

BASIC COURSE INSTRUCTOR UNIT GUIDE

20

USE OF FORCE

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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

The curricula contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

The training specifications referenced herein express the required minimum content of this domain.

UNIT GUIDE 20

TABLE OF CONTENTS

Learning Domain 20 Use of Force

	Page
Knowledge Domain 20 (POSTRAC)	
7.1.1 Training and Ability to Cope with Danger	1
7.1.2 Liability Associated with the Use of Force	5
7.2.1 Legal Framework for Using Reasonable Force	7
7.2.2 Use of Non-Lethal Force	11
7.3.1 Justifiable Homicide	13
7.3.2 Fear and the Use of Deadly Force	15
7.3.3 Factors to Consider when Using Deadly Force	17
7.3.4 Agency Policies on the Use of Deadly Force	19
7.3.5 Justified or Not Justified Deadly Force	21
7.19.3 Appropriate Use of Tear Gas	23
12.8.1 When to Use the Baton	25
Scenarios	
7.4.1 Acceptable Uses of Force	29
Supporting Materials and References	

Training and Ability to Cope with Danger

Given a direct question, the student will identify the following effects that training has on the psychological and physiological forces which affect a person threatened with danger:

- A. Confidence in one's abilities
- B. Development of instinctive reaction
- C. Mental alertness and concentration
- D. Self-control over emotions and body

Performance Objective 7.1.1

CURRICULUM

- A. Psychological and physiological aspects of the use of force
 - 1. The police role in physical arrest is essentially defensive.
 - a. 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."
 - b. 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.
 - c. Most of an officer's concerns grow out of the use of necessary force employed against a combative but unarmed law violator.
 - d. What is needed is a range of decision-making tools that permit the use of exactly that degree of control which constitutes necessary force.
 - 2. Concept of control
 - a. In all cases, control is that degree of influence the officer must exert over the violator to take the person safely into custody.
 - b. Control is a two-way street. Officers must be in complete control of themselves to be able to control a violator.
 - c. In fact, self-control alone will be one of the greatest assets in dealing with a law violator.
 - (1) Self-control is a result of the development of confidence in one's skills.
 - (2) Self-control comes through training and practice on and off the job.

- d. The objective in applying a control technique is to elicit cooperation from the violator.
- e. The application of a control hold may elicit a pain response from the person being controlled.
- f. Pain should not be applied for the sake of pain alone, but for control.
 - (1) The control techniques applied should be applied to the extent necessary to achieve control.
 - (2) As long as the individual complies to the control hold, the subject can find relief from the potential pain.
 - (3) If the individual resists or tries to move in a different direction, the control hold is maintained firmly, increasing pain potential.
 - (4) There is a world of difference between inflicting uncontrolled injury to a person without having a specific objective and inflicting a degree of controlled pain for a purpose. (key word-control).

3. Arrest is an emotional problem as well as a physical one

- a. Attitudes or prejudices can lead to conflict.
- b. Emotion is directly involved in the immediate response or reaction by the officer or the violator to the factors peculiar to an immediate encounter.
- c. The officer may have more direct and personal influence.
 - (1) That influence depends on past performance in area of assignment.
 - (2) An arrogant or insensitive officer, only invites emotional response from prejudices already created or perpetuated.
 - (3) A firm but fair, sincerely friendly and interested officer, when given the chance to be so, can reduce the problems and danger natural to physical arrest.
- d. Emotional response is often the direct result of uncertainty. Uncertainty is likely to result in compensating behavior. Compensating behavior takes one of the following forms:
 - (1) Hesitation
 - (2) Verbal abuse
 - (3) Bluff

(4) Unnecessary force

e. Thus, officer must learn to control personal emotions.

4. The mind and body are one

a. Physiologically, it is obvious that the mind and the body are one.

(1) Normal functioning of the human body depends upon complete cooperation between the brain and the rest of the body.

(2) The mind can only concentrate on one message at a time. Lack of concentration causes lag time which affects reaction time.

(3) 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 action.

b. Mental alertness comes through concentration.

c. Body movements must be controlled as well.

5. Psychology engendering weapons

a. Police officers must be prepared mentally for the use of weapons, or having weapons used against them. Officers must be prepared, based on training and experience, to react instantly to violent acts by persons who have little regard for the value of life.

(1) Through training and knowledge of the laws pertaining to handguns, shotguns, self-defense and batons, the officer attains:

- (a) Confidence
- (b) Instinctive reaction
- (c) Mental alertness
- (d) Control of emotions

(2) Lack of training results in:

- (a) Lack of confidence
- (b) Poor marksmanship
- (c) Panic and loss of control
- (d) Civil liability

b. Authority to use force.

(1) The Penal Code authorizes and defines the general tenants on the use of force.

- (2) The authority to use force is the most distinctive characteristic of policing; how a police department uses force affects its relationship with the community and its mission to provide humane, productive law enforcement.
- (3) An agency will control the use of force through clearly stated policies, training and exacting supervision.

c. Use of force

- (1) In every arrest situation the officer must be firm and be prepared to protect self and others within the provisions of the law and department policies.
 - (a) Only the force necessary to effect arrest can be used.
 - (b) Force must be controlled and used wisely with a lawful purpose.
- (2) The officer must consider the following factors when assessing the need to use force:
 - (a) Is the suspect submitting peacefully or resisting?
 - (b) Is the suspect armed?
 - (c) The nature and seriousness of the crime.
 - (d) Previous arrest record of suspect indicative of a pattern of violence.
 - (e) The number of suspects involved and the amount of support from other officers immediately available.
 - (f) Surrounding environmental condition.
 - (g) Danger to witnesses and bystanders.

Liability Associated with the Use of Force

Given a direct question, the student will identify the possible criminal and civil liabilities that are attached through the use of force in a law enforcement situation. These include:

- 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. Agency liability under the "master/servant" rule
- E. Agency liability under federal civil rights laws
- F. Agency liability under "failure to train" or "failure to supervise" tort theories

Performance Objective 7.1.2

CURRICULUM

- A. Liabilities involved in use of force.
 - 1. A police officer must be aware of the legal and moral aspects governing the use of weapons and use of force.
 - a. 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.
 - b. Society imposes a tremendous burden upon the officer when it grants, by legal statute, permission to use force that may take the life of human being "when necessary".
 - c. An officer must recognize that in the United States there is no greater value than that placed on human life.
 - 2. In enforcing the law and in the use of necessary force in effecting an arrest.
 - a. The moral implications of police actions must be considered with regard to the degree of punishment afforded in the statutes for the crime committed.
 - b. It is absolutely imperative that officers be well versed in the laws governing the use of "force", particularly "lethal force". Officer must also be proficient in the safe handling of firearms or other law enforcement weapons in applying force.
 - c. 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.
 - d. For the community's protection and the officer's protection

and peace of mind, they must become expert in the laws pertaining to the use of firearms and other law enforcement weapons required by the assignment.

