this stage it appears the case will not be prosecutable. The Homicide Commander will advise the command staff in writing as to the initial findings.
- B. All reports, including the *Response to Resistance Forms*, Crime Scene Report, and Bureau Report, copies of arrest tickets, offense reports, and memos will be presented by Inspectional Services to the Director for review.

Upon reviewing all initial reports, the Director will take the following action:

- Order new and / or any additional investigations as required; or
 - Concur with the investigative findings that the officer(s) was justified in the use of deadly force and order notification of the officer of said findings by letter; or
 - Concur with the investigative findings that the officer(s) was not justified in the use of deadly force and direct administrative processing of the Statement of Charges issued by Inspectional Services under the established disciplinary procedures.
- C. The lead Homicide Investigator will complete the investigative file, including all reports, lab results, final autopsy report, and all evidentiary information along with a written summary of the facts. The Homicide Supervisor and Lt. Colonel of Investigative Services will review the investigative file within ten (10) working days and accept or order additional investigative measures. The Homicide file will then be forward to Inspectional Services for review and presentation to the Grand Jury Section of the Attorney General's office for final review.
- D. Upon completion of this review, the Inspectional Services Commander/Supervisor will notify the command staff of the final disposition.

IX. Response to Resistance Involving Animals

Officers should be aware that from time to time they will find themselves in a situation or receive a call that involves an animal that is causing a disturbance or is a threat to the officer or the community.

TCA 39-14-202 prohibits unnecessary cruelty to animals, and while animals are considered property under the law and are **NOT** guaranteed protection under the United States Constitution and Bill of Rights, officers should attempt to adhere to the guidelines concerning force established in the Response to Resistance Continuum in their dealings with animals. This means that officers should use force that is reasonable and consistent with the accomplishment of their duties.

The safety of the officer and the community should be the primary factor when officers make the

Date: 09-11-13

Section 8: Response to Resistance

Chapter II

Page 10

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Response to Resistance

decision to use Deadly Force to control an animal. If a decision is made that, the animal must be shot in order to protect the officer or the community, the officer must make every effort to insure that the discharge of his weapon is done as safely as possible. The officer's actions must be in conscious regard for both the foreground and background near the animal to minimize the danger to other officers, citizens and/or private property. The officer's use of deadly force against an animal should be undertaken in such a manner that is humane, but unlikely to result in the animal's undue suffering or escape.

In addition, the officer must remain acutely aware of the potential danger that results from wounding a large frightened and/or vicious animal. If the animal's death is not immediate, officers are warned that the animal might become enraged and desperate, causing it to attack the officer or further threaten the safety of other citizens.

If deadly force is used against an animal, the officer should notify the dispatcher who in turn will notify the appropriate supervisors, bureaus and departments for further action. Per Policy and Procedure, the officer will complete a *Response to Resistance* form.