

Use of Force

Concepts and Issues Paper

Originally Published: February 1989

Revised: December 1995; October 1998; April 1999; August 2001, February 2005, February 2006

I. INTRODUCTION

A. Purpose of the Document

This paper is designed to accompany the *Model Policy on Use of Force* established by the IACP National Law Enforcement Policy Center. The paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their community and their law enforcement agency.

This is the sixth revision of the *Model Policy on Use of Force* published originally in 1989. These revisions are due largely to sometimes subtle changes in law governing use of force. It is also a response to the ever-increasing number of nondeadly force alternatives that are being introduced to law enforcement agencies, thus increasing both the options and flexibility of alternatives to the use of deadly force.

In this respect, a recurring inquiry of the National Law Enforcement Policy Center has involved the wisdom of developing a nondeadly force policy in addition to this use-of-force model policy. The policy board has considered this issue each time revisions to this policy have been undertaken and has arrived at the same conclusion. That is, police use of both deadly and nondeadly force is governed by the same legal principles on the use of force. Certainly, there are differences in the means of applying the varied types of force options and these should be addressed in policies, procedures, rules, and training associated with each method, technique, or force device (e.g., Kubotan, PR-24, pepper aerosol spray, pain compliance techniques, and bean-bag projectiles).

Police agencies may select to develop separate nondeadly force policies and procedures for prudent and sound reasons relevant to their own jurisdiction and department. Development of individual policies on the use of specialized force equipment is also a prudent approach. However, the legal grounds for selection, application, and removal of any force option applied against a subject should be based on the same legal principles cited in this model policy.

B. Background

Officers must be provided with a clear and concise departmental policy that establishes guidelines and limitations on the use of force generally and the use of deadly force in particular. Officers also require training in the appropriate and proficient use of all force options, not just firearms. But probably the most important component of regulating the use of force by police officers is first-line supervision. Policies and procedures on use of force are of little value without the oversight of line supervisors in particular and command-level personnel in general to ensure officer compliance and conformity with such directives. This latter concern also makes it very important that law enforcement administrators create formal procedures for reporting and reviewing use-of-force incidents.

Issues relating to reporting use-of-force incidents, training of officers in the handling, maintenance, and use of firearms, investigation of officer-involved shooting incidents, officer postshooting trauma, and early warning systems to identify potential personnel problems are dealt with separately in other model policies. This concepts and issues paper on use of force refers interested readers to the model policies associated with these important issues and does not reiterate the information and recommendations of these other documents.¹

In constructing an agency policy on the use of force, the foregoing related issues are often included. However, a strong argument can be made to keep a use-of-force policy as short and simple as possible. It is essential that officers have a complete understanding and recall knowledge of their agency policy on this critical issue. But the longer and more complex the policy the less likely that this is possible. A use-of-force policy can and should be concise and incorporate only the essential principles to adequately guide officer decision making. The remainder of procedural matters can be addressed through agency training and by providing links to other agency policies that address corollary issues of concern in use of force.

Managing uses of force by officers is one of the more difficult challenges facing law enforcement agencies. The ability of police officers to enforce the law, protect the public, and guard their own safety and that of innocent bystanders is very difficult in the United States where violent crime is commonplace and firearms

are widely available for both legal and illegal purposes.

The FBI's annual report of police officers killed and assaulted reflects part of the vast scope of this problem. In the year 2004, for example, official statistics indicated that 57 law enforcement officers were feloniously killed, an increase of five from the prior year. An additional 16,000 were wounded or injured during the same period.

These statistics, as serious as they are, do not reflect the vast number of unreported and more typical cases in which police officers confront uncooperative suspects who are physically resistant. Unless managed properly, such situations can, and often do, escalate into more serious confrontations. An officer's use of force in these or other circumstances, if justified, must not exceed that which is reasonably necessary to gain control and compliance of suspects.