3. Laws affecting the liability of an officer utilizing force.
 - a. Penal Code Section 835a

Right of arresting officer to use reasonable force, effects thereon of resistance by person arrested: retreat of officer not necessary.
 - b. Penal Code Section 149

Assaults by police officers under color of authority.
 - c. Penal Code Section 245

Assaults with a deadly weapon.
4. Police officers must answer for their actions in several 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, etc.
5. Police agencies must answer for their officers' actions in several ways.
 - a. Public reaction.
 - b. Agency liability under the "master/servant" rule.
 - c. Agency liability under federal civil right laws.
 - d. Agency liability under "failure to train" or "failure to supervise", tort theories.

Legal Framework for Using Reasonable Force

Given a direct question, the student will identify the following legal framework for an officer's use of reasonable force in making an arrest.

- A. An officer who has reasonable cause to believe that a person has committed a crime may use reasonable force to make an arrest (Penal Code Section 835a)
- B. An arrest is made by physically restraining the person to be arrested or by the arrested person submitting himself to the authority of the officer (Penal Code Section 835)
- C. The person being arrested may not use force or a weapon to resist the arrest. (Penal Code Section 834a)
- D. If an officer uses excessive force in making an arrest, the person being arrested may lawfully resist with enough force to resist the officer's excessive force
- E. In making an arrest, an officer need not retreat or desist in his efforts because of the resistance of the person being arrested (Penal Code Section 835a)

Performance Objective 7.2.1

CURRICULUM

- A. Understanding limitations of 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 reasonableness under the circumstances.
 - 3. Boundaries for reasonableness are clear in certain circumstances, but many others must be interpreted by the circumstances involved.
- B. Purpose of reasonable force decision
 - 1. Officers will constantly be faced with decisions as to when and when not to use force and to what degree.
 - a. Deadly force - use of weapons, shotgun-handgun.
 - b. Injuring force - baton, physical restraint holds.
 - c. Controlling force - physical control holds.
 - 2. When officers use force, the following purposes are involved:
 - a. Protection of life.
 - b. Enforce the law within its limits.
 - c. Overcome resistance.

3. When force is used, the following may result:

- a. Death,
- b. Injury, or
- c. Control of extraordinary situations.

C. Legal aspects of force - lecture

1. How an arrest is made and what restraint 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.
 - (1) Only reasonable force and no more.

2. Reasonable force to effect arrest/prevent escape is permissible (Penal Code Section 835a).

a. Right of arresting officer to use reasonable force.

(1) Any peace officer who has reasonable cause to believe that the person arrested has committed a public offense, may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

- (a) Force must be reasonable.
- (b) There must be resistance to the arrest.
- (c) There must be an attempt to escape.
- (d) To overcome resistance to the arrest.

(2) The peace officer shall not be deemed the aggressor if a person resists arrest.

(3) 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.

b. Peace officers do not lose their right to self-defense.

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

a. 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.

4. Quote directly from section:
 - a. Penal Code Section 835a - Right of arresting officer to use reasonable force.
 - b. Penal Code Section 843 - What force may be used to effect arrest under warrant.

5. Stimulate questions with the following statements:
 - a. Under Penal Code Section 835a, the use of reasonable force. (Cite examples and "What if" situations, then direct questions to students.)
 - b. Under Penal Code Section 843, the action taken must be reasonable.
 - c. The use of excessive force could result in a criminal action against an officer or at the very least, a civil action.

NOTE: The wording **MAY USE ALL NECESSARY MEANS TO EFFECT THE ARREST** is to many officers confusing and misleading. Cite examples and "What if" situations, then direct questions to students.

Use of Non-Lethal Force

Given a word picture depicting an arrest where deadly force is not necessary, the student will identify the amount of force that may be used. (Penal Code Sections 835a and 843)

Performance Objective 7.2.2

CURRICULUM

A. Peace officer liability

1. Discuss that an officer can be made to answer for every shot fired or physical force used.
 - 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," and the baton's blow.
 - b. Officers and their employer can face a civil action based on the premise that the officers lacked the necessary marksmanship ability, the weaponless defense techniques, and/or baton training.
2. Emphasize the need:
 - a. For marksmanship ability coupled with the ability to observe and think.
 - b. To practice weaponless defense.
 - c. To learn the most effective use of the baton.

B. Types of liability

1. Criminal liability
 - a. The distinction between criminal and civil liabilities are: The nature of the wrong complained of and nature of the penalties involved.
 - b. Defendant must answer to the state for criminal violations of the law, i.e., theft from property.
 - c. Penalty can be fine and/or imprisonment.
2. Civil liability (torts)
 - a. Defendant must answer the complaint that he violated some duty owed another person, i.e., violation of civil rights.
 - b. Penalty if held liable is remunerative redress for resulting damages and can be, under Title 42 U.S. Code, imprisonment and/or fine.

- c. 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.
 - d. 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.
- c. Mental conditioning
- 1. Emphasize the responsibility the officer has accepted in becoming an officer.
 - a. An oath has been taken to enforce the law, and as part of that sworn duty, the officer has been given the power to use force, and control another when necessary and reasonable.
 - b. The officer may have to make a decision and start motor mechanics of firing in a split second.
 - 2. The mind will have to rely on the knowledge it has stored to evaluate the situation and start the physical action.
 - a. Then in a fraction of a second, make the supreme decision to shoot, apply a control hold, or utilize your baton.
 - b. Or the officer may be involved in a S.W.A.T. situation where it may be necessary to take hours to make the final decision.
 - 3. Mental conditions evolves from excellent training. Peace officers must acquire and maintain:
 - a. Complete working knowledge of the law.
 - b. Expertise in the use of firearms.
 - c. Expertise in weaponless defense and baton use.
 - 4. Training is a personal responsibility as well as departmental. Officers must seek and obtain training throughout their entire career.

NOTE: Short discussion on vicarious liability and proximate cause might be used to point out both responsibilities.

Justifiable Homicide

Given a word picture depicting homicide by a public officer, the student will identify when the homicide is justifiable. (Penal Code Section 196)

Performance Objective 7.3.1

CURRICULUM

A. Decision to use deadly force

1. An officer must be prepared by training, mental alertness, emotional maturity, and understanding of legal and department policies to use the degree of force necessary to achieve the police mission.

B. Legal Aspects of Deadly Force

I. Quote directly from sections:

- a. Penal Code Section 196, Justifiable homicide by public officers
- b. Penal Code Section 197, Justifiable homicide by other persons
- c. Penal Code Section 198, Bare fear not to justify killing

2. Stimulate questions and open discussion to clarify any doubts in the officer's mind

- a. Emphasize: Doubt in an officer's mind can result in a moment of hesitation that could result in death or injury to the officer and to others.

