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Enhancing Texas Peace Officer
Firearms Proficiency Requirements

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ABSTRACT

The consequences and pitfalls that can occur when adequate training is lacking are severe. The cost of negligence and mediocrity is high when loss of life, civil lawsuits, increased insurance, and loss of productivity are taken into account. Artwohl and Christensen (1997) said, "with deadly force encounters, realistic training needs to include two basic elements: dynamism, and enough stress to induce a high arousal state" (p. 70). Ultimately, citizens are the ones who bear the cost of police liability lawsuits through increased taxes or a reduction in services. As public servants accountable to the community they serve, police have a duty to possess expertise in the use of handguns.

Current minimum state firearms proficiency requirements in Texas do not mandate for an officer to qualify in reduced-light or incorporate any reality-based training into firearms qualification. Texas standards not only allow a peace officer to miss 30% of his or her shots and still achieve a passing score, but also permit a police administrator to request annual firearms qualification be waived if he or she can demonstrate such qualification would cause a hardship. Everyone benefits from effective training. Critics cite additional costs to already shrinking agency budgets and the danger of increased crime by pulling officers off the street for additional training as reasons to not train more. The key, however, is that effectiveness and proficiency do not just happen. In today's litigious society, it would be a mistake to underestimate the importance of enhancing sound firearms qualification standards and minimum firearms proficiency requirements in Texas.

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INTRODUCTION

One of the most visible components of any governmental body is that community's police force. Law enforcement officers in municipalities, sheriff's departments, universities, public schools, parks, and airports protect millions of citizens across the State of Texas any given day. Law enforcement officers derive their authority from the state and are accountable to the public they serve. The role of a law enforcement officer is dynamic and driven by circumstances occurring and situations encountered within the community. The public expects and demands that the law enforcement officers charged with its protection be properly equipped, educated, and skilled. Law enforcement training plays a vital role in ensuring the safety and security of citizens, and firearms training is an important element. Law enforcement officers are vested with the unique authority to control the behavior of others. The public places a great deal of confidence in the police and police are presumed to have expertise in the use of handguns.

The level of that training must ensure the officer is mentally and physically prepared for the possibility of a deadly force encounter. According to national statistics compiled by the Federal Bureau of Investigation (FBI), 48 law enforcement officers were killed in the line of duty in 2009 (FBI, 2010). This number increased to 56 law enforcement officers feloniously killed in 2010 (FBI, 2011a). A preliminary report released by the FBI (2012), in advance of the full report set to be released in October, revealed that 72 law enforcement officers were killed in the line of duty in 2011. This reflected a 16% increase in officers killed in 2010 from the year before and an astonishing 28% increase in law enforcement officers killed in 2011 from 2010. Yet, as

the danger to law enforcement officers continues to increase annually, state firearms proficiency requirements in the State of Texas have remained the same. The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) should increase minimum firearms proficiency standards for handguns.

POSITION

Before law enforcement agencies, instructors, and commanders can be informed, shooting standards need to improve and the elements of those standards must be clearly defined. Texas Administrative Code Firearms Proficiency Requirements (2010) obliged a law enforcement officer in Texas to demonstrate proficiency with his or her handgun once each calendar year. Incidents occurring at law enforcement agencies across the country illustrate this level of training is inadequate, and marksmanship training needs a significant upgrade. According to a report published in the New York Times, of the 540 rounds fired by New York City police officers in actual shooting incidents occurring in 2006, 182 hit their intended target (Baker, 2007). This equates to law enforcement officers in this report missing their target almost 70% of the time. There is an argument in favor of requiring Texas peace officers to shoot two courses of fire during each qualification session. One course of fire should focus on marksmanship at varying distances, while the second course of fire can focus on reality-based training. Shooting behind a barricade, moving from cover to cover, and decision-based firing are practical shooting scenarios designed to replicate the real life situations a law enforcement officer may encounter. TCLEOSE should mandate this course of fire be completed by Texas law enforcement officers twice each calendar year. A case can be made where an agency has a duty to train its officers in this manner. In *Canton v.*

Ohio (1989), the Supreme Court said, "the focus must be on whether the training program is adequate to the tasks the particular employees must perform, and if it is not, on whether such inadequate training can justifiably be said to represent city policy" (p. 2). A law enforcement agency is accountable to the community and may find itself incurring civil liability for failing to train its officers to respond effectively in a deadly force situation.