C. Scope of Policy

The public generally associates police use of force with the discharge of a firearm. However, officers recognize that use of force includes a much wider range of nonconsensual compliance techniques and devices. These less coercive but more common uses of force may range from command presence to hand control procedures such as a firm grip, escort or pain or pressure compliance holds, or the use of other more aggressive measures involving a stun gun, electronic control weapon (ECW), pepper spray, or other nondeadly force equipment or tactics.

The variety of coercive options available to police officers in a confrontational setting is generally referred to as the force continuum. Force options on this continuum, ranging from so-called verbal judo and command presence to the use of a deadly weapon, officers are expected to employ only the level of force that is objectively reasonable to gain control and compliance of suspects. The decision to employ any force, including the use of firearms, may be considered excessive by statutory law and departmental policy or both, if it exceeds a degree of force that reasonably appears necessary in a specific situation. Such use-of-force decisions are made under exceedingly varied scenarios and often on a split-second basis. Based on this fact, state and federal courts have recognized that police officers must be provided with the necessary knowledge and training to make such decisions, in addition to attaining proficiency with firearms and other nondeadly force equipment and force techniques that may be used in the line of duty.

D. Definitions

The model policy employs the terms deadly force and nondeadly force. Deadly force is defined as "force that creates a substantial risk of causing death or serious bodily harm." The most common example of deadly force is that which employs the use of a handgun or other firearm in an encounter with a violently resistant individual. The vast majority of officers killed in the line of duty during 2004, for example, were shot to death—36 with handguns, 13 with rifles, and 5 with shotguns.

Nondeadly force is "any force other than that which is considered deadly force." The model policy sets a threshold for force at "any physical effort used to control or restrain another, or to overcome the resistance of another." This would include but is not limited to an officer's use of come-along holds, pain compliance techniques, manual restraint, and handcuffs. It would not include verbal commands or so-called verbal judo.

The difference between deadly and nondeadly force is not determined simply by the nature of the force technique or instru-

ment that is employed by an officer. Many force options may result in the death of a suspect under certain circumstances. For example, a police baton, if used properly in accordance with professionally accepted training guidelines, is not likely to cause death. But it can, and has, resulted in the death of suspects when used inappropriately by an officer who lacks training, or in situations that are chaotic or desperate where blows are accidentally or even intentionally struck to the head or other vulnerable area of the body. The same could be said for a variety of other items in the police arsenal. Therefore, a key to understanding what separates deadly force from nondeadly force has to do with the likelihood that a given level of force will result in death, whether it involves a handgun or other weapon or even an object that may be close at hand.

Force that is likely to cause death or serious bodily harm is properly judged through the eyes of a reasonably prudent and well-trained police officer under the same or similar circumstances. This reasonable man or, more accurately, reasonable officer standard is an objective test. That is, it is not based on the intent or motivation of the officer or other subjective factors at the time of the incident. It is based solely on the objective circumstances of the event and the conclusion that would be drawn by any "reasonable officer at the scene."²

The courts have made it clear that determination of the need for deadly force as well as the need for and appropriateness of any level of force is to be judged on the basis of objective facts in a given situation. The model policy states in this regard that "in determining the necessity for force and the appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community."

In determining the proper level of force to use, the model policy states that officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be a threat of death or serious bodily harm. Officers must use nondeadly force options where deadly force is not authorized and may use only that level of force that is objectively reasonable to bring the incident under control.

E. Legal Considerations

1. *Scope of Remedies.* Use of force may have potential civil and criminal consequences in either state or federal courts or both. As scores of such actions have demonstrated, the scope and the wording of departmental policy can be crucial to the final outcome of such cases.

At a minimum, departmental policy should meet state and federal court requirements and limitations on the use of force. The U.S. Constitution forms the base line for civil rights in this and other circumstances. While the states cannot take away or diminish rights under the U.S. Constitution, they can, and often do, expand upon those rights. In such cases, law enforcement administrators must establish a departmental policy that meets the more stringent use-of-force guidelines of their state constitution and statutory or case law. It should be emphasized, however, that it is sometimes possible for action to be initiated against an officer, police department, police administrator(s), and in some cases, the governing jurisdiction in either or both state or federal courts.

