

SECTION **4**
Use of Force

4.1 – 4.2 **COMPETENCY REQUIREMENTS**

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SECTION 4 USE OF FORCE

Phase 1 Phase 2 Phase 3 Phase 4 Phase 5

Trainee _____ FTO _____

4.1 LEGAL AND ETHICAL ISSUES

4.1.01 Legal and Ethical Considerations
 The trainee shall review and discuss the legal and ethical considerations pertaining to the use of force and “reasonable force.”

Reference(s): Penal Code 835, 835a, 843, 198

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Comments:

Incident #: _____
 Case Report #: _____
 (If applicable)

4.1.01 Additional References / Agency-Specific Information: SLTPD Manual section 300

Reasonable force is a legal term for how much and what kind of force an officer may use in a given circumstance. California Penal Code §835a provides the authority for an officer to use reasonable force to effect an arrest, prevent escape or overcome resistance. In 1989, the United States Supreme Court applied an objective standard to a force situation and further established how reasonable force must be judged objectively. This is the Graham v. Connor case (490 U.S. 386, 109 S.Ct. 1865 (1989)). The Court’s analysis began by considering the subject’s Fourth Amendment right to remain free from any unreasonable seizure against the government’s interest in maintaining order through effective law enforcement.

The Court noted that determining objective reasonableness for the use of force must be fact specific, and established four components for determining reasonableness. The reasonableness of a particular use of force must be:

1. Judged from the perspective of a reasonable law enforcement officer.

2. Examined through the eyes of a officer on scene at the time the force was applied, not the 20/20 vision of hindsight.
3. Based on facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation.
4. Based on knowledge that the officer acted properly under the established law at the time.

Officers will constantly be faced with decisions of when to use force and to what degree it should be applied. The totality of the circumstances must be evaluated from the perspective of the officer at the scene. Reasonable force must be based on the facts and circumstances known to the officer at the time the force was used.

The Court noted that “the amount of force necessary for the situation is determined by the objective reasonableness as judged by a reasonable officer given the officer's training and experience.” A reasonable officer is defined as an officer with similar training, experience and background in a similar set of circumstances who will react in a similar manner.

Community members want their officers to possess the skills necessary to subdue violent and dangerous subjects. They also want officers to use these skills to apply only the amount of force that is reasonable to affect an arrest, to overcome resistance or to prevent escape. Force should never be used to punish subjects. In the American criminal justice system, punishment in the form of judgments is the sole responsibility of the courts.

The objective for the use of force by officers in any situation is to ultimately gain or maintain control of an individual and the situation. Control, as it relates to defensive tactics, means maintaining composure to make sound judgments and decisions.

The Court noted that the certain facts should be considered, but not limited to, gauging the reasonableness of the amount of force used. These factors include the severity of the crime, the nature and extent of the threat posed by the subject, the degree to which the subject resists arrest or detention, and any attempts by the subject to evade arrest by flight.

The reasonable officer standard asks would another officer with like or similar training and experience facing like or similar circumstances act in the same way or use similar judgment? Officers should be familiar with this standard.

Sworn employees are permitted to use whatever force is reasonable and necessary under the circumstances. Each situation is unique. The SLTPD relies on the sworn employee's judgment and discretion to employ an objectively reasonable level of force under each unique circumstance. Sworn employees need not retreat or desist in the reasonable use of force. There is no requirement that sworn employees use a less intrusive force option before progressing to a more intrusive one, as long as the force option used is objectively reasonable under the known totality of the circumstance at that time. When confronted by force or resistance, a sworn employee may use an objectively reasonable higher level of force to overcome that resistance. .

Sworn employees may use reasonable physical force in the performance of their duties to effect an arrest, prevent escape, prevent or stop an assault, in self-defense or in the defense of another person, to prevent an individual from harming himself/herself, to make an individual(s) comply with a lawful order, to quell a jail disturbance, to effect crowd control, and/or any other situation where reasonable physical force is necessary. .

Sworn employees use of reasonable force, on-duty, is governed by SLTPD Man 300: Use of Force policy. Sworn employees using reasonable force are accountable for its use. Justification for the use of force is limited to what is reasonably known or perceived by the sworn employee at the time. If

extenuating circumstances occur that are not contemplated by the use of force policy, sworn employees may use reasonable force to protect themselves and/or other individuals

Additionally, physical force may be used to overcome the physical resistance to a lawful order by a peace officer until that resistance stops or is overcome and/or where necessary to accomplish a legitimate task. When an employee is required to use considerable force, he/she shall immediately notify a supervisor, or if not practical, contact the supervisor as soon as the incident has been concluded. Deadly force shall only be used in compliance with SLTPD policy.

- §835 PC: 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 arrest and detention.
- §835a PC: Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his 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 right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.
- §843 PC: 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.
- §198 PC: A bare fear of the commission of any of the offenses mentioned in subdivisions 2 and 3 of Section 197, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

Officers need to understand and contemplate the legal and ethical considerations regarding the use of force and what is reasonable. The preceding information is intended as a guide in assisting officers in understanding how reasonable force is determined.

