

153268<sup>3</sup>



# BASIC COURSE INSTRUCTOR UNIT GUIDE

20

USE OF FORCE

November 1, 1994

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THE COMMISSION  
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

**UNIT GUIDE 20**

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## SPECIFICATIONS FOR LEARNING DOMAIN #20: USE OF FORCE

September 1, 1994

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### I. INSTRUCTIONAL GOALS

The goals of instruction on **Use of Force** are to provide students with:

- A. an understanding of the important role that training plays in preparing students to cope with dangerous situations and to use reasonable force;
- B. an understanding of the liability associated with the use of force;
- C. knowledge of the conditions under which force can be lawfully used by a peace officer;
- D. knowledge of force options;
- E. the ability to make judgments concerning the level of force justified by a given set of circumstances;
- F. an understanding of the concept of fear and anger management;
- G. an understanding of the basic concept of intervention to prevent unreasonable use of force; and
- H. an understanding of the importance of effective tactical communication in use-of-force situations.

### II. REQUIRED TOPICS

The following topics shall be covered:

- A. The effects of training on the ability to cope with danger and use reasonable force
- B. Liability associated with the use of force

- C. Laws governing the use of force by a peace officer
- D. Force options (use-of-force spectrum)
- E. Justifiable homicide and the *sufficiency of fear* requirement
- F. Factors that must be considered in making the decision to use deadly force
- G. Agency policies on the use of force
- H. Fear and anger management
- I. The concept of intervention
- J. Tactical communication as it relates to the use-of-force spectrum

III. REQUIRED TESTS

The following tests shall be administered:

- A. The POST-constructed knowledge test for Domain #20
- B. A scenario test that requires the student to respond to simulated encounters with suspects under circumstances that justify varying levels of force

IV. REQUIRED LEARNING ACTIVITIES

- A. Participation in a facilitated discussion relating to use of force by a peace officer

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **8 hours** of instruction on use of force.

VI. ORIGINATION DATE

July 1, 1993

VII. REVISION DATES

September 1, 1994

# CURRICULUM

## I. PSYCHOLOGICAL AND PHYSIOLOGICAL ASPECTS OF THE USE OF FORCE

A. The law enforcement role in a physical arrest is essentially defensive.

1. The Oxford English Dictionary defines the word "defend" as "to ward off, avert, repeal, restrain, prevent. To ward off, keep off (an assailant); to repeal, avert."

NOTE: See "Effects of Force" in the reference section of this document.

2. It is not aggression when you take the initiative to confront the law violator. The use of force by an officer is not one of hostility; it's one designed to defend and protect the community from criminal violence.
3. Most of an officer's concerns grow out of the use of reasonable force employed against a combative but unarmed law violator.
4. What is needed is a range of decision-making tools that permit the use of exactly that degree of control which constitutes reasonable force.
  - a. The subject's actions will dictate that degree.
  - b. The subject's actions will either be cooperative, resistive, assaultive or life-threatening.
5. Penal Code Section 835a states "...nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."

B. Concept of control

1. In all cases, control is that degree of influence the officer must exert to take a person safely into custody.
2. Self-control
  - a. Control is a two-way street. Officers must be in complete control of themselves to be able to control a person or a situation.
  - b. In fact, self-control alone is one of the greatest assets in dealing with a person or a situation.
    - (1) Self-control comes through training and practice.
    - (2) Self-control is a result of the development of confidence in one's skills.

3. Control of others

- a. The objective of using force on a subject is to gain control.
- b. The application of a control hold may result in pain and should be applied for control alone, not for punishment. Once control is gained, pain application should be reduced.
  - (1) Control techniques should be applied to the extent necessary to achieve control.
  - (2) If the subject resists, the pain potential may increase.

NOTE: Refer to Penal Code Section 149, and U.S. Title Code 18, Section 241 and 242, "Assault Under Color of Authority"

C. Emotional and physical responses to arrest

- 1. Arrest is an emotional problem as well as a physical one.
- 2. Attitudes or prejudices of any involved party can lead to conflict.
- 3. Officers should be prepared for a variety of emotional responses to an arrest situation. (e.g., self, partner, bystander, subject, etc.) Responses can include fear, apprehension, anger, etc.
- 4. The officer's demeanor and actions will most likely influence the outcome of the event.
  - a. The degree of influence will depend on the officer's life experience, past performance, training, etc.
  - b. An insensitive or arrogant officer can create a negative emotional response.
  - c. A firm but fair, sincere, and courteous officer can reduce the problems and danger inherent to physical arrest.
- 5. Emotional response is often the direct result of uncertainty. Uncertainty is likely to result in compensating behavior. Compensating behaviors include:
  - a. Hesitation
  - b. Verbal abuse
  - c. Bluffing
  - d. Unreasonable/unnecessary force

D. Psychological factors

1. Officers must be mentally prepared to use force or have force used against them. That preparation is based on training and experience.
  - a. Training will provide cognitive understanding and manipulative skill regarding force options. The officer will attain:
    - (1) Confidence
    - (2) A trained response
    - (3) Mental alertness
    - (4) Control of emotions
  - b. Lack of training results in:
    - (1) Lack of confidence
    - (2) Poor marksmanship
    - (3) Panic and loss of self-control
    - (4) Increased liability
  - c. Trained response vs instinctive reaction
    - (1) Advantages of a trained response:
      - (a) Less predictable to the suspect than an instinct
      - (b) Correctable
      - (c) Flexible (can be adjusted and customized)
      - (d) Increased self-control
    - (2) Disadvantages of instinctive reactions:
      - (a) Predictable to the suspect
      - (b) Limited
      - (c) May be improper
      - (d) May be dangerous
    - (3) The goal is to have a trained response that is so practiced it is "instinct-like". An "instinct-like" response becomes a trained reflex with repetition.

NOTE: Instructors should emphasize that training is a personal responsibility as well as departmental. Officers must seek and obtain training throughout their entire career.

E. Physiological factors

1. Physiological theory holds that the mind and the body are one.
  - a. Normal functioning of the human body depends upon cooperation between the brain and the rest of the body.
  - b. Action/reaction
    - (1) The mind can only concentrate on one action at a time.
    - (2) An action will be faster than a reaction.
  - c. By learning to discipline the mind to remain calm and flexible at all times, an officer can reduce reaction (lag) time and prevent distraction from disturbing thoughts and actions.
2. Mental alertness comes through concentration.