In particular, a police officer may be found criminally liable under 18 U.S.C. 241 where it can be demonstrated that the officer intentionally violated an individual's civil rights. Action may also

be initiated under 18 U.S.C. 242 to establish criminal conspiracy where two or more officers may have been involved in the same incident.

Typically, plaintiffs pursue civil action under 42 U.S.C. 1983 or section 1985 or both as a civil rights violation of the due-process clause of the 14th Amendment, as cruel and unusual punishment in violation of the Eighth Amendment, or as a violation of Fourth Amendment restrictions on seizure of persons. A municipal or county government may also be named as a defendant under section 1983. A plaintiff need not exhaust state and local remedies before pursuing these forms of relief in federal court. Many attorneys prefer to pursue relief in federal, as opposed to state, court as federal guidelines allow for the independent award of attorney's fees that are often beyond those contingency fees that would be gleaned from plaintiffs' awards for damages.

2. *Use of Policy in Court.* Courts vary on their interpretation of the propriety of allowing departmental policy to be introduced as a standard of conduct analogous to statutory law. Generally, the fact that an officer failed to comply with agency policy is important only in determining agency-imposed discipline. However, in some cases, it may be permissible to enter at trial the issue of officer noncompliance for whatever weight and significance a jury feels appropriate. Police administrators should not be hesitant to develop comprehensive, strong, and definitive policies and procedures for fear that they may prove prejudicial to a future court assessment of an officer's conduct. In fact, failure to adopt a use-of-force policy in clear and unequivocal terms will almost certainly have more serious consequences for the officer's agency and employing jurisdiction.

3. *Federal Guidelines for Use of Force.* In drafting policy on the use of force, police administrators should be aware of the benchmark 1985 decision of the U.S. Supreme Court in *Tennessee v. Garner*. This decision held unconstitutional the Tennessee deadly-force statute that permitted police officers to use deadly force to arrest nondangerous fleeing felons.³

In *Garner*, a Memphis, Tennessee, police officer, acting in conformance with state law, shot and killed an unarmed youth fleeing over a fence at night in the backyard of a house he was suspected of burglarizing. The Court held the officer's action unconstitutional under 42 U.S.C. 1983 stating that ". . . such 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."⁴

The Court ruled that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. Thus, even where an officer has probable cause to arrest someone, it may be unreasonable to do so through the use of deadly force. The principles of this case are essential in the formation of a sound contemporary use-of-force policy. For example, the model policy sanctions use of deadly force "to protect the officer and others from what is reasonably believed to be a threat of death or serious bodily harm," (or) "if it is necessary to prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others."

4. *Defining a Reasonable Use of Force.* The ominous, ever-present potential of civil or criminal litigation involving deadly-force incidents also necessitates close scrutiny of the language employed in use-of-force policy by legal authorities. Police administrators should work closely with knowledgeable attorneys in determining the suitability of use-of-force policy to their

local conditions, needs, and perspectives. The deliberations over individual phrases or word usage may on the surface appear inconsequential or excessive. However, such terms can, and do, have significant consequences in an adversarial court setting.

For example, the model policy employs the reasonableness standard in describing the limitations on the use of force: "officers shall use only the force that is objectively reasonable to bring an incident under control."

A commonly used alternative wording (which is not recommended) may direct officers to use only the *minimum force* necessary to control such an incident. The literal wording of this latter directive, however, can impose an unacceptable burden upon a police officer in a deadly-force confrontation. For example, attempts to assess minimum force responses may result in a decision to use less force than would be legally permissible or effective to control the situation. These restricted actions could result in the death or serious injury of the officer or other persons.