3. 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, justifies a public officer where a death sentence is carried out under a valid warrant and in a lawful manner and will also justify a homicide resulting from the lawful carrying out of a valid judgment.
- b. When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty, justifies homicides committed by public officers in the lawful enforcement of their legal duties where the attempt to carry out such duties is met with such actual resistance that the homicide is necessarily committed.

But to justify a homicide under such circumstances, the killing must be actually necessary or must reasonably appear so and if the duty

could reasonably be performed without such killing, it would not be justified.

- 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 an officer is justified when making an arrest for a felony in using as much force to compel the submission to arrest as appear reasonably necessary to accomplish the arrest with safety to himself. (People vs. Brite, 9 Cal. 2d.666). If, viewed from the standpoint of the ordinary reasonable and prudent person, such extreme force was not reasonably necessary and the arrest could have been accomplished without it, the homicide is not justifiable. (People vs. Newsome, 51 Cal. App. 42).
 - d. In all cases, the following must be considered:
 - (1) The homicide must be necessarily committed;
 - (2) The burden of proof of the necessity is on the officer;
 - (3) The act must be that of a reasonable man;
 - (4) An escape does not occur until a prisoner has been arrested and booked or has been convicted in court;
 - (5) If a felony has been committed, the law does not require that the prisoner be arrested and booked or convicted.
 - e. While the law makes no distinction regarding the use of deadly force to prevent escape of suspected felon, in the case of non-violent felonies such as forgery or grand theft, a concern by the officer for human life and the safety of bystanders would preclude shooting the suspect, except in the most extreme emergency.
4. Penal Code Section 197 - Homicide is justifiable when committed by a person when:
- a. Preventing a murder or great bodily injury
 - b. Defense of home during riot
 - c. Apprehending a felon
 - d. Suppressing a riot
 - e. Protecting a person or family when death or great bodily injury is imminent.

Fear and the Use of Deadly Force

Given a direct question, the student will identify the following factors required to establish the "sufficiency of fear" requirement for the use of deadly force in a justifiable homicide. (Penal Code Section 198)

- A. Circumstances must be sufficient to excite the fears of a reasonable person
- B. Person acting must have acted under the influence of such fears alone
- C. To save self or another from death or great bodily harm

Performance Objective 7.3.2

CURRICULUM

- A. Penal Code Section 198 - Bare fear does not justify homicide
 - 1. Circumstances must be sufficient to excite the fears of a reasonable person
 - 2. Must act under influence of justified fear.
 - 3. To save self or another from death or great bodily harm.
- B. What is a reasonable and prudent man?
 - 1. Discuss individual opinions.

Factors to Consider when Using Deadly Force

Given a direct question, the student will identify the following factors which an officer should consider before using deadly force:

- A. The type of crime and suspect(s) involved
- B. The threat to the lives of other persons in the present situation and in future situations
- C. The surrounding environment, background, buildings or vehicles
- D. The legal basis and agency policy, if applicable
- E. The officer's present capabilities
- F. The suspect's capabilities, including potential use of weapons
- G. The immediacy of the threat

Performance Objective 7.3.3

CURRICULUM

A. Moral aspects

- 1. In the consideration of moral aspects of the force necessary to effect an arrest, officers should consider the following quote, "The good of the people is the chief law".
- 2. This statement should be weighed in the following circumstances:
 - a. Juvenile offenders
 - (1) Courts recognize that a juvenile cannot commit a crime
 - (2) Seriousness of the offense and danger to officer or citizens
 - (3) Community resentment
 - b. Fleeing felon
 - (1) Seriousness of felony
 - (2) Danger to officer and citizens
 - (3) Effects of weapons (shooting at vehicles)
 - (4) Department policy

B. Practical aspects

- 1. There are many circumstances in which officers fire their weapons unnecessarily, without considering the potential danger involved. These would include:
 - a. Warning shots

- b. **Stolen cars - Weapons generally are ineffective against moving vehicles**
 - c. **Injured animals**
 - (1) **Consider surrounding area**
 - (2) **Choose soft soil area or good background**
 - (3) **Consider flight of projectile**
 - d. **Panic shooting**
 - (1) **Do not shoot merely because another officer shoots.**
 - (2) **Control fire until a target is clear and are justified in shooting.**
2. **Court decisions - Use of force to effect an arrest**
- a. **Felony**
 - (1) **Kortum vs. Alkire, 138 Cal. Rprt. 26-1977 69 Cal. 3rd. 326-1977**
 - (2) **An officer may not use deadly force upon a fleeing felon unless the felony is violent or there is a reasonable belief of serious bodily harm.**
 - b. **Misdemeanor**
 - (1) **People v. Wilson, 36 Cal. App. 589**
 - (a) **When the arrest is for misdemeanor, the use of force to the extent of homicide is not justified.**
 - (b) **When violently assaulting a person with weapon likely to kill, it is presumed that the assailant intended to kill.**
 - (2) **People v. Lathrop, 49 Cal. 63**

It is the policy of the law that it is better to allow a misdemeanant to escape than to kill the individual.

Agency Policies on the Use of Deadly Force

Given a direct question, the student will identify the following issues commonly addressed by law enforcement agency policies regarding the use of deadly force.

- A. Defense of self or others when immediate threat to life or threat of great bodily injury exists
- B. Shooting at non-violent fleeing felons
- C. Warning shots
- D. Shooting at juveniles
- E. Shooting at or from moving vehicles

Performance Objective 7.3.4

CURRICULUM

- A. Common conditions found in agency policies on use of deadly force
 - 1. Defense of self or others when immediate threat to life or threat of great bodily injury exists
 - 2. Shooting at nonviolent fleeing felons
 - 3. Warning shots
 - 4. Shooting at juveniles
 - 5. Shooting at or from moving vehicles

Justified or Not Justified Deadly Force

Given a word picture depicting a situation where deadly force may be legally justified, the student will identify it as justified or not justified. (Penal Code Sections 835a and 843)

Performance Objective 7.3.5

CURRICULUM

- A. Considerations in "shoot" or "no shoot"
 - I. Purpose
 - a. Primary - The primary purpose of firearms in law enforcement is the protection of life.
 - (1) The officer
 - (2) Citizens
 - (3) Police firearms are defensive weapons
 - b. Secondary - A secondary purpose of firearms in law enforcement is to enforce the law within the limits of the law. Example: The apprehension of a dangerous felon.
 2. Assumptions - When an officer fires a weapon, the officer must assume the following:
 - a. Someone may be fatally wounded
 - b. If death or injury results, the act must be justified
 - (1) Necessarily committed
 - (2) The act of a reasonable man
 3. Legal aspects
 - a. Laws pertaining to police use of firearms
 4. Case law
 - a. Graham V. Ogden
 - b. Peer V. Newark
 - c. Wimberly V. Paterson
 - d. Davis V. Hellwig

5. California case law
6. Incidents that generate liability as negligence.

Appropriate Use of Tear Gas

Given a word picture depicting a situation that calls for the use of force, the student will identify if the use of tear gas would be appropriate.