## II. FEAR AND ANGER MANAGEMENT

### A. Fear

1. Fear is an emotional response to a perceived threat (real or unreal)
  - a. Everyone has experienced the sensation of fear. It is unpleasant but normal, natural and often necessary.
  - b. Fear is not a problem until it interferes with the ability to perform effectively.
  - c. Courage/bravery is not the lack of fear but the control of fear.
  - d. A person's fear changes with time and experience.
  - e. Fear may heighten alertness during stressful situations.
2. There are two types of fear:
  - a. Reasonable fear is
    - (1) a controlled, legitimate and manageable fear, and
    - (2) is a mechanism that is necessary for officer safety if it is based on true circumstances.
  - b. Unreasonable fear:
    - (1) Generated in an officer's mind with no direct correlation to facts and situations
    - (2) Types of unreasonable fear
      - (a) Prejudice-based fear (e.g., racial fear, gang members)
      - (b) Cultural fear - often caused by an officer's lack of exposure to a community's culture
      - (c) Unreasonable fear of physical harm
      - (d) Fear of using force to do harm - the inability of some officers to use force in general, and deadly force in particular, when it is necessary and justified
      - (e) Positional fear - the fear of the responsibility of making critical decisions during an incident
      - (f) Psychological fear (paranoia)
      - (g) Fear of peer disapproval

- (3) Unreasonable fear can be responsible for
  - (a) Inappropriate responses
  - (b) Failure to respond
  - (c) Overreaction such as the use of inappropriate or excessive force

3. Phases of fear in a dangerous situation

- a. Perception of fear
  - (1) Situation escalating
  - (2) Body and mind become alert
  - (3) Fight or flight
  - (4) Determine the threat level
- b. Awareness of vulnerability
  - (1) Awareness of mortality, lack of control, shock and disbelief
  - (2) "This can't be happening to me"
  - (3) Need to focus on survival and attempt to gain control over fear
- c. Decision to take action
  - (1) Acknowledge the reality of threat
  - (2) Officer's will to survive
- d. Survival
  - (1) Keenly aware of external events
- e. Proper training/tactics triggered
- f. Decision to respond
  - (1) Commitment to action
- g. Response
  - (1) Respond with correct action and survive

4. Understanding the phases of fear
  - a. In the second phase (awareness of vulnerability), the officer faces vulnerability and potential lack of control.
  - b. If you **focus** solely on the danger and your vulnerability, you tend to feel weak and helpless.
  - c. You must **focus** in on the survival phase in order to control this feeling of vulnerability.
  - d. This **focus** will then be on evaluating the situation and determining what must be done to achieve this goal.
3. Ways of managing fear
  - a. Discussion of fears with peers
  - b. Individual self-assessments - after action assessment
  - c. Mental preparation
  - d. Focus on what must be done and not solely on the danger

B. Anger

1. Anger is a feeling of displeasure resulting from perceived injury, mistreatment, opposition, etc.
  - a. It usually shows itself as a desire to fight back at the cause of the feeling.
  - b. Just as with fear, anger has some good uses.
    - (1) Officers have reported that anger appropriately channeled has enabled them to keep fighting or keep trying during a crisis situation.
    - (2) To a certain extent, anger allows us to be assertive to stand up for our rights and even plays a small role in command presence.
  - c. When anger is inappropriate or out of control (i.e., rage), it becomes a definite liability.
  - d. While somewhat more acceptable than fear, officers often act as if they should not have angry reactions to do things they see or experience during the performance of their duties. Denying or suppressing anger simply creates a volcano that may eventually erupt with possibly disastrous consequences.

2. Taking charge of anger.

In combating and controlling anger, there are several key factors:

NOTE: Instructors may wish to administer the "Anger Scale" to students as an optional learning activity. A copy of the scale is contained in the supporting materials section of this document.

- a. Awareness and identification of personal reaction (physical, mental, behavioral) which may range from a mild irritation to a full-blown fury
- b. Acknowledgement and recognition of anger as a normal emotion.
- c. Identification of situations most likely to cause an anger reaction
  - (1) Knowledge of "universal" anger-provoking situations (e.g., being attacked or shot at which would cause an angry reaction in most people), or
  - (2) "Personal" anger-provoking situations (e.g., those that really "push our buttons")
    - (a) Individual sensitivities that may prompt an overreaction (history, personality, etc.)
    - (b) Emotional bruises and other sources of personal vulnerability
- d. Development of a mind set of "he is not worth my job" or "she is reacting to the uniform not me". In essence, "reframe" (depersonalize) what people do and say so that it is no longer a source of provocation.
- e. Manage anger when it is at the lower end of the emotional scale and easier to control. The rule is "the sooner the better".
- f. Express anger in an appropriate and controlled manner also the feeling is at the lower end of the emotional scale and easier to control. Exercising self-control allows the officer to select the most effective and professional reaction.
- g. If anger gets high on the emotional scale, the reaction may be different.
  - (1) Few people can exercise effective emotional control when their anger is near the top of the scale.
  - (2) An officer may need to exercise self-control by backing off and/or getting out of a situation, if possible.

- (3) It may be appropriate for a partner to step in, call for backup, etc. If an officer cannot back off or create a buffer, it may be appropriate to attempt to slow down the action or interrupt the sequence of events.

h. Preparation to deal with anger-inducing events

- (1) Identify worst-case scenarios (i.e., most anger-inducing situations) and problem-solving ways of handling them (i.e., mental rehearsal, role-playing, seeking advice from more experienced officers, etc.)
- (2) If anger continues to be a problem, counseling or additional anger management training should be considered.

3. Reacting to an anger situation

When an officer has lost emotional control, it may be necessary to intervene and assist.

NOTE: Detailed information regarding intervention techniques is contained in Section VII of this instructor unit guide.

F. Why is it so difficult to manage anger?

1. When looking at the obligation to assist a fellow officer who has temporarily lost emotional control, it may seem obvious that intervention is required. But when it actually happens there are a number of forces that interfere with a deputy taking action to protect another deputy:
  - a. Diffusion of responsibility - "somebody else will step in any minute now"
  - b. Pluralistic ignorance - "nobody else is doing anything, so maybe I am just misunderstanding the situation and nothing is really wrong"
  - c. Evaluation apprehension - "what if I am wrong, what will everyone think of me if I step in and do something"
2. Officers are encouraged to use their own judgement and to trust their "gut" instinct. If your gut tells you that a situation is wrong then it is important to not second guess yourself based upon the behavior of others around you who are not taking action. The cost of acting when you did or did not need to is embarrassment. The cost of not acting when you should have could mean your peace of mind, the loss of your career or that of a friend.



### III. LEGAL ASPECTS OF THE USE OF FORCE

#### A. Understanding limitations in the use of force

1. Use of force by officers is an extremely sensitive issue and requires careful study and understanding.
2. The definition of the "use of force by police" is based on the determination of objective reasonableness under the circumstances. (Graham v. Conner 109 S.Ct. 1865 (1989))
3. Boundaries for objective reasonableness are clear in certain situations, but many others must be interpreted by the circumstances involved.

#### B. Legal aspects

1. Officers will constantly be faced with decisions as to when and when not to use force and to what degree.
2. Force levels are commonly identified in each agency's policy. The following are examples of force level descriptions which may be categorized differently within the individual policies.
  - a. Lethal force
  - b. Intermediate force
  - c. Controlling force
3. How an arrest is made and what restraint is allowed (Penal Code Section 835)
  - a. An arrest can be made by an actual restraint of the person, or by submission to the custody of an officer.
  - b. The person arrested may be subjected to such restraint as is reasonable for the arrest and detention. (reasonable restraint and no more)
4. When force is used, the following may result:
  - a. Physical control
  - b. Injury
  - c. Death
5. Reasonable force to effect arrest is permissible (Penal Code Section 835a).

