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**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Use of Force Policy: Issues, Liability, and Development

**A Policy Research Project
Submitted in Partial Fulfillment
Of the Requirements for the Professional Designation
Graduate, Management Institute**

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by
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**Pharr Police Department
Pharr, Texas
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Abstract

Court decisions involving civil liability of police officers that use excessive force have cost cities thousands of dollars. Studies have shown that some officers involved in lawsuits are unaware of their departments' use of force policies. Research has also shown that a majority of officers have not received training in less-than-lethal force since graduating from the academy. Failure to train has also been a significant factor in liability issues.

As administrators it is our responsibility to design training programs and develop sound training policies. Through training, officers will be better prepared to meet use of force incidents. The department must have a clear use of force policy to provide proper guidelines for the officers in situations that force has to be used. Once the policies are in place we must meet policy violations with immediate and corrective action.

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Introduction

In *Graham V. Conner*, the court held that the 'reasonableness' standard be analyzed under the Fourth Amendment rather than under a 'substantive due process.' Having a sound use of force policy and providing proper training to officers could decrease excessive use of force complaints and litigation against police departments.

The purpose of this research project is to assist the Pharr Police Department in creating a sound use of force policy, which meets the needs of the department. The issue to be examined is the proper guidelines that officers can follow in order for them to be able to assess a situation to determine whether to use nondeadly force or deadly force.

The intended audience for this project is the command staff of the Pharr Police Department. Sources of information used are books, journals, and legal opinions. The intended outcome of this project is to develop guidelines for the use of force. The most common complaint brought against police officers is for excessive force. Use of force allegations can arise from vehicle pursuits, use of batons, firearms, or other law enforcement tools. Although an officer may believe that he/she used only that force which was reasonable and necessary to affect an arrest, a lawsuit may nevertheless be brought and a jury may determine that the use of force was not reasonable and/or necessary.

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Historical and Legal Context

"Since police were first organized, they have been accused of abusing their power and using excessive force" (Alpert and Dunham 83). The history of police use of excessive force and public outcry from it have developed into one of the greatest dilemmas of policing: to balance the police officer's use of force to make an arrest and to protect those against whom force is used (84).

The beating of Rodney King on March 3, 1991, by Los Angeles Police, is probably the most publicized example of excessive force by police, generating extensive television coverage and numerous news articles. In Detroit, a court found two officers guilty of second degree murder in the November 5, 1992, beating death of Malice Green (McEwen 39).

Excessive use of force can occur when an officer uses deadly or non-deadly force. Deadly force is defined as "force likely or intended to cause death or great bodily injury." Non-deadly force is that force which is not likely to result in death or great bodily injury (Kaune 1). Four constitutional amendments are applicable in excessive force liability cases: the Eighth, Fifth, Fourteenth and Fourth Amendments. The Eighth Amendment prohibits cruel and unusual punishment, the Fifth Amendment and Fourteenth Amendment guarantee due process, and the Fourth Amendment establish the right against unreasonable searches and seizures. The appropriate constitutional rights are determined by the facts of the case (Kaune and Tischler 91).

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There are many different legal standards of proof and interpretations of liability for excessive force. Two recent Supreme Court decisions, *Tennessee v. Gardner* and *Graham v. Conner*, have produced guidelines which clarify some of the issues surrounding police liability issues (1). In *Gardner*, the Supreme Court ruled that the use of deadly force was unreasonable because the officer did not have probable cause to believe that the suspect posed any physical danger to the officer or others (Ramirez 15). The Supreme Court went on to state, "to determine the constitutionality of a "seizure" we must balance the nature and quality of the intrusion of the individual's Fourth Amendment interests against the importance of the governmental interest alleged to justify the intrusion (16). In *Graham*, the court ruled that the conflict between individual and governmental interests is not as dramatic as is the case in deadly force situations. Additional factors must be considered in determining liability. These factors consist of the following: whether the suspect poses an immediate threat to the officer or others, the severity of the crime, whether the suspect is actively resisting, and whether the suspect is attempting to escape. Since *Graham* involves the use of non-deadly force, it may be imprudent to apply the four factors to situations involving deadly force (Kaune 4).

