

# *Use of Force in a Jail Setting*

*Course Number 3504*

## **TEXAS COMMISSION ON LAW ENFORCEMENT**

### **OFFICER STANDARDS AND EDUCATION**

#### **INTRODUCTION**

##### **I. Course Objectives**

- A. To provide county corrections officers with a basic understanding of the statutory authority for use of force.
- B. To provide county corrections officers with use of force models and use of force options.
- C. To increase the county corrections officer's knowledge of the causes of disruptive behavior and disturbances.
- D. To provide information which will enable the jail administrator and officer to take appropriate preventive or remedial action to protect against potential civil liability.

##### **II. Topics of Instruction**

- A. An overview of the statutory authority for use of force as found in the Texas Penal Code.
- B. An introduction to terms, factors to be considered, and types of use of force situations.
- C. An introduction to force options, communication options, weapon options related to use of force.
- D. An overview of deadly force topics related to corrections/law enforcement.
- E. An introduction to disruptive behavior of inmates and causes of disturbances in correctional facilities.
- F. An overview of the legal issues related to use of force in correction/law enforcement.

#### **1.0 STATUTORY AUTHORITY FOR USE OF FORCE**

**1.1 LEARNING OBJECTIVE: The student will be able to recognize circumstances which justify use of force to subdue inmate or defend self.**

- A. Duty to prevent escape (Art. 16.21 CCP)
- B. May use reasonable means necessary to secure detention of the accused (Art. 15.24 CCP)
- C. Define custody (Sec. 9.01 (1) PC)
- D. Define escape (Sec. 9.01 (2) PC)
- E. Define force:  
  
An aggressive act committed by any person which does not amount to an assault and is necessary to accomplish one's objective.
- F. Define deadly force (Sec. 9.01 (3) PC)
- G. Justification as a defense (Sec. 9.02 PC)
- H. Confinement as Justifiable Force (Sec. 9.03 PC)
- I. Reckless Injury of Innocent Third Person (Sec. 9.05 PC)
- J. Public Duty (Sec. 9.21 PC)
- K. Necessity (Sec. 9.22 PC)
- L. Self-Defense (Sec. 9.31 PC)
- M. Deadly Force in Defense of Person (Sec. 9.32 PC)
- N. Defense of Third Person (Sec. 9.33 PC)
- O. Protection of Life or Health (Sec. 9.34 PC)
- P. Protection of One's Own Property (Sec. 9.41 PC)
- Q. Protection of Third Person's Property (Sec. 9.43 PC)
- R. Arrest and Search (Sec. 9.51 PC)
- Peace Officer/Corrections Officer distinction
- S. Prevention of Escape From Custody (Sec. 9.52 PC)
- T. Maintaining Security in a Penal Institution (Sec. 9.53 PC)

**1.2 LEARNING OBJECTIVE: The student will be able to determine when the use of force can be considered excessive.**

Hudson v. McMillian, 112S. Ct. 995 (1992)

In deciding whether force meets this standard, the Supreme Court said lower courts should consider several factors:

- The need for the use of any force;
- The amount of force actually used;
- The extent of any injuries sustained by the inmate;
- The threat perceived by the reasonable correctional official; and
- Efforts made to temper the use of force.

**1.3 LEARNING OBJECTIVE: The student will be able to identify possible indicators of excessive use of force.**

Possible indicators of excessive use of force:

- any force when none is needed
- more force than needed
- any force or a level of force continuing after the necessity for it has ended
- knowingly wrongful uses of force
- well-intentioned mistakes that result in undesired use of force
- departmental constraints that needlessly put officers in the position of using more force and/or using it more often, that would otherwise occur (problems with training, supervision, deployment, assignment practices, equipment, procedures, and policies precluding use of certain tactics or tools)
- frequent use of force by particular officers, particular units, or departments, even if each instance seems justifiable.

**REFERENCE MATERIALS:**

Collins, W. C. (1994). Jail design and operation and the constitution. Washington, DC: National Institute of Correction.

Geller W. A., & Toch, H. (1995). And justice for all: Understanding and controlling police abuse of force. Washington, DC: Police Executive Research Forum.

Texas Department of Public Safety. (1993). Texas criminal law. Austin, TX: Author.

Report of the independent commission on the Los Angeles police department. (1991). Los Angeles: Author.

Skolnick, J. H. & Fyfe, J. J. (1993). Above the law: Police and the use of force. New York: Macmillan.

## **2.0 INTRODUCTION TO USE OF FORCE**

### **2.1 LEARNING OBJECTIVE: The student will be able to define terms relating to use of force.**

#### A. Define Force

An aggressive act committed by any person which does not amount to assault, and is necessary to accomplish an objective.

#### B. Deadly Force

Force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury.

#### C. Reasonable or Necessary Force

The minimum amount of lawful aggression sufficient to achieve a legitimate law enforcement objective.

### **2.2 LEARNING OBJECTIVE: The student will be able to recognize psychological aspects of the use of force.**

#### A. Corrections Officer's Role in Self Defense

1. Webster's Dictionary defines the word defensive as “devoted to resisting or preventing aggression or attack.”

2. Most of a corrections officer's problems grow out of the use of necessary force employed against a combative but unarmed inmate.

3. A corrections officer needs a range of decision-making tools that permits use of exactly that degree of control which constitutes necessary force.

#### B. Concept of Control

1. Control is that degree of influence the corrections officer must exert over the inmate to safely regulate him or her while in custody or maintain in custody.

2. Control is a “two-way street.” An officer must be in complete self-control to be able to control an inmate.

3. Self-control alone will be one of the greatest assets in dealing with an inmate.

a. Self-control results from the development of confidence in one's skills.

b. Self-control is achieved through training and practice both on and off the job.

4. The objective of using control is to elicit cooperation from the inmate.

5. Some “tools” for the corrections officer to maintain a psychological and physical edge.

a. Demonstrated alertness

b. Be emotionally in control

c. Personal appearance and bearing

d. Talking versus fighting

e. If possible, maintain a height advantage

f. Triangle interview (Example: two officers and one inmate)

g. Be over an arms length from suspect

h. Be prepared to step back

C. Emotions, Attitudes, Prejudices

1. A custody situation can be both an emotional and physical problem for the corrections officer and inmate.

2. Emotional response or reaction is directly involved in an encounter between a corrections officer and an inmate.

3. Attitudes or prejudices can lead to conflict.

4. A corrections officer has the potential to reduce the problems and danger associated with physical confrontations if he is firm but fair with the inmate.

5. Emotional responses are often the direct result of uncertainty. Uncertainty is likely to result in compensating behavior.

6. Compensating behavior may take one of the following forms:

- a. Hesitation
- b. Verbal abuse
- c. Bluff
- d. Unnecessary force

7. A corrections officer must learn to control personal emotions.

**2.3 LEARNING OBJECTIVE: The student will be able to identify factors to consider when determining the need to use force.**

A. Use of Force

1. In every situation the corrections officer must be firm and be prepared to protect himself/herself and others.

- a. Force must be controlled and used wisely with a purpose.
- b. Only the minimum amount of force necessary to achieve the objective.

2. A corrections officer should consider the following factors when assessing the need to use force.

### **INMATE FACTORS**

- a. What is the nature of the violation?
- b. What is their size, age, and weight?
- c. What is their apparent physical ability?
- d. Is the inmate submitting peacefully or resisting?
- e. Is the inmate armed?
- f. Does the inmate have a history showing a pattern of violence?
- g. What is the number of inmates involved?

h How much support from other corrections officers is available?

**OFFICER FACTORS:**

- a. Size, physical ability and defensive tactics expertise of the officer
- b. Number of officers present or available
- c. Immediate reaction in the case of sudden attack
- d. Weapons or restraint devices available to the officer
- e. Legal requirements
- f. Agency policy
- g. A corrections officer must prepare mentally for the use of weapons or having weapons used against him or her.
- h. A corrections officer must be prepared, based on training and experience, to react instantly to violent acts by persons who may have little regard for the value of life.

**2.4 LEARNING OBJECTIVE: The student will be able to identify common types of incidents in which force may be required.**

- A. Disturbances (riots, fights)
- B. Handling, transporting, custody of prisoners
- C. Booking of prisoner (searches)
- D. Lock downs

**REFERENCE MATERIALS:**

American Correctional Association. (1991). Riots and disturbances in correctional institutions. College Park, MD: Author.

Flesch, R. A. (1994). Defensive tactics for law enforcement, public safety and corrections officers. Longwood, FL: Gould Publications.

Fyfe J. J. (ed.). (1982). Readings on police use of deadly force. Washington, DC: Police Foundation.

Geller, W. A., & Karales, K. J. (1981). Split-second decision: Shootings of and by Chicago police. Chicago: Chicago Law Enforcement Study Group.

Matulia, K. (1985). A balance of forces. Washington, DC: International Association of Chiefs of Police.

Milton, C., Halleck, J. W., Lardner, J., & Abrecht, G. (1977). Police use of deadly force. Washington DC: Police Foundation.

Ohio Department of Development. (1983). The use of force in patrol work.

Scharf, P. (1980). Shooting: Moral judgments related to the police use of deadly force, Criminology Yearbook. Santa Monica, CA: Sage.

### **3.0 FORCE OPTIONS**

**3.1 LEARNING OBJECTIVE: The student will be able to list six force options available to corrections officers.**

- A. Command Presence - just entering into a scene
- B. Verbal Tactics - words, language
- C. Empty-Hand Control or Weaponless Control - takedowns, come alongs
- D. Chemical/Electrical Means - Oleoresin Capsicum, Mace, Stun Gun, Taser
- E. Baton or Impact Weapons
- F. Deadly Force

**3.2 LEARNING OBJECTIVE: The student will be able to discuss the relationship of the level of vulnerability to the appropriate level of force response as exhibited in a “Use of Force Continuum Scale.”**

- A. Explain and discuss the model after providing the student with a copy.
- B. Ineffective control results when the level of force is less than the subject's level of resistance.
- C. Excessive control results when the level of force is greater than the subject's level of resistance.

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**NOTE:** Appendix A contains a complete explanation of the model which the instructor may use to prepare his/her lesson plan.

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Appendix C contains other Use of Force Models, have discussion with students.

These models are examples of other department's way to deal with the Use of Force. Always follow departmental policy.

**3.3 LEARNING OBJECTIVE: The student will be able to list factors that relate to a corrections officer's command presence.**

A. The Scene

1. Each situation will have been developing under its own dynamics long before a corrections officer may be obligated to intervene with force.
2. Events change because of certain kinds of presences.
3. People act differently under different circumstances and a corrections officer's intervention into a situation creates a new set of circumstances.

**3.4 LEARNING OBJECTIVE: The student will be able to identify aspects of communication strategies used when dealing with inmates.**

A. Strategic Communication

1. Communication is an important skill.
  - a. 97% of a corrections officer's duties involve verbal skills.
  - b. Only about 3% of contacts require physical force.
2. Communication process
  - a. Words
  - b. Touch
  - c. Body movement
3. Message
  - a. Content - actual message
  - b. Voice - verbal personality (how it is said)
  - c. Non-verbals - raised eyebrows, posture
4. Perception of a message

- a. 7% of the time a message is received due to content.
- b. 33% of the time a message is received due to voice.
- c. 60% of the time a message is received due to non-verbals (body language).
- d. This means that approximately 93% of the time a message is received and interpreted based on how it is said rather than what is said.

#### 5. Improper listening

Not paying attention to what is said, merely waiting for the opportunity to speak as soon as someone finishes talking.

6. Communication is a professional skill, not just luck.

7. Corrections officers must communicate under uniquely stressful conditions:

- a. To people who do not want to talk, or listen
- b. To emotionally charged individuals
- c. Dangerous circumstances
- d. While being watched by others
- e. To people who dislike and/or mistrust corrections officers

8. Most people respond positively to reasonable requests from a corrections officer.

9. Frustrated people often resist.

10. Upset people are often incapable of acting reasonably.

They will not respond to appeals of reason.

11. Commands or orders usually meet with resistance.

12. A corrections officer must trust tactics which redirect behavior:

- a. Maintain disinterest (objectivity).
- b. Learn to allow people to express frustration.
- c. Listen.

d. Do not take things personally.

**3.5 LEARNING OBJECTIVE: The student will be able to recognize characteristics of verbal judo (verbal persuasion).**

A. Introduction

1. The word “judo” means “gentle way.”
2. Judo is a way of redirecting energy by using minimum effort to achieve maximum efficiency.
3. Flexibility is strength, rigidity is weakness.

B. Verbal Judo (Verbal Persuasion)

1. Defined as the use of words and verbal strategy to redirect the negative behavior of others into more positive behavior.
2. Effective corrections officers are intuitively good mediators.

Skills are learned through experience.

3. Teaches strategies to resolve encounters peacefully and safely.
4. To avoid needless violence, corrections officers must redirect human behavior with words.
5. This redirecting of behavior involves the use of rhetoric.