- a. Any peace officer who has reasonable cause to believe that the person arrested has committed a public offense may use reasonable force to
  - (1) effect arrest
  - (2) prevent escape, or
  - (3) overcome resistance.
- b. The peace officer shall not be deemed the aggressor by the use of reasonable force.
- c. Peace officers who make or attempt to make an arrest need not retreat or desist from their efforts by reason of the resistance of the person arrested.
- d. Peace officers do not lose their right to self-defense.

6. Duty of a Person to Submit to Arrest (Penal Code Section 834a)

If a person has knowledge, or by the exercise of reasonable care should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

7. Resistance to Unlawful Use of Force (Penal Code Section 692, 693 and 694)

Although Penal Code Section 834a states that the person being arrested must submit to an arrest, if unreasonable or unlawful force is used, the person being arrested may lawfully resist to overcome that force.

NOTE: Instructors may also wish to refer to Civil Code Section 43 (Citizens' Right of Protection from Unlawful Bodily Restraint or Harm, from Personal Insult, from Defamation, and from Injury to his or her Personal Relations) and Civil Code Section 50 (Citizens' Right to Use Necessary Force to Protect Oneself et. al. from Wrongful Injury)

8. What force may be used (Penal Code Section 843)

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

NOTE: The wording "...may use all necessary means to effect the arrest" may be confusing and misleading to many officers. Instructors may wish to discuss the application of this phrase to a variety of situations.

C. Legal aspects of lethal force

- 1. An officer's decision to use lethal force will be based on their

- (a) preparation by training
- (b) mental alertness
- (c) emotional maturity, and
- (d) understanding of legal and department policies concerning the use and degree of force objectively reasonable to achieve the law enforcement mission.

2. Justifiable Homicide by Public Officers (Penal Code Section 196)

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either

- a. in obedience to any judgment of a competent court or
- b. when necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty or
- c. when necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest. (Kortum v. Alkire 325 Cal. 3d 138 - fleeing felons) (Peterson v. City of Long Beach - 72 CA. 3rd 852 (1977) - fleeing felons/restrictive policy)

3. Key points regarding the use of lethal force addressed in Tennessee v. Garner, 105 S.Ct. 1694 (1985):

- a. Life-threatening escape - "Where the officer has **probable cause** to believe that the suspect poses a threat of serious physical harm, either to the officer or others..."
- b. Life-threatening felony - "...if the suspect threatens the officer with a weapon or there is **probable cause** to believe that he has committed a crime involving the infliction of serious bodily harm..."
- c. Give warning where feasible - "...the court imposes a constitutional requirement that '**some warning**' be given prior to the use of deadly force '**where feasible**'...", "halt, police! Stop or I'll shoot!"
- d. If necessary to prevent escape - "...in order for deadly force to be constitutionally permissible, there must be **probable cause** to believe that the use of deadly force is '**reasonably necessary**'..."
  - (1) If deadly force is not employed escape will probably succeed.
  - (2) No other means reasonably available to prevent escape

(3) "Reasonable necessity" may mean

- a) foot pursuit plus nondeadly force would not likely result in apprehension, or
- b) delay in apprehension would create substantial and unreasonable risk to police/others possibly resulting in death or serious physical injury.

**NOTE: THIS FEDERAL CONSTITUTIONAL STANDARD IS ONLY THE BASELINE - THE STARTING POINT. OFFICERS MUST STILL CONFORM TO AGENCY POLICY REGARDLESS OF WHAT FEDERAL OR STATE LAW MIGHT ALLOW.**

4. Bare Fear Not to Justify Killing; Reasonable Fear (Penal Code Section 198)

- a. Circumstances must be sufficient to excite the fears of a reasonable person and
- b. the person must act under influence of that fear
- c. to save self or another from death or great bodily harm

NOTE: Instructor may wish to discuss individual opinions regarding definition of a reasonable and prudent person.

5. Use of Deadly Force; misdemeanors

- a. When the arrest is for misdemeanor, the use of force to the extent of homicide is not justified. (People v. Hughes, 49 Cal. Rpt. 767, 240 Cal. 2d 615 (1966))
- b. It is the policy of law that it is better to allow a misdemeanant to escape than to kill the individual. (People v. Lathrop, 49 Cal. 63)
- c. However, the officer may, in effecting an arrest for a misdemeanor, justifiably kill in self-defense. (People v. Wilson, 36 Cal. App. 589)

NOTE: Additional information regarding these cases is included in the supporting materials section of this instructor unit guide.

#### IV. CIVIL LIABILITY

##### A. Enforcing the law and the use of force in effecting an arrest:

1. It is absolutely imperative that officers be well versed in the laws governing the use of "force", particularly "lethal force". Officers must also be proficient in the safe handling of firearms or other law enforcement weapons in applying force.
2. In the course of duty, officers may be called upon to make a decision which may affect the officer's family, department or the lives of other citizens.
3. For the community's protection and the officer's protection and peace of mind, the officer must have an understanding of the laws pertaining to the use-of-force spectrum.

##### B. Liabilities involved in use of force

1. An officer must be aware of the legal and moral aspects governing the use of force.
  - a. Even though the officer may be within the law to shoot, to control, or use a baton, that officer is responsible for the termination of the bullet's flight, the force of the "control hold", the baton's blow, etc.
  - b. In this regard, probably the most widely recognized duty of a law enforcement officer is that of avoiding negligence in doing the law enforcement task.
  - c. As mentioned previously, officers may have the full authority to act, but unless they are using a **reasonable standard of care**, they may be sued and judged liable for damages.
  - d. The officer may be called upon to use split-second judgment requiring the use of deadly force, either in protecting self, preventing a criminal action, or in protecting the lives of citizens.
  - e. Society imposes a tremendous burden upon the officer when it grants, by legal statute, permission to use force that may take the life of a human being "when necessary".
  - f. An officer must recognize that in the United States there is no greater value than reverence for human life.
2. Law enforcement officers may be held liable for unreasonable use of force in the following ways:
  - a. Personal compensatory and punitive civil tort actions
  - b. Personal criminal actions for improper use of authority or force

- c. Personal civil rights violations, both federal and state
  - d. Administrative hearings and actions: internal affairs, trial boards, coroner's inquest, shooting review boards, etc.
3. Laws affecting liability of an officer utilizing force:
- a. **Assaults By Officers Under Color of Authority (Penal Code Section 149)**  
  
Every public officer who under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding \$10,000 or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment.
  - b. **Cruel and Unusual Punishment (Penal Code Section 673)**  
  
Prohibits custody personnel from inflicting cruel, corporal, or unusual punishment or inflicting any treatment or allowing any lack of care which would injure or impair the health of a prisoner.
  - c. **Title 18, Section 242, U.S. Code (criminal)**  
  
Prohibits peace officers from depriving citizens of rights under the color of law. If death results, the penalty may include life imprisonment.
  - d. **Title 42, Section 1983, U.S. Code (civil)**  
  
Prohibits peace officers from depriving citizens of rights under the color of authority
4. Law enforcement agencies may also be held liable for their officers' unreasonable use of force in the following ways:
- a. Negative public reaction
  - b. Agency civil liability
    - (1) "Master/servant" rule (vicarious liability)
    - (2) Tort theory of "failure to train"
    - (3) Tort theory of "failure to supervise"
    - (4) Federal civil rights laws

**V. DEPARTMENT POLICIES**

A. Common issues contained in agency policies on the use of force:

1. When force can be used
2. The amount of force that can be used
3. Force options available
4. Reporting requirements

B. Common circumstances addressed in agency policies on the use of lethal force:

1. Defense of self or others against great bodily injury or death
2. Shooting at nonviolent fleeing felons
3. Warning shots
4. Shooting at juveniles
5. Shooting at or from moving vehicles

NOTE: The use-of-force policy developed by the California Peace Officers' Association has been included in the supporting material section of this instructor unit guide.