Performance Objective 7.19.3

CURRICULUM

- A. Factors affecting use of chemical agents
 - 1. Situation
 - a. The situation has a major effect upon use of chemical agents.
 - b. You must determine what type of person you are dealing with.
 - c. You must determine if a single person or a crowd.
 - d. Is the person mentally ill, a criminal, militant?
 - e. Are there hostages, etc.?
 - 2. Hazards in using agent vs. what it can control:
 - a. Hazards of fire, property damage, injury and death.
 - b. Control a crowd, remove a barricaded suspect, etc.
 - 3. Environment
 - a. Enclosed - House and building, etc.
 - b. Outside area - Street, park, etc.
 - 4. Avenues of escape
 - 5. Preparedness and capabilities of control force.
- B. Ethical and procedural aspects:
 - 1. The moral aspects of tear gas.
 - a. Necessary force is that force required to prevent or control specific kinds of unlawful behavior.
 - b. In the use of chemical agents, excessive force is the use of quantities of chemical agents which exceed what is required for prevention or control into the area of punishment.

- (1) The courts established by our society are charged with punishment of those convicted of crimes.
 - (2) The police function is to protect the public and, when necessary, to apprehend those who commit crimes.
- c. The application of chemical agents in quantities which inflict more pain or discomfort than required to achieve the police function moves into the realm of punishment and is usually motivated consciously or subconsciously by the desire to punish.
- (1) This is morally wrong and could lead to civil and criminal liability, not to mention lending to claims of police brutality.
- d. Special consideration should be given prior to dispersing tear gas in close proximity to schools, hospitals, convalescent homes, and heavily traveled streets or freeways.

When to Use the Baton

Given a word picture depicting a situation where a police baton was used, the student will identify whether or not the use of the police baton was appropriate and/or justified.

Performance Objective 12.8.1

CURRICULUM

A. Legal aspects

1. The police baton is a deadly weapon as defined in Penal Code Section 12020.
2. Any officer who uses the baton against a person beyond reasonable force, can be charged with Penal Code Section 149 or Penal Code Section 245.
3. As a weapon, the baton can either be used defensively or offensively. In law enforcement, however, in order for it to be used in an authorized manner, it must be used defensively, that is, to repel or protect.
4. Use of the police baton is proper in lawful situations requiring a degree of force greater than that readily provided by weaponless control techniques, but less than that provided by resorting to the use of deadly weapons.
5. How an arrest is made and what restraint allowed (Penal Code Section 835)

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his/her arrest and detention. (Stats, 1957, Chap. 2147)

- a. When an officer is a member of a tactical squad in a crowd or riot control formation, the baton may be used to move, separate, disperse or deny a person access to a structure or through an area.
- b. When an officer is attacked by a suspect armed with a non-firearm type weapon, the officer may use the baton to disarm, distract, or disable the suspect, or to hold the suspect at bay until additional assistance arrives.
- c. When the officer is assaulted by an unarmed suspect, the baton can be used to disable the suspect; or to defend against an assault.

- d. When the officer is confronted by several suspects who are threatening the officer; the suspects are capable of carrying out the threats, and they make an overt act to carry out the threats, the officer may use the baton to fend off an attack or assault and make an arrest(s).
- e. When the officer is confronted by a suspect or suspects who he/she has reasonable cause to believe committed a crime, and the suspect or suspects refuse or fail to comply with the officer's direction prior to searching or handcuffing, the baton may be used to obtain compliance.
 - (1) The officer has the burden to justify the use of a baton by the totality of circumstances.
 - (2) Facts tending to justify the baton's use are:
 - (a) The physical stature of the suspect as compared to the officer.
 - (b) The need for immediate control of the suspect or situation due to a tactical consideration; the officer's perception of the suspect's knowledge or apparent knowledge of a martial art form; or assumes an aggressive stance; or the suspect's inability to be controlled by lesser means due to the influence of alcohol and/or drugs.

6. Reasonable force to effect arrest, prevent escape is permissible (Penal Code Section 835a)

Any peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Stats. 1957, Chap. 2147)

7. 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. (1872)

B. Rules

- 1. The baton should normally be positioned between you and the suspect.
- 2. If the baton is held in either the right or the left hand, a good defensive position should be maintained.
- 3. Do not intentionally use a baton to strike at the head or throat.

- a. Head is easiest part of the body for the suspect to defend.
 - (1) Suspect has hands and arms to defend against blow.
 - b. Easy for officer to lose control of baton to suspect.
 - c. If the head is struck, it could cause serious injury.
4. The baton should not be used to apply a choking technique.

SCENARIOS

Acceptable Uses of Force

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:

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

Performance Objective 7.4.1

CURRICULUM

- A. Legal aspects to remember in police work
 - 1. When an officer uses force, the following can result:
 - a. Death,
 - b. Injury,
 - c. Or control of the situation.
 - 2. Force in law enforcement is used for the following:
 - a. Protection of life.
 - b. Enforce the law within the "limits of the law."
 - 3. If force is used, the officer must be sure the act is justified:
 - a. Necessarily committed.
 - b. The act of a reasonable person.
 - c. Use of minimum force necessary to take suspect into custody.
- B. Roleplay instructions
 - 1. Admonition to roleplayers.
 - a. Play out the part as noted on the roleplaying sheet.
 - b. Don't overact.
 - c. If called to resist as part of the role, be aware that exceeding the roleplaying script could result in injury.
 - d. Use common sense; if things start to get carried away--relax and ask to stop the activity.

NOTE: Refer to POST Basic Course Scenario Manual for specific roleplaying guidelines.

2. Admonition to students.
 - a. Perform as you would in a real situation.
 - b. React according to the laws and procedures you have learned.
 - c. If the roleplaying suspect resists, use only that reasonable force for the situation, up to and including simulate deadly force.
 - d. Use common sense. If things get out of hand and suspect calls it off, back down immediately.
3. Admonition to observers, evaluators, referees.
 - a. Be prepared for situations that call for a resisting suspect - rating sheets, etc.
 - b. Keep the roleplayers in line, remind them about overreacting.
 - c. Use common sense. If things get out of hand and suspect calls it off or, if someone is liable to be injured, call off the action immediately.

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**

Case Law

California Case Law

Incidents that Generate Liability as Negligent

Effects of Force

CASE LAW

In Graham v. Ogden, 157 so.2d 365 (La. Ct. of App. 1966), the court held that a deputy sheriff was not liable for the death of a bystander, when the fatal shot was accidentally fired while attempting a lawful arrest for creating a disturbance in the deputy's presence. The evidence showed that the shot resulted from the offender's action in resisting the officer and his attempt to take the deputy's weapon from him.

