



Policy Number: 300 – Response to Aggression and Resistance
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Approved By: Brandon Gatlin, Interim Chief of Police

300.1 PURPOSE AND SCOPE

This policy provides guidelines to police officers employed by the Montana State University Billings Police Department (Department) on reasonable responses to aggression and resistance and to ensure that Department response to aggression and resistance policies adhere to all existing applicable federal, state, and local laws. While there is no way to specify an exact response to aggression and resistance in any given situation, every member of the Department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. When a person allows him/herself to be searched, escorted, handcuffed or restrained it shall not be considered a response to aggression and resistance.

Imminent - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

Objectively Reasonable - The amount and type of force that would be considered rational and logical to an “objective” officer on the scene, supported by facts and circumstances known to an officer at the time force was used.

Improvised Device - Object(s) that are not defined as an “authorized device/weapon”, however, based upon the totality of the circumstances may be used by officer(s) to prevent bodily harm to themselves or another.

Assaultive Aggression: Behavior initiated by a subject that may or may not be in response to police efforts to bring the person into custody or control for detainment or arrest. A subject engages in assaultive aggression when presenting behaviors that constitute an assault or the circumstances reasonably indicate that an assault or injury to a person is likely to occur at any moment.

Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions (or verbal behavior reflecting an intention) to make it more difficult for officers to achieve actual physical control.

300.2 POLICY

Response to aggression and resistance by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may be required to respond to aggression and resistance in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming aggression and resistance while engaged in the performance of law enforcement duties.

This Department recognizes and respects the value of all human life and dignity, without prejudice to anyone. Vesting officers with the authority to lawfully and reasonably respond to aggression and resistance and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE

Any officer present or observing another officer responding to aggression and resistance by using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 RESPONSE TO AGGRESSION AND RESISTANCE/USE OF FORCE

Officers shall respond to aggression and resistance using only the amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate response to aggression and resistance in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

An officer may use reasonable force to arrest a person (§ 46-6-104, MCA).

300.3.2 THREAT MITIGATION

Whenever reasonable, officers should attempt to use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize use of physical force.

When safe and feasible, officers should:

- a. Attempt to slow down or stabilize the situation so that more time, options, and resources are available.
 1. Mitigating the immediacy of a threat gives officers more time to call additional officers or specialty units and to use other resources.
 2. The number of officers on scene may make more force options available and may help reduce overall force used.
- b. Consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 1. Medical conditions
 2. Mental impairment
 3. Developmental disability
 4. Physical limitation
 5. Language barrier
 6. Influence of drug or alcohol use
 7. Behavioral crisis

Such considerations, when time and circumstances reasonably permit, shall be balanced against incident facts when deciding which tactical options are the most appropriate to resolve the situation safely.

300.3.3 DE-ESCALATION

De-escalation tactics include, but are not limited to:

- a. Placing barriers between an uncooperative subject and an officer
- b. Containing a threat
- c. Moving from a position that exposes officers to potential threats to a safer position
- d. Reducing exposure to a potential threat using distance, cover, or concealment
- e. Communication from a safe position intended to gain the subject's compliance, using verbal persuasion, advisements, or warnings
- f. Avoidance of physical confrontation, unless immediately necessary (e.g. to protect someone or stop dangerous behavior)
- g. Using verbal techniques to calm an agitated subject and promote rational decision making
- h. Calling additional resources to assist

300.3.4 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- a. Immediacy and severity of the threat to officers or others.
- b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- c. Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- d. The effects of drugs or alcohol.
- e. The individual's mental state or capacity.
- f. Proximity of weapons or dangerous improvised devices.
- g. The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- h. The availability of other options and their possible effectiveness.
- i. Seriousness of the suspected offense or reason for contact with the individual.
- j. Training and experience of the officer.
- k. Potential for injury to officers, suspects and others.
- l. Whether the individual appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- m. The risk and reasonably foreseeable consequences of escape.
- n. The apparent need for immediate control of the individual or a prompt resolution of the situation.
- o. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- p. Prior contacts with the individual or awareness of any propensity for violence.
- q. Any other exigent circumstances.