## VI. FORCE OPTIONS

### A. What is a force option?

1. A force option is a choice available to a peace officer concerning the type of force or influence to be exerted over an individual in response to their actions in a given situation. An officer is required to:
  - a. Use physical force only when legally authorized to do so (e.g., to overcome resistance to a lawful process)
  - b. Use a type of force which is reasonable under the circumstances
  - c. Use only that amount of force reasonable to overcome resistance and/or gain control
  - d. Use only the amount and type of force which is permitted by agency policy

NOTE: Instructor should discuss the concept of "reasonableness" and "objective reasonableness" as contained in *Graham v. Connor* 109 S. Ct. 1865 (1989). This case is contained in the supporting materials section of this instructor unit guide.

2. The actions of an individual will determine the force option and the amount of force applied by an officer. The actions of an individual may be:
  - a. Cooperative
  - b. Resistive
  - c. Assaultive or High Risk
  - d. Life Threatening
3. Factors which affect which force option is selected and the amount of physical force applied include:
  - a. The amount and nature of the resistance which must be overcome
  - b. The presence of a weapon and the type of weapon
  - c. The nature and seriousness of the offense
  - d. The individual's age, history, and capabilities
  - e. The officer's capability to overcome the resistance (e.g., diminished by injury or other factors)
  - f. The availability of assistance from other officers
  - g. The location and surroundings including danger to bystanders

h. Threats to life and property including their immediacy and probability

B. Types of force options

1. A variety of physical force options are generally available to an officer. These include:

- a. Physical strength and compliance techniques (e.g., control holds)
- b. Chemical agents
- c. Impact weapons
- d. Firearms

2. An officer's physical force options can be complemented by:

a. Nonverbal communications ability (body language) which includes:

- (1) Gestures
- (2) Posturing
- (3) Facial expressions
- (4) Proxemics (spatial relationships)

b. Verbal communications ability including:

- (1) Content
- (2) Inflection
- (3) Pitch
- (4) Tone
- (5) Volume

c. Professional/command presence. This includes:

- (1) Visual appearance
- (2) Projected confidence
- (3) Physical condition
- (4) Hygiene
- (5) Appearance of the uniform

3. Officers may also have additional physical force options available. Examples include:
  - a. Canines
  - b. Electronic devices (e.g., Tasers, Stun Guns)
  - c. Other less-lethal projectile weapons (e.g., rubber bullet firing devices)

C. Other considerations regarding force options

1. The safety of the public
2. The use of chemical agents

NOTE: As with any force option, the amount of force applied should not exceed the amount which is reasonable to overcome resistance and/or gain control.

- a. Environment (e.g., wind, enclosed area vs. open area, proximity to schools, hospitals, or well-traveled public thoroughfares, etc.)
- b. Avenues of escape
- c. Property damage potential (e.g., fire hazard)
- d. Potential lethality of the concentration of the agent
- e. Hazards associated with the deployment method (e.g., projectile deployment, blast dispersion devices, etc.)

NOTE: Comprehensive information regarding chemical agents is contained in Basic Course Instructor Unit Guide #35 (Firearms and Chemical Agents)

3. Considerations regarding the use of impact weapons

NOTE: As with any force option, the amount of force applied should not exceed that which is reasonable to overcome resistance and/or gain control.

- a. Absent a life-threatening situation, the officer should avoid impacts to potentially lethal parts of the body.
- b. Likewise, unless a life-threatening situation exists, the officer should not use the impact weapon as a choking device.
- c. When an officer strikes a person with an impact weapon, the officer must assume that injury may occur. This fact must be considered when selecting an impact weapon as a force option.

NOTE: Comprehensive information regarding impact weapons is contained in Basic Course Instructor Unit Guide #33 (Person searches/baton etc.)

4. Use of deadly force

- a. The use of deadly force is the most serious decision a peace officer will ever be called upon to make.
- b. The decision to use deadly force should be guided by a reverence for human life and used only where other means of control are impractical or have been exhausted.

5. Other applications of force

Individual agency policies may address specific situations where physical force options are discussed. These may include, but are not limited to:

- a. Firing warning shots
- b. Shooting at moving vehicles
- c. Dispatching an injured or dangerous animal

## VII. THE CONCEPT OF INTERVENTION

### A. What is intervention?

1. Intervention, as it pertains to this curricula, is simply acting to prevent or stop the inappropriate or unlawful behavior of a fellow peace officer.
2. Intervention involves the application of a variety of techniques for restoring or maintaining professional control over a given situation, or for improving the professional quality of future contacts.

### B. Types and levels of intervention

#### 1. Immediate intervention

In some situations it may be desirable or necessary to intervene immediately. Among the options available are:

##### a. **Verbal Intervention**

Example: A fellow officer is becoming agitated, angry, or appears to be losing professional objectivity during a contact. In this case, an effective intervention may be to simply offer to assist (e.g., "Hey, partner, let me take care of this one, O.K.?")

##### b. **Physical/Touch Intervention**

Example: A fellow officer is engaged in a heated verbal confrontation with a subject and is starting to become increasingly agitated. An effective intervention may be to lightly touch your partner on the shoulder and offer a tactful reminder to calm down or for you to take over.

Example: A fellow officer, who is usually quite calm, appears to be losing control and begins to advance on a subject who is being verbally abusive. It may be desirable to step inbetween (if this can be accomplished without compromising officer safety) making some type of diffusing remark (e.g., "Let me talk to him").

##### c. **Restraint Intervention**

Example: A fellow officer is using unlawful or clearly unreasonable physical force. In this case physical restraint may be necessary.

#### 2. Delayed Intervention

In some situations it may be desirable to utilize an intervention strategy after the fact. This can be valuable to improve the professional quality of future contacts. Techniques include:

a. **Discussion**

This may be an appropriate follow-up if a fellow officer was being verbally condescending to someone. Discussing the improprieties of such behavior is professionally beneficial.

b. **Admonishment**

If a fellow officer uses inappropriate vulgarity or demeaning language in contacts with the public, you should inform him that this type of behavior is not acceptable (e.g., it is professionally inappropriate and is likely to provoke or escalate conflict)

c. **Training**

(1) When an officer is having a continuing problem, an effective intervention technique may be a diplomatic suggestion that additional training be pursued. (e.g., an otherwise effective officer is having consistent difficulty during contacts with a certain group)

(2) Also, an officer can provide a valuable form of ongoing training to a peer by consistently demonstrating desirable behaviors.

