

## **POST PERISHABLE SKILLS PROGRAM (PSP)**

### **V – USE OF FORCE/DE-ESCALATION**

(Sergeant Marcus Terry and Officer Noel Prado)

CCN: \_\_\_\_\_ | POST Certification II | Reimbursement Plan \_\_\_ | 4 hours

#### **COURSE GOAL:**

The course will provide the student with the minimum topics of Use of Force required in the POST Perishable Skills Training Program (PSP). The intent of the course is to improve the student's knowledge of use of force laws and policies as well as critical decision-making skills. The course consists of facilitated discussion, case study analysis, and scenarios for in-service personnel.

**The training will be presented in an 4-hour format allowing for flexibility based upon specific agency or trainee group needs, as long as the minimum topics are contained within each format independently.**

#### **USE OF FORCE**

##### **Minimum Topics/Exercises:**

- a. Statutory Law
- b. Case Law
- c. Agency Policies
- d. Reverence for Human Life
- e. De-Escalation
- f. Duty to Intercede
- g. Rendering First-Aid
- h. Class Exercises/Student Evaluations/Testing

#### **COURSE OBJECTIVES:**

The student will:

1. Demonstrate knowledge of use of force laws.
2. Demonstrate knowledge of individual agency's use of force policies.
3. Demonstrate an understanding of force options decision-making with every technique and exercise, to include:
  - A. Reverence for Human Life
  - B. De-Escalation and Verbal Commands
  - C. Rendering First-Aid
  - D. Legal Duty to Intercede and Report Excessive Force to a Superior Officer

***Minimum standards of performance shall be tested by an instructor observing the trainee during their participation in facilitated discussions, case study analysis, and scenarios. If the trainee does not meet minimum standards, as established by the presenter, remediation will be provided until the standard is met.***

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#### I. INTRODUCTION/ORIENTATION

##### A. Introduction, Registration and Orientation

1. Instructor/student introductions
2. Registration/rosters

##### B. Course Goals and Objectives

1. Increase knowledge of use of force laws
2. Increase knowledge of individual agency's use of force policies
3. Increase understanding of force options decision-making

#### II. POLICIES AND LEGAL ISSUES

##### A. Statutory Law

##### 1. Key Elements of Assembly Bill (AB) 392

###### a. Two measures for reasonableness

- 1) Reasonable force
- 2) Perspective of a reasonable officer

###### b. To effect arrest, prevent escape, overcome resistance

###### c. Significant change in use of force threshold per AB 392

- 1) Subsections (b) and (c)(1) of PC 835a provide for a clear distinction between objectively reasonable and deadly force standards
- 2) While objectively reasonable force may be utilized "to prevent escape, or to overcome resistance" to effect a lawful arrest, as soon as the circumstances reach a threshold for deadly force the standard increases to "necessary."

##### 2. Key Elements of Penal Code (PC) Section 196 – Justifiable Homicide

###### a. Definition revised to rely more heavily on PC 835a – deadly force can only be used when necessary

###### b. "Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:" [PC 196]

- 1) "In obedience to any judgment of a competent court order." [PC 196(a)]
- 2) "When the homicide results from a peace officer's use of force that complies with Penal Code Section 835a." [PC 196(b)]

###### c. What changed?

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- 3) Removed “When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty”
- 4) Removed “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.”

3. Key Elements of Penal Code Section 835a

- a. “The Legislature finds and declares”: [*PC 835a(a)*]
  - 1) “The authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and the sanctity of every human life.”
  - 2) “The Legislature finds and declares that every person has a right to be free from excessive use of force by peace officers acting under the color of law.” [*PC 835a(a)(1)*]
- b. “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” [*PC 835a(a)(2)*]
- c. “That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.” [*PC 835a(a)(3)*]
- d. That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” [*PC 835a(a)(4)*]
- e. “That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in

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between one-third and one-half of all fatal encounters with law enforcement.” [PC 835a(a)(5)]

- f. “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” [PC 835a(5)(b)]
- g. “Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is **necessary** (emphasis added) for either of the following reasons:” [PC 835a(c)(1)]
  - 1) “To defend against an imminent threat of death or serious bodily injury to the officer or another person.” [PC 835a(c)(1)(A)]
  - 2) “To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.
    - a) Where feasible, a peace officer shall, before the use of force, make reasonable efforts to identify themselves as a peace officer and
    - b) Warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.” [PC 835a(c)(1)(B)]
- i. “A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.” [PC 835a(C)(2)]
- j. “A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, ‘retreat’ does not mean tactical repositioning or other de-escalation tactics.” [PC 835a(d)]

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k. “For purposes of this section, the following definitions apply:” [PC 835a(e)]

1) “‘Deadly force’ means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.” [PC 835a(e)(1)]

2) “A threat of death or serious bodily injury is ‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” [PC 835a(e)(2)]

l. “‘Totality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” [PC 835a(e)(3)]

1) Officers should be prepared to articulate what actions were taken and why

2) Officers should be prepared to articulate what actions were *not* taken and why they were not taken