C. Rhetoric

Defined as the art or skill of selecting the best available verbal means of persuasion at any given moment.

**3.6 LEARNING OBJECTIVE: The student will be able to identify elements used for prior analysis of a scene.**

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**NOTE:** Acronyms are included to assist the instructor(s) in presenting their topic and to enhance student learning and retention. Their use is an instructor option.

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A. Process for prior analysis of a scene includes perspective, audience, voice, purpose and organization (PAVPO).

1. Perspective

a. Corrections officer's point of view

b. Past experience is a factor.

c. A corrections officer should try to exhibit “disinterest.”

(1) “Disinterest” means free from bias, impartial; it does not mean un- interested, unconcerned, or mechanical.

2. Audience

a. The other's point of view

b. A corrections officer's ability to “read” an audience is a crucial skill.

c. Types of audiences

(1) A single person, known

Example: Attorney, repeat offender

(2) A single person, unknown

(3) Single group, well-defined

Example: inmates that the corrections officer has dealt with before

(4) Single group, unknown

(5) Multiple groups, well-defined

Example: general population, other corrections officers, peace officers

(6) Multiple groups, unknown

d. Each type of audience must be analyzed.

e. No matter what type of audience a corrections officer faces it is helpful to see the situation from the other person's or group's point of view.

3. Voice

a. Verbal personality

b. Elements of verbal personality:

(1) Tone and level of voice modulation

(2) Accompanying facial expressions (a sneer, nervous smile, eye contact)

(3) Hand or body gestures

(4) Word choice (diction)

4. Purpose

a. A corrections officer must develop an ability to discover and sustain a clear sense of purpose throughout an encounter.

b. A corrections officer must know what is to be accomplished.

5. Organization

a. The plan of an encounter

b. A corrections officer must control the outcome for a situation to be successful.

B. PAVPO are the basic elements of effective communication.

**3.7 LEARNING OBJECTIVE: The student will be able to recognize benefits for corrections officers that may result from training in rhetorical strategies.**

A. Benefits for corrections officers

1. Rhetorical training will make corrections officers better able to:

a. Control their own biases and perspectives

b. Analyze an audience (inmate, officers) quickly and skillfully

c. Create appropriate voices to influence their audience

d. Define and sustain a clear sense of purpose

e. Organize verbal strategies to achieve purpose

f. Apply the elements of rhetoric (PAVPO) to the hard realities of the encounter, i.e., verbal judo

- g. Solve problems using flexible and alternative thinking
- h. Earn increased respect from the inmate for professional action
- i. Develop greater self-confidence and self-respect in their work
- j. Improve officer safety

**3.8 LEARNING OBJECTIVE: The student will be able to identify benefits to corrections officers and administrators that may result from training in communication strategies.**

A. Benefits

1. Fewer formal complaints filed
2. Fewer informal complaints
3. Fewer internal affairs investigations
4. Greater officer efficiency effectiveness
5. More effective retraining of corrections officers who establish a profile of violent street behavior
6. Better public image for the agency
7. Reduction of tensions within jail

**3.9 LEARNING OBJECTIVE: The student will be able to recognize elements that a corrections officer must recognize and control in every encounter.**

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**NOTE:** Acronyms are included to assist the instructor(s) in presenting their topic and to enhance student learning and retention. Their use is an instructor option.

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A. Four elements of confrontation - PACE (problem, audience, constraints, and ethics)

1. Problem
  - a. Analyze and identify the problem.
  - b. Enables an officer to plan an approach.

c. Problems often change as confrontation progresses.

## 2. Audience

a. Everyone encountered is part of the audience.

b. How is the audience reacting?

Examples: receptive, hostile, critical

c. Read audience and adapt tactics appropriately.

d. If person has a friend in the audience you may try to enlist their help. Ask the friend to help reason with and persuade the person to follow the officer's orders.

## 3. Constraints

a. Determine if there are any obstacles to effective communication and try to eliminate them if possible.

Example: time of day, weather, location, external noise, officer's own mood, person's values and beliefs

## 4. Ethical Presence

a. An expression of self-control

b. Use words to state purpose, not to express personal feelings

c. Maintain professional attitude

d. Anything perceived as hasty, irrational, or unfair, makes an officer seem unethical

e. There can be serious long-term consequences for unethical behavior.

**3.10 LEARNING OBJECTIVE: The student will be able to identify helpful “tools” used in redirecting someone's behavior using verbal persuasion.**

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**NOTE:** Acronyms are included to assist the instructor(s) in presenting their topic and to enhance student learning and retention. Their use is an instructor option.

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A. Method of Redirecting Behavior - LEAPS (listen, empathize, ask, paraphrase, and summarize)

1. Listen

- a. Sort the real problem from the symptoms of the problem.
- b. Determine priorities you must respond to.
- c. Determine context of the event.

2. Empathize

- a. Understand the other person's state of mind.
- b. See through the eyes of the other person.

3. Ask

- a. Use questions to gain control by causing others to report to you.
- b. Questions direct attention away from the problem.
- c. Buys time.
- d. Demonstrates concern.

4. Paraphrase

- a. Repeat what you have learned in your own words.
- b. Forces other person to stop talking and listen.
- c. Helps to ensure that the corrections officer understands the situation.

5. Summarize

- a. Allows the corrections officer to conclude the situation.
- b. Officer provides the bottom line.
- c. State the resolution clearly.

**3.11 LEARNING OBJECTIVE: The student will be able to identify types of verbal appeals.**



## A. Appeals as a motivational device

1. Arouse interest in other person.
2. Persuades people to see things in different ways.
3. Good speakers analyze the audience and develop an appeal that applies to the audience's personal sense of reason.

## B. Types of Appeals

### 1. Practical appeal

- a. Based on an urgent need to change a particular circumstance.
- b. Ignores long term consequences.
- c. It is a short term solution.
- d. Adapt yourself and persuade the other person that you are like them.
- e. Based on the beliefs and value system of the person.

### 2. Personal appeal

- a. Based on addressing person's needs and desires.
- b. Set aside your own personal values.
- c. This type of appeal works well with headstrong people who insist on getting their own way.

**3.12 LEARNING OBJECTIVE: The student will be able to determine when words are no longer working as a force option.**

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**NOTE:** Acronyms are included to assist the instructor(s) in presenting their topic and to enhance student learning and retention. Their use is an instructor option.

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## A. When Words Fail - SAFER (security, attack, flight, excessive repetition, and revised priorities)

### 1. Security

- a. Person seriously threatens bodily harm to a corrections officer or other person
- b. An officer's control is compromised

## 2. Attack

- a. A corrections officer's personal body danger zone is violated.
- b. An inmate couples aggressive words with present ability.

Example: an inmate threatens to hit you while lunging toward you

- c. Words and gestures alone are not an attack.
- d. Sometimes a person displays conflicting signs; words suggest one thing and actions suggest another.
- e. A good principle to remember is: when words and actions disagree, trust actions.
- f. Actions can also be misleading, but whenever words and actions disagree you should be alert and ready to use force.

## 3. Flight

- a. When an inmate begins walking or running away
- b. When an inmate escapes from custody

## 4. Excessive Repetition

- a. When a corrections officer is forced to repeat the same words or ideas over and over, conclude the officer is not being persuasive.
- b. Repeated refusal by an inmate to comply with a reasonable request
- c. When an inmate is unreceptive to alternatives after repeated appeals

## 5. Revised priorities

- a. Possibly when the problem or constraints change
- b. Other events of greater importance occur

**3.13 LEARNING OBJECTIVE: The student will be able to identify criteria relating to a professional corrections officer.**

## A. Definition of Professional

Webster's New Universal Unabridged Dictionary defines profession as:

“A vocation or occupation requiring advanced training in some liberal art of science, and usually involving mental rather than manual work, as teaching, engineering, writing, etc.; especially medicine, law, or theology (formerly called the learned professions).”

## B. Criteria of Professionalism

1. A person who applies knowledge under varying circumstances
2. Ability to communicate effectively with those persons outside of the profession
3. Ability to use rhetorical elements; PAVPO as a part of the system of processing reality
4. Ability to know when to move from words to force
  - a. There is no clear-cut simple answer.
  - b. As a professional, a corrections officer's use of force is:
    - (1) Selective - the officer knows what kind of force and how much to use.
    - (2) Appropriate - used in a controlled and purposeful manner.
5. Ability to return to words and verbal strategies once the threat to a corrections officer's safety (or other's safety) is over
6. Possess the knowledge to recognize a person's actions that indicates their being under the influence of some substance or has a mental or physical disorder
7. Ability to evaluate your own performance
8. Capability of describing and characterizing your own performance to superiors.

A corrections officer must be consciously competent, i.e., know why you did what you did in any given situation.

**3.14 LEARNING OBJECTIVE: The student will be able to identify general principles relating to confrontation communication (verbal judo).**

## A. Summary

1. PAVPO (prior analysis of a situation)

a. Perspective

b. Audience

c. Voice

d. Purpose

e. Organization

2. PACE (elements of a confrontation)

a. Problem

b. Audience

c. Constraints

d. Ethical presence

3. LEAPS (method of redirecting behavior)

a. Listen

b. Empathize

c. Ask

d. Paraphrase

e. Summarize

4. SAFER (when words fail)

a. Security

b. Attack

c. Flight

d. Excessive repetition

e. Revised priorities

B. Principles of Verbal Judo

1. Exhibit disinterest - be open, flexible, and unbiased.
2. Every situation is unique.
3. Usually people are flawed, not corrupt.
4. Establish and maintain a continuous rapport (constant “hold”).
5. Maintain a “not me”/”otherness” perspective.
6. Project a clear strong ethical presence.
7. Check your assumptions.
8. Flexibility is strength - rigidity is weakness.
9. Employ the equity principle - treat everyone alike.
10. Remember the Golden Rule - treat others as you would like to be treated in the same situation.
11. Be professional - know your limitations.
12. Check your actions.

When words and actions disagree, people believe actions.

13. Respond rather than react.
14. Anticipate before getting involved.

**3.15 LEARNING OBJECTIVE: The student will be able to identify when it is appropriate to use weaponless control techniques.**

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**NOTE:** This course is not designed as a “how to” course, although training providers are encouraged to add skill sessions to this course.

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A. When words do not control and the use of a weapon is not appropriate, weaponless control should be used.

1. Corrections officers should be trained in this skill area and periodically practice such techniques to maintain proficiency.

2. Weaponless control and techniques can involve:

a. Restraining holds

b. Impact or stunning blows

c. Pain compliance techniques to cause the person to cease resistance

B. The first principle of self-defense is prevention. The best method of defense against an assault is to think ahead so that you are prepared before you act.

1. Be aware of potential dangers. Prepare yourself physically and mentally for physical encounters.

2. Avoid over-extending yourself to a point of no return. Do not commit yourself to an act that you cannot reasonably carry out.

3. Maintain the proper distance to allow you adequate reaction time (generally over an arms length). Be prepared and able to step back.

C. A second principle is if attacked it is better to move out of the line of force than to try to stop the force.

1. Side-step and allow the force to pass by and dissipate.

2. Once the force has passed, apply a control technique.

D. Three basic concepts of weaponless control are: self-control, balance, and awareness.

1. Self-Control alone will bring you more success in dealing physically with inmates than all the defense and control methods ever taught. If you cannot control yourself in a stressful situation, then your skill with techniques will be neutralized. Self-control is attained through confidence, and confidence is gained through knowledge and ability.

a. Self-control is enhanced through practice, but practice alone will not suffice. It is important to realize that you must understand the basic principles and theories as well as practice.

(1) Having practice without understanding the principles and theories is just as impractical as having theories and principles without the practice. They are both part of the whole. Both are equally necessary to meaningful physical control and self-defense training.

(2) When you apply a technique or control hold on an inmate your body does not do it by itself, your mind and body must operate in unison.

b. The acceptance and following of principles as a training aid is important.

(1) Principles allow you to explain “why” things work and why you should stand or move a certain way to accomplish your purpose.

(2) It is a well accepted fact that a student understands better and retains longer the training they receive when they can understand not only how, but why.

c. Listed below are three principles used in corrections/law enforcement, as they pertain to self-defense and weaponless control.

(1) The corrections officers role in physical confrontation is essentially defensive.

(a) It is important to understand the word “defensive.”

(b) It is neither offensive, which means to commit the first act of hostility, nor passive, which means to endure without resistance. Defend denotes warding off actual or threatened attack.

(2) A confrontation is an emotional problem as well as a physical one.

(a) Both you and the inmate undergo emotional stress. You feel stress because of your attitudes and experiences in other situations, and because you are never sure of the danger levels of any given situation.

(b) The inmate feels emotions and stress because he/she is about to be restrained.

(3) The mind and the body are one.

(a) This is physiologically true as well as being true in self-defense and weaponless control training.

(b) Your body sends messages to the brain through the five senses and responses to those stimuli are sent back to the body. In most cases this cycle is a routine, everyday act of the body, but it becomes increasingly more important to understand this process when we deal with stressful situations.