C. The legal basis of intervention

1. The United States Constitution provides protection for individuals against the unlawful actions of peace officers.
2. The United States Code contains criminal sanctions against peace officers who violate the civil rights of the public. (USC Title 18, Sections 241 and 242)
3. There are also a variety of state laws and criminal sanctions which are intended to regulate the behavior of California peace officers. Among these are:
  - a. Penal Code Sections 147, 149 and 673 (Officers inhumanely or oppressively treating prisoners or unnecessarily assaulting or beating any person)
  - b. Penal Code Section 661 (Removal from office for neglect or violation of an official duty)
  - c. Penal Code Sections 692 and 693 (when resistance to use of force is lawful)
4. Several case decisions have held that peace officers have a responsibility to intervene in certain circumstances. For example:

- a. Byrd v. Bishke, 46 F.2d 6 (7th Cir. 1972)

In this case the plaintiff alleged that he was surrounded by a dozen Chicago police officers and was struck repeatedly. The court held that even though the plaintiff could not identify individual officers who struck him, all officers were liable because none of them intervened. They were considered negligent for failing to protect the plaintiff from other officers who were violating his civil rights.

- b. Several other cases support this concept, including:

- (1) Masel v. Barrett, 707 F. Supp. 4 (D.D.C. 1989)
- (2) Wilson v. City of Chicago, 707 F. Supp. 379 (N.D. Ill. 1989)
- (3) Peterson v. Dept. of Navy 687 F. Supp. 713 (D.N.D. 1988)

- 5. The community expects that its peace officers will use only reasonable amounts of force. Likewise, they expect that someone, including other officers, will intercede if reasonable levels of force are exceeded.
- 6. When officers intervene appropriately, their professionalism is enhanced as is their personal and organizational credibility.
- 7. Intervention may save officers from:
  - a. Physical injury resulting from unnecessary escalation
  - b. Disciplinary action up to and including termination
  - c. Criminal complaints filed against them
  - d. Financial loss resulting from civil suits

- D. What behaviors prompt the need for intervention?

- 1. Unlawful use of force
- 2. Other unlawful, unethical, or inappropriate behaviors

NOTE: Instructors should encourage group discussion regarding what specific types of behaviors might prompt the need for an intervention.

- E. What can inhibit us from intervening?

- 1. Unfamiliarity with the officer
- 2. Inexperience (unfamiliar with the means with which to remedy the problem)
- 3. A feeling that it is "someone else's responsibility" to intervene

4. Peer pressure
5. A feeling of personal risk or other consequences for intervening (e.g., fear of being ostracized)
6. Fear of ramifications for intervention with senior officers, FTOs or supervisors (e.g., getting a bad evaluation)
7. Psychological factors:
  - a. New officers may have developed erroneous notions of how peace officers should behave. Roles in movies and television often foster false impressions as to what behaviors are acceptable.
  - b. Certain types of stress develop into aggression.
  - c. Fear may play a significant part in the behavior of an officer.

NOTE: Refer to Section II of this instructor unit guide regarding the concept of fear and anger management.

F. Why should an individual officer intervene?

1. Personal integrity demands it
2. Preserves professionalism and supports the law enforcement mission
3. Strengthens public confidence in the law enforcement profession and the individual agency involved
4. Reduces personal and organizational liability
5. Enhances officer safety
6. Is morally and ethically correct

**LEARNING DOMAIN #20  
USE OF FORCE**

**EXERCISE PERFORMANCE OBJECTIVE:**

Given a word picture depicting a situation where an officer has used physical force, the student will identify if the amount of physical force used was reasonable. The authority for using physical force, the factors that determine the amount of force to be used, and the use-of-force options available to an officer are listed below.

- A. Authority for an officer's use of physical force:
  - 1. For self-defense or in the defense of others
  - 2. To overcome resistance to a lawful process (e.g., to make an arrest, to disperse an unlawful assembly, to evict a tenant)
  - 3. To prevent an escape (e.g., apprehend a fleeing felon, prevent the escape of a prisoner)
  
- B. Physical force options available to an officer:
  - 1. Controlling force including strength and compliance techniques
  - 2. Chemical agents
  - 3. Impact weapon (baton)
  - 4. Firearm
  
- C. Factors influencing the amount of force that an officer may lawfully use:
  - 1. The amount and nature of the resistance that must be overcome
  - 2. The presence of a weapon and the type of weapon
  - 3. The nature and seriousness of the offense
  - 4. The person's age, history and capabilities
  - 5. The officer's capability to overcome resistance (e.g., diminished by injury or other factors)
  - 6. The availability of assistance from other officers
  - 7. The location and surroundings including danger to bystanders
  - 8. Threats to life and property including their immediacy and probability

**SCENARIO PERFORMANCE OBJECTIVE:**

- 7.4.1 Given simulated situations where force is needed, the student will use the degree of force allowed by the law, court decisions, and/or agency policies. The situations will include:

(1-1-85)

- A. Detention
- B. Arrest
- C. Self Defense
- D. Deadly Force

## LEARNING ACTIVITY:

Given a minimum of four video clips, re-enactments, simulations, role plays, word pictures, or other stimulus material provided by the instructor which depict different examples of use of force by a peace officer, the student will participate in a facilitated discussion regarding whether or not:

- A. There was a legal authority for the use of force
- B. The force option selected was appropriate under the circumstances
- C. The amount of force used was objectively reasonable
- D. Intervention was appropriate

**SUPPORTING MATERIAL**

**AND**

**REFERENCES**

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND  
REFERENCES INCLUDED IN THIS SECTION**

Tennessee v. Garner and Graham v. Connor  
Effects of Force  
Anger Scale

## TENNESSEE V. GARNER

The case of Tennessee v. Garner, decided in 1985, actually began when two Memphis Police Department officers were dispatched to answer "a prowler call". The officers went to the scene and met a neighbor who gestured to the adjacent residence, saying she had heard glass breaking next door. One of the officers went to the rear of the house where he heard a door slam and saw someone run across the yard. The officer saw the person run to a fence where the person stopped. Using his flashlight, the officer illuminated the person's face and hands. The officer "saw no sign of a weapon, and though not certain, was 'reasonably sure' and figured' that (the person) was unarmed. The officer shouted "police, halt"/ however, the person began to scale the fence. Fearing that the person "would elude capture," the officer shot him. The bullet struck the fifteen-year-old Edward Garner in the back of in the head. Garner died on the operating table. Ten dollars and a purse from the house were found on Garner's person.

Garner's father brought an action under Section 1983 against the officer who shot his son, the Memphis Police Department, its Directors, the City of Memphis, and its Mayor. He alleged the shooting violated the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The case eventually reached the U.S. Supreme Court, which seized the opportunity to clarify the legal standard for use of force by police. The Supreme Court decided that the use of force in making an arrest is subject to the reasonableness of the Fourth Amendment. The court based this perspective on the numerous cases it had decided regarding whether a seizure of a person by a police officer was reasonable. In ascertaining whether a seizure is reasonable, and, thus, constitutional, the Court stated it "must balance the nature and quality of the intrusion of the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. Noting that the extent of the government's intrusion is an important factor in determining its reasonableness, the Court reasoned that "it is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out."