#### 4. Senate Bill 230

a. Discuss your agencies’ current use of force policy

b. Does it accurately reflect the requirements of SB 230

1) De-escalation, crisis intervention, other alternatives to force

2) Objective reasonableness

3) Required reporting of potential excessive force to superior officer

4) Guidelines regarding situations in which officer may or may not draw or point a firearm

c. Consideration of surroundings and potential risks to bystanders before discharging firearm

d. Procedures for disclosing public records

e. Procedures for filing, investigation, and reporting of citizen complaints regarding UoF incidents

f. Duty to intercede

g. Guidelines regarding methods and devices available for application of force

h. Requirement that officers carry out duties in fair and unbiased manner

i. Guidelines for application of deadly force

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- j. Requirements for internal reporting and notification of UoF incidents, including to DOJ
  - k. Role of supervisors in review of UoF incidents
  - l. Prompt provision or procurement of medical assistance for injured parties, when necessary
  - m. Training to demonstrate knowledge and understanding of UoF policy
  - n. Training and guidelines regarding vulnerable populations such as children, elderly, people with disabilities, etc.
  - o. Guidelines for discharge of a firearm at or from a moving vehicle
  - p. Factors for evaluating and reviewing all UoF incidents
  - q. Minimum training regarding UoF policy
  - r. Regular review and updating of UoF policy
  - s. UoF policy available to the public
5. Pending legislation
- B. Case Law**
- 1. Foundational case law
    - a. Graham v. Connor
    - b. Tennessee v. Garner
    - c. Hayes v. County of San Diego
  - 2. Pending cases
  - 3. Peace officers must understand that the landmark cases of Graham v. Connor, Tennessee v. Garner, and Hayes v. County of San Diego are foundational and have historical and legal significance on the application of law. However PC 835a creates a higher standard for the application of deadly force in California.
- C. Agency’s Use of Force Policy** **V(c)**
- 1. Agency’s existing policy
  - 2. How has the policy changed in recent years?
  - 3. How does this affect how officers do the job?
  - 4. Officer’s responsibility to notify supervisor following use of force
  - 5. Supervisor’s responsibility following a notification
- II. REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE** **V(d, f)**
- A. Reverence for Human Life**
- 1. What does “reverence for human life” mean?
  - 2. How is this applied to the use of force?
  - 3. Behavior health issues and mental disabilities
- B. Duty to Intercede** [*Penal Code 13519.10(b)(2), Penal Code 7286(b)(8)*]
- 1. What is a “duty to intercede?”

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- a. Bystander officer liability
  - b. What is the stigma around this?
  - c. How do we break the stigma?
  - d. How does this reflect your personal and organizational core values?
2. What is your responsibility as a peace officer to intervene?
    - a. To the public?
    - b. To fellow officer(s)?
    - c. To self?
    - d. To organization?
  3. What are the consequences and liabilities?
    - a. Criminal
    - b. Civil
    - c. Administrative
    - d. Moral/ethical
  4. How do you recognize when to intercede?
  5. Agency's policy on duty to intercede
    - a. What is your responsibility to report to a supervisor?
    - b. Has the policy changed in recent years?
    - c. What is the policy on retaliation?

**C. Rendering First-Aid**

**V(g)**

1. What is your responsibility to render first-aid?
2. How does one deem when it is safe to render first-aid?
3. Discuss agency policy regarding handcuffing techniques when rendering aid to subjects who are severely injured or possibly deceased
4. Agency's policy on rendering first-aid

**III. DE-ESCALATION AND VERBAL COMMANDS**

**V(e)**

**A. De-Escalation**

1. What is it?
2. How is it used?
3. What are the key components and considerations?

**B. Interpersonal Communications - Verbal Communications versus Verbal Commands**

1. How does verbal communication fit in as a force option?
2. How is it used as a tool for de-escalation?
3. How might either verbal communication or commands affect the outcome of a situation?

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C. Control the Environment

1. Tactical pause
2. Tactical repositioning
3. Slow down
4. Gather information
5. Develop a plan
6. Time + Distance = Options

D. Making Sound Decisions

1. What is important right now?
2. Set priorities
3. Think through your choices
4. Make sound decisions

**IV. CLASS EXERCISES AND STUDENT EVALUATIONS/TESTING**

**V(h)**

A. Practice engaging in potential use of force situations via active process

1. Individual or small group case study review
2. Discussion of case studies
3. Participation in role play scenarios
4. Observation of role play scenarios
5. Debrief of role play scenarios using the following lenses:
  - a. Department policy/legal standards – Articulation of use of deadly force v. non-deadly force (necessity v. objective reasonableness)
  - b. Procedural Justice – How did the response demonstrate procedural justice?
  - c. Tactics

B. Evaluation of potential use of force situations via demonstration

1. Evaluate role play scenarios
2. Feedback from peers
3. Feedback and debrief from instructors using the following lenses:
  - a. Department policy/legal standards – Articulation of use of deadly force v. non-deadly force (necessity v. objective reasonableness)
  - b. Procedural Justice – How did the response demonstrate procedural justice?
  - c. Tactics



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#### **Recommended Topics for Learning Activities, Facilitated Discussions, and Scenarios**

- Traffic Stop
- Pedestrian Stop
- Consensual Encounter
- Disruptive/Defiant Student
- Fight in progress/Public Disturbance
- Fleeing suspect (foot & vehicle)
- Creating your own exigency
- Excessive/Potentially Excessive Force (Duty to Intercede)
- Unnecessary Force (Duty to Intercede)
- Crowd Management/Crowd Control
- Mental Health Crisis
- Person(s) with disability
  - o Autism
  - o Hearing Impaired
  - o Non-verbal
  - o Amputee
  - o Wheelchair
  - o Other disability not listed
  
- Alleged suspicious person(s)
- Alleged Shoplift
- Domestic Violence
- Language/Culture barriers
- Implicit/Explicit bias
  - o Officer bias
  - o Community bias
  - o Organizational bias
  
- Articulation and Report Writing
  - o Review of Body Worn Camera or In Car Camera video
  
- Courtroom testimony