In Peer v. Newark, 176A.2d 249 (N.J. Super, Ct. 1961), a Newark police officer in off-duty status removed his service revolver (work by regulations) in his bathroom and the weapon fired. The bullet pierced a six and one-half inch wall and struck a child in the adjoining apartment, paralyzing her for life. In a suit against the officer and the city, it was contended that the city was negligent in that (1) no instruction had been given to the officer in off-duty firearms safety; (2) the officer was using a dangerous holster which would allow the weapon to fall out; (3) no retraining had been given to the officer since the original three-day firearms class; and (4) he had not fired the weapon for over 16 months. The verdict was for the plaintiff.

Wimberly v. Paterson, 183 A. 2d 691 (N.J. Super. 1962). In Davis v. Hellwig, 122 A. 2d 497 (N.J. 1956), two police officers were instructed to pick up a 17-year-old boy as a parole violator and for questioning on suspicion if they saw him. The youth was on parole from a juvenile home but no complaint warrants or indictments were outstanding against him. They saw the boy at a basketball game and arrested him as a parole violator. The arrestee broke and ran from the officers who gave chase, firing warning shots during the pursuit. The subject ran into a long alley four feet wide. One of the officers fired another warning shot; it struck and killed the subject whose father sued the officers and the city. The court emphasized the general rule that shooting a fleeing misdemeanor is not justified. Thus, the officer would be liable if the jury found that the officer had fired at the deceased. The plaintiff also argued that the officer was negligent for firing a warning shot. The court noted a split of authority over the use of warning shots and held that the better rule is that an officer may discharge a firearm to frighten into halting anyone who is attempting to escape from a lawful arrest, but that the law imposes a duty to employ extraordinary care in firing warning shots. The officer who uses warning shots is held to a "duty of prevision not far from that of an insurer."

Davis v Hellwig, 122 A. 2d 497 (N.J. 1956), a policeman fired his gun at a thief running down a narrow street without making thorough observation for pedestrians beyond seeing that none were in his line of fire. A deflected bullet hit a pedestrian. Verdict entered for officer on basis of no cause of action. NJ Supreme Court reversed and held that conduct so far departed from the applicable standard of care which he should have exercised in the use of firearms that the pedestrian was entitled to have his action considered by a jury.

CALIFORNIA CASE LAW

California statutory law represents a codification of the common law felony-misdemeanor rule. The law states that homicide by a public officer is justified when necessarily committed in retaking escaping felons or arresting suspected felons (Cal. Penal Code Sec. 196 West 1069). Section 196 can be traced back to the Statutes of 1850 and was first enacted in 1872. No major revisions of the provision have occurred in the past 100 years.

Case law has upheld the common law felony-misdemeanor distinction. Generally, the use of deadly force for prevention of crime or to effect an arrest is limited to cases of felonies and not permissible in cases of misdemeanors (People v. Hughes, 49 Cal. Rptr. 767, 240 Cal. 2d 615 (1966)). However, the officer may, in effecting an arrest for a misdemeanor, justifiably kill in self-defense (People v. Wilson, 172 P. 116, 36 Cal. 598 1918). The rights of an officer to shoot in self-defense against an assault are the same as those of any private citizen (People v. Mallicoat, 149 P. 1000, 27 Cal. 355 1915).

Much of early California decisional law supported and justified police discretion in the use of deadly force. Two early cases presented factual situations where an officer saw the decedent running down a street at night with pursuers yelling, "Stop thief." In both cases, the officer was found to have had reasonable grounds to believe a felony had been committed and was thus justified in using deadly force to effect the arrest (People v. Kilvington, 37 P. 799, 104 Cal. 86 1894), and People v. Lillard, 123 P. 221, 18 Cal. 343 1912). Underlying these opinions is a presumption that the officer acting under authority of law will generally be justified in his decision to kill. Indeed, the court in People v. Mason explicitly stated that homicide necessarily or inadvertently committed by a public officer, while in the exercise of his authority or duty, is generally justifiable or excusable (165 P. 2d 481, 72 Cal. 2d 699).

The courts have attempted to provide some limitations on police use of deadly force. Although self-defense is accepted justification for use of deadly force, there must be a real and apparent necessity for resorting to such force, as a measure to ensure safety or protection (People v. Newsonce, 195 P. 938, 51 Cal. 42 1921). The officer has also been ordered to stop short of killing or seriously injuring the fleeing person, except in situations of self-defense (People v. Lathrop, 192 P. 722, 49 Cal. 63 1920).

A recent appellate level decision indicates a judicial preference for a restriction of the common law rule relating to police use of deadly force. Kortrum v. Alkire, prohibited the use of deadly force by police officers against a fleeing felony suspect unless the felony is of the violent variety (138 Cal. Rptr. 26, 69 Cal. 3d 326 1977). In essence, the court assumed that mere flight of a suspected felon did not by itself justify the use of deadly force.

Conclusion: California statutory and decisional law has followed the common law rule for the past 100 years. Recent appellate level decisions indicate a trend toward limiting the use of deadly force to situations where the officer or a third party is threatened physically by a dangerous felon.

Graham v. Ogden, 157 so. 2d 365 (La. Ct. of App. 1963) the court held that a deputy sheriff was not liable for the death of a bystander, when the fatal shot was accidentally fired while attempting a lawful arrest for creating a disturbance in the deputy's presence. The evidence showed that the shot resulted from the offender's action in resisting the officer and his attempt to take the deputy's weapon from him.

Peterson v. City of Long Beach, 72 CA 3rd 852 (1977). The victim of a burglary discovered his property at the apartment of the suspect. The police were called and units were dispatched to a "459 in progress." Upon their arrival, the officers observed the suspect climbing out a window and escaping over a balcony. The officer ordered the suspect to halt. When the suspect refused to stop, the officer shot and killed him. The suspect was unarmed and had made no movements which indicated he might have possessed a weapon. The officer later testified that he shot the suspect because the suspect was believed to be fleeing a felon.

The court ruled that the police officer used excessive force and was negligent as a matter of law when he shot the unarmed, escaping burglary suspect. The court held that since there was no evidence tending to show that the crime committed was one involving physical harm or the threat of physical harm to any person, the City of Long Beach was liable as a result of the officer's negligence. In holding that the officer was negligent, the court based its decision on the rationale of the Kortum case.

Grudt v. City of Los Angeles, 2 Cal. 3d 375, 86 Cal. Rptr. 465, 468 P. 825 (1970). Held that a department's written firearms policy as stated in the police tactical manual on the use of firearms was competent evidence relative to the question of due care and that the policy may be introduced into evidence in a wrongful death lawsuit and that police officers' deviation from that policy is evidence of negligence, even though the use of deadly force in this case was permitted under California Penal Code.