Managing and controlling police use of force is a complex and difficult issue. The limits of police power will ultimately be established by the community they serve, as it is they who will decide what is reasonable (Alpert and Dunham 84). It is the police administrator who must promulgate a use of force policy that will provide sufficient protection to his officers; provide officers with guidance; provide

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all citizens with an assurance of safety and guarantees granted them by the Constitution of the United States (Fazo 54). Polices are most effectively implemented when it is apparent that they have the full support of the administrators. While training is the most obvious vehicle for communicating support for a department's use of force policy, officers should not to memorize it word-for-word (Milton 137).

Review of Literature or Practice

Research findings suggest that the majority of force used by and against officers is a result of citizens not following orders and police officers escalating the level of demand, to which the citizens escalate their resistance (Toch 1969). Separate studies by Griswald (217) and Breda and Dugan (169) found that 18-20 percent of complaints filed against police were related to excessive force. When one considers that only one third of the persons who claimed to have been mistreated actually file complaints, this number could be higher (Fridell and Pate 128). Croft and Austin (1987) reported in their Rochester and Syracuse study that force was used in less than 5% of arrest situations, and less than one-tenth of 1% of police-citizen encounters.

Many studies have been made on deadly force by police. William A. Geller made one such study in 1982. In his book Deadly Force: What We Know, data from several of the studies help give a sense of the proportions of persons shot at by police but missed, those shot and wounded, and those shot fatally. Geller

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and Karales (1981b) and Meyer (1980a: 12,15,31) reported the data for Chicago and Los Angeles, respectively. While they look like they have roughly similar levels of police shootings, 132 and 139 (1974-1979), you have to take into account the size of the two police forces. The justifiable homicide rate, (number of justifiable homicide by police per 100 officers on the force) in Los Angeles is twice that for Chicago, possibly suggesting to the uncautious reader that Los Angeles has twice the level of shootings (Matulia forthcoming:76). In their book on deadly force, Geller and Scott (1992), conclude that a promising strategy for controlling the use of deadly force by police is self-restraint. Self-restraint may be enhanced by several factors, including the proper use of less-than-lethal force, such as physical force, batons and chemical sprays.

In his Savannah, Georgia study, McLaughlin (1992) examined the types of force officers used in effecting arrests after being trained in various pressure point control tactics and less-than-lethal weapons. Of the 168 use of force incidents studied, he found officers used the baton in 18 incidents, mace in two cases, a baton and mace in 11 incidents, and a flashlight in two cases. Six applications of the lateral vascular neck restraint were reported, hard empty hand control techniques were used in 19%, while soft empty hand control techniques were used in over 65% of the incidents. The use of various subject control tactics and weaponry has led to a number of citizen complaints and lawsuits over allegations of excessive force. When law enforcement agencies authorize these tactics and equipment without providing training, or implementing policy without carefully defining and limiting the circumstances for their use, the agencies invite

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complaints and lawsuits (Che 1995). It should be noted that Fyfe (1995) provides specific guidance on training officers to reduce violence against citizens. He noted that training should be realistic, tailored to experiences and needs of the officers, and must be delivered on a continuous regular basis. The philosophy of Law Enforcement officer training has shifted from a nominal number of hours in the academy to a mandated requirement in a majority of states. A majority of departments provide four to eight hours of firearms training either semi-annually or quarterly (McEwen 52). While training has helped officers in deadly force situations, training in less-than-lethal force tactics/weapons has received little attention (Ross and Jones 251).

Discussion of Relevant Issues

It is critical that a clear set of policies and procedures be established to define, limit and explain the manner in which force should and should not be used (Alpert and Dunham 85). The Commission on Accreditation for Law Enforcement Agencies (CALEA) and the International Association of Chiefs of Police (IACP) are two national organizations that have developed policy guidelines on use of force. CALEA has established standards for use-of-force policies, and the IACP offers its members a model policy on use of force (McEwen42). Attorney General Janet Reno established a new use of force policy on October 17, 1995, which will govern all law enforcement agencies

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within the U.S. Department of Justice. This created for the first time a uniform deadly force policy for federal law enforcement agencies (Hall 25,26).

The primary purpose of these policies is to ensure that the minimum amount of force is used in a given situation, regardless of whether greater force could have been used without a liability risk. Moreover a policy is the opportunity for the administrators of a department to set the tone for agency officials and line personnel on its expectations.