4.1.02 Agency Policy and Liability								
The trainee shall explain agency policy regarding the use of physical force or deadly force, and the legal ramifications and civil liability for both the officer and the agency.								
Reference(s):								
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4.1.02 Additional References / Agency-Specific Information: SLTPD Manual section 300

The use of force policy for the South Lake Tahoe Police Department is “that the use of physical force shall be restricted to circumstances authorized by law and to the degree reasonable necessary to accomplish a sworn employee’s lawful task.” Sworn employees are permitted to use whatever force is reasonable and necessary under the circumstances. Sworn employees are not required to engage in hand-to-hand combat before resorting to the use of force that will bring a situation under control. Sworn employees have a number of force options available for use in those situations where force is reasonably necessary. Sworn employees may use firearms in the performance of his/her duties.

Physical force may be used to overcome the physical resistance to a lawful order by a peace officer until that resistance stops or is overcome and/or where necessary to accomplish a legitimate task. When an employee is required to use considerable force, he/she shall immediately notify a supervisor, or if not practical, contact the supervisor as soon as the incident has been concluded. Deadly force shall only be used in compliance with SLTPD policy;

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- 1 The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- 2 The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

Sworn employees shall document use of force as outlined in the SLTPD Incident Report Policy Sworn employees shall document use of force (SLTPD 300.5)

Although statutory law and case law have provided a foundation for the use of force by an officer, the most detailed considerations and regulations are established by the Department’s use of force policy. Officers shall be familiar with the limitations set forth by the use of force policy as the policy provides reasonable guidelines for officers to protect themselves and the Department from criminal and civil liability. Failure to follow the use of force policy can result in lawsuits, investigations (internal and external), and imposition of a consent decree imposed by the United States Department of Justice.

4.1.03 Justification of Deadly Force								
The trainee shall identify and evaluate situations that do and do not justify the use of deadly force.								
Reference(s): Penal Codes 196, 198, 835a, 843								
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						Case Report #: _____ (If applicable)		

4.1.03 Additional References / Agency-Specific Information: SLTPD Manual section 300.5

Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

- 1 The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
- 2 The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

4.2 FORCE OPTIONS

4.2.01 Explanation of Force Options and Examples

The trainee shall explain what is meant by ‘force options’ and provide examples of each that would fall within legal and moral limits, to minimally include:

- A. Nonverbal/police presence
- B. Verbal (tactical communication)
- C. Physical (weaponless)
- D. Less lethal weapons, including:
 - 1. Chemical Agents
The trainee shall explain the regulations governing the use of chemical agents, including the follow-up procedures for those to whom they have been applied, and the reporting procedures in cases where they were used.
 - 2. Impact Weapons
 - a. The trainee shall know when and how to effectively use the police baton and other impact weapons in an authorized manner.
 - b. The trainee shall identify the areas of the body recognized as baton/impact weapon “target” areas.
 - c. The trainee shall identify those vital body areas that are potentially lethal when struck by a baton/impact weapon.
- 3. Additional Less-Lethal Weapons
The trainee shall identify additional agency-approved less-lethal weapons (e.g., Stun guns, TASER®, PepperBall®, and/or bean bag weapons, etc.)
- E. Deadly force
The trainee shall explain considerations to be made when determining whether or not to resort to the use of deadly force. These considerations shall minimally include:
 - 1. Type of crime and suspects(s) involved
 - 2. Threat to the lives of innocent persons
 - 3. Laws and agency policies
 - 4. Officer’s present capabilities
- F. Capabilities of officer’s weapon

Reference(s):

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4.2.01 Additional References / Agency-Specific Information: SLTPD Manual section 300

Force options are choices available to officers in order to overcome resistance, effect arrest, prevent escape or gain control of the situation. The force options are as follows and more than one option may be used at the same time: (the force options are listed alphabetically)

- command presence
- distraction device(s)
- distraction strike
- ECD - TASER
- firearms
- impact weapons
- individual aerosol dispenser - chemical agents
- personal body weapons
- physical control techniques,
- projectile impact weapon (e.g. Bean Bag)
- protective hood
- shields
- verbal commands

The objective for the use of force by officers is to gain and maintain control of an individual and the situation. Officers are required to use the type of force which is reasonable under the circumstances, use only the amount of force reasonable to overcome resistance and to gain or maintain control of a subject, and to conform to Department policy and federal and state law.

The amount of force applied shall not exceed what is reasonable to overcome the subject's resistance to gain or maintain control of the subject. Each officer must rely on their judgment to employ objectively reasonable force for that specific situation.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer, examined through the eyes of a officer on the scene at the time the force was applied, not the 20/20 vision of hindsight, based on facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation, and based on the knowledge that the officer acted properly under the established law at the time.