INCIDENTS THAT GENERATE LIABILITY AS NEGLIGENCE

Administrators may be charged vicariously for their subordinate's conduct where negligence can be shown. Civil lawsuits arising out of an officer's use of the firearm are not unusual. The officer's conduct must not fall below the standard established by law for the protection of others against unreasonable risk of harm. (Re-statement of Torts, Section 282). Type of training, quantity, type of weapon and ammunition used, re-qualification frequency, and scoring are all considered. Following are cases that demonstrate situations where courts have determined liability exists.

A. Failure to Train or Retrain

Officers and their employees may be held civilly and, in some cases, criminally liable for injuries occurring from the misuse of firearms.

1. Linda Peer v. City of Newark, 1960, 176 A 2d 249

A Newark, New Jersey police officer, off duty, removed his service revolver (required to be worn 24 hours-a-day by regulation) in his bathroom. The weapon fired, piercing a wall in the apartment house where he lived and striking a child in an adjoining apartment, paralyzing her for life. The city was held liable for negligence on the following basis.

- a. No instruction of officer in off-duty firearms safety;
- b. The officer was using a dangerous, department-issued holster, that would allow the weapon to fall out;
- c. No re-training had been given to the officer since the original three-day firearms class;
- d. The officer had not fired the weapon for more than 16 months.

2. Meistansky v. New York, 140 N.Y.S. 2d 212 (1955)

New York City police officer entered a store being robbed and announced himself. The officer fired six shots at close range at two bandits. Four shots struck the hostage, killing him. In a negligence action, the court held that the following facts constituted a prima facie case of negligence: (a) the officer had been given firearms training once every four months, firing ten rounds, slow fire, at a target 60 feet away; (b) his two scores were 65 and 62; and (c) there was no training in combat shooting.

Discussion: Training records, like personnel files, are subject to subpoena and therefore must be kept accurately and completely. One of the important considerations for accurate record keeping is protection for the department and the officer in the event of civil and/or criminal litigation. In the event lawsuits, accurate and

complete records of proper training also protect other department staff, including you the instructor, under the doctrine of vicarious liability.

Note: Be aware of the legal and practical aspects of firearms training.

B. Intentional Shootings - Intentional Torts

1. Self defense or defense of other - no liability.

Penal Code (P.C.) 196, Justifiable Homicide by Public Officers. Legal authority (refer to Penal Code). The distinction between justifiable force and excessive force is important.

2. Effecting an arrest.

- a. Kortum v. Alkire, 325 Cal. 3d 138

The court held that the use of deadly force by police officers is limited to violent felonies - those that threaten death or serious bodily harm.

Discussion: While the Penal Code allows a broad legal basis in felony cases for the use of deadly force, the courts have held that it is not sufficient to protect an officer and that officer's organization from civil liability. It indicated that departmental shooting regulations must limit the use of deadly force to prescribed circumstances.

Note: Hold "tailgate" or "roll call" sessions to discuss Penal Code violations that qualify as violent felonies.

- b. Peterson v. City of Long Beach, 24 Cal. 3d 238 (1979)

The court held that a violation of a department's manual guidelines concerning the use of firearms constitutes negligence as a matter of law and establishes a cause of action for the negligent use of deadly force by an officer.

Discussion: The conclusion by the court placed police officers in civil jeopardy on the basis of their violation of department manuals. This conclusion may subject the officer to liability without the agency's protection if anyone is injured due to such violations.

Note: For their own personal safety and legal standing, all employees should know and follow departmental manual guidelines as they direct the safety, maintenance, and enforcement aspects of job performance.

3. Innocent bystander injured.

Loaded firearms are regarded as dangerous instruments and a high degree of care and caution must be exercised in their use. Whether an officer will be held liable for the injury of an innocent third party will depend on whether the officer used care in the actions. The degree of care must be commensurate with the danger involved.

Davis v. Hellwig, 122 A 2d 497 (NJ (1956)
Askay v. Maloney, 166 Pac 29 (Ore 1917)

C. Negligent Handling of Firearms - Unintentional Shootings

1. Accidental discharge of a weapon.

Suits have arisen from unintentional shootings. Where there is no negligence, there will be no liability. However, where accidental discharge follows improper handling, improper procedures, or improper equipment, liability may attach.

Martin v. Charlotte, 270 S.O. 2d 252 (La Court of Appeals 1973)

Horseplay with a loaded revolver is particularly susceptible to a holding of negligence. The courts properly condemn it.

Trudg v. American Bonding Co. 107 P 2d 203 (Arizona)

Personal liability occurred for target practice in what appeared to be an unoccupied area but was not.

2. Controlling access to firearms.

A reasonable standard of care must be exercised, particularly with children.

3. Persons known to act in an unsafe manner.

Two officers were speed-drawing in the squad room. Their supervisor told them not to do this, but did not follow through with disciplinary action or documentation of any sort. A week later, one of the officers was again practicing speed-drawing when his weapon fired, injuring a bystander. The supervisor knew the officer acted in an unsafe manner and the supervisor was liable for not taking action.

D. Warning Shots

Departmental policy determines whether warning shots are permitted.

E. Negligent Supervision and Retention

1. Knowledge (known or should have known) of alcohol, drug, or mental problems of subordinates. Ignoring such problems could result in self-destruction by the subordinate, aggression toward others, and/or instability, including patterns of conduct leading to being "trigger happy."
2. Conduct or remarks of supervisor or training officer (even in jest) condoning unprofessional behavior can result in potential liability.
3. Fernelius v. Pierce, 21 Cal. 3d 12, 138 (1943)

The court held that a supervisor or manager may be held jointly liable with an employee for the employee's misconduct if the supervisor failed to properly supervise the employee.

Discussion: While not a new ruling, other more recent rulings have upheld and amplified this decision. The court has held that the law giving a supervisor the right to discipline an employee would be little more than a contribution to the ego of the supervisor if it did not place on the supervisor the duty of exercising that power in the protection of the public interest. This ruling has been extended to employee training matters also. If an agency has not properly trained an employee, and that lack of training results in injury to a member of the public, then the organization itself may be civilly liable.

Note: The above discussion re-emphasizes the importance of the role supervisors and managers play in employee training, and the need for effective supervision. Supervisors should assure that required qualifications in firearms, defensive tactics, defensive driving, first aid, etc., are maintained and that adequate records are kept on a current basis.

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

THE IMPORTANCE OF TRAINING

WITH TRAINING

Through training and a thorough knowledge of laws pertaining to firearms, self-defense and use of batons, officers attain:

CONFIDENCE IN THEIR ABILITIES

Confidence to apply control techniques and use firearms to overcome dangerous suspects.