Minimum firearms proficiency standards in Texas also do not require law enforcement officers to shoot in reduced-light conditions during firearms qualification (Firearms Proficiency Requirements, 2010). This is true even though the most recent national statistics pertaining to law enforcement officers killed or assaulted revealed that nearly 60% of law enforcement officers killed between 2001 and 2010 were killed between the hours of 6:00 p.m. and 6:00 a.m. (FBI, 2011b). Of the 56 officers killed in 2010, 37 were killed between these hours (FBI, 2011b). After the accidental shooting of a third party in a reduced-light situation over three decades ago, *Popow v. City of Margate* (1979) cautioned law enforcement agencies regarding the consequences of overlooking this particular area of police training. It was stated that "the only continuing training was shooting instruction approximately every six months at a range. However, there was no instruction on shooting at a moving target, night shooting, or shooting in residential areas" (*Popow v City of Margate*, 1979, para. 29). This particular jurisdiction was almost completely residential and the possibility of having to use force under circumstances different than how the officers were trained was highly likely. In a review of Margate, the court called this training insufficient. It is evident from this that the time

for reduced-light shooting to be made a part of the minimum standard for law enforcement officers in Texas is now.

Texas peace officers are only required to fire 50 rounds of ammunition during firearms qualification (Firearms Proficiency Requirements, 2010). The officer must achieve a passing score of 70%. The standard B-27 target used by most law enforcement agencies has a five-point ring, a four-point ring, and a three-point ring. This means a law enforcement officer need only hit 35 rounds of ammunition in the five-point ring in order to achieve a passing score. More importantly, this allows a Texas law enforcement officer to completely miss the target with the equivalent of a full capacity 15-round handgun magazine and still achieve a passing score. This level of performance is inadequate, and the standards require a complete overhaul. If Texas law enforcement officers were required to complete two courses of fire twice a year, they would be firing a minimum of 200 rounds per year, a much higher standard.   The University of Texas at Austin requires its commissioned personnel to fire a qualifying score with the weapon they are authorized to carry twice each year (University of Texas Police Department [UTPD], 2009). Additionally, many agencies already require a much higher passing score, typically 80% to 85%, for qualification; therefore, requiring this standard for all Texas peace officers will only serve to enhance law enforcement training statewide.

Another area of the Texas peace officer proficiency requirements in need of a significant overhaul is the distance at which officers are required to qualify. Currently, law enforcement officers are not mandated to fire from a distance of greater than 15 yards. This distance should be increased to a maximum distance of 25 yards. One of

the most common reasons citizens come into contact with police is by being stopped for a traffic violation. In a survey conducted by the United States Department of Justice (USDOJ) in 2008, an estimated 44% of face-to-face contacts that citizens had with police occurred as a result of a traffic stop (USDOJ, 2011). An estimated 17.7 million persons age 16 or older indicated that their most recent contact with the police in 2008 was as a driver pulled over in a traffic stop. Between 2001 and 2010, of the 541 law enforcement officers killed nationwide, 17.6% of these officers were killed while performing a traffic stop. In a traffic stop situation, allowing for the length of both the violator and the officer's vehicle, along with the distance separating both vehicles, the distance between the officer and the suspect can easily exceed 15 yards. Officer safety is paramount. Statistics of law enforcement officers killed or assaulted reveal the dangers to police are increasing. A better system would be to extend the minimum shooting distance required for firearms qualification in Texas. This would condition police officers to shoot more effectively at greater distances.

Currently, minimum firearms qualification standards (Firearms Proficiency Requirements, 2010) do not require the incorporation of decision-making, reality-based strings of fire during firearms qualification. Every string of fire calls for the officer to pull the trigger. While this training has been the standard for decades, this model has the potential to lead to officers firing their weapons without completely assessing the threat. In California, law enforcement officers in Pasadena shot and killed an unarmed suspect who appeared to be reaching for his waistband (Lovett, 2012). In New Orleans, police shot and killed an unarmed suspect while raiding a drug house (McCarthy, 2012). Decision-making training incorporated into every Texas peace officer's firearms

qualification may help avert incidents like these from occurring. Under current firearms proficiency standards (Firearms Proficiency Requirements, 2010), law enforcement officers in Texas are under no obligation to demonstrate they can safely and effectively perform in a real-life shooting situation. Texas officers need only demonstrate they can successfully shoot at paper targets that do not move, do not react, and do not shoot back.

COUNTER POSITION

As police agencies continue to seek ways of improving law enforcement training for their officers, enhancing minimum firearms proficiency requirements at the statewide level is not without its critics. In the era of tightening governmental budgets, stricter citizen oversight, and tighter spending caps, there is major concern regarding the cost of implementing higher minimum training standards for police (Oliver, 2012). One area of concern is the cost of ammunition. A 50-round box of 40 caliber ammunition can cost anywhere from $17 to as high as $25. The average law enforcement academy spends $16,100 per recruit who completes training (USDOJ, 2009). Agencies presently requiring their officers to qualify once per year that would need to increase their firearms training to two qualifications per session twice per year can see budget costs in this area alone increase up to 75%.

