

# USE OF FORCE



# STATEMENT OF PURPOSE AND COURSE OBJECTIVES:

This 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.





# 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 Exercise



# COURSE OBJECTIVES:

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





# 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



# POLICIES AND LEGAL ISSUES:

## A. Statutory Law

### 1. Existing law

- a. AB 392 – Emphasize the importance of “necessity”
  - 1) “...it is the intent of the Legislature that peace officers use deadly force only when necessary, in defense of human life.”
  - 2) “In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”





# POLICIES AND LEGAL ISSUES (cont.):

- b. AB 392 - Emphasize the change in 835a that adds “totality of circumstances” and how it can affect the reasonableness of force that is used
  - 1. PC 835a
    - a) Objectively reasonable standard - and how it has been defined in 835a
    - b) Fleeing felons
    - c) Suicidal persons
    - d) Pre-force tactics and conduct of officer/suspect
    - e) The difference in imminent and immediate threat
      - 1) Penal Code defines “Imminent” threat
      - 2) When a reasonable officer would perceive a present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury. Imminent harm is not merely a fear of future harm.



# 835a PC – CURRENT STATUE

**835a(b) PC:** 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.

**835a(d) PC:** 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 to effect the arrest or to prevent escape or to overcome resistance.





# GRAVITY, PERSPECTIVE, AND EVALUATION OF ALTERNATIVES TO THE USE OF FORCE

## **835a(a) PC:**

(1) The Legislature finds and declares all of the following:

- Peace officers must understand that the authority to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights, and dignity and the sanctity of every human life.
- Every person has a right to be free from excessive force by peace officers acting under the color of law.

(2) Peace Officers use deadly force when necessary in defense of human life:

- Peace officers shall evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques (De-Escalation/Less-Lethal) if reasonably safe and feasible to an objectively reasonable officer.
- The standard changed with the addition of the word “objectively” reasonable officer.



# GRAVITY, PERSPECTIVE, AND EVALUATION OF ALTERNATIVES TO THE USE OF FORCE (cont.)

## **835a(a) PC (cont.):**

(3) 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.

(4) The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation.

- Based on the totality of the circumstances known to or perceived by the officer at the time.
- Without the benefit of hindsight.
- The totality of the circumstances shall account for occasions when officers may be forced to make quick judgements about using force.





# GRAVITY, PERSPECTIVE, AND EVALUATION OF ALTERNATIVES TO THE USE OF FORCE (cont.)

## **835a(a) PC (cont.):**

(5) Peace officers must understand that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions

- One's disability may affect their ability to understand or comply with commands from peace officers
- Estimates show that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement
- Individuals may be impaired by the use, misuse, or discontinued use of medications or controlled substances that create further disruptions to compliance
- An individual's disability(ies) may impair the ability to understand and comply with a peace officer's commands



# DEADLY FORCE

**835a(c)(1):** 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 for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or to another person.
- 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.
- Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.





# SUICIDAL SUBJECTS

**835a(c)(2) PC:** 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.



# KEY TERMS

**835a(e) PC:** For purposes of this section, the following definitions shall apply:

- **“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.
- 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.
- **“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.

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# POLICIES AND LEGAL ISSUES:

## 2) PC 196 (Justifiable Homicide):

- a. 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:
  - 1) In obedience to any judgment of a competent court
  - 2) When the homicide results from a peace officer's use of force in compliance with Section 835a
- b. What's 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 committed in arresting persons charged with felony and who are fleeing from justice or resisting such arrest"



# POLICIES AND LEGAL ISSUES (cont.):

SB 230 incorporates the best practices already proven by other cities and states to be effective in reducing serious use-of-force incidents — making it the most comprehensive legislation dealing with use-of-force policies and training in the country. SB 230 will proactively and effectively result in better public safety outcomes for everyone because it will:

- Require that every California law enforcement officer receive the most robust training in the nation strictly designed to minimize the use of force.
- Set specific policy requirements on de-escalation, an officer's duty to intercede, rendering medical aid, proportional use of force, interacting with vulnerable populations and more.
- Specify that use-of-force policies and training may be considered in legal proceedings.
- Increase transparency by setting forth detailed, standardized requirements for reporting all instances when force is used in our communities.





# POLICIES AND LEGAL ISSUES (cont.):

## B. Case Law

### 1. Foundational cases

- a. Graham v. Connor (Objectively Reasonable Standard)
- b. Tennessee v. Garner (Fleeing Felon)
- c. Hayes v. City of San Diego (Pre-Tactics Consideration)



# POLICIES AND LEGAL ISSUES (cont.):

## C. Agency's Use of Force Policy

1. Agency's existing policy (Policy Handout)
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

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# REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE:

## A. Reverence for Human Life

1. What does “reverence for human life” mean?
2. How is this applied to the use of force?

## B. Duty to Intercede (*Penal Code 13519.10(b)(2)*, *Penal Code 7286(b)(8)*)

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 core values?

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## REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE (cont.):

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





## REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE (cont.):

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?



# REVERENCE FOR HUMAN LIFE AND DUTY TO INTERCEDE (cont.):

## C. Rendering First-Aid

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

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# DE-ESCALATION AND VERBAL COMMANDS:

## A. De-Escalation

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

## B. 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?



# DE-ESCALATION AND VERBAL COMMANDS (cont.):

## C. Control the Environment

1. Tactical pause
2. Slow down
3. Gather information
4. Develop a plan
5. 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

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# EVALUATING USE OF FORCE

Evaluate use of force incidents by using the following lenses:

1. Department policy / legal standards

2. Procedural Justice

The four central features of Procedural Justice include:

- a. Whether they were treated with **dignity and respect**
- b. Whether they were given **voice**
- c. Whether the decision-maker was **neutral and transparent**
- d. Whether the decision-maker conveyed **trustworthy** motives

3. Tactics

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# CLASS EXERCISE

Charlotte County, Florida — On Wednesday, October 23, 2024, at 12:15 p.m., Charlotte County Sheriff's dispatch received a call regarding a disturbance in the 2200 block of Sandy Pine Drive in unincorporated Punta Gorda, FL. The owner of the property, 42-year-old Elroy Clarke, called to report a tenant on his property was acting erratically. Two deputies arrived at the property and made contact with Clarke. During the incident, Clarke was found to have misdemeanor warrant for trespassing (failure to appear).

Following the use of force, deputies provided medical aid, including the use of CPR, until the arrival of Charlotte County Fire Paramedics. Clarke was pronounced deceased at the scene. One deputy suffered a head injury during the altercation with Clarke. He was treated and released from the hospital. No uninvolved people were injured in this incident.

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## CLASS EXERCISE (cont.):

In three (3) groups, discuss this use of force incident and present your discussion findings using the following lenses:

1. Group #1: Department policy / legal standards
2. Group #2: Procedural Justice
  - a. Whether they were treated with **dignity and respect**
  - b. Whether they were given **voice**
  - c. Whether the decision-maker was **neutral and transparent**
  - d. Whether the decision-maker conveyed **trustworthy** motives
3. Group #3: Tactics