(c) Understanding the need to improve this coordination and cooperation is essential to successful training in self-control and weaponless defense.

## 2. Balance

a. Balance consists of two different areas; mental balance as well as physical balance.

(1) Mental balance is being prepared through training and practice to first, control your own emotional and physical self, and then being prepared to control the inmate and,

ultimately, the situation. In every situation you should be able to think the problem all the way through to its successful completion. Do not allow the emotional level of the inmate or situation to overcome your self-control and balance.

(2) Physical balance is the position that allows you the ability to move while maintaining balance, strength and advantage.

b. The basic position of balance is the “position of interrogation.”

(1) Proper positions

(a) Distance - proper distance gives you time to react.

1) Just outside the inmate's reach. Slightly more than arm's length.

**HAZARD: If you can touch an inmate, you are generally too close.**

2) Be able to see inmate from head to foot, and you can see everything in between. Do not stare into inmate's eyes. Watch the inmate's shoulders as they will telegraph any movement.

(b) Balanced stance - right or left handed.

1) Lead foot pointed directly at inmate.

2) Rear foot slightly to rear at approximately a 45 degree angle.

3) Do not lock your knees; bend them slightly to facilitate any defensive movement.

3. Awareness is basically observing the entire situation and being specifically aware of some major hazards to the corrections officer when approaching an inmate.

a. Five major concerns when approaching an inmate are:

(1) Where are the inmate's hands? If they are in their pockets, do not tell them to remove them. Try not to draw attention to your concern until you are in a position to remove them safely. (After maneuvering to a safer position).

(2) Weapons

(a) Visually frisk inmate, especially the waistline area

(b) Anything in the immediate area that could be used as a weapon in its natural state

(3) Associates - anyone who may come to the inmate's aid or assistance.



(4) Escape routes - you should be aware of possible escape routes the inmate may take when confronted. The inmate is likely to be as familiar with an area as the corrections officer.

(a) Doors

(b) Dark rooms

(c) Dark yards

(d) Day rooms

(e) Cell

(5) Your footing - where are you standing and what is the area like?

(a) Halls

(b) Recreational yards

(c) Laundry

(d) Obstacles: Furniture

(e) Shop areas

D. Areas of the body most vulnerable to physical attack:

1. Head - face

2. Neck - larynx, trachea

3. Chest

4. Abdomen

5. Groin

6. Legs

E. Areas of the body which may be potentially fatal:

1. Head

2. Neck

3. Throat area

F. Parts of the body which can be used as weapons and are capable of producing damage and/or pain:

1. Head - by butting

2. Hands - fists and fingers

3. Arms - elbows, forearms

4. Feet

5. Legs - knees

**3.16 LEARNING OBJECTIVE: The student will be able to identify factors relating to the justification for use of Electrical Weapons or Chemical Agents.**

A. Description of Electrical Weapons

1. A hand-held electronic weapon capable of emitting an electrical charge. (e.g., stun guns, tasers).

2. When used properly it can effectively coerce, repel, stun, disorient, or incapacitate an individual during contact, and for several minutes after contact with the instrument has ceased.

3. When used properly it is recognized as safe, non-injurious, and non-lethal by the medical and scientific communities.

B. Description of Chemical Agents

1. Chemical agents are chemical compounds designed for anti-personnel applications.

2. When used properly it can effectively coerce, disorient, or incapacitate an individual for several minutes after contact with the agent.

3. When used properly it is recognized as safe, non-injurious, and non-lethal by the medical and scientific community.

C. Justification For Use

1. They can be utilized by all corrections officers regardless of their physical size, strength, and speed.

2. Minimal training time is required.

3. No special skills need be acquired, other than basic defensive blocks, holds, and takedowns.
4. It can be utilized at almost all levels of non-lethal force:
  - a. Coercion
  - b. Repellent
  - c. Stunning
  - d. Non-injurious incapacitation
5. Non-injurious short term incapacitation reduces the chance of using excessive force.
6. Enhances the corrections officer's ability to respond to threats safely.
7. When possible have a show of force prior and during use. This will often gain compliance. Video taping of confrontations is also effective.

**3.17 LEARNING OBJECTIVE: The student will be able to identify possible situations in which the Electrical Weapons or Chemical Agents can be used.**

- A. To overcome physical resistance to an inmate's search, movement to another area, or resistance to a lawful order
- B. To prevent officer injury; protection of self
- C. To prevent injury to inmates or other officers
- D. To control violent inmate situations in order to prevent injury to other corrections officers
- E. To control a violent inmate who is still causing injury to himself or other corrections officers
- F. To prevent escape
- G. Follow Agency Policy

**3.18 LEARNING OBJECTIVE: The student will be able to identify types of unauthorized use of the Electrical Weapons or Chemical Agents.**

- A. To threaten, harass, taunt, belittle or abuse anyone

B. Use in areas where there are heavy concentrations of combustible materials. Sparks from the electrical weapons are capable of igniting flammable materials.

C. Use of electrical weapons above the shoulders (i.e., neck, head, eyes)

D. Use of chemical weapons in areas with poor ventilation

E. Use of chemical weapons on inmates with asthma

**3.19 LEARNING OBJECTIVE: The student will be able to determine when it is appropriate to use a Baton or Impact Weapon.**

A. A baton is classified in the Penal Code as a weapon capable of inflicting serious bodily injury or death. (46.01 (1) P.C.)

B. Use of the baton is proper in lawful situations requiring a degree of force greater than that readily provided by weaponless control techniques, but less than that provided by resorting to the use of deadly weapons.

C. Situations which may necessitate the use of a Baton:

1. When a corrections officer is a member of a tactical squad in a crowd or riot control formation, the baton may be used to move, separate, disperse or deny a person access to a structure or through an area.

2. When a corrections officer is attacked by an inmate armed with a non-firearm type weapon, the corrections officer may use the baton to disarm, distract, or disable the inmate, or to hold the inmate at bay until additional assistance arrives.

3. When the corrections officer is assaulted by an unarmed inmate, the baton can be used to disable the inmate; or to defend against an assault.

4. When the corrections officer is confronted by several inmates who are threatening the officer; when the inmates are capable of carrying out the threats, and when they make an overt act to carry out the threats, the corrections officer may use the baton to fend off an attack or assault.

5. When the corrections officer is confronted by an inmate or inmates who they have reasonable cause to believe committed a violation or crime and the inmate or inmates refuse or fail to comply with the corrections officer's direction prior to searching or handcuffing, the baton may be used to obtain compliance.

a. The corrections officer has the burden to justify the use of a baton by the totality of circumstances.

b. Additional facts tending to justify the baton's use are:

(1) The physical stature of the inmate as compared to the officer.

(2) The need for immediate control of the inmate or situation due to a tactical consideration; the corrections officer's perception of the inmate's knowledge or apparent knowledge of a martial art form; or assumes an aggressive stance; or the inmate's inability to be controlled by lesser means due to the influence of alcohol and/or drugs.

6. Section 9.51 P.C.

#### D. Guidelines for Using Baton

1. The baton should normally be positioned between you and the inmate.

2. A good defensive position should be maintained.

3. Do not intentionally use a baton to strike at the head or throat.

a. Head is easiest part of the body for the inmate to defend.

Inmate has hands and arms to defend against blow.

b. Easy for officer to lose control of baton to inmate.

c. If the head is struck, it could cause serious injury.

4. The baton should never be used to apply a choking technique.

#### E. Vulnerable Areas

1. There are certain areas and parts of the body that are particularly vulnerable. When the baton is used against certain parts of the human body, it can cause serious injury. It is up to the corrections officer to use caution.

2. Areas which are particularly vulnerable:

a. Head

b. Neck

c. Throat

d. Spine

3. Use of the baton against these points is considered by some departments to be justified only when deadly force is justified.

## F. Target Areas

1. Hands, wrist, elbows
2. Knees, shins
3. Chest, midsection
4. The above areas are appropriate targets to control subjects in most situations.

## G. Limitations

1. Corrections officers should receive appropriate skill training and hands-on practice before using a baton in the line of duty.
2. Departments frequently place limitations on the use of batons. It is crucial that corrections officers know and adhere to their agency's policy if they are to avoid serious problems from criminal and civil sanctions.

### **3.20 LEARNING OBJECTIVE: The student will be able to identify typical procedures that are followed in an internal affairs investigation of excessive force.**

- A. Each department has its own policy and procedures concerning internal affairs investigations. Officers should be aware of these practices.
- B. Where there is the possibility of criminal charges being filed many departments will conduct separate investigations.

Garrity v. New Jersey, 385 U.S. 493 (1967) ruled that evidence gathered from an employee under threat of dismissal was not admissible in a criminal trial.

C. During an administrative investigation, officers may be compelled to answer questions, participate in a line-up, or take a polygraph examination.

1. If the officer is warned of the possible consequences of non cooperation, he may be disciplined.
2. This information is not admissible in a criminal trial under Garrity v. New Jersey.

D. If an officer is under arrest or is a suspect in a criminal investigation and any answer sought by the investigator (or any information derived from such answer) is intended for use in a criminal trial, the officer must be given the Miranda warning contained in Article 15.17 and 38.22 of the CCP.

E. Texas statutes provide guidelines for investigations.

1. Government Code 614.021

a. Graves v. City of Dallas, 532 S.W.2d 106, writ ref, nre.

(writ of error refused, no reversible error)

b. Fudge v. Haggar, 621 S.W.2d 196 (Texas App.), writ ref, nre.

2. Local Government Code, Chapter 143.001

3. Local Government Code, Chapter 157 and 158

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## **4.0 DEADLY FORCE**

**4.1 LEARNING OBJECTIVE: The student will be able to recognize issues that should be addressed in an agency's deadly force policy.**

A. Defense of Life

1. An officer may use deadly force to protect himself or others when and to the degree he reasonably believes an immediate threat of death or serious bodily injury exists to himself or others.

2. Penal Code - Chapter 9

B. "Fleeing Felon" Rule

1. Limited by Tennessee v. Garner, 105 S.Ct. 1694 (1985).

2. The rule has been modified by the Supreme Court, but not eliminated.

3. Penal Code 9.52, Prevention Escape from Custody

4. Penal Code 9.53, Maintaining Security in Correctional Facility

C. Risk to Innocent Bystanders

1. An officer should not use deadly force if there is a risk that an innocent person could be killed or injured.

2. While an officer might be justified in the discharge of his weapon, the law requires that he do so with reasonable prudence to avoid injury to others and that he exercise care commensurate with the danger involved.

3. Cases dealing with risk to innocent bystanders.

a. Davis v. Hellwig, 21 N.W. 412, 122 A.2d 497 (1956).

b. Caines v. Montgomery County (Md. Dis. Ct. 1979).

c. Popow v. City of Margate, 484 F. Supp. 1195 (D.C.N.J. 1979); 26 Cr.L. 2021.

d. Grandstaff v. City of Borger, 767 F.2d 161 (1985).

e. Coon v. Ledbetter, 780 F.2d 1158 (5th Cir. 1986).

D. Shots At a Motor Vehicle

1. Shooting at a motor vehicle raises these issues:

a. Difficulty in hitting the target

b. Ricochets striking innocent persons

c. Population densities



- d. Difficulty in penetrating steel belted radial tires
- e. Inability to put a stop to vehicle momentum even when the suspect is hit
- f. Liability from what may happen when suspect is disabled and control of suspects vehicle is lost

#### E. Warning Shots

1. Most departments have policies against using warning shots or shots to summon assistance.
2. Reasons why warning shots should not be used:
  - a. Risk to innocent persons
  - b. The threat of an inappropriate response from other officers who mistake the warning as an intended shot and subsequently shoot at the suspect
  - c. Using a warning shot as an excuse that hitting a person was not intended
  - d. Warning shots may prompt a suspect to return fire when his original intention was to flee.
  - e. There may be legal consequences associated with a warning shot that strikes an unintended target.
3. Relevant case: Jones v. Wittenberg University, 534 F.2d 1203 (6th Cir. 1976).

#### **4.2 LEARNING OBJECTIVE: The student will be able to identify the fleeing felon rule established in common law.**

- A. The common law rule was that law enforcement officers could use deadly force to arrest for a felony or to prevent the escape of any fleeing felon.
1. The officer did not have to be in any danger in order to shoot a fleeing felon.
  2. It did have to be reasonably necessary to prevent the escape, to effect the arrest, or to prevent the imminent occurrence of a felony.
  3. It arose at a time when almost all felonies were punishable by capital punishment.
  4. Deadly force could not be used to apprehend a misdemeanor.

B. Majority of law enforcement agencies had already rejected the fleeing felon rule by their policy. Only 7.5% of departments explicitly allowed the fleeing felon rule at the time of the Garner decision.