The court then undertook the process of balancing a person's fundamental interest in safety of his own person against the government's interest in effective law enforcement. Although recognizing the importance of the various governmental goals suggested by the State, the Court remained unpersuaded that the means - the use of deadly force against a non-violent suspect - were justified by the end. The Court held that "(t)he use of deadly force to prevent escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable." The court continued:

*It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to*

*do so...A police officer may not seize an unarmed non-dangerous suspect by shooting him dead.*

The Court did not foreclose the possibility of use of deadly force to prevent escape. "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."

#### GRAHAM V. CONNOR

In *Graham V. Connor*, decided in 1989, the Supreme Court applied its objective standard to a nondeadly force situation. Dethorne Graham suffered from diabetes. On the night of November 12, 1984, he asked a friend of his to drive him to a local convenience store in Charlotte, North Carolina, so he could buy some orange juice to counteract an insulin reaction. Upon entering the store, Graham saw that the checkout line was too long and left the store. Graham then asked his friend to drive him to another friend's house. Unfortunately for Graham, his quick entry and exit at the convenience store came to the attention of a Charlotte police officer, M.S. Connor, who followed the automobile in which Graham was riding. The officer made an investigatory stop about one-half mile from the store.

After being stopped, Graham's friend advised the officer of Graham's condition. Connor ordered the men to wait until he could ascertain what, if anything, happened at the convenience store. At this point, Graham exited the car, ran around it twice, and sat down on the curb where he briefly became unconscious. Backup officers arrived at the scene; one to get Graham some sugar. Several officers lifted Graham and placed him on the hood face down. Graham regained consciousness and asked the officers to check his wallet for a diabetic decal he carried. One of the officers told Graham to "shut up" and shoved his face against the hood of the car. Four officers grabbed Graham and threw him head-first into the convenience store, the officers drove Graham home and released him. During this incident, Graham suffered a broken foot, cuts on his wrists, bruises on his forehead, and an injured shoulder. Graham filed a Section 1983 action against all the officers involved and the City of Charlotte.

This case ultimately reached the U.S. Supreme Court which stated: "In addressing an excessive force claim brought under 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force." The Court noted that in most cases this right will either be Fourth Amendment or the Eighth Amendment. "The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized "excessive force" standard. Because Graham's claim arose in the course of an investigatory stop (a seizure), the Court stated that Fourth Amendment applied. Citing the *Garner* decision, the Supreme Court held:

*Today we make explicit what was implicit in Garner's analysis, and hold that all claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and it's "reasonableness" standard rather than a "substantive due process" approach.*

To assist the lower courts in applying this standard, the Supreme Court reiterated the need to balance "the nature and quality of the intrusion on the individual's Fourth Amendment interest against the countervailing governmental interest at stake."

Noting that this balancing test is extremely fact specific, the court listed several factors to be considered by the lower courts:

1. the severity of the crime;
2. the nature and extent of the threat posed by the suspect;
3. the degree to which the suspect resists arrest or detention, and
4. any attempts by the suspect to evade arrest by flight.

Moreover, in performing this analysis of the facts and the circumstances, courts should judge the reasonableness of the force used from the perspective of the reasonableness of the police officer and not use hindsight. Lastly, the Supreme Court lucidly stated that the reasonableness balancing test is an objective standard, leaving no room for inquiry into the interest or motivation of the police officer.

*An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.*

In summary, the issue of whether force used by a police officer against a citizen is excessive requires a thorough analysis of the facts and circumstances known to the police officer at the time when the force is used. A court must weight the countervailing interests involved, that is, the individual's right to remain free of any unreasonable seizure, against the government's interest in maintaining order through effective law enforcement. The *Graham* court provided several factors with which to undertake the balancing test. Several other factors also apply - the nature and quality of the intrusion, and the severity of injury inflicted. The subjective intent of the police officer is irrelevant in this analysis. Finally the evaluation of the totality of the circumstances must not be conducted with benefit of hindsight, but rather from the perspective of the officer at the scene.

## EFFECTS OF FORCE

The role of a peace officer is essentially defensive. Officers must defend and protect the community as well as enforce the law. Officers must confront law violators and be prepared to use the necessary force to *control* potentially dangerous, life threatening situations.

Using force effectively in law enforcement situations will allow the officer to safely take lawbreakers into custody and, at times, may be the difference between life and death.

Learning to apply force legally and effectively comes through...

**PROPER TRAINING**

**and**

**PRACTICE**

# EFFECTS OF FORCE

<b>THE IMPORTANCE OF TRAINING</b>	
<b>WITH TRAINING</b>	<b>WITHOUT TRAINING</b>
<p>Through training and a thorough knowledge of laws pertaining to firearms, self-defense and use of batons, officers attain:</p>	<p>On the other hand, without proper training, officers will suffer from:</p>
<p><b>CONFIDENCE IN THEIR ABILITIES</b></p>	<p><b>LACK OF CONFIDENCE</b></p>
<p>confidence to apply control techniques and use firearms to overcome dangerous suspects.</p>	<p>This can seriously affect the ability to control physical and emotional reactions.</p>
<p><b>TRAINED REACTIONS</b></p>	<p><b>INCORRECT REACTIONS</b></p>
<p>This means the ability to make split-second decisions which may be the difference between life and death. Officers must at all times be prepared to react instantly and effectively to any possible situation.</p>	<p>Lack of training may cause officers to overreact. This could cost the life of the officer and/or the lives of innocent persons. Officers may apply the wrong level of force such as shooting when a control hold would have been enough. Officers may use a hold incorrectly or fire inaccurately, thus causing unnecessary harm.</p>
<p><b>MENTAL ALERTNESS AND CONCENTRATION</b></p>	<p><b>PANIC</b></p>
<p>By staying alert and learning to concentrate, officers will be able to keep their minds on the situation and stay aware of all the circumstances.</p>	<p>Panic is total and absolute loss of control. Panic in crisis situations may render an officer incapable of applying the correct defensive action for the situation.</p>
<p><b>SELF CONTROL OVER EMOTIONS AND BODY</b></p>	<p><b>LIABILITY</b></p>
<p>Physical control will increase self confidence and help develop emotional control.</p>	<p>An officer may face civil and criminal liability resulting from unnecessary injury or death.</p>
<p>Control of emotions will enhance mental as well as physical ability to act effectively.</p>	

Continue to next page

## CONTROL

Control is the degree of influence officers must exert to take a suspect safely into custody. To control dangerous suspects, officers must at all times be in control of themselves. Self control is a direct result of confidence in the officers abilities. Officers acquire confidence by developing. . .