Scheduling presents another issue. Citizens continually expect an increased police presence within their community. In fact, stepped-up community policing practices is cited as one reason for the 6% decline in violent crime in 2010 (FBI, 2011a). National crime statistics for 2010 show burglaries dropped 2% from 2009, thefts dropped 2.4% from 2009, and vehicle thefts dropped 7.4% from 2009 figures (FBI,

2011a). Some may argue now is not the time to pull police officers off the street to attend increased training when crime seems to be taking a statistical downturn. They may argue that there are not enough officer-involved shootings per year to justify any significant changes to police training in Texas.

When exploring costs, manpower, and scheduling, risk management is one area opponents who would argue against augmenting police training standards because of increased costs or scheduling issues should investigate. Law enforcement has traditionally been reactive in response to specific training needs by waiting to be sued before implementing significant upgrades in this area (Scott, 2005). Risk management amounts to resources being allocated to problems that are seen more frequently; however, police shootings, though infrequent, have a very severe impact when they do arise. Civil liability and related costs from civil lawsuits following an incident can be significantly higher than upgrading police training. In White Plains, New York, the family of a man shot and killed after police responded to a call for an activated medical alert pendant filed a $21 million lawsuit alleging wrongful death, negligence, and poor training (Kim, 2012). In Austin, Texas, the family of a teen shot and killed by police after a struggle for a gun resulted in a $750,000 settlement to the family (Plohetski, 2011). The public expects its police to be excellently trained and properly equipped. A law enforcement officer who is trained to respond using real-world training concepts will help minimize the likelihood of officers training being questioned.

Opponents further say law enforcement training instructors are instilling hesitancy on the part of police officers by teaching the officer to assess whether or not it is necessary to shoot before firing. In fact, agencies that improve officers'

marksmanship without incorporating decision or judgment training in these same officers may actually be increasing their liability by employing a police officer who is more likely to hit his target if he shoots but lacks the necessary skills to determine when to shoot (Ryan, 2007).

RECOMMENDATION

Law enforcement training has seen significant upgrades, changes, and transformations over time. The role of today's law enforcement officer is highly complex. Law enforcement officers must strike a delicate balance between performing their job effectively and reducing crime, while at the same time keeping themselves protected both physically and civilly. One of the most pressing issues facing law enforcement today is the liability of officers to their department and the jurisdiction they serve. In some instances, one lawsuit can completely drain an agency's resources, particularly in smaller jurisdictions. Opportunities for cultivating excellence and reducing poor performance have been virtually non-existent. Reducing civil liability encompasses a variety of factors, including establishment of sound policies and procedures, effective supervision of law enforcement officers, and a training program that is ongoing, comprehensive, and timely. Payne (2002) defined negligent failure to train as occurring when "a subordinate has not been given sufficient training to provide the skills, abilities, and knowledge to properly perform the job" (p. 8). When it comes to the firearms proficiency requirements in Texas, the minimum standards should be raised. Current minimum firearms proficiency standards in Texas are too low.

A solid firearms training program should include two courses of fire, one for marksmanship and a second incorporating reality based scenarios. Firearms courses

of fire should be demonstrated and performed twice a year. That an officer only has to fire 50 rounds per qualification is unacceptable. Many agencies may already have enhanced firearms qualification as a part of their training curriculum, but law enforcement officers at some agencies are still only firing 50 rounds of ammunition per year. The authority to use deadly force is the most critical responsibility placed on law enforcement officers. In a critical incident, officers must balance several, sometimes conflicting, variables, and do so instantaneously. Low light shooting should be mandatory. Shooting distances need to be greater than 15 yards. The incorporation of movement, barricade shooting, sitting, lying, and shooting after physical exertion all replicate conditions a law enforcement officer will encounter in an actual incident. The ability of any administrator to request firearms qualification be waived should be removed. Every officer in Texas needs to complete an enhanced qualification course twice each year.

It was already established that in a ten year period between 2001 and 2010 nearly 60% of law enforcement officers killed were killed during the nighttime (FBI, 2011b). Law enforcement agencies should, therefore, be conditioning officers to deploy their flashlights in reduced-light situations as well. The use of technology is an important element of police training. Many agencies are incorporating firearms or use-of-force simulators into their training. These machines place the officer in front of a screen offering up to a 360 degree view. Law enforcement officers react to the situations presented to them and respond to the situation accordingly. This training model does not instill hesitancy on the part of the officer but trains the officer realistically. In *Milstead v. Kibler* (2001), a police officer accidentally shot and killed a

complainant who ran out of the house attempting to flee a gunman inside. This incident occurred in low light. A law enforcement agency would be remiss not to take advantage of the latest technology or learn from past incidents that have greatly affected law enforcement officers and the agencies that employ them. Texas, as arguably one of the most populous states in the country, has over 75,000 licensed peace officers, and Texas should be leading the nation in firearms training standards.

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