C. Modified by Tennessee v. Garner, 105 S.Ct. 1694 (1985).

**4.3 LEARNING OBJECTIVE: The student will be able to identify key elements of the most significant court case(s) concerning the use of deadly force.**

A. Tennessee v. Garner, 105 S.Ct. 1694 (1985)

1. Previous charges of excessive force via the U.S. Constitution focused on lack of due process (Sixth and Fourteenth Amendments) and/or cruel and unusual punishment (Eighth Amendment).

2. The Garner case focused on the Fourth Amendment constitutional right to be free of unreasonable seizure.

“A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.”

B. Some unclarity in the Garner case

1. Language in that case stated that:

a. Deadly force “may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”

b. “It is not unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not unconstitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”

2. Statement 1-a focuses on present dangerousness while statement 1-b seems to focus on the crime that was just committed.

3. Section 9.51 (c) Texas Penal Code focuses on the crime committed and/or the risk to the officer or others if the arrest is delayed.

4. The Garner case does not clearly modify Section 9.51. Officers should look to their department's policy and procedures or rules for guidance.

5. The fact situations in a jail escape would be different from the facts in the Garner case, so it is unclear what the courts might rule.

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**NOTE:** Look to departmental policy.

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**4.4 LEARNING OBJECTIVE: The student will be able to identify the phases of transition that persons who experience traumatic events typically go through.**

A. Denial Phase

1. A tendency to reject the traumatic incident.
2. Refusal to believe the event occurred.
3. In officer-related shootings this phase may be brief or nonexistent because of the necessity to immediately deal with the aftermath of the event.

B. Anger Phase

Feeling anger or resentment that the traumatic event “had to happen to me.”

C. Bargaining Phase

1. A wish that the event had never taken place.
2. An officer wishes he could “take back” what happened.

D. Depression Phase

1. This phase is often the longest.
2. Its severity depends on:
  - a. The individual's basic personality
  - b. The nature of the event
  - c. The reaction of the department
  - d. The reaction of the community
  - e. The support system (family, friends)

#### E. Acceptance Phase

1. "Gets over" the total preoccupation with the event
2. Accepts the fact that the event occurred
3. Resumes a normal life

#### **4.5 LEARNING OBJECTIVE: The student will be able to identify psychological reactions that officers often experience following a critical incident.**

##### A. The Violence

1. A common experience of officers who use deadly force is the viewing of the event in "slow motion."
2. Because of being under physiological stress, the officer's senses are keenly attuned to the event.
3. Some officers involved in shooting situations have reported seeing the bullet leave their gun and enter the suspect. They see blood come out of the suspect's body and his body bend and slowly fall to the ground and hear the person's screams.

##### B. Flashbacks

1. Sometimes the traumatic event is re-lived in dreams and nightmares.
2. Many officers involved in critical incidents have nightmares that reflect their unexpressed feelings about the violent event.
3. Sometimes conscious recognition of past shooting incidents occurs.

##### C. Fear

1. Whenever an officer re-lives a violent traumatic incident, fear is experienced.
2. Not just fear associated with the violent aspect of the event, but also fear related to being unable to forget the traumatic incident.
3. Some officers begin to fear mental illness when they cannot "shake" the memories.
4. Fear may also revolve around real or imaginary retribution.
5. Most commonly, officers fear having criminal or civil charges filed against them. While officers only have seconds to make decisions, prosecuting and plaintiff's attorneys have months to examine every possible alternative in a situation.

6. Even if completely exonerated from any wrong doing, the officer recognizes that their future involvement in such an incident may result in an attempt to show a “pattern of unjustified violence.”

7. Fear may cause an officer to avoid violent confrontation or react too slowly because of the consequences.

**4.6 LEARNING OBJECTIVE: The student will be able to identify various post-critical incident services available to officers.**

**A. Legal Services**

1. Departments should provide their officers with legal assistance and guidance.
2. Litigation arising out of an officer’s use of deadly force can occur many years after the incident.
3. It is important to prepare a defense of an officer's use of force immediately after the incident occurs by compiling relevant documentation.

**B. Psychological Services**

1. An officer involved in a deadly force incident undergoes a self-examination of their moral and ethical conscience.
2. If properly controlled this “soul-searching” can be a beneficial and healthy experience.
3. Some officers mentally crumble under the strain of soul searching after an incident.
4. Psychologists working with police officers say that almost all officers go through similar experiences after the use of deadly force.
  - a. Officers become less aggressive in their work.
  - b. Officers become more introspective about their role as public servants.
  - c. Other officers treat them with fascination.
  - d. City officials are likely to publicly keep their distance from the officer.
  - e. The officer's family relationships may become strained.
  - f. The officer will probably experience flash-backs and nightmares.
  - g. A proportion of officers involved in fatal shootings ultimately leave their departments because of stress disability.

5. Departments should encourage religious or psychological counseling to officers following a critical incident.
6. Where these services are provided, the results seem positive.
7. The family of the involved officer also faces stress and often times are completely forgotten by the department and the officer.
8. This isolation is psychologically unhealthy and must be overcome.
9. The psychologist and clergy can assist by providing professional services to both officer and family.

#### C. Administrative Leave

1. An officer involved in a shooting incident needs time to think about the experience.
2. An officer should meet with a psychologist and an attorney and may want to talk with a clergy member.
3. The officer and department are subjected to community and media pressure.
4. These pressures and the need for time to think places the department under some obligation to temporarily relieve the officer from the challenges of duty.
5. Many departments do not recognize this need, while others that have recognized it stigmatize the officer by placing him or her on “suspension.”
6. The term “suspension” carries negative connotation.
7. When an officer is “suspended pending an investigation”, the media, the public, and officers see this as a disciplinary reaction to an incident.
8. To avoid this stigma, yet provide the officer with a few days of paid time off, “administrative leave” is recommended.

#### **4.7 LEARNING OBJECTIVE: The student will be able to identify typical procedures that are followed after an officer-involved deadly force incident.**

##### A. Departmental Policy

1. Each department has its own procedures for investigating an officer-involved deadly-force incident.
2. Most agencies have extensive investigative requirements in such circumstances.

## B. Typical Procedures

1. When an officer is involved in a deadly-force incident he or she must:
    - a. Determine the physical condition of any injured person.
    - b. Render first aid when necessary.
    - c. Summon necessary medical aid.
    - d. Notify the supervisor of the incident and location.
  2. The officer is required to remain on the scene (unless injured) until investigators arrive.
  3. The officer must protect his or her weapon(s) for examination, treat it as potential evidence, and submit it for investigation.
  4. The officer must prepare a detailed report of the incident.
  5. Within the constraints established by Garrity, an officer is usually permitted to discuss the case with supervisory and assigned investigative personnel, the assigned District Attorney (or officer's attorney), psychologist, clergy, or immediate family. Discussion with anyone else is prohibited.
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**NOTE:** Emphasize that each department has its own procedures and that the officer should follow those procedures.

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## **5.0 DISRUPTIVE BEHAVIOR AND DISTURBANCES**

### **5.1 LEARNING OBJECTIVE: The student will be able to describe the relationship between psychopathology and violent behavior in typical correctional populations.**

In correctional institutions we see at least two general patterns of disruption that fit this condition. We see inmates engaging in violence or other serious disruption who either:

1. blatantly defy measures of control, or
2. appear to be so irrational as to be unresponsive to measures of control.

Of course, these are not completely tidy categories. Many disruptive inmates respond to routine controls and sanctions, but only for a short time. They seem devoted to a cycle of disruption, and the problem is not so much that our interventions don't work (they do), but that they don't work permanently. And there are inmates who seem to fit into both categories, or who fluctuate between a posture of defiance and a posture of irrationality or emotional instability.

### **The Psychopathology of Violence**

The best research and best techniques of therapy have not identified a single cause, or even a well defined set of causes, for violent behavior. And, except for a very few individual cases, they have failed to arrive at a clear strategy of treatment. Corrections naturally looks to mental health for solutions to these major behavior problems (“there is obviously something wrong with these people, they don't act like regular inmates”), but with little effect.

1. Only a small percentage of violence in prisons is committed by mentally or emotionally disturbed inmates—about the same as their percentage of the population. (+/- 5 %, in national surveys).
2. Psychosis and other major mental/emotional disturbances per se do not cause violent behavior.
3. Treatment of violent individuals who are diagnosed as mentally/emotionally disturbed has limited effect on their violent behavior.
4. Contemporary mental health treatment typically includes comprehensive programs of social training, medications, and environment—not the kind of treatment that is easily provided in prisons.



5. Mental health professionals don't like treating criminals.

**5.2 LEARNING OBJECTIVE: The student will be able to describe the concept of “character disorder.”**

### **The Characterological Basis of Violence**

Most patterns of violence have a characterological foundation.

This means that violence is not caused (very often) by a purely psychiatric condition. It also means that patterns of violence seldom have purely rational causes based on circumstances.

It means that the personality and character of the individual inclines him (or her) to violent behavior.

Character consists of:

1. Willful mind-sets, attitudes, and thinking patterns that determine broad patterns of behavior,
2. that are habitual, but
3. within the individual's control, and that
4. are not amenable to change without the individual's conscious cooperation.

This definition of “character” does not mean that individual's have conscious control over all their actions. Sometimes they (and we) are “out of control.” It does mean that underlying their (and our) actions, are attitudes, thinking patterns, etc., that they willfully attach themselves to. It is this deliberate, responsible attachment to a “point of view on life” that defines their character.

With chronically violent and disruptive individuals, their underlying attitudes and thinking patterns produce violence and disruption as a natural course of events.

**5.3 LEARNING OBJECTIVE: The student will be able to identify examples of violent inmate behavior resulting from identifiable patterns of thinking.**

With chronically violent and disruptive individuals, their underlying attitudes and thinking patterns produce violence and disruption as a natural course of events.

A characterological foundation typically underlies patterns of violence, whether or not the individual is “emotionally disturbed” in a clinical sense. It is this characterological foundation that poses such special problems for intervention, control, and treatment.

The attitudes, mind-sets, and thinking patterns that these individuals adopt as their primary perspective on life, results in frequent “justifications” for violent behavior. Typical justifications are feelings of being victimized, controlled, and unfairly treated. They feel entitled to act out their defiance and rage.

They may feel that they have to do so. Some inmates learn to perceive a great variety of situations as demanding a violent response. Their perception is grounded on the thinking patterns that define their “character disorder.”

### **Character Disorder**

Character disordered offenders learn to experience genuine satisfaction out of their acts of violence and disruption. It feels good to escape the control and domination of others, even if only for a brief moment.

Some individuals learn to live off these brief moments of total control, which they experience only when they are performing extreme acts of violence and disruption.

The satisfaction they derive from temporary “total control” reinforces (in a psychological sense) the attitudes and mind-sets and thinking patterns that gave rise to the violence in the first place.

A vicious circle is established, in which the consequences of disruptive behavior reinforce the causes of disruptive behavior.

The thinking displayed by the following inmates illustrate this kind of vicious circle.

This inmate is a defiant convict, rather than “emotionally disturbed” in a clinical sense. He spent literally years of incarceration living off his reputation among inmates, and his personal satisfaction at defying the authority of corrections. He committed dozens of assault against officers and inmates. In segregation, he reports “whistling away my time”, thinking of how he refused to submit to authority, and how good that feels.

### **Emotionally Disturbed**

The next inmate is “emotionally disturbed” rather than a defiant convict. His patterns of disruption are generally viewed as symptoms of an emotional disorder. He has been diagnosed as a “personality disorder” but he is not considered treatable. His acts of violence include self-mutilation, as well as assaults on officers and inmates.

He reports reaching a “cut-off point” in his ability to cope with people. He describes increasing frustration and anger, leading to a conscious thought of “I don't care”, or “to hell with it.” After this experience of cut-off he feels free, turned loose from the frustrating effort of trying to maintain control. In effect he reverts to a totally inward kind of experience: only his own feelings count now, everyone else is cut off from consideration.

He typically responds quickly to external, physical intervention. He becomes calm when placed in segregation. He agrees to counselors and psychologists plans for his future. He makes promises to control himself. He seems sincere. He may go for weeks or months without another violent incident. But sooner or later, the cycle repeats itself. (Generally, shortly after staff start taking his good behavior for granted).

A circular pattern of disruption can mislead us in our efforts to intervene. We tend to think of intervention as putting a stop to a behavior, and that's the end of it. We tend not to notice that putting a stop to the behavior can itself be one stage in a repeating cycle of behavior.

Effective intervention in this kind of cycle requires that we take the cycle itself as our target for change.

#### **5.4 LEARNING OBJECTIVE: The student will be able to identify causes of disturbances in a jail setting.**

Overview: The causes of disturbances should be viewed as complex, interrelated variables contributing to a total problem that erupts into violence when left uncontrolled.

#### **Institutional Factors**

1. Institutional Environment: An unnatural environment which contributes to the emotional stress of the incarcerated.
2. Substandard Facilities: Facilities that lack heating, lighting, ventilation and/or poor maintenance.
3. Overcrowding: The jail population is at an all time high and is expected to escalate.
4. Idleness and Lack of Programs: Individuals require something to do rather than of being idle.