- PHYSICAL CONTROL,
- EMOTIONAL CONTROL, and
- COMMAND OF MIND AND BODY

<b>PHYSICAL CONTROL</b>		
<p>Some suspects can only be controlled by using physical force, such as in the application of control holds.</p> <p style="text-align: center;">PAIN SHOULD NEVER BE APPLIED FOR THE SAKE OF PAIN ALONE, BUT FOR CONTROL.</p> <ul style="list-style-type: none"> <li>• Control techniques are used to get the suspect to respond to officer commands.</li> <li>• Officers must increase the application of the technique as the suspect resists lawful commands, and reduce the application as the suspect complies with lawful commands.</li> </ul>		
<b>EMOTIONAL CONTROL</b>		
<p>Arrests present emotional as well as physical problems. Emotions will affect immediate reactions by both the officer and the suspect. Sometimes officers influence and control the suspect by their attitudes alone.</p>		
<p><i>Good attitudes</i> can have a positive influence in calming a suspect and taking him or her safely into custody.</p> <p>FAIR, COOLHEADED BEHAVIOR CAN SIGNIFICANTLY REDUCE DANGER.</p>	<p><i>Poor attitudes</i> can easily lead to increased conflict. These emotions can encourage dangerous behavior by the suspect and result in poor behavior on the part of the officer.</p> <p style="text-align: center;">ARROGANT, INSENSITIVE BEHAVIOR</p> <p style="text-align: center;">INVITES</p> <p style="text-align: center;">HOSTILITY AND DANGER.</p>	
<b>MIND AND BODY ARE ONE</b>		
<p><b>CONTROL</b></p> <p>To use proper control, your brain must cooperate with the rest of your body. Officers must stay mentally alert.</p>		
<p style="text-align: center;"><b>DISCIPLINE</b></p> <p>Officers must discipline their minds to remain calm and flexible at all times. This will help gain control over mind and body</p>		<p style="text-align: center;"><b>ALERTNESS</b></p> <p>Mental alertness comes through concentration and leads to proper control of body movements. It's important that officers don't let their minds wander.</p>
<b>CONCENTRATION</b>		
<p>Concentrate on one objective. Lack of concentration leads to lag time and reduces reaction time. Concentration will help officers discipline their minds.</p>		

## REASONABLE FORCE

"Reasonable force" is a legal term for how much and what kind of control an officer may use in a given circumstance. At a minimal level, the Penal Code defines such control in an arrest as. . .

ONLY THAT FORCE NECESSARY FOR RESTRAINT OF THE PERSON  
AND TO GET THE PERSON TO SUBMIT TO CUSTODY. (P.C. 835)

The Penal Code further suggest "degrees" of controlling force in permitting peace officers to use. . .

REASONABLE FORCE TO EFFECT THE ARREST, PREVENT ESCAPE,  
OR OVERCOME RESISTANCE OF A PERSON. (P.C. 835a)

According to law, when an officer is using reasonable force, the officer is no the aggressor. Officers have a legal right to. . .

- Stand their ground against any aggressor; and
- Use self-defense for protection.

The court measures reasonable force as. . .

THE AMOUNT OF FORCE NECESSARY TO EFFECT AN ARREST  
AS JUDGED BY AN ORDINARY, PRUDENT PERSON GIVEN THE  
OFFICER'S TRAINING AND EXPERIENCE.

## CONSEQUENCES of UNREASONABLE FORCE

TO THE OFFICER	TO THE AGENCY
<p>When excessive force is used, an officer must answer for actions in several ways:</p> <ul style="list-style-type: none"><li>• Personal compensatory and punitive civil tort actions.</li><li>• Personal criminal actions for improper use of authority or force.</li><li>• Personal civil rights violations, both federal and state.</li></ul>	<p>A law enforcement agency must answer for an officer's action in several ways:</p> <ul style="list-style-type: none"><li>• Agency liability under the "master/servant" rule.</li><li>• Agency liability under federal civil rights laws.</li><li>• Agency liability under "failure to train" or "failure to supervise" tort theories.</li></ul>
<b>LIMITATIONS AND LIABILITY</b>	
<p>Liability is not to be taken lightly. Society places a tremendous burden on law enforcement officers by granting them permission to take life when necessary. Peace officer's authority to use force is defined in the Penal Code statutes as...</p>	
<b>ONLY THE AMOUNT OF FORCE NECESSARY TO EFFECT THE ARREST</b>	
<p>How the individual officer and other members of a department use force directly affects law enforcement's relationship with the community. Lack of restraint, particularly in use of deadly force, can result in officer and agency liability for...</p>	
<b>CRIMINAL CHARGES and LAW SUITS</b>	
<p>Force used by officers is a very sensitive issue with the public. There are limitations on reasonable force set down in law enforcement agency policies. Sometimes the boundaries for reasonableness are clear, other times they require close scrutiny by the courts. The limitations most commonly imposed by law enforcement agencies on the use of reasonable force include...</p>	
<p><b>SOME AGENCY IMPOSED LIMITATIONS</b></p>	<ul style="list-style-type: none"><li>• Definitions of when and where deadly force may be used;</li><li>• Prohibitions on use of unreasonable force against restrained suspects;</li><li>• Shooting at nonviolent fleeing felons;</li><li>• Consideration of harm to innocent persons through the use of chemical agents;</li><li>• Restrictions of firing weapons at or from moving vehicles;</li><li>• Shoot at juveniles; and</li><li>• Warning shots.</li></ul>
<p>Not all agencies subscribe to these limitations. Many agencies impose their own unique limitations on use of reasonable force. All such policies defining the use of reasonable force are attempts to protect the officer and agency from liability. <b>IT IS THE INDIVIDUAL OFFICER'S RESPONSIBILITY AS A PEACE OFFICER TO KNOW AND ABIDE BY THE SPECIFIC AGENCY'S POLICIES.</b></p>	

As you know, the officer and the agency can be held liable for the results of injury or death from use of force. Even though in some circumstances officers may be within the law to shoot, injure or physically control a suspect, they are responsible for the results and can still be held liable.

For instance, if officers lack the proper training in using certain types of force, they and their agencies may face criminal charges or civil suits for a death or injury occurring during an arrest. Or, the officer may be held liable if it is the opinion of the court that the officer used unreasonable force given the circumstances.

## LETHAL FORCE

### KEY PHRASES

It is important to remember and understand some key phrases in California law relating to homicide or use of lethal force:

- Reasonable Person - variously defined as a rational, sensible or just person
- Imminent Danger or Peril - refers to danger or peril about to happen
- Great Bodily Injury - means a significant or substantial physical injury
- Necessarily Committed - suggests something done because it was essential to an end, indispensable, logically unavoidable or required.

