

**The Bill Blackwood
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A Need to Mandate More Firearms Training



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ABSTRACT

Establishing the need to mandate more firearms training is relevant to contemporary law enforcement because this state does not require mandatory firearms training and due to the number of law enforcement officers being killed in the line of duty on an annual basis. Mandating more firearms training for officers is necessary for the safety and protection of officers and citizens alike and will also serve as a means of reducing civil liability for both officers and agencies. The position of the researcher is that many agencies, both large and small, should offer or mandate firearms training to their officers on a more continual basis. The types of information used to support the researcher's position are training manuals, policy manuals, journals, Federal Bureau of Investigation Crime Statistics, electronic newspapers, electronic magazine articles, and books. In an effort to better protect the lives of officers and civilians, better prepare officers for deadly force encounters, and to limit the amount of civil liability on the agency and officers, more continual firearms training should be implemented.

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INTRODUCTION

Since 1791, 21,016 American police officers have died in the line of duty. Of those, 1,778 of those deaths occurred in the State of Texas (ODMP, 2012). About 50% of all law enforcement officers killed in the line of duty are shot to death (Van Zandt, 2011). With these statistics, it stands to reason that each year, several officers within the United States will be confronted with a deadly force encounter involving a firearm. The outcome of those encounters often times depends on the amount of training the officer has received. As more and more firearm related encounters occur between officers and suspects, the need for continuous officer firearms training becomes more important every day.

In most cases, firearms training is the closest thing to a real life experience an officer will receive up until the time they are actually involved in a deadly force encounter with a firearm. This research will show that continuous training will better prepare those officers for deadly force encounters, possibly leading to a reduction in firearms related deaths. Continued training will also reduce the amount of civil liability on both the officer and the agency, while offering a higher level of protection to those citizens throughout state, county, or municipality in which that officer serves.

The position of this research is that there is a need for firearms training to be either offered or mandated on a more continuous basis. Many agencies today, especially smaller agencies, incorporate firearms training and firearms qualification together as one. Doing this often times leads to officers just qualifying with their firearm instead of actually training. The City of Henderson police department requires their officers to train and qualify on a semi-annual basis with firearms; however, according to

the Henderson Police Department Policy and Procedure Manual, qualification normally runs in conjunction with training (City of Henderson, 2009). Once an officer fails to qualify, remedial training would be implemented in an effort to sharpen their skills and help them pass the state mandated qualification. There have also been past court decisions, such as *Popow vs. City of Margate (1979)*, that requires officers be continually trained with their firearms. These decisions were made by the courts after agencies were sued for incidents resulting in injury or death to civilians and the plaintiffs cited a common-law negligence or a violation of civil rights as the basis for their suit. The intended audience for this research is the administration of all interested agencies small and large, police firearms instructors, and law enforcement officers. This research concluded that many agencies, both large and small, should offer or mandate firearms training to their officers on a more continual basis.

POSITION

Firearms training conducted on a more continual basis could lead to a greater chance of survival for those officers involved in deadly force encounters and reduce the chance of innocent bystanders being struck on accident. In the State of Texas, there is no required amount of in-service firearms training for police, so the amount of firearms training officers receive is left up to each individual agency. It stands to reason the more training officers receive, the better prepared they will be when confronted with a deadly force situation. From 2008 to 2011, the law enforcement community has seen an increase in officer firearm related deaths. Most of those deaths were due to firearms related encounters with suspects. In 2011, five officer deaths also occurred from accidents involving a firearm (ODMP, 2011). Training is defined by the Merriam-

Webster Learner's Dictionary as a process by which someone is taught the skills that are needed for an art, profession, or job (Merriam-Webster). In law enforcement, this means not only being proficient with a firearm, but also being able to utilize it in a safe and effective manner regardless of environmental conditions. Since law enforcement officers in the field are faced with many different obstacles and elements when coming into contact with suspects, the training received must be realistic to the environment the officers' work in.

In the court case of *Popow vs. City of Margate (1979)*, the justices ruled firearms training must be given on a continual basis which should include moving targets, low light shooting, training for shooting in residential neighborhoods, or simulations training that teaches the practical application of deadly force decision making (*Popow vs. Margate, 1979*). This ruling came after a police officer, who was in a foot pursuit with a person he believed to be a kidnapper, fired shots at the possible suspect in a residential neighborhood. Popow, who lived in the neighborhood, stepped out of his residence to find out the source of the noise; at that time, he was struck and killed by one of the officer's shots. Although the Justices do not give a definition or set a standard for what a continual basis means, it is difficult to imagine training twice a year would be sufficient.