#### **Inmate Population Factors**

1. Anti-Social Inmates: Sociopaths, societal misfits, and other deviants are included in the jail population.
2. Mentally Ill Inmates: Some mentally ill inmates are psychopaths, and can also be included in the general population.
3. Racial/Ethnic Minorities: Racial and ethnic identity lead to the formation of groups which compete for power and control.
4. Prison Gangs: Typically formed along racial lines, first formed for self-protection, now are branching toward traditional organized crime.

5. Revolutionary Organizations: Members of these groups are organized to spread their influence inside jail and consider themselves to be “political prisoners.”

6. Fear: With the varied mix of people inside jail, conflict is sure to happen. Some violence is result of inmates attempting to protect themselves from other inmates.

7. Collective Behavior: When inmates become frustrated, it is easier for agitators to convince others to pursue violent or aggressive acts.

### **Administrative Factors**

1. Frequent Turnover of Management: Changes in management cause inconsistency of programs.

2. Frequent Turnover of Staff: Inexperienced staff cannot be expected to deal with problems, especially crisis situations, as well as experienced staff.

3. Staff Recruitment and Hiring: Pay is low and stress is high, which does not increase appeal to becoming a corrections officer.

4. Inadequate Training: Sometimes correctional staff enter service with little or no training.

5. Breaches of Security: Personnel become lax in security procedures.

### **Non-Institutional Causes**

1. Public Apathy: With little or no support from the community, morale will suffer.

2. Punitive Attitude: Staff can reflect a punitive attitude toward the inmates, increasing tension.

3. Social Unrest: The inmate population can reflect the outside community.

4. Inadequate Funding: Without funding to adequately provide for the inmate population, tensions can increase.

5. Inequities in the Criminal Justice System: The disparity of sentencing can also increase tensions.

### **5.5 LEARNING OBJECTIVE: The student will be able to identify methods for preventing disturbances in a jail setting.**

A. Overview: Prevention includes sensitivity to the unique problems inside a jail and also detection of problem signs to prevent disturbances.

1. **Effective Communication:** Disturbances can be prevented if both staff and inmates know exactly what is expected and allowed.
2. **Information Gathering:** Staff should attempt to communicate with regular inmates instead of just “snitches.”
3. **Information Sharing:** Staff and inmates should receive reliable information on policy changes and new programs.
4. **Communication between Shifts:** It is important that the next shift is informed of the “current status.”
5. **Grievances:** Inmate grievances should be handled as quickly as possible.
6. **Tool Control:** A system for tool inventory must be followed.
7. **Contraband Control:** A system for identifying and preventing contraband must be followed.
8. **Searches:** It is always necessary to search inmates and inmate areas periodically.
9. **Classification of Inmates:** Classification is a necessary security function.
10. **Programs for the Inmate Population:** Organized programs can offer inmates activities to divert them from disruptive behavior.

**Signs of Tension:** Disturbances in correctional institutions can be prevented by being able to interpret and act on change in institutional atmosphere and behavior patterns. (See Appendix B).

**5.6 LEARNING OBJECTIVE: The student will be able to identify methods for controlling disturbances in a jail setting.**

A. Every jail should have a plan for necessary cell extractions.

1. There should be a predetermined team (typically five (5) members and a supervisor) that has been specifically trained for cell extractions.
2. Each team member should have a predetermined area of responsibility (i.e.: pin the inmate, secure right arm, secure left arm and handcuff, secure right leg, and secure left leg).
3. After the inmate has been restrained and extracted, determination on the continued use of restraints should be made.

**NOTE:** Officers should have specialized training in this area.

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B. Every jail should have an emergency plan for riots or disturbances.

Texas Jail Standards Chapter 263.40, Plans and Drills for Emergencies

Officer should stand within safe distance and observe, in an attempt to identify the inmates responsible. Officer should never enter cell block alone, and attempt to contain the disturbance by locking down the run/floor.

1. A policy that specifies what constitutes an emergency, what personnel are to do in an emergency, including specialized personnel (such as hostage negotiation and special response personnel).
  2. Personnel: Mobilization of on-duty personnel, call-up of off-duty personnel, notification of specialized hostage negotiation personnel, special response personnel, and other agencies.
  3. Equipment: The specialized equipment can include: protective clothing, communication devices, weapons, evidence gathering equipment, fire suppression, and medical support.
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**NOTE:** Officers should have specialized training in this area.

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**5.7 LEARNING OBJECTIVE: The student will be able to recognize guidelines for hostages in a correctional facility.**

### **GUIDELINES**

Be cautious of heroics. Don't act foolishly.

Be cooperative and obey hostage takers' demands without appearing either servile or antagonistic.

Look for a protected place where you could dive or roll if either authorities or inmates attempt to assault your location with force.

Keep your cool. Attempt to relax by thinking about pleasant scenes or memories. You might try to recollect the plots of books or movies. This will help you remain functional.

Keep a low profile. Avoid the appearance of observing crimes that rioters commit. Look down or away. Avoid interfering with their discussions or activities.

Do not make threats against hostage takers or give any indication that you would testify against them. If inmates are attempting to conceal their identities, make no indication that you recognize them.

Be reluctant to give up your identification or clothes. Loss of these things is demoralizing. Inmates will use them for bargaining. Be especially resistant to exchange clothes with an inmate. This could put you in much greater danger in case of an assault.

As a result of the stress of the hostage situation, you may have difficulty retaining fluids. Try to drink water and eat even if you are not hungry. It is important to maintain strength.

Be conscious of your body language as well as your speech. Do not say or do anything to arouse the hostility or suspicions of your captors. Act neutral and be a good listener if your captors want to talk. Be cautious about making suggestions to your captors as you may be held responsible if something you suggest goes wrong.

Think of persuasive reasons the hostage takers should keep you and the other hostages alive and not harm you. Encourage them to let authorities know of your whereabouts and condition. Suggest possible ways where you or others may benefit your captors in negotiations that would free you.

If you as hostage end up serving as negotiator between inmates and authorities, messages between the two groups should be conveyed accurately.

If there is a rescue attempt and shots are fired, drop quickly to the floor and seek cover. Keep your hands on your head. When appropriate, identify yourself. Do not resist being apprehended until positive identification is made.

There is a tremendous psychological and physiological relief when you are released. You should be debriefed. This will give you opportunity to discuss what happened to you and how you feel. Express your feelings freely. Deal openly with your reactions and any problems you may have subsequently. You have nothing to be ashamed of.

Even though you must appear disinterested while being held hostage, observe all you can. Insure that you are thoroughly debriefed and make your own notes after your release. All of these things will help in the subsequent prosecution of the rioters.

### **REFERENCE MATERIAL**

American Correctional Association. (1981). Riots and disturbances in correctional institutions: A discussion of causes, preventive measures, and methods of control. College Park, MD: Author.

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Texas Commission on Jail Standards. (1995). Minimum jail standards. Austin, TX: Author.

## **6.0 LEGAL ISSUES**

**6.1 LEARNING OBJECTIVE: The student will be able to identify the possibilities of criminal charges being filed in civil rights cases involving excessive force.**

A. Conspiracy against rights of citizens-Title 18 Section 241 United States Code Annotated.

B. Deprivation of rights under color of law - Title 18 Section 242 United States Code Annotated.

1. U.S. v. Delorme, Jr., 457 F.2d 156 (3rd Cir. 1972).

2. U.S. v. Stokes, 506 F.2d 771 (5th Cir. 1975).

3. U.S. v. Ehrlichman, 546 F.2d 910 (1976), cert. denied 97 S.Ct. 1155.

5. U.S. v. Kerley, 643 F.2d 299 (5th Cir. 1981).

4. U.S. v. Golden, 671 F.2d 369 (10th Cir. 1982), cert. denied 102 S.Ct. 1777.

6. U.S. v. Dean, 722 F.2d 92 (5th Cir. 1983).

C. Federal civil rights complaints are investigated by the FBI.

1. They look for clearly offensive, deliberate, and willful misconduct.

2. They may, if an agency is taking swift decisive action to punish misconduct, defer to that administrative process.

D. No good faith defense for criminal violations.

E. Violations of the Civil Rights of a Prisoner - Texas Penal Code. 39.04, 39.05.

Gordon v. State, 681 S.W.2d 629 (Texas App. 14 District 1984).

**6.2 LEARNING OBJECTIVE: The student will be able to identify tort suits, tort actions, and breach of duty.**



A. Tort Suits - suits brought in state court when one person feels that they have suffered some injury because of the fault of another.

B. Negligence - failure to exercise the proper degree of care a prudent or reasonable person would exercise in similar circumstances.

C. Gross Negligence - an aggravated form of negligence where the wrongdoer acts with reckless disregard for the probable consequences of their actions.

D. Intentional Action - occurs when a person willfully engages in an act where the chance that harm will result is so great that they must be “aware” that harm will occur.

E. Winning a tort suit requires proof that there was a duty which was breached, and the breach caused the injury or damage.

**6.3 LEARNING OBJECTIVE: The student will be able to identify governmental liability under the Texas Tort Claims Act.**

A. A governmental unit is only liable in Texas Courts to the extent that the Texas Tort Claims Act permits.

B. Texas Civil Practice and Remedies Code (TCPRC).

1. Section 101.001

2. Section 101.021

3. Section 101.023 through Section 101.27

4. Section 101.055 through Section 101.57

5. Section 101.103

6. Section 101.105 and Section 101.106

7. Chapter 7

C. Cases relevant to the Texas Tort Claims Act

1. County of Brazoria v. Radtke, 566 S.W.2d 326 (Texas Civil App. 1978).

2. State v. Terrell, 574 S.W.2d 616 (Texas Civil App. 1978), 588 S.W.2d 784 (Sup. Ct. 1979).

3. Forbus v. City of Denton, 595 S.W.2d 621 (Texas Civ. App. 1980).

4. City of Amarillo v. Langley, 651 S.W.2d 906 (Texas App. 7 District 1983).

5. City of San Antonio v. Hagle, 685 S.W.2d 682 (Texas App. 4 District 1984), writ ref, nre.

**6.4 LEARNING OBJECTIVE: The student will be able to identify elements of Title 42 United States Code Section 1983.**

A. The Act was originally passed to protect the civil rights of the recently freed slaves in the south.

B. It is often referred to as a “Section 1983” suit because it is found in Title 42 of the U. S. C. under Section 1983.

C. Section 1983 is the most important federal civil rights statute involved in actions against law enforcement/corrections.

D. Section 1983 provides that every person shall be liable to the party injured who:

1. Under color of state law

2. Subjects or causes to be subjected

3. Any citizen or inhabitant

4. To the deprivation of any rights, privileges or immunities secured by the Constitution and laws.

**6.5 LEARNING OBJECTIVE: The student will be able to identify major constitutional provisions that are used as the basis for Section 1983 actions involving corrections/law enforcement use of force.**

A. The Fourth Amendment

1. Wolf v. Colorado, 69 S.Ct. 1359 (1949).

2. Tennessee v. Garner, 105 S.Ct. 1694 (1985).

B. The Fifth Amendment (in part)

Benton v. Maryland, 89 S.Ct. 2056 (1969).

C. The Eighth Amendment

Robinson v. California, 82 S.Ct. 1417 (1962).

D. The Fourteenth Amendment

Grandstaff v. City of Borger, 767 F.2d 161 (1985).

**6.6 LEARNING OBJECTIVE: The student will be able to identify certain basic principles of the nature and scope of Section 1983 that have emerged from Supreme Court decisions.**

A. Section 1983 must be carefully read and understood in the context of interpretations by the federal courts, especially the United States Supreme Court.

B. Occasionally, where Congress has disagreed with a particular judicial interpretation, it has acted to amend the statute.

District of Columbia v. Carter, 93 S.Ct. 602 (1979).

C. Basic principles that have emerged from readings of Supreme Court decisions:

1. Section 1983 itself creates neither substantive rights nor jurisdiction in the federal courts.

Chapman v. Houston Welfare Rights Organization, 99 S.Ct. 1905 (1979).

2. The plaintiff suing under Section 1983 must specifically plead federal jurisdiction under the appropriate jurisdictional statute.

3. Section 1983 is available to a plaintiff even if the conduct alleged also violates state law.

Monroe v. Pape, 81 S.Ct. 473 (1961).

4. A plaintiff suing under Section 1983 need not bring separate state and federal actions.

Migra v. Warren City School District Bd. of Education, 104 S.Ct. 892 (1984).

5. There is no requirement that a section 1983 plaintiff first exhaust his remedies under state law.

a. Monroe v. Pape, supra.

b. Patsy v. Florida Board of Regents, 102 S.Ct. 2557 (1982).

6. The actions complained of must have been taken under color of law or use of authority even if the defendant was misusing his authority.

a. Monroe v. Pape, supra.

b. Patsy v. Florida Board of Regents, supra.