TRAINED REACTIONS

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.

MENTAL ALERTNESS AND CONCENTRATION

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.

SELF CONTROL OVER EMOTIONS AND BODY

Physical control will increase self confidence and help develop emotional control.

Control of emotions will enhance mental as well as physical ability to act effectively.

WITHOUT TRAINING

On the other hand, without proper training, officers will suffer from:

LACK OF CONFIDENCE

This can seriously affect the ability to control physical and emotional reactions.

INCORRECT REACTIONS

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.

PANIC

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.

LIABILITY

An officer may face civil and criminal liability resulting from unnecessary injury or death.

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 officer's abilities. Officers acquire confidence by developing . . .

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

PHYSICAL CONTROL

Some suspects can only be controlled by using physical force, such as in the application of control holds.

**PAIN SHOULD NEVER BE APPLIED FOR THE SAKE OF PAIN ALONE,
BUT FOR CONTROL.**

- Control techniques are used to get the suspect to respond to officer commands.
- 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.

EMOTIONAL CONTROL

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.

Good attitudes can have a positive influence in calming a suspect and taking him or her safely into custody.

**FAIR, COOLHEADED BEHAVIOR
CAN SIGNIFICANTLY REDUCE
DANGER.**

Poor attitudes 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.

**ARROGANT, INSENSITIVE BEHAVIOR
INVITES
HOSTILITY AND DANGER.**

MIND AND BODY ARE ONE

CONTROL

To use proper control, your brain must cooperate with the rest of your body. Officers must stay mentally alert.

DISCIPLINE

Officers must discipline their minds to remain calm and flexible at all times. This will help gain control over mind and body.

ALERTNESS

Mental alertness comes through concentration and leads to proper control of body movements. It's important that officers don't let their minds wander.

CONCENTRATION

Concentrate on one objective. Lack of concentration leads to lag time and reduces reaction time. Concentration will help officers discipline their minds.

REASONABLE FORCE

PURPOSES OF FORCE

The purposes for using force are...

- Protection of life;
- Enforcement of law within its limits; and
- Need to overcome resistance or escape.

Using force against a person for reasons other than the above purposes would not be reasonable.

REASONABLENESS IS ALWAYS JUDGED BY THE CIRCUMSTANCES.

FACTORS USED IN DETERMINING REASONABLE FORCE

Officers should consider the following factors in using force when making an arrest:

- Whether or not the suspect is submitting peacefully. If the suspect submits without a struggle, any injuring or deadly force would be unreasonable.
- Whether or not the suspect is armed. This is an extremely important factor in the courts' determination of an officer's justification for using deadly force. If the suspect is unarmed, the officer usually cannot justify use of a firearm.
- The nature of the crime (violent or nonviolent). The courts will not tolerate the use of deadly force against a suspect who has committed a misdemeanor or a non-violent felony unless there is a definite threat to life.
- Previous arrest record and pattern of violence of suspect. The suspect's history of violence is a key factor in determining the seriousness of threat that faces the officer at the time of arrest.
- Number of suspects and amount of support from other officers. This factor will be used to determine if an officer could have used support to help with the arrest if the odds were heavily mounted against him or her.

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 suggests "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 not 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

When excessive force is used, an officer must answer for actions in several ways:

- Personal compensatory and punitive civil tort actions.
- Personal criminal actions for improper use of authority or force.
- Personal civil rights violations, both federal and state

TO THE AGENCY

A law enforcement agency must answer for an officer's actions in several ways:

- Agency liability under the "master/servant" rule.
- Agency liability under federal civil rights laws.
- Agency liability under "failure to train" or "failure to supervise" tort theories.

LIMITATIONS AND LIABILITY

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...

ONLY THE AMOUNT OF FORCE NECESSARY TO EFFECT THE ARREST

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 the use of deadly force, can result in officer and agency liability for...

CRIMINAL CHARGES and LAW SUITS

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...

SOME AGENCY IMPOSED LIMITATIONS

- Definitions of when and where deadly force may be used;
- Prohibitions on use of injuring force against restrained suspects;
- Shooting at nonviolent fleeing felons;
- Consideration of harm to innocent persons through the use of chemical agents (e.g., tear gas);
- Restrictions of firing weapons at or from moving vehicles;
- Shoot at juveniles; and
- Warning shots.

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. **IT IS THE INDIVIDUAL OFFICER'S RESPONSIBILITY AS A PEACE OFFICER TO KNOW AND ABIDE BY THE SPECIFIC AGENCY'S POLICIES.**

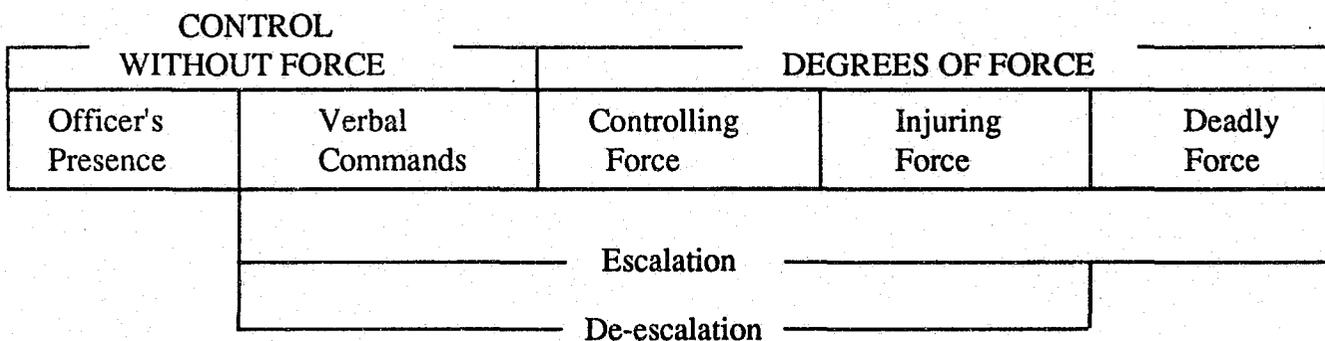
As you know, the officer and the agency can be held liable for the results of injury or death from use of force. Even though in some circumstances officers may be within the law to shoot, injure or physically control a suspect, they are responsible for the results and can still be held liable.

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.

USE OF REASONABLE FORCE

Remember that reasonable force is **ONLY THAT FORCE NECESSARY TO EFFECT THE ARREST, PREVENT ESCAPE, OR TO OVERCOME THE RESISTANCE OF A PERSON (P.C. 835a. 835).**

When a suspect resists arrest, the officer begins with the least amount of force and increases force until the suspect is brought safely into custody. Reasonable force increases by degrees as necessary. But as soon as the suspect submits, the force is reduced. Increasing and decreasing force as necessary is called escalation and de-escalation of force.