The FBI previously conducted interviews on 50 officers and 43 offenders. Of those 50 officers interviewed, all officers combined practiced an average of 14 hours per year, averaging 2.5 training sessions per year. Eighty-one percent of the offenders interviewed practiced on a regular basis that averaged about 23 practice sessions per year, per offender (Pinizzotto, Davis, & Miller, 2006). Grossi (2011) conducted a poll

during a use-of-force class he was teaching to Florida officers from six different agencies. In this poll the question was asked how many of the officers trained more than twice a year and no one responded. When asked how many officers train or qualify with their duty guns once a year, everyone responded to the affirmative. With suspects engaging in firearms training more than officers, this should definitely raise awareness of the need for officers to train on a more continual basis. Many officers today are either issued or choose to carry semi-automatic pistols as their preferred side arm. The skills to master the semi-automatic pistol under high stress conditions require more and more frequent fine tuning than those old revolvers, so cutting back training to twice a year is probably not a good idea (Grossi, 2010).

Training with firearms on a continual basis can also reduce the amount of civil liability placed on officers, agencies, and firearms instructors. Any time firearms are used in the line of duty, the likelihood of someone being killed or injured is very real. The amount of training an officer received prior to a deadly force encounter involving a firearm could mean the difference between winning and losing a lawsuit, which is almost certain to be filed after the incident. The *City of Canton Ohio vs. Harris Supreme Court (1989)*, ruling is a case that shows the need for continual training in the use of firearms. In this ruling the Supreme Court ruled a municipalities training may subject that municipality to *42 U.S.C., Section 1983* liability when it is deliberately indifferent to the rights of the city's inhabitants and causes injury to the plaintiff (Firearms training related case law, 2000). The *42 U. S. C. section 1983* statute protects the deprivation of rights by any person acting under color of state law and is often used in suit when a failure to train situation arises (*42 U.S.C Sec. 1983*).

Continually training officers in the use of their firearms, the agencies use of force policies, and having documentation on hand to prove the training took place is of the utmost importance in the protection against civil suits. As found in Hill (2003), agencies spend billions each year in civil liability cases. Even in the case of an officer being not billed by a Grand Jury, the largest sums of financial settlements are made in police involved shootings. The Firearms Instructor Certification training manual provides suggestions on how Firearms Instructors can protect themselves, their agency, and officers from being found negligent when it comes to firearms training. Keeping good records, evaluating students, keeping records of test along with the student's performance are just a few ways to avoid liability (East Texas Police Academy, 2010). By providing realistic training scenarios and documenting all training instructed, police agencies along with their Instructors and officers will be able to serve the public while limiting the amount of civil liability they might otherwise incur. The type and amount of firearms training conducted is very important. Grossi (2011) added that most of the legal professionals he has spoken to advised training one or two times a year is not sufficient for the purposes of agencies and officers avoiding liability.

Ostro (2010) stated, "Second to the brain, the firearm is the law enforcement officer's most important tool. So why do we give it barely adequate and only rudimentary training" (para. 1). Firearms training conducted on a continual basis also serves in keeping officers better prepared for those deadly force encounters. Many aspects of an officer using a firearm require the use of psychomotor skills.

Psychomotor is defined as muscular activity associated with mental process (free dictionary.com). Psychomotor Skills are skills in which the processes involved are

primarily muscular. A few of these tasks include drawing a firearm from its holster, pulling the trigger, reloading and manipulating the firearm from one hand to the other when necessary. Grossi (2011) suggested without constant reinforcement and training with a firearm, the retention of psychomotor skills needed to effectively use that firearm will deteriorate. Grossi (2011) also recommended officers train with their handgun at least four times per year.

According to the Uniform Crime Report, agencies reported 53,469 officers assaulted in 2010. Out of those 53,469 officers, 14.1% of the officers were injured with knives or cutting instruments, 11.6% were injured while being attacked with a firearm, and 23.4% were injured by other types of dangerous weapons. Sixty-nine percent of these officers worked in one man patrol units (CJIS, 2010). Although officer assaults were down slightly in 2010 from 2009, gunfire related deaths of officers have been on the rise since 2009. Veit (2009) examined the average hit ratio of New York City Officers involved in gunfights between 1998 and 2006. Between the dates examined, officers were found to have hit the suspect 18% of the time with four out of five shots missing their intended target. Realistic training conducted on a continual basis is the only way to remain prepared for that dreadful moment and increase the ability to hit the mark when it occurs.

COUNTER POSITION

Even though many agencies would probably like to conduct more firearms training, things like budget constraints often get in the way. Grossi (2010) pointed out that most all firearms instructors have felt the limitations budget cuts place on their department, but the truth is the people in charge of the money actually determine how

much training can be done. Wilson (2011) pointed out extreme budget cuts to firearms training for the City of Hamilton, Ohio. In an interview with Brian Buchanan, Hamilton's Range Master and Firearms Instructor, Wilson (2011) found due to the current wars ammunition prices have risen 15% to 30% a year. Despite the rising cost of ammunition, Hamilton's ammunition budget was slashed in 2008 from \$65,000 to \$15,000 per year. Budget cuts of this type have a direct impact on the amount of firearms training that can be accomplished.

