

POST PERISHABLE SKILLS PROGRAM (PSP)
V – USE OF FORCE
BEAR VALLEY POLICE DEPARTMENT - 1198
CCN: 29580 | POST Certification II | Reimbursement Plan IV | 4 hours

COURSE GOAL:

The course will provide the trainee with the minimum topics of Use of Force (UOF) required in the POST Perishable Skills Training Program (PSP). The intent of the course is to improve the trainee's knowledge of UOF 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.

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/trainee evaluations/testing

Course Objectives:

The trainee will:

- a. Demonstrate knowledge of UOF laws
- b. Demonstrate knowledge of individual agency's UOF policies
- c. Demonstrate an understanding of force options decision-making with every technique and exercise, to include:
 1. Reverence for human life
 2. De-escalation and verbal commands
 3. Rendering first-aid
 4. 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/trainee introductions
2. Registration/rosters

B. Course goals and objectives

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

II. POLICIES AND LEGAL ISSUES

A. Statutory law

V(a)

1. **Assembly Bill (AB) 392** – key elements:

- a. Two measures of reasonableness
 - 1) Reasonable force
 - 2) Perspective of a reasonable officer
- b. To effect the arrest, to prevent escape, or to overcome resistance
- c. Significant change in UOF threshold per AB 392
 - 1) Subsections (b) and (c)(1) of Penal Code (PC) 835a provide for a clear distinction between objectively reasonable and deadly force standards
 - 2) While objectively reasonable force may be utilized “to effect the arrest, to prevent escape, or to overcome resistance”, as soon as the circumstances reach a threshold for deadly force, the standard increases to “necessary”.

2. **Penal Code 196** “*Justifiable Homicide*” – key elements:

- 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...”
- c. What changed?
 - 1) **REMOVED**: “When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty.”
 - 2) **REMOVED**: “When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily

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committed in arresting persons charged with felony and who are fleeing from justice or resisting such arrest.”

3. **Penal Code 835a** “*Use of Force*” – key elements:

a. “The Legislature finds and declares...” – *PC 835a(a)*

- 1) “The authority to use physical force... is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and sanctity of every human life.”
- 2) “... every person has a right to be free from excessive UOF by peace officers acting under the color of law.”
- 3) “the decision... 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 UOF...”
- 4) “... evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances (TOC)... rather than with the benefit of hindsight... shall account for occasions when officers may be forced to make quick judgments...”
- 5) “That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force... their disability may affect their ability to understand or comply with commands...”

b. Authority to use “objectively reasonable force” – *PC 835a(b)*

c. Authority to use “deadly force” – *PC 835a(c)(1)*

- 1) “... officer reasonably believes, based on the TOC, that such force is necessary for either of the following reasons:”
 - A) “To defend against an imminent threat of death or serious bodily injury (SBI)...”
 - B) “To apprehend a fleeing person for any felony that threatened or resulted in death or SBI, if the officer reasonably believes that the person will cause death or SBI... Where feasible... make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used...”
 - 2) “... shall not use deadly force against a person based on the danger that person poses to themselves...”
- d. “A peace officer... need not retreat or desist from their efforts... A peace officer shall not be deemed an aggressor or lose the right to self-defense...retreat does not mean tactical repositioning...”

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- e. Definitions:
 - 1) “Deadly Force”
 - 2) “Imminent”
 - 3) “Totality of circumstances”
- 4. **Senate Bill (SB) 230** – key elements:
 - a. Agency requirements for their UOF policy
 - 1) De-escalation techniques
 - 2) Alternatives when feasible
 - 3) Guidelines for deadly force
 - 4) Agency review of UOF incidents
 - b. Agency UOF policy requirement to be made “publicly accessible”
 - c. CA-POST requirements to LEO/Agency “regular and periodic training”
 - d. “The Legislature finds and declares...” – *SB 230, Section 1.*
 - 1) “The highest priority... safeguarding life, dignity, and liberty of all persons, without prejudice to anyone.”
 - 2) Guiding principle: “Reverence for human life... consider tactics and techniques that may persuade the suspect to voluntarily comply...”
 - 3) “The authority to use force is a serious responsibility... with respect for human rights, dignity, and life.”
 - 4) “... to establish minimum standard for policies and reporting procedures regarding... UOF.”
 - 5) “... officers are expected to exercise sound judgement and critical decision making when using force options.”
 - 6) “... agency’s UOF policies and training may be introduced as evidence... may be considered as a factor in the TOC in determining whether the officer acted reasonably...”
 - 7) “Every instance in which a firearm is discharged... shall be reviewed...”
 - e. Definitions:
 - 1) “Excessive Force”
 - 2) “Feasible”
 - 3) “Intercede”
 - f. **Government Code (GC) 7286(b)** – agency UOF policy requirements:
 - 1) “.... officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives...when feasible.”

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- 2) "... officer may only use a level of force that they reasonably believe is proportional..."
- 3) "... officers immediately report potential excessive force..."
- 4) "A prohibition on retaliation against an officer who reports a suspected violation..."
- 5) "...guidelines regarding situations in which officers may or may not draw a firearm or point a firearm..."
- 6) "A requirement that officers consider their surroundings... before discharging a firearm."
- 7) "... disclosing public records in accordance with Section 832.7."
- 8) "Procedures for... citizen complaints regarding UOF incidents."
- 9) "A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary..."
- 10) "Comprehensive and specific guidelines regarding approved methods and devices available for the application of force."
- 11) "... officers carry out duties... in a manner that is fair and unbiased".
- 12) "Comprehensive and specific guidelines for the application of deadly force."
- 13) "... prompt internal reporting and notification regarding a UOF incident, including... to the DOJ..."
- 14) "The role of supervisors in the review of UOF applications."
- 15) "A requirement to promptly provide... medical assistance... when reasonable and safe to do so."
- 16) "Training standards and requirements... to demonstrate knowledge and understanding of the... agency's UOF policy..."
- 17) "Training and guidelines regarding vulnerable populations..."
- 18) "Procedures to prohibit an officer from training others for a period of at least three years from the date that an abuse of force complaint against the officer is substantiated."
- 19) "... an officer that has received all required training on the requirement to intercede and fails to act... be disciplined up to and including in the same manner as the officer that committed the excessive force."
- 20) "Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted."