300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling an assaultive or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed Department-approved training. Officers utilizing any pain compliance technique should consider:

- a. The degree to which the application of the technique may be controlled given the level of aggression and resistance.
- b. Whether the individual can comply with the direction or orders of the officer.
- c. Whether the individual has been given sufficient opportunity to comply.
- d. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.6 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted.

300.4 DEADLY FORCE APPLICATIONS

Use of deadly force is justified in the following circumstances involving imminent threat or imminent risk:

- a. An officer may use deadly force to protect themselves, or others, from what s/he reasonably believes would be an imminent threat of death or serious bodily injury.
- b. An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the individual has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the individual is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.
- c. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the officer believes the individual intends to do so.

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 USE OF A CHOKE HOLD

The use of a choke hold, which is a physical maneuver or technique that restricts an individual's ability to breathe for the purpose of incapacitation, is prohibited unless deadly use of force is authorized.

300.5 REPORTING RESPONSE TO AGGRESSION AND RESISTANCE

Any response to aggression and resistance that results in the use of force by an officer of this Department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why s/he believed the response to aggression and resistance was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department requires that officers complete a *Response to Aggression and Resistance Form*.

300.5.1 NOTIFICATIONS TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- a. The application caused a visible injury.
- b. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- c. The individual subjected to the use of force complained of injury or continuing pain.
- d. The individual indicates intent to pursue litigation.
- e. Any application of the Conducted Electrical Weapons (CEW).
- f. Any application of a restraint device other than handcuffs, shackles or belly chains.
- g. The individual subjected to the force was rendered unconscious.
- h. An individual was struck or kicked.
- i. An individual alleges any of the above has occurred.

300.6 MEDICAL CONSIDERATIONS

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until s/he can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, when possible.

The on-scene supervisor or, in the event no supervisor is immediately available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be a potential safety or medical risk to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these person(s) should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable.

300.7 REVIEW OF OFFICER RESPONSE TO AGGRESSION AND RESISTANCE

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- a. Obtain the basic facts from the involved officer(s). Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- b. Ensure that any injured parties are examined and treated.
- c. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
 1. These photographs should be retained until all criminal and potential civil litigation has expired.
- d. Identify any witnesses not already included in related reports.
- e. Review and approve all related reports.
- f. Determine if there is any indication that the individual may pursue civil litigation.
 1. If there is an indication of potential civil litigation, the supervisor should notify their direct supervisor immediately.
- g. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

300.7.1 PATROL SERGEANT RESPONSIBILITY

The Patrol Sergeant shall review each use of force, by any personnel within his/her command, to ensure compliance with this policy and to address any training issues.

300.7.2 RESPONSE TO AGGRESSION AND RESISTANCE REVIEW BOARD

In addition to other reporting and review requirements outlined in this policy, the Chief of Police may request a Response to Aggression and Resistance Review Board investigate the circumstances surrounding any use of force incident.

The Response to Aggression and Resistance Review Board will be convened in all cases when use of force by an officer results in very serious injury or death to another person.

The Response to Aggression and Resistance Review Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the officer was on or off duty, excluding training, dispatching of wildlife, or recreational use. See also University Police Department Policy 301 – Response to Aggression and Resistance Review Board.

300.8 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

300.9 RESPONSE TO AGGRESSION AND RESISTANCE ANALYSIS

At least annually, the Assistant Chief of Police should prepare an analysis report on incidents involving officer(s) response to aggression and resistance. The report should be submitted to the Chief of Police. The report should not contain the names of the officer(s), suspects or case numbers, but should include:

- a. The identification of any trends in response to aggression and resistance.
- b. Training recommendations.

- c. Equipment needs recommendations.
- d. Policy revision recommendations

(Cancels and Replaces 103.1 – Use of Force)