Because of budget cuts some smaller agencies have not only been forced to reduce training, they have been forced to close down their entire police department. Tarlow (2011) pointed out because of the recession and budgetary woes, the City of Alto, Texas had to furlough its entire police department for a period of up to six months. With these types of situations occurring, continual firearms' training is stopped completely. Other agencies have been able to leave portions of their budget the same but have not been able to allow for the rising cost in items such as ammunition for firearms training. Ammunition for the Henderson Police Department, which was purchased from the consumables budget, remained the same in the 2011-2012 budget as it was in the 2010-2011 budget (City of Henderson, 2012). Decreasing budgets and budgets that do not allow for inflation place considerable constraints on the amount of training a department can offer.

Even though budget constraints are a realistic problem when it comes to firearms training, being creative and assessing resources can help keep training on schedule and may help in adding additional training hours to the firearms training program. Grossi (2010) explained that by assessing and modifying the current training program,

an agency may be able to cut expenditures without cutting back on the frequency of training. Several years ago, the City of Henderson (2009) began preparations for financially difficult times by pooling resources with an adjacent county to purchase a firearms simulator. Joining in with the other agency not only saved the departments money on the purchase, it also allowed for officers to be trained while working their regular shift which eliminates the need for overtime pay. Any amount of money an agency could save by reducing firearms training would not come close to the amount of money it could possibly lose in civil court, if just one failure to train suit were substantiated in a court of law.

Some agencies fail to adequately train their officers with firearms because they perceive state mandated firearms qualification and training as one in the same. The state of Texas is in charge of mandating training in all aspects of law enforcement, but in the case of firearms, the only thing required is an examination of proficiency by each individual officer. According to the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) (2010), in the use of handguns, shotguns, precision rifles, patrol rifles, and fully automatic weapons, officers must successfully complete a firearms proficiency examination at least once per year with a passing score of at least 70%. TCLEOSE further requires the proficiency course implemented by each agency meet or exceed the minimum standards set forth by the state. TCELOSE does not mandate any specific amount of training be done therefore; it is left up to each individual agency to determine the amount of firearms training needed to pass the state requirements, if any.

Rogers (2007) conducted a survey of 45 different agencies in the state of Texas varying in departmental size, to help determine if agencies in fact perceived firearms qualification as training. Out of the 45 agencies surveyed, only 27 of the 45 conducted firearms training separate from firearms qualification. Fifteen of those agencies surveyed conducted no additional training and only required their officers pass qualification as mandated by the state (Rogers, 2007). This survey in itself suggested that at least some agencies perceive mandated qualification as firearms training.

Although some agencies perceive and utilize firearms qualification as firearms training, they actually have two different meaning and should be utilized for two different purposes. Hill (2003) stated, "The purpose of qualification is to demonstrate and quantify an officer's accuracy and safety, while firearms' training is intended to provide the officer with tactical exercises that conform to both practical skills and the department's use of force policy" (para. 4). Throughout this research, no civil suits were named where agencies or officers were sued for failing to meet minimum state qualification standards. There were, however, several civil suits located, such as *Popow vs. The City of Margate* (year) and *Tuttle vs. The City of Oklahoma* (year), where the agencies were sued for failing to properly train their officers. Having an understanding of the differences in firearms training and firearms qualification is very important. In order to limit liability on the agency and its officers, agencies should put a greater emphasis on firearms training, making certain not to confuse it with firearms qualification.

RECOMMENDATION

Law enforcement agencies, both large and small, should place a higher emphasis on and mandate more firearms training for their officers. In the past few years officer firearms related deaths have been on the rise (ODMP, 2011). With firearms related deaths on the increase in the United States, continual firearms training offers the best chance officers have of surviving a deadly force encounter. Although real life firearms encounters cannot be duplicated through training, more realistic training can be introduced to involve greater amounts of stress that will help keep officers better prepared to use their firearms (Ostro, 2010). In many cases tried before Supreme Justices, the courts have ruled training is very vital to today's law enforcement. In order to limit liability on the agencies and officers, the rulings from the justices must be followed, meaning firearms training must be done.

Budget issues are very realistic problem and no doubt place constraints on agencies when it comes to training. Although budget cuts are certain to occur, a needs assessment can be conducted on an agencies training needs and with a little creativity, training programs can be designed to do more with less (Grossi, 2010). Many aspects of firearms training can be implemented with very few rounds having to actually be fired. Dry firing, malfunctions drills, and reload drills are just a few examples of low cost firearms training exercises.

Even though some agencies perceive qualification and training as the same, utilizing annual qualification as training could be detrimental to officer safety. Hill (2003) pointed out that firearms qualification and firearms training have two entirely different purposes and are not the same. Even though it is possible an officer could be taught

how to shoot during firearms qualification, realistic firearms training is needed to teach officers how to survive in real life threatening situations. Firearms training not only helps better protect the officers, it also adds to the safety of citizens as well. An example of this is can be seen in *Popow vs. The City of Margate* (1979), where an officer's bullet struck and killed an innocent civilian in a residential neighborhood. The jury awarded the plaintiff a substantial amount of money in this case, citing failure of the police agency to properly train the officer in the use of his firearm. In an effort to protect the lives of officers and civilians, better prepare officers for deadly force encounters, and to limit the amount of civil liability on the agency and officers, more continual firearms training should be implemented.

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