7. In order to have valid Section 1983 claim instead of a state tort claim, it is necessary to prove that actions taken were beyond mere negligence.

a. Daniels v. Williams, 106 S.Ct. 662 (1986).

b. Davidson v. Cannon, 106 S.Ct. 668 (1986).

8. The defendant's actions must be the legal cause of the harm alleged by the plaintiff.

Martinez v. California, 100 S.Ct. 553 (1980).

**6.7 LEARNING OBJECTIVE: The student will be able to recognize types of relief or damages that are available in a tort or Section 1983 suit.**

A. Section 1983 cases frequently involve injunctive relief telling someone (usually the agency) not to do something or to do something.

B. Three types of monetary damages can be awarded a plaintiff if they win the suit.

1. Nominal damages can be awarded when the plaintiff cannot prove a substantial loss or injury, usually \$1.00.

2. Compensatory damages can be awarded to compensate for their actual loss.

3. Punitive damages can be awarded over and above compensatory damages if the defendant acted in a wanton, reckless, malicious, or fraudulent manner or acted with "reckless and callous indifference" to the rights of the plaintiff.

4. Punitive damages cannot be awarded against a local government.

5. Punitive damages usually must be paid by the individual and not the governmental entity or insurance company.

6. Cases dealing with types of damages:

a. Palmer v. Hall, 517 F.2d 705 (5th Cir. 1975).

b. Carlson v. Green, 446 U.S. 14 (1980).

c. Newport v. Fact Concents, Inc., 453 U.S. 247 (1981).

d. Smith v. Wade, 105 S.Ct. 1623, 33 Cr.L. 3021 (1983).

**6.8 LEARNING OBJECTIVE: The student will be able to recognize the potential for loss of large sums of money to pay for attorney fees under Title 42 Section 1988 United States Code Annotated even if compensatory or punitive damages are small.**

A. Title 42 Section 1988 U.S.C.A. passed in 1976 allows the court to award reasonable attorney fees to the prevailing party.

B. In many cases awards for attorney fees have greatly exceeded awards for damages.

C. Making an early settlement offer can stop the “meter” of attorneys charges if the actual damage awarded later is less than the offer.

D. Cases dealing with attorney fees:

1. McNamara v. Moody, 606 F.2d 621 (5th Cir. 1979).
2. Dean v. Gladney, 621 F.2d 1331 (5th Cir. 1980), cert. d 101 S.Ct. 1521.
3. Swope v. Bratton, 541 F.Supp. 99 (1982).
4. Smiddy v. Varney, 574 F.Supp. 710 (1983).
5. Marek v. Chesny, Ill., 105 S.Ct. 3012 (1985).
6. Kentucky v. Graham, 105 S.Ct. 3099 (1985).
7. Hensley v. Eckerhart, 461 U.S. 424.
8. City of Riverside v. Rivera, 106 S.Ct. 2686 (1986).

**6.9 LEARNING OBJECTIVE: The student will be able to recognize opportunities for legal representation and indemnification as provided by statute, local ordinance, or local policy in an excessive force case.**

A. Indemnification - to make good another's loss caused by some particular act or omission. (Cochran's Law Lexicon, 5th edition)

B. County employees

1. 157.901 Local Government Code. Legal Defense of Employees.
2. Chapter 102, Texas Civil Practice and Remedies Code.
3. Chapter 7, Texas Civil Practice and Remedies Code.

C. City or special purpose district peace officers.

1. 180.002 Local Government Code. Defense of Civil Suits Against Peace Officers, Fire Fighters, and Emergency Medical Personnel.

2. Chapter 102, Texas Civil Practice and Remedies Code.

D. State Employees

Chapter 104, Texas Civil Practice and Remedies Code.

**6.10 LEARNING OBJECTIVE: The student will be able to recognize the effect their agency's written directives have in officer liability.**

A. Written directives of an agency may be used against the officer and/or the agency.

B. Written directives of an agency may be used to support the officer and/or the agency.

C. An officer using more force than the agency's written directives allow is increasing his vulnerability to legal liability.

D. The good faith defense for an officer is greatly enhanced when following the written directives of the department.

E. Following the Minimum Jail Standards should also serve as some protection.

F. Cases dealing with the role of written directives:

1. Dillinbeck v. City of Los Angeles, 72 Cal. Reporter 321, 446 P.2d 129 (Cal. 1968).

2. Delong v. City and County of Denver, 530 P.2d 1308 (Colo. App. 1947). Affirmed 545 P.2d 154 (January 26, 1976).

3. City of San Antonio v. Hagle, 685 S.W.2d 682 (Texas App. 4 District 1984), writ ref, nre.

4. Aldape v. Lambert, 34 F.3d 619 (8th Cir. 1994).

**6.11 LEARNING OBJECTIVE: The student will be able to identify officer liability in not following prudent corrections/law enforcement procedures prior to the decision to use force.**

A. Failure to follow proper procedures can make a situation more dangerous.

B. Failing to follow prudent procedures in stopping and confronting inmates may increase the risk that force be used.

C. An officer can be found liable in his justified use of deadly force if his negligent conduct created a danger for himself or others.

D. Relevant cases:

1. Young v. City of Killeen, Texas, 775 F.2d 349 (5th Cir. 1985).
2. Cheatham v. City of New Orleans, La., 378 So.2d 369.

**6.12 LEARNING OBJECTIVE: The student will be able to recognize possible personal liability for failure to stop other officers from using excessive force in his presence.**

A. A supervisor has an affirmative duty to intervene to stop officers who are engaging in excessive force in his presence.

B. A non-supervisory officer has an affirmative duty to intervene to stop officers and/or supervisors who are engaging in excessive force in his presence.

C. Cases dealing with liability for failure to intervene:

1. Whirl v. Kern, 407 F.2d 781 (5th Cir. 1968).
2. Byrd v. Brishke, 466 F.2d 6 (7th Cir. 1972).
3. Harris v. Chanclor, 537 F.2d (5th Cir. 1976).
4. Putman v. Gerloff, 639 F.2d 415, 423 (8th Cir. 1981).
5. Webb v. Hiykel, 713 F.2d 405 (8th Cir. 1983).
6. Ware v. Reed, 709 F.2d 345 (5th Cir. 1983).

**6.13 LEARNING OBJECTIVE: The student will be able to identify factors that the courts use to determine if unreasonable force was used in a case.**

A. The Fourth Amendment limits the level of force that may be used to reasonable force.

B. Reasonableness is based on individual facts and circumstances of the situation.

C. The need for force will be evaluated. The feasibility or availability of alternatives are considerations.

D. Motivation for the force will be evaluated. Whether the force was used to maintain or gain control or to harm will be considered.

E. The extent of injury inflicted will be evaluated. Minor injuries may be relegated to state court as a tort suit rather than as a Section 1983 cause.

F. Whether the officer's actions created a situation of dangerousness where a fatal error was likely.

G. Other considerations which might be used:

1. The nature of the offense in which control was lost
2. Actions of third parties who were present
3. An emergency situation which existed
4. Behavior of the person against whom force was used
5. The physical size, strength, and weaponry of the inmate
6. Known character of the inmate

H. In general, an action is unreasonable if a reasonable man in similar circumstances would recognize the act as involving a risk of harm and a risk of such magnitude as to outweigh the utility of the act or the manner in which it was done. If an officer's conduct in discharging his weapon creates a danger recognizable as such by a reasonable and similarly situated officer, he will be held accountable to others as the proximate result of his conduct.

Relevant cases dealing with unreasonable force:

1. Kyle v. New Orleans, 353 So.2d 969 (La. 1977).
2. Roberts v. Marino, 656 F.2d 1112 (5th Cir. 1981).
3. Shillingford v. Holmes, 634 F.2d 263 (5th Cir. 1981).
4. Whitley v. Albers, 38 Cr.L. 3161.
5. Young v. City of Killeen, Texas., 775 F.2d 1349 (5th Cir. 1985).

I. Civil Practice and Remedies Code, Section 101.55 Vernon's Texas Code Annotated.

J. Huguet V. Barnett, 900 F.2d. 838 (5th Cir. 1990)

The U.S. Court of Appeals for the Fifth District adopted a standard for excessive force claims. In order for a plaintiff to prevail on excessive force claims, the court held that he/she must prove that:



1. a significant injury, which:
2. resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was:
3. objectively unreasonable, and:
4. the action constituted an unnecessary and wanton infliction of pain.

The court must ask whether the force was “applied in good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” If the last element is missing, there is no liability, the court stated, regardless of “how significant the injury, how far in excess of the need, and how unreasonable” the force used.

Related cases:

1. Huguet v. Barnett, 900 F.2d 838 (5th Cir. 1990).
1. Adams v. Hansen, 906 F.2d 192 (5th Cir. 1990).
1. Oliver v. Collins, 914 F.2d 56 (5th Cir. 1990).
1. Wesson v. Oglesby, 910 F.2d 278 (5th Cir. 1990).
1. Wise v. Carlson, 902 F.2d 417 (5th Cir. 1990).
1. Jackson v. Culbertson, 984 F.2d 699 (5th Cir. 1993).
1. Hudson v. McMillian, 112 S. Ct. 995, 100 (1992).

**6.14 LEARNING OBJECTIVE: The student will be able to identify Fourth Amendment applications to excessive force cases.**

A. The Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause...”

B. The Fourth Amendment is not as applicable in Correctional Law cases as the individuals involved are already deprived of liberty. The Eighth Amendment usually is more applicable in corrections.

C. Because the Garner case on deadly force based the constitutional violation upon the Fourth Amendment's right to be free from unreasonable seizure rather than a due process

violation under the Fifth and Fourteenth Amendments, more litigation on excessive force has followed.

Under this reasoning the use of any significant degree of excessive force in effecting an otherwise constitutional arrest may constitute an unreasonable seizure.

D. Whether a particular seizure is constitutionally unreasonable depends upon factual circumstances.

To determine the question requires that the court “balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the governmental interests alleged to justify the intrusion.” (Garner)

E. The use of Fourth Amendment deprivation could allow even minor cases into federal court under 1983 where those have been denied or diverted to state courts before.

F. Fourth Amendment cases:

1. Kidd v. O'Neil, 774 F.2d 1252 (4th Cir. 1985).
2. Robbins v. Harum, 773 F.2d 1004 (9th Cir. 1985).
3. Tennessee v. Garner, 105 S.Ct. 1694 (1985).

**6.15 LEARNING OBJECTIVE: The student will be able to identify Eighth Amendment applications to excessive force cases.**

Eighth Amendment

“...Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”

The United States Supreme Court has ruled that the Eighth Amendment's ban on cruel and unusual punishment is obligatory on the states through the Fourteenth Amendment, Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1972).

Cruel and unusual punishment prohibition of the Eight Amendment applies to county jails as institutions.

“Convicted prisoners are protected by the Eight Amendment to the United States Constitution which prohibits the imposition of cruel and unusual punishment. Like most constitutional declarations, the exact meaning of 'cruel and unusual punishment' is somewhat elusive. Consequently, we look to the broad principle underlying the constitutional terms.”

“The basic concept underlying the Eighth Amendment is nothing less than the dignity of man... The words of the amendment are not precise...Their scope is not static. The amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” The amendment prohibits penalties that transgress today's “broad and idealistic concept of dignity, civilized standards, humanity, and decency.” Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980), Hutto v. Finney, 437 U.S. 678, 685 (1978); Trop v. Dulles, 356 U.S. 86 (1958).

An important distinction exists within the Eighth Amendment between pretrial detainees and post-trial convicted misdemeanants and felons. Since the due process clause prohibits punishment prior to conviction, the constitutional issue rests on determination of whether the conditions of confinement are punitive in nature. This deals, in part, with the intention of detention facility officials; however, courts have held that, even in the absence of expressed punitive intent, “if a restriction or condition is not reasonably related to a legitimate goal - be it arbitrary or purposeless - a court permissibly may infer that a purpose of the constitutionally be inflicted upon detainees.” Bell v. Wolfish, 441 U.S. 520 (1979); Campbell v. Cauthron, supra.

The jail administrator has no control over the first two parts of this amendment, bail and fines, but U.S. Supreme Court and circuit court decisions dictate that the third part of this amendment, cruel and unusual punishment, is very applicable to the jail facility.

1. The Eighth Amendment proscribes the “unnecessary and wanton infliction of pain.” Gregg v. Georgia, 428 U.S. 153, 173 (1976).

2. The Eighth Amendment proscribes more than physically barbarous punishments. Its prohibition extends to penal measures which are incompatible with “the evolving standards of decency that mark the progress of a maturing society.” Trop v. Dulles, 356 U.S. 86, 101 (1958). Confinement itself, under certain conditions, may violate the amendment's prohibition of cruel and unusual punishment.

The Eighth Amendment proscription of cruel and unusual punishment “is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement that may prevail at a prison,” Gates v. Collier, 501 F.2d 1291, (5th Cir 1974).