In the development of a use of force policy several key issues should be addressed. Among these is the policy purpose, which should include the term 'reasonable force or reasonable and necessary force' and may include a definition of the term. This is to insure that officers understand the policy purpose. Another issue is defining lethal and less-than-lethal force. The IACP defines deadly or lethal force, "as any use of force that is likely to cause death or serious bodily injury". Less-than-lethal force is defined as "force that is not lethal". However, lethal force can also be expanded to include the use of nonlethal weapons and force, if the intent in their use is to cause serious physical injury or death. A third key issue to be considered is authorized and unauthorized weapons. The policy should include a list of lethal and LTL weapons that officers are authorized to use. The availability of several LTL weapons for an officer necessitates police direction on when one technique or weapon should be used rather than another. It is also important to also address a force continuum. The usual continuum approach is to rely first on the officer's presence to quell a situation, and if that fails, to move to increasingly severe

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types of force. According to John G. Petters, Jr. (1988) author of "Tactical Handcuffing" the force continuum should include the following steps: officer presence, verbal commands, control & restraint, chemical agents, temporary incapacitation and deadly force. Less-than-lethal weapons include chemical/electrical means, stun guns, batons or impact weapons. The use of deadly force is the last option and is governed by a separate policy statement. In developing a use of force policy another issue to consider is avoiding excessive force. In order to avoid excessive force with LTL weapons the following statement should be included in the policy," The force used shall be no greater than is necessary and reasonable in a given situation. The amount and degree of force which may be employed will be determined by the surrounding circumstances including but not limited to: the nature of the offense, the behavior of the subject against whom force is to be used, actions of third parties who may be present, physical odds against the officer, and the feasibility or availability of alternative actions" (McEwen 43,44). Of great importance in policy making is addressing the medical aid issue. Few policies address the issue of medical aid after use of force. Most deal with chemical sprays since most policies always include chemical sprays as authorized LTL weapons. The policy statement should include that after any level of less-than-lethal force the need for medical attention should be evaluated. (McEwen 54). Training requirements is also a major issue. It is generally agreed that a major vehicle for policy implementation is adequate training (Milton136). More than half of policies incorporate training guidelines for LTL weapons. The majority are brief statements to the effect that

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"each officer must pass a training course in the use of department issued weapons and must recertify once every two years" (McEwen 52). In Texas, the Texas Commission on Law Enforcement Standards and Education sets training requirements. The IACP and CALEA have also played major roles in establishing training standards for police. Despite the recommendations of these entities, many officers still do not receive regular training. Laws, procedures and tactics change frequently without officers receiving commensurate training (Ross and Jones 254). The final key issued to be considered is having reporting requirements. Because police officers operate in a low-visibility arena, managers must monitor behavior and hold officers accountable for their actions. First-line supervisors can observe, first-hand, their officer's actions and administrators should require use-of-force forms to be completed by the officer and supervisor. These forms can then be analyzed and compared to citizen complainants and suspects' injuries (Alpert and Dunham 86).

As for the cost for implementing this policy, the cost would be miniscule when you consider the benefits. If you are looking at dollar amounts it would cost approximately \$800.00. The policy would first have to go to the city's legal staff to make sure that it is within the legal guidelines. This would be the only major cost for the city. As for the benefits of having a clear and definitive use of force policy is that it will greatly reduce citizens' complaints against officers. One other obvious reason for such a policy is to limit liability of a police department. Cities pay thousands of dollars annually in civil liabilities involving excessive use of force.

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Conclusion/Recommendations

The purpose of this project was to examine the issues, liabilities, and the development of a use of force policy. The objective of this research was to assess the need for a clear and sound use of force policy.

Research indicates that the use of force by police is sometimes necessary and unavoidable. In order to avoid liability we must have clear policies and procedures for officers to follow. This will eliminate the problem of officers making up their own rules as they go along. It will also hold them accountable for their actions.

It is recommended that the IACP's use of force model policy be considered. A copy is included in Appendix A. This model policy has been adopted by several ICAP members and appears to be a very sound policy. I am convinced that it will serve the needs of the Pharr Police Department. Our present policy is outdated and very vague. An ambiguously worded policy sends a message that officers have leeway in their actions, while a clear and strongly worded policy reflects concern on the part of the administration for how officers conduct themselves ((McEwen 40).