### HOMICIDE BY PEACE OFFICERS (Penal Code 196)

WHEN JUSTIFIABLE	WHEN NOT JUSTIFIABLE
<p>According to the Penal Code and applicable case law, homicide by a peace officer is legally justified in the following circumstances:</p> <ul style="list-style-type: none"><li>• <i>When under court orders to carry out a death sentence.</i></li></ul> <p>If officers are under the orders of a competent court to participate in capital punishment, the officers would be committing legal execution and could not be held responsible or prosecuted.</p> <ul style="list-style-type: none"><li>• <i>When acting in the course of duty.</i></li></ul> <p>In a situation requiring deadly force, if the officer accidentally shot and killed a bystander, this would be legally justified, but only if it were necessarily committed in the course of police duty. Note, in these circumstances, the officer may still be civilly liable for death or injury.</p> <ul style="list-style-type: none"><li>• <i>When retaking escaping felons.</i></li></ul> <p>This applies to situations where it would be necessary for the officer to use deadly force against a felon who presents a threat to life.</p> <ul style="list-style-type: none"><li>• <i>When arresting a felon who resists to the point where deadly force is reasonable.</i></li></ul> <p>This applies to arrest situations where a threat to life exists, the suspect could not have reasonably been taken by use of restraint techniques, and the homicide was necessarily committed.</p>	<p>Homicide by an officer is not legally justified under these circumstances:</p> <ul style="list-style-type: none"><li>• <i>When pursuing nonviolent felons.</i></li></ul> <p>In the case of nonviolent felonies, such as forgery or grand theft, the consideration by the officer for human life and the safety of bystanders would preclude shooting the suspect, except in the most extreme situations.</p> <ul style="list-style-type: none"><li>• <i>When arresting or pursuing a felon who does not present a threat to life.</i></li></ul> <p>If the felony is not of the violent variety, that is, a forcible and atrocious one which threatens death or serious bodily harm, or there are no other circumstances which create a fear of death or bodily harm, then the use of deadly force against the fleeing felony suspect would be improper.</p> <ul style="list-style-type: none"><li>• <i>When arresting or pursuing a misdemeanor.</i></li></ul> <p>When an arrest is for a misdemeanor, use of force to the extent of homicide is not justified. It is the policy of the law that it is better to allow a misdemeanor to escape than to apply deadly force against the individual.</p>

## AGENCY POLICIES ON USING FIREARMS

NOT ALL AGENCY POLICIES ARE THE SAME.  
CHECK WITH CONCERNED AGENCY FOR SPECIFIC POLICY

In addition to the law, individual agencies also have policies to cover the use of firearms.

<b>DEFENSE OF SELF OR OTHERS</b>	<p>Many agencies have policies that specify when it is appropriate or inappropriate to fire a weapon in defense or self or others.</p> <p>Typical agency policies include the following:</p> <ul style="list-style-type: none"> <li>• Do not shoot merely because another officer shoots.</li> <li>• Control fire until justified in shooting.</li> <li>• Have reasonable belief that threat to life is present in the situation.</li> </ul>
<b>WARNING SHOTS</b>	<p>Many agencies have policies on shooting at fleeing felons who are armed and dangerous and who may go on to harm other people.</p> <p>Typical agency policies include the following:</p> <ul style="list-style-type: none"> <li>• Seriousness of felony;</li> <li>• Danger to self and others; and</li> <li>• Effects and capabilities of weapon.</li> </ul>
<b>FLEETING FELONS</b>	<p>Many law enforcement agencies have policies on firing at moving vehicles. The danger of ricocheting bullets and danger to people in the constantly changing background warrants these restrictions.</p>
<b>MOVING VEHICLES</b>	<p>Many law enforcement agencies have policies on firing at moving vehicles. The danger of ricocheting bullets and anger to people in the constantly changing background warrants these restrictions.</p>

07.03.03

### CONSIDERATIONS BEFORE USING LETHAL FORCE

As part of the mental process in preparing oneself to use lethal force, officers must consider several important aspects. These aspects must be considered before a situation requiring the use of lethal force arises.

TYPE OF CRIME  
THREAT TO LIFE  
IMMEDIACY OF THREAT  
LAW AND AGENCY POLICY

LOCATION AND BACKGROUND  
OFFICER'S PRESENT CAPABILITIES  
THREATENING WEAPON'S CAPABILITIES

	CRIMINAL	CIVIL	
STATE	SOME PENAL CODE SECTIONS  242 PC    245 PC 147 PC    149 PC 187 PC    192 PC 118 PC    236 PC	A CIVIL WRONG IS CALLED A <u>TORT</u> THE PLAINTIFFS ARE LOOKING FOR MONETARY COMPENSATION	A D M
FEDERAL	Usually filed under this section:  TITLE 42 SECTION 242 UNITED STATES CODE	Usually filed under this section:  TITLE 18 SECTION 1983 UNITED STATES CODE	I N

Every time a deputy uses force, the incident will probably be scrutinized by at least one of the following entities. Sometimes, two may get involved and on occasion, all three may get involved:

- a. Administratively
  - (1) By the Watch Commander, Captain, I.A.B., Executives
- b. State courts
  - (1) Criminally - 242 PC, 245 PC, 149 PC, 118 PC, 236 PC, etc.
  - (2) Civilly - tort (civil wrong), looking for monetary results.
- c. Federal courts
  - (1) Criminally - Title 42, Section 242, U.S. Code. Prohibits peace officers from depriving citizens of rights under the color of law.
  - (2) Civilly - Title 18, Section 1983, U.S. Code (\$\$\$). Prohibits peace officers from depriving citizens of rights under the color of authority.

## ANGER SCALE

1 to 4 (1 = low annoyance, 4= high annoyance)

1. You unpack your new stereo, plug it in, and discover tht it doesn't work.
2. Being overcharged by a mechanic for a flat tire when you are stranded.
3. Being singled out for correction, when the actions of others go unnoticed.
4. Going to the parking lot and finding a new scratch or dent in your car door.
5. You are talking to someone and they don't answer you.
6. Someone pretends to be something they are not.
7. While you struggle to carry fast food and drinks for four to your table, and someone bumps you and the drinks spill.
8. You clean the room and your roommate comes in throwing books and clothes on the beds and floor.
9. You are hounded by a salesperson from the moment that you walk into the store.
10. You have made arrangements to go somewhere with a person who backs out at the last minute, leaving you hanging.
11. Being joked about or teased.
12. Your car is stalled at a traffic light, and the guy behind you keeps honking his horn.
13. You accidently make the wrong kind of turn in a parking lot and someone yells, "Where did you learn to drive?"
14. Someone makes a mistake and blames it on you.
15. You are trying to concentrate, but a person nearby is tapping his foot.
16. You lend a tape to a friend and they damage or lose it.
17. You have had a busy day, and your roommate starts to complain about how you forgot to do something you agreed to.
18. You are trying to discuss something important with your significant other and you are not being given a chance to express your thoughts or feelings.
19. You are in a discussion with someone who persists in arguing about a topic they know very little about.
20. Someone sticks their nose into an argument between you and someone else.
21. You need to get somewhere quickly, but the car ahead of you is going 25 in a 40 mph zone, and you can't pass.

22. Stepping on a gob of chewing gum.
23. Being mocked by a small group of people as you pass them.
24. In a hurry to get somewhere, you tear a good pair of slacks on a sharp object.
25. You use your last bit of change on a phone call, but you are disconnected before you finish dialing, losing your money.

## SCORING

- 0 - 45 Remarkably low amount of anger and annoyance. Few in the population score this low. You are an elite.
- 46 - 55 Substantially more peaceful than average.
- 56 - 75 Average amount of anger in response to life's annoyances.
- 76 - 85 You frequently react in an angry way to life's annoyances. Substantially more irritable than average.
- 86 - 100 You are a true anger champion, plagued by frequent furious reactions that do not quickly disappear. You may experience tension headaches and elevated blood pressure. Your anger outbursts may often get out of control, getting you into trouble. Only a small percentage of the population get as angry as you.

ADDITIONAL REFERENCES

POST Video Catalog, Force, Weaponry and Defensive Tactics