Eighth Amendment cases:

1. Owens-El v. Robinson, 442 F. Supp. 1368 (W.D. Penn. 1978).

1. Santiago v. Yarde, 487 F. Supp. 52 (S.D. N.Y. 1980).

1. O'Conner v. Keller, 510 F. Supp. 1359 (D. Md. 1981).

1. Whitley v. Albers, 106 S.Ct. (1986).

1. James v. Alfred, 832 F.2d 339 (5th Cir. 1987).
1. Huget v. Barnett, 900 F.2d 838 (5th Cir. 1990).
1. Wise v. Carlson, 902 F.2d 417 (5th Cir. 1990).
1. Gilbert v. Collins, 905 F.2d 61 (5th Cir. 1990).
1. Adams v. Hansen, 906 F.2d 192 (5th Cir. 1990).
1. Oliver v. Collins, 914 F. 2d. 56 (5th Cir. 1990).
1. Luciano v. Galindo, 944 F.2d 261 (5th Cir. 1991).
1. Flowers v. Phelps, 956 F.2d 488 (5th Cir. 1992).
1. Hudson v. McMillian, 962 F.2d 522 (5th Cir. 1992).

**6.16 LEARNING OBJECTIVE: The student will be able to recognize the concepts of vicarious liability.**

A. Definitions

1. Respondeat Superior - an old English common law notion that the master is responsible for the acts of the servant. Does not apply to government employees.
2. Vicarious Liability - under this theory in order to hold an administrator, supervisor, or local government liable, a plaintiff would have to show that they were somehow negligent in the manner in which they supervised their subordinates.

B. To find the administrator, supervisor, or governmental entity liable there must be an affirmative link between the civil rights violation and the agency or supervisor. For Section 1983 cases, that link to the agency is a policy or custom.

C. A policy is (1) an officially adopted policy or (2) widespread practice that is so common that it fairly represents agency or departmental policy.

D. Plaintiffs want to link local government to the civil rights action because they have the “deep pockets” or money.

E. There are six steps a plaintiff must establish to link vicarious liability to the local governmental entity.

1. Prove improper, unconstitutional action by officer.
2. Prove action was pursuant to policy or custom.

3. Prove policy or custom was wrong.
4. Prove policy or custom was known or should have been known by the agency administrator.
5. Prove that administrator represented the local governmental entity because of delegated policy making authority.
6. Prove that local government knew or acquiesced to the policy or policy makings.

F. Vicarious liability cases:

1. Monnell v. Department of Social Services, 436 U.S. 658 (1978).
2. McNamara v. Moody, 606 F.2d 621 (5th Cir. 1979).
3. Webster v. City of Houston, 735 F.2d 838 (5th Cir.) (en banc), rev'd on other grounds, 739 F.2d 993 (5th Cir. 1984) (en banc).
- 4 Grandstaff v. City of Borger, Texas, 767 F.2d 161 (5th Cir. 1985), cert. denied.
5. Bennett v. City of Slidell, 728 F.2d 762, rehearing denied, 735 F.2d 861. (5th Cir. 1984), cert. denied, 105 S.Ct. 3476 (1985).

**6.17 LEARNING OBJECTIVE: The student will be able to identify the most common ways for vicarious liability to be established in federal civil rights violation cases.**

A. The seven most common ways to establish vicarious liability for the actions of an officer are:

1. Negligent hiring

- a. Employing someone without adequately investigating their background or qualifications for the job.
- b. Failure to screen properly and to weed out the obviously unfit provides the link needed if an employee violates someone's civil rights.
- c. Only gross negligence is actionable.
- d. Negligent hiring cases.

(1) Peters v. Bellinger, 159 N.E.2d 528 (Ill., App. 1959).

(2) Moon v. Winfield, 383 F.Supp 31 (N.D. Ill. 1974).

(3) McKenna v. The City of Memphis, 544 F.Supp., 415 (W.D. Tenn. 1982).

## 2. Negligent Assignment

a. Assigning someone to a job without making sure he or she is prepared and fit to do the job.

b. If an officer is obviously unfit for an assignment, the assignment should be changed.

c. Negligent assignment case:

(1) Moon v. Winfield, supra.

## 3. Negligent supervision

a. Not adequately overseeing the activities of an employee if the supervisor “knew or should have known” such supervision was required.

b. Negligent supervision cases:

(1) Thomas v. Johnson, 295 F.Supp. 1025 (D.D.C. 1968).

(2) Marusa v. District of Columbia, 484 F.2d 828 (D.C. Cir. 1973).

(3) London v. Ryan, 349 So.2d 1334 (La. App. 1977).

## 4. Negligent retention

a. Failure to suspend or terminate an employee who has demonstrated incompetence, unreliability or other unsuitability for the job.

b. Negligent retention cases:

(1) McCrink v. City of New York, 71 N.E.2d 419 (Ct. App. N.Y. 1974).

(2) Brandon v. Allen, 516 F.Supp. 1355, 1357 (W.D. Tennessee 1981).

(3) Brandon v. Holt, 105 S.Ct. 873, 83 L.Ed.2d 878 (1985).

## 5. Negligent entrustment

a. The failure of a supervisor to properly supervise or control an employee's custody use of equipment or facilities entrusted to him on the job.

b. Examples: automobile, firearms, nightstick, tear gas, etc.

c. Negligent entrustment case:

McAndrews v. Mulavcheck, 162 A.2d 820 (N.J. 1960).

6. Failure to direct

a. Not telling the employee of the specific requirements and proper limits of the job to be performed.

b. Failure to direct case:

(1) Ford v. Brier, 383 F.Supp. 505 (E.D. Wis. 1974).

(2) Dwell v. Lawson, 489 F.2d 877 (10th Cir. 1974).

(3) Bonsignore v. City of New York, 521 F.Supp. 394 (S.D.N. 1981), affirmed 2nd Circuit 1982.

(4) Odal Typographers, Inc. v. City of New York, 560 F.Supp. 558 (1983).

7. Failure to train

a. Agencies have an affirmative duty to train their employees.

b. Plaintiff must establish that there was a policy of failure or improper training.

c. Failure to train cases:

(1) Meistinsky v. City of New York, 140 N.Y.S. 2d 212 (1955).

(2) Peer v. City of Newark, N.J., 176 A.2d 249 (N.J. Ct. App. 1961).

(3) Thomas v. Johnson, 295 F.Supp. 1025 (D.D.C. 1968).

(4) Myers v. Town of Harrison, 310 F.Supp. 526, affirmed 438 F.2d 293, cert. denied 404 U.S. 828 (1971).

(5) Jackson v. City of Baton Rouge, La., 286 So. 2d 743 (La. App. 1973).

(6) Owens v. Haas, 601 F.2d 1242 (2nd Cir. 1979), cert. denied, 100 S.Ct. 483.

(7) McClelland v. Facticeau, 610 F.2d 693 (10th Cir. 1979).

(8) Mozingo v. Barnhart, 285 S.E.2d 497 (W. Va. 1981).

(9) Sager v. Woodland Park, 543 F.Supp. 282 (D. Col. 1982).

(10) Languirand v. Hayden, 717 F.2d 220 (5th Cir. 1983).

(11) Wellington v. Daniels, 717 F.2d 932 (4th Cir. 1983).

(12) Vippolis v. Village of Haverstraw, 37 Cr.L 2387 (2d Cir. 1985).

(13) City of Okla. City v. Tuttle, 53 U.S.L.W. 5639, 37 Cr.L., 3077 (1985).

**6.18 LEARNING OBJECTIVE: The student will be able to identify the issue of good faith as it affects officer liability and the liability of local government.**

A. The good faith defense means that officers or personnel will not be held personally liable for damages when:

1. The law is not clearly established,
2. The law is not known or could not reasonably be known, or
3. The staff member is unaware that their actions or inactions might result in a constitutional violation.

B. If the law is clearly established, the good faith immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.

C. A police/corrections officer should be excused from liability where he acted under a statute that he reasonably believed to be valid but that was later held unconstitutional.

D. Local governments cannot use a good faith defense.

E. The potential for a conflict of interests arises in the legal defense of a suit in which an officer argues that he was only following agency policy and procedures in the use of force and is entitled to a good faith defense. This argument, especially if the officer is called as a witness, could increase the local agency's exposure to monetary liability. Some legal experts have maintained that officers and local governments should have separate attorneys for this reason. Officers should seek legal advice as to the correct course of action in this matter.

F. Relevant good faith cases:

1. Pierson v. Ray, 87 S.Ct. 1213 (1967).

2. Palmer v. Hall, 517 F.2d 705 (1975).

3. Richardson v. City of Conroe, Texas., 582 F.2d 19 (5th Cir. 1978).



4. Owen v. City of Independence, 100 S.Ct. 398 (1980).
5. Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982).
6. City of Amarillo v. Langley, 651 S.W.2d 906 (Tex. App. 7th Dist. 1983).
7. Coon v. Ledbetter, 780 F.2d 1158 (5th Cir. 1986).

### **REFERENCE MATERIALS:**

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## **Appendix A**

### **Use of Force Model**

#### **USE OF FORCE MODEL**

by Special Agent John C. Desmedth

U.S. Secret Service

#### **INTRODUCTION**

After several centuries of social evolution and several decades of collective law enforcement experience, mankind has begun to recognize the specialty of police science as a discipline worthy of serious study. Much has been learned and documented about the role of police in modern society. But, in spite of all knowledge accumulated and insights gained, there is very little information about the degrees of force recommended for or applied by law enforcement officers. Officers, trainers and administrators would all benefit from a classification or clarification scheme for the use of force, but this issue seems not to have been squarely addressed.

#### **DEADLY FORCE AND FIREARMS**

There are clear limits placed on an officer's right to use deadly force. Statutes lay down the basic rules, courts further refine the statutes and agency policy adds another layer of

regulation. Because the use of deadly force is irreversible, policy for its use is intrinsically more important than policy for use of less-than-deadly force. And since the term deadly force is usually understood to mean use of firearms, most agencies have some type of mandated firearms training. Officers are awarded ribbons, medals and plaques for demonstrated proficiency on the range. And, in furtherance of our knowledge about deadly force, volumes have been written about the effects of different weapons and ammunition.

Part of most firearms training programs normally addresses deadly force and its use to prevent death or serious injury. An officer is taught to evaluate a situation to decide if there is justification for using the upper limit of his authority. Some agencies even address the use of firearms on animals. But whatever language is used to describe deadly force policy, the only point in question is whether or not the officer is justified in using deadly force. It is a black and white issue. There is never a question about the caliber of the bullet, how much it weighs or how fast it travels; these factors are not left to the judgment of the officer, but are predetermined by policy.

### **LESS-THAN-DEADLY FORCE**

When the use of less-than-deadly force is involved, everything is left to the judgment of the officer. They are given no guidelines about how much force to use and no specifics on how to meet force with force. They are expected to rely only on their own instinct. Their agency and society trust in their good faith and damn them if they are wrong.

Existing statutes and policies spell out conditions when an officer may use deadly force correctly. These guidelines help us look back on a situation to determine if officers were or were not justified in their actions. But, if a policy is to be truly helpful for officers, it should clarify what level of force is appropriate before the situation becomes critical--before deadly force is applied. Officers need guidelines for determining when to use less-than-deadly force also.

Police officials and their academic advisors have addressed low-intensity problems in police/citizen contacts by applying interdisciplinary approaches in the study of such subjects as police/community relations, communication arts and the rhetoric of confrontation. High-intensity, acute, life-threatening emergencies are also planned for with a wealth of firearms training techniques and an abundant arsenal of deadly weapons.

It is, of course, more prudent to resolve any confrontation with words rather than with wounds. And, when the situation requires it, the firearm can be the simple-to-operate equalizer that renders the officer's size, conditioning and defensive skill irrelevant as long as he can point the weapon and pull the trigger. But, it is between the point at which words no longer serve to control an uncooperative subject and the point at which the use of deadly force is not yet justified that the wealth of legal, sociological and technological assistance becomes sparse and the standard policies and guidelines become clouded.

How can an officer justify his/her actions if the use of force has never been clearly defined or understood? This question has no acceptable answer, yet officers hit the street every day knowing full well that they will be called upon to use force. Still, the officers go out telling each other, "You have only a split second to react and they have years to prove you wrong." Must officers be naive and brave, foolish and dedicated at the same time?

### **THE GRAY AREA - WEAPONLESS CONTROL**

The area between the all-or-nothing extremes of the police/citizen "confrontation continuum" is served by both weaponless control techniques and use of intermediate impact weapons. Little has been written in this area. This situation exists for specific reasons.

One reason is that in America there is a handgun tradition far stronger than the practice of any martial art. Except for the rigidly structured and supervised sports of boxing and wrestling, the martial arts are synonymous with the culture of the Orient. Anything else we could extract from our own history would be no more enlightening than a brawl.

A second reason concerns the several situational altercations which occur when an officer places his/her hands on a subject. Ordinarily, an officer is accustomed to being a physical entity unto him/herself. Remaining balanced and upright is not a conscious effort unless an officer stands on ice or walks on uneven ground. But when an officer places his/her hands on a subject, or when a subject places his/her hands on the officer, the two persons become one physical unit. The movements of the subject directly affect the officer's ability to control his/her own balance. Control of balance then becomes a conscious concern, taking up thinking time which the officer could better use in problem solving.