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21)“Factors for evaluating and reviewing all UOF incidents.”

22)“Minimum training... to meet the objectives in the UOF policy.”

23)“... regular review and updating of the policy to reflect developing practices and procedures.”

5. Pending legislation

B. Case law

V(b)

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 UOF policy

V(c)

1. Discuss your agencies' existing UOF policy

a. How has the policy changed in recent years?

b. How do the changes effect how officers do the job?

c. Does it accurately reflect the requirements of SB 230?

1) Training

2) Officer's responsibility to notify following a UOF

3) Supervisor's responsibility following a notification

d. How do your agencies' policy define force?

e. Is drawing or pointing a firearm a UOF according to your agencies' UOF policy?

f. Does your agencies' UOF policy allow force to be used during incidents involving an uncooperative 5150 subject?

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- III. REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE
- A. Reverence for human life **V(d)**
 - 1. What does “reverence for human life” mean?
 - 2. How is this applied to the UOF?
 - B. Duty to intercede (PC 13519.10(b)(2), GC 7286(b)(8)(9)) **V(f)**
 - 1. What is a “duty to intercede?”
 - 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 values?
 - 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
- IV. 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 skills
 - 1. Effective communications versus verbal commands
 - a. Barriers to communication
 - b. Emotional intelligence
 - 2. How can both forms of communication be used as a tool for de-escalation?
 - 3. How might either affect the outcome of a situation?
 - 4. Person’s with disabilities
 - a. Cognitive disabilities
 - 1) Various forms
 - 2) Recognition
 - 3) Slow down
 - 4) Limit physical contact when feasible
 - 5) Provide options

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- 6) Resources available
- b. Physical impairments/disabilities
 - 1) Various forms
 - 2) Inability to follow commands
 - 3) Be flexible
- 5. Understand various cognitive biases and how they can influence outcomes in a UOF
 - a. Implicit bias
 - b. Confirmation bias
 - c. Anchoring bias
 - d. Hindsight bias
 - e. Overconfidence bias
 - f. Misinformation bias
 - g. Pluralistic bias
- 6. Are officers required to give verbal announcements prior to a UOF?
- C. Fear and anger management in a UOF
 - 1. Factors that affect an officer's response during a UOF
 - a. Attitude or prejudices
 - b. Emotional state
 - c. Insensitivity or arrogance
 - d. Sincere or courteous behavior
 - e. Life experience, past performance, training, and outcomes
 - 2. Self-control
 - a. Professional demeanor
 - b. Unprofessional demeanor
 - 3. Emotional responses
 - a. Fear of a perceived threat
 - b. Anger from perceived opposition
 - c. How does fear and anger affect the officer's ability to make judgements and decisions?
 - 1) Hesitation
 - 2) Communication
 - 3) Reasonableness of force used
 - d. Physiological reactions to fear
 - 1) Blood vessel dilation and increased heart rate
 - 2) Vision and hearing become more acute/focused
 - 3) Increased muscle tension/perspiration
 - 4) Elevated pain thresholds

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- 5) Time distortion
 - 6) Color distortion
 - 7) Impaired fine motor skills
 - e. Recognizing anger
 - 1) Understanding individual's triggers
 - 2) Acceptable versus unacceptable anger
 - 3) How does anger affect an officer's performance
 - A) Enhanced abilities
 - B) Decreased abilities
 - 4) Managing/mitigating anger
 - A) Not internalizing what is not in your control
 - B) Understanding personal triggers
 - C) Recognizing the onset
 - D. Control the environment
 - 1. Tactical pause
 - 2. Tactical repositioning
 - 3. Slow down
 - 4. Gather information
 - 5. Develop a plan
 - 6. Time + Distance = Options
 - E. Making sound decisions
 - 1. What is important right now?
 - 2. Set priorities
 - 3. Think through your choices
 - 4. Make sound decisions
- V. CLASS EXERCISES AND STUDENT EVALUATIONS/TESTING
- A. Practice engaging in potential UOF situations via active process **V(h)**
 - 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. Departmental policy/legal standards – Articulation of use of deadly force versus non-deadly force (necessity versus objective reasonableness)

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- b. Procedural justice – How did the response demonstrate procedural justice?
 - c. Tactics
 - B. Evaluation of potential UOF 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 versus non-deadly force (necessity versus 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:

- a. Traffic stop
- b. Pedestrian stop
- c. Consensual encounter
- d. Disruptive/defiant student
- e. Fight in progress/public disturbance
- f. Fleeing suspect (foot, vehicle, etc.)
- g. Creating your own exigency
- h. Excessive/potentially excessive force (duty to intercede)
- i. Unnecessary force (duty to intercede)
- j. Crowd management/control
- k. Mental health crisis
- l. Person(s) with disability
 - Autism
 - Hearing impaired
 - Non-verbal
 - Amputee
 - Wheelchair
 - Other disability not listed
- m. Alleged suspicious person(s)
- n. Alleged shoplifter
- o. Domestic violence
- p. Language/cultural barriers
- q. Implicit/explicit bias
 - Officer bias
 - Community bias
 - Organizational bias
- r. Articulation and report writing
 - Review of body worn camera and/or in-car camera video(s)
- s. Courtroom testimony