In addition to knowing when to escalate and de-escalate force, a peace officer must be able to identify the amount of force that may be used in each arrest. Use of an unreasonable amount of force may result in injury to the suspect and liability to the officer.

DEGREES OF CONTROL

OFFICER'S PRESENCE	<p>An officer's presence alone is a form of power and control. An officer's authority and uniform and/or marked vehicle are frequently enough to bring about order. For instance, when persons driving over the speed limit see a patrol car, they will usually reduce their speed immediately at the mere sight of the officer. In such situations, law violators are controlled without any need to use force.</p>
VERBAL COMMANDS	<p>Verbal commands are usually the first action the officer will take. Giving commands will often be sufficient to bring a suspect into custody. If a suspect appears violent, when possible, the officer should give verbal warnings before resorting to any greater force.</p> <p>If the suspect submits to verbal commands, never use physical force beyond this point. Any further force would be unreasonable.</p>
CONTROLLING FORCE	<p>Controlling force is usually the minimal amount of physical force needed to control a suspect who will not submit to verbal commands. This level of force involves the application of pain without injury. Special control techniques are used to encourage a suspect to go in the direction desired. Examples of these techniques include:</p> <ul style="list-style-type: none"> · Twistlock to control and direct the suspect; and · Rear wristlock for handcuffing.
INJURING FORCE	<p>Injuring force usually involves the use of the baton and special defense tactics. This force would only be used to overcome suspects who fail to submit to non-injuring control techniques. Examples of injuring techniques include:</p> <ul style="list-style-type: none"> · Striking joints and muscles with the baton; and · Hair pull or crossface takedowns to prone control.
DEADLY FORCE	<p>Deadly force usually involves the use of firearms. This is the highest degree of force and should only be used in situations where there is an obvious threat to life. These situations include...</p> <p style="text-align: center;">THREAT TO OFFICER'S LIFE;</p> <p style="text-align: center;">THREAT TO ANOTHER PERSON'S LIFE;</p> <p style="text-align: center;">or</p> <p style="text-align: center;">THREAT OF GREAT BODILY INJURY</p> <p>Deadly force is really in a different category than controlling force or injuring force because, when the officer must use a firearm or other weapon, the probable outcome is serious injury or death.</p> <p>Also, in certain lifethreatening situations, officers may not have time to escalate force, but must be prepared (through proper training) to make a split second decision to use the firearm or other weapon.</p>

OFFICERS CAN BE HELD LIABLE FOR CERTAIN USES OF FORCE IF THEY

LACK THE PROPER TRAINING IN . . .

- MARKSMANSHIP;
- DEFENSE TECHNIQUES;
- USE OF BATON; OR

USE UNREASONABLE FORCE UNDER THE CIRCUMSTANCES

DEADLY FORCE

The most dangerous situations an officer will face as a peace officer are those that require use of deadly force. Officers have to be prepared for those situations, and always know that a split second decision may result in serious injury or death.

- . Officers must have proper training in the operation and safety of all firearms that may be used.
- . Officers must be prepared mentally to use issued weapons and to respond instantly to weapons used against them or others.
- . Officers must acquire a thorough knowledge of the laws and agency policies pertaining to the use of deadly force.

DEADLY FORCE

KEY PHRASES

It is important to remember and understand some key phrases in California law relating to homicide or use of deadly 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 (P.C. 196)

WHEN JUSTIFIABLE

According to the Penal Code and applicable case law, homicide by a peace officer is legally justified in the following circumstances:

• *When under court orders to carry out a death sentence.*

If officers are under the orders of a competent court to participate in capital punishment, the officers would be committing a legal execution and could not be held responsible or be prosecuted.

• *When acting in the course of duty.*

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.

• *When retaking escaping felons.*

This applies to situations where it would be necessary for the officer to use deadly force against a felon escaping from a correctional institution or capturing a fleeing felon who presents a threat to life.

• *When arresting a felon who resists to the point where deadly force is reasonable.*

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.

WHEN NOT JUSTIFIABLE

Homicide by an officer is not legally justified under these circumstances:

• *When pursuing nonviolent felons.*

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.

• *When arresting or pursuing a felon who does not present a threat to life.*

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.

• *When arresting or pursuing a misdemeanor.*

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.

OTHER JUSTIFICATIONS FOR HOMICIDE

In addition to the special justifications for homicide by a peace officer, there are also certain justifications for homicide by ANY PERSON. These justifications and their limitations must be understood in order to appreciate the courts' treatment of deadly force used by peace officers.

HOMICIDE BY ANY PERSON

HOMICIDE BY ANY PERSON (P.C. 197) is justifiable when:

- Resisting any attempt to murder any person, or to do some great bodily injury upon any person;
- In defense of habitation, property, or person against a person who manifestly intends or endeavors in a violent, riotous or tumultuous manner, to enter the habitation of another for purpose of offering violence to any person therein;
- Apprehending a felon;

NOTE: Case law decisions make the use of deadly force applicable only when the fleeing felon poses a realistic threat to life.

- Lawfully suppressing a riot; or
- Protecting a person or family when death or great bodily injury is imminent.

...BUT BARE FEAR IS NOT ENOUGH!

According to the law, "bare fear" does not justify the use of deadly force. That is, when committing homicide to prevent the crimes listed above, bare fear of the commission of these crimes is not sufficient to justify the homicide. The circumstances must be sufficient to excite the fears of a reasonable person and the person committing the homicide must have acted under the influence of such fears alone in order to justify the homicide.

AGENCY POLICIES ON USING FIREARMS

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

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

DEFENSE OF SELF OR OTHERS	<p>Many agencies have policies that specify when it is appropriate or inappropriate to fire a weapon in defense of self or others.</p> <p>Typical agency policies include the following:</p> <ul style="list-style-type: none"> · Do not shoot merely because another officer shoots. · Control fire until justified in shooting · Have reasonable belief that threat to life is present in the situation.
WARNING SHOTS	<p>Many agencies prohibit the firing of warning shots. Warning shots can be dangerous because of the misdirected bullet.</p>
FLEEING FELONS	<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"> · Seriousness of felony; · Danger to self and others; and · Effects and capabilities of weapon.
MOVING VEHICLES	<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>

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CONSIDERATIONS BEFORE USING DEADLY FORCE

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

TYPE OF CRIME

LOCATION AND BACKGROUND

THREAT TO LIFE

OFFICER'S PRESENT CAPABILITIES

IMMEDIACY OF THREAT

THREATENING WEAPON'S CAPABILITIES

LAW AND AGENCY POLICY

ADDITIONAL REFERENCES

"Federal Civil Rights Act Criminal Liability for Peace Officers",
Title 18, Section 241. AG Series, Attorney General Series,
Sacramento, California

POST Video Catalog, Force, Weaponry and Defensive Tactics