Words and firearms can affect control from a distance, but weaponless control is close-in control. Physical distance is, in most cases, a measure of safety, but vulnerability and anxiety increase in inverse proportion as physical proximity and reaction time decrease.

Just as the course of a conversation cannot be predicted verbatim, the result of weaponless control application cannot be known in advance. And just as there are variables determining the effects of deadly force, there is no single factor to guarantee the success of less than deadly force. There are, however, several distinctions between verbal responses, weaponless control techniques and use of deadly force that can be postulated.

- As we learned as children, words do no harm, whereas physical acts can cause pain or injury.
- Weaponless control is usually unpleasant to learn and easy to forget.
- The average officer's precision with weaponless control techniques is erratic.

- Since formulation of weaponless control techniques is the product of someone else's uninvolved opinion about how to best solve a control problem, there is always room for second guessing. (Nobody disputes the efficacy of talking a subject into compliance. Compare a trigger pull; there may be a little debate about its appropriateness, but none about its effectiveness).
- Manufacturing precision and ballistic science lend standardization and predictability to the use of firearms. But the variables of pressure, torque, pain threshold, impact and leverage resulting from force, vector, state of mind, and relative strengths, body structures and positions, are totally unique to each weaponless control situation, never to be duplicated.

### **THE USE OF FORCE MODEL**

With the Use of Force Model, we have attempted to generalize, categorize and interrelate the reasons, considerations and limitations in the use of all measures of force for all occasions. To use the model, an officer need only place any situation at the proper level and match it against the appropriate response. This concept of grouping situations into logical categories conforms to principles of educational psychology, assists officers in better understanding the use of force, and thereby helps officers to respond properly and promptly during times of stress.

### **CONTROL**

To better appreciate this model, first disassociate the idea of offense versus defense from your thinking as the primary descriptive terminology in the use of weaponless control techniques. Next, insert the idea of control. Don't dwell on the adversarial nature of the relationship; instead, substitute the idea that you will control with the other's consent, if you can get it--but by force, if need be.

One school of thought holds that the role of police is essentially defensive. What is defensive about going forth to arrest a subject who does not wish to be arrested? Chasing a suspect is, in the broader sense, defending society in general but is offensive in its narrower context. An officer uses force when he/she needs to establish control over a subject. The reasons he/she must establish control are to perform lawful duties and protect against harm. An officer need not rethink this argument during each emergency, but does need to periodically clarify his/her values with a statement of purpose and working philosophy.

The correct amount of force is that amount necessary to establish control over the subject and neutralize threat or resistance. The officer must immediately match the risk sensed from the subject with the proper means of control. The confrontation must be resolved with a minimum of injury to all parties concerned in a timely manner. Since all possible conflict situations cannot be listed in detail, and since all proper responses also cannot be precisely spelled out, situations are classified by major problems and relative seriousness.

### **WHAT THE MODEL REPRESENTS - The Subject's Actions**

In this model, the subject's threat/resistance level determines the necessary amount of force the officer uses. Therefore, the first step in using the model in all cases is to determine the level of the subject's threat/resistance. Previous data concerning the subject's propensity for violence may be taken into account when establishing the initial response level, if there is time for such planning. (The model is depicted on page 90 of this Appendix).

B is the neutral point on the vertical axis at which no problem exists. Rising up line AB, there is a continuous increase in the potential or real resistance by the subject and vulnerability to the officer. Horizontally along line BC extend the successively stronger responses by the police and progressively greater potential for injury to the subject.

In the first increment above point B, proximity alone links officer and subject. That is, the officer is near the subject's personal space and area of possible control. At this point of no overt resistance, the mere presence of the officer is enough to control the subject since the subject presents no problem. Further escalation of conflict by the subject is self-explanatory up line AB.

### **WHAT THE MODEL REPRESENTS - Police Options**

Line BC represents the means of establishing control, not in order of frequency or chronology but in the order of intensity and severity. Going from left to right along this line, the officer plays out his/her repertoire of available controls. The further along this line, the greater chance there is of establishing control, but there is also a greater chance of causing bodily injury to the subject.

### **WHAT THE MODEL REPRESENTS - Presence**

Far to the left on line BC, the first increment indicates the mere presence of legal authority in the person of the officer; as previously noted, this may in itself be a form of control. This control can be augmented by an imposing physical stature, an appearance of conditioning and an alert demeanor. If these advantages exist, the officer's position on the horizontal scale is moved correspondingly to the right.

An officer's presence may, at any point before deadly force on the horizontal continuum, suddenly cause the subject to realize that he should abandon resistance. But, the higher the initial resistance, the less likely this will occur.

### **WHAT THE MODEL REPRESENTS - Verbal Direction**

The next level of control is verbal direction, ranging from a smiling "Please" to a heart-pounding "Stop or I'll shoot!" Verbal direction, advice and persuasion may arrest the subject's intent at any point on the continuum. Once again, though, the more intense the subject's resistance, the less probable that words alone will suffice unless there is time to

establish dialogue or negotiations. There is a point, too, at which words prove fruitless when used without higher level control. Along this horizontal axis, presence and verbal direction are included with any higher level controls when higher level controls are necessary.

### **WHAT THE MODEL REPRESENTS - Weaponless Control**

When words do not control and lethal force is not appropriate, weaponless control is available to fill the gap. In this model, weaponless control has been divided into three categories--from least injurious (but with least probability of control against high-level resistance), to most effective against high-level resistance (but with greatest possibility of bodily injury to the subject). These categories are listed below:

1. Mechanical techniques deal with the skeletal structure of the body. Either impact pressure or opposing prohibitive pressures are used. Any of these pressures can fracture bone or cause other damage to the body. Mechanical techniques generally offer the best chance for establishing physical control of an individual, but also the greatest chance of injury to him/her. Techniques in this category include:

a. Impact techniques such as penetrating karate strikes and kicks. These techniques may be used to stun as well as to stop. Impact techniques are intended to penetrate explosively into tissue to a depth sufficient to affect specific nerve centers or to jar the bone with enough force to accomplish the same result, stopping an attacking subject.

b. Prohibitive joint locking and breaking techniques such as arm locks. These techniques are applied to any jointed part of the body: fingers, thumbs, wrists, elbows, shoulders, ankles, knees and hips. The application of joint locks is often an intermediate step before full control or restraint is accomplished against a resistive or aggressive subject. When massive force is applied after the joint lock is fully established, tendon or ligament damage may result.

c. Neck restraints, either vascular control or choke holds. Important note: Lateral vascular neck controls are not the same as choke holds. They are two distinct types of control with very different potential for body damage. Choking techniques are infinitely more dangerous than vascular controls. Many people who are not well informed mistake the two types of holds. The reason for such mistakes is that both techniques appear similar in execution, are applied to body parts in close proximity, and, if the technique is not well performed, a lateral vascular neck control may unintentionally turn into a choking technique.

The vascular control is meant to establish control only by means of changing the rate of blood flow to and from the brain. Choke holds, however, constrict the flow of air to the lungs and may cause other undesired reactions as well. (For further information on a systematic use of force involving neck restraint, see the KCPD lateral neck restraint system of Jim Lindell, Physical Training Supervisor for the Regional Training Academy, Kansas City, Missouri).

2. Pain compliance techniques consist of the application of non-impact pressure to pain receptors. This motivates the subject to find relief either by ceasing all resistance or by propelling himself in the direction of relief given by the officer.

The outcome of the use of pain compliance techniques is not always predictable, however, when attempted by means of wrist locks or nerve pressure unless a control instrument is used. This is so because the quality of pain varies widely from one subject to another and between body parts, and it is greatly affected by mental condition and drugs. The use of control tools such as a Kubotan, Yawara or other short stick instruments, when readily available and expertly applied, can greatly increase the chances of establishing control. These instruments are designed to maximize pain, and when used strictly as pain compliance instruments, they cause little tissue damage.

3. Inhibitory techniques (stunning) are techniques to stun or temporarily cause inhibition of respiration or loss of conscious control of the motor functions of the extremities. Examples are a quick penetration pressure to a pressure point, a palm heel struck to the head, a similar blow to the lower rib cage or a sharp strike to the solar plexus. Both of the latter two techniques can cause the diaphragm to spasm and breathing to be temporarily suspended. These techniques can give the officer the opportunity to apply locking techniques, handcuffs or other restraining devices to the previously uncooperative subject.

This range of mechanical techniques could also include most unconventional military combat techniques at the lethal force end of the continuum. Although these unconventional techniques are not usually taught in police academies, they are also examples of this category of weaponless technique.

### **WHAT THE MODEL REPRESENTS - Impact Weapons (Straight Baton, Side-Handle Baton, etc.)**

Impact weapon techniques start at the same point on the continuum as mechanical weaponless techniques; and just as with weaponless techniques, batons or other impact weapons can be used with various degrees of intensity. If a subject is aggressively offensive, an officer should be able to apply baton techniques at the appropriate level of intensity, as indicated by the matching category on the vertical axis.

If a subject is likely to harm others, perhaps more intense baton techniques would be in order. When a subject places life and limb in jeopardy, the baton can still be useful, but its potential does not match the probability of establishing instantaneous control that a firearm offers.

### **HOW TO USE THE MODEL**

In using this model, the subject's level of action is determined first (on the vertical scale), since it is his/her action which determines the amount of force used by a law enforcement officer. This vertical continuum is sectioned to indicate degrees of threat/resistance. It

would be better if the lines on the graph were replaced by a gradual shading from white (point B) to dark red (point A). This coloration would indicate the level of threat/resistance posed by the subject, which is also the level of vulnerability faced by the officer.

The horizontal axis represents the use of force by a law enforcement officer. This line BC is sectioned to indicate levels of control. Again, these sections would be better represented by progressive shading from white (point B) to dark blue (point C). This darkening would represent both the probability of establishing positive control and the probability of tissue damage to the subject.

The graph is traversed by three lines. Line BD represents the ideal use of force. Note that it exactly bisects the chart at 45 degrees. In creating this model, it would have been possible to move this line slightly to the lower right to indicate that an officer may use slightly more force than a resisting subject uses; the law allows the officer to be the aggressor and to use greater force to win the encounter. However, it is far more practical and professional to leave the ideal at 45 degrees to indicate that an officer may meet force with equal force, but uses his skill and training to his lawful advantage.

Lines BE and BF create a discretionary gray area within which the officer's actions are acceptable. Area ABE indicates potential ineffective control or response, and area CBF represents potential excessive control or response.

This model can be used for both pre-incident training and post- incident analysis. If a situation is complex and characterized by fast-changing levels of threat/resistance, then its course may be plotted by numbering each action and reaction (e.g., 1. This happened first. 2. This happened second, 3. etc.)

### **TO ANALYZE PAST USE OF FORCE**

For use in situational analysis to determine in retrospect whether an officer reacted appropriately:

1. Determine the level of threat/resistance on the vertical axis.
2. At that level, follow a horizontal line to the right edge of the graph.
3. Determine the level of control used on the horizontal axis.
4. At that level, follow a vertical line upward until it intersects the line drawn in step 2.
5. Repeat for all actions taken. Label each point of intersection sequentially.

## **Appendix B**

### **Riots**



## **JAIL TENSION INDICATORS OFTEN PRECEDING**

### **RIOTS AND DISTURBANCES**

Disturbances in correctional institutions can be prevented if staff are able to interpret and act on change in institutional atmosphere and behavior patterns. Among the signs indicating growing tensions and potential disturbances are the following:

- Many inmates spending more time in their cells;
- Inmate groupings with point men facing away from the group;
- Increase in disciplinary cases;
- Increase in inmate/employee confrontations;
- Increase in inmates trying to intimidate officers who are in the process of writing up an inmate;
- Increase in veiled threats against officers;
- Increase in voluntary lockups;
- Increase in inmate sick calls;
- Increase in inmate violence;
- Increase in number of weapons found in shake-downs;
- Harsh stares from inmates;
- Drop in attendance at movies or other popular functions;
- Unusual and/or subdued actions by inmate groups;
- Reluctance on the part of inmates to communicate with staff;
- Inmates avoiding eye contact with staff;
- Inmates making excessive and/or specific demands;

## **JAIL TENSION INDICATORS OFTEN PRECEDING**

### **RIOTS AND DISTURBANCES (Continued)**

- Appearance of inflammatory and anti-authority materials;

- Warnings to “friendly” officers to take sick leave or vacation;
- Increased safety demands from employees;
- Significant increase in employee resignations;
- Letters and/or phone calls from concerned inmate families demanding protection for inmates;
- Unusual number of telephone inquiries about prison conditions;
- Outside agitation.

Taken from: Riots and Disturbances in Correctional Institutions, American Correctional Association, 1981.

## **Appendix C**

### **Other Models**