A final recommendation is that we design a training program and develop a sound training policy. This will minimize the risk of allegations of failure to train, which are routinely cited in Section 1983 claims of excessive force (Ross and Jones 252).

In concluding, I would like to state that it is not enough just to commit a policy to paper. If police officers are to respect the departments that employ them, it is

important that rules be clear and reasonable. Policies should be written for use on the street rather than for public relations or for after-the-fact insurance against liability (Milton 59).

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APPENDIX A

IACP POLICY MODEL

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APPENDIX A

IACP Use of Force Model Policy

I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of deadly and nondeadly force.

II. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only that force that appears reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer or another.

III. DEFINITIONS

- A. *Deadlyforce*: Any use of force that is likely to cause death or serious bodily harm.
- B. *Nondeadlyforce*: Any use of force other than that which is considered deadly force.

IV. PROCEDURES

- A. Parameters for use of deadly force.
 - 1. Police officers are authorized to fire their weapons in order to
 - a. protect the police officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or,
 - b. prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur;
 - c. before using a firearm, police officers shall identify themselves and state their intent to shoot, where feasible.
 - 2. A police officer may also discharge a weapon under the following circumstances:
 - a. during range practice or competitive sporting events;
 - b. to destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
 - 3. Police officers shall adhere to the following restrictions when their weapon is exhibited:
 - a. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
 - b. Warning shots are prohibited.
 - c. Police officers shall not fire their weapons at or from a moving vehicle.
 - d. Firearms shall not be discharged when it appears likely that an innocent person may be injured.

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B. Parameters for use of nondeadly force

1. Where deadly force is not authorized, officers should assess the incident in order to determine which nondeadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
2. Police officers are authorized to use department-approved nondeadly force techniques and issued equipment for resolution of incidents, as follows:
 - a. To protect themselves or another from physical harm; or
 - b. To restrain or subdue a resistant individual; or
 - c. To bring an unlawful situation safely and effectively under control.

C. Training and qualifications

1. Deadly weapons

- a. While on and off duty, police officers shall carry only weapons and ammunition authorized by and registered with the department.
- b. Authorized weapons are those with which the police officer has qualified and received departmental training on proper and safe usage, and the at are registered and comply with departmental specifications.
- c. The police department shall schedule regular training and qualification sessions for duty, off duty and specialized weapons, which will be graded on a pass/fail basis.
- d. Police officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be immediately reassigned to nonenforcement duties.
- e. A police officer shall not be permitted to carry any off duty weapon with which he has not been able to qualify during the most recent qualification period.
- f. A police officer who has taken extended leave or suffered an illness or injury that could affect his use of firearms ability will be required to requalify before returning to enforcement duties.

2. Nondeadly force weapons and methods

- a. A police officer is not permitted to use a nondeadly weapon unless qualified in its proficient use as determined by training procedures.
- b. The following nondeadly weapons are authorized:

D. Reporting use of force

1. A written report prepared according to departmental procedures will be required in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or injury.
 - c. When a nonlethal weapon is used on a person.
2. A supervisor will be immediately summoned to the scene and will comply with investigative procedures as required by the department in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or serious injury.
 - c. When a subject complains that an injury has been inflicted.

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E. Departmental response

1. Deadly force incident

- a. Where a police officer's use of force causes death, the officer shall be placed on administrative leave after completing all internal investigative requirements, and until it is determined by a mental health professional that the police officer is ready to return to duty.
- b. The department shall conduct both an administrative and criminal investigation of the incident.

2. Administrative review of critical incidents

- a. All reported uses of force will be reviewed by the appropriate departmental authority to determine whether
 - (1) Departmental rule, policy or procedures were violated
 - (2) The relevant policy was clearly understandable and effective to cover the situation
 - (3) Department training requires revision.
- b. All findings of policy violations or training inadequacies shall be reported to the appropriate unit for resolution and/or discipline.
- c. All use of force incident reports shall be retained as required by state law.
- d. There will be a regular review of use of force incidents by the appropriate departmental authority to ascertain training and policy needs.
- e. An annual summary report of use of force incidents will be published and made available to the public.

WARNING

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard or safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.

-- Copied from the International Association of Chiefs of Police "Models for Management: Use of Force" The Police Chief, February 1989, 57-58.

Appendix A

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