On the other end of the spectrum, the subjectiveness of the minimum-force standard could support an officer's belief or contention that his actual excessive use of force was the minimum force required to deal effectively with the situation. More importantly, the minimum-force standard requires an analysis based on knowledge of all relevant facts. Officers in a shooting incident may not have all these facts at hand. Generally, all relevant facts come to light at a later time. Under questioning in court and with all the facts then available through investigation of the incident, the officer may be forced to admit that, in hindsight, he or she did not use the minimum force that was necessary as directed by the policy even though at the time the force that was used appeared necessary.

Thus, while most police officers would understand the underlying meaning of minimum force, its literal interpretation in an adversarial court setting could prove detrimental to a fair determination of an officer's actions.

The use of other commonly employed terms and phrases, even though well intentioned, can cause unexpected and unnecessary consequences for the officer and the agency. Use of such phrases as "officers shall exhaust all means before resorting to the use of deadly force" present additional obstacles to effective defense of legitimate and justifiable uses of force. These and similar terms and phrases impose additional burdens on officers above those required by law.

The use of some preambles to policy statements can have the same effect if not properly constructed and limited. Preambles to use-of-force policies often impart such messages as "the taking of a human life is the ultimate step in the use of force and represents a measure that may only be taken if unavoidable, justifiable, and legal." While there are few who would argue with the basic intent of this statement, it establishes standards of care and mandatory precautions for officers that need not, and should not, be imposed on them by departmental policy. First, the sanctity of human life should be self-evident to all officers and should, in fact, be part of the basis upon which officers are screened, selected, and trained. The significance of using deadly force should also be readily apparent to officers. This issue can also be reemphasized in departmental training and is more appropriately documented in the agency's statement of values, statement of ethics, or code of conduct. These issues need not, and should not, be incorporated into the agency's use-of-force policy.

The foregoing discussion is not meant to suggest that law enforcement agency policy must be established only with potential litigation in mind. On the contrary, police administrators

should seek language that helps to properly guide officer decisions consistent with departmental desires and values while also protecting the officer, the department, and the community from unnecessary litigation. But this discussion is meant to reemphasize the importance of word selection in establishing policies in general and a use-of-force policy in particular. It is strongly recommended that this and other policies undergo informed, professional legal review before they are sanctioned by the agency.

It should also be recognized that a considerable proportion of officer guidance and direction is established in the training process. Training should effectively translate the general guiding principles of agency policy and operational procedures into real-world scenarios through explication and practice. Training shares an equal, if not greater, responsibility in departmental efforts to control and manage the use of force and, as such, can have an independently dramatic impact on an agency's attempts to justify actions involving the use of force in court or other contexts.

II. MODEL POLICY DIRECTIVES

A. Structure of the Policy

As noted in the introduction to this policy, many police agencies prefer to develop separate deadly force and nondeadly force policies. In addition to the comments previously made on this topic, there are several other reasons why the model policy combines these into a single use of force policy.

The first reason pertains to policy organization. That is, a common problem among law enforcement agencies is that their policies and procedures are not organized in a manner that enhances policy usefulness for the officer. Policies that are interrelated may not be cross-referenced, or may appear separately under different topical areas. Differing promulgation dates may create a conflict where revisions are not continuously made to both policies. Under such conditions, policies and procedures can prove hard to digest, integrate, and implement.

Second, and more importantly, integrating both deadly and nondeadly force guidelines into one policy serves to illustrate and reinforce for the officer the concept of the use of force as a continuum. The use-of-force continuum illustrates the range of uses of force and the appropriate force necessary to match a given incident. By placing both sets of guidelines under one heading, an officer consulting the policy is encouraged to view force on a broader, more integrated conceptual basis.

As noted earlier, determining whether a use of force is deadly can be problematic. Even the use of a firearm in a hostile confrontation results in death in only 50 percent of shootings. On the other hand, presumably nondeadly force incidents have on numerous occasions resulted in death. Therefore, it is the position of the policy center that use of force is an issue that is best dealt with from this integrated perspective, recognizing that nondeadly force situations can, and often do, escalate into deadly force confrontations. Effective guidance for police officers on use of force, whether with firearms or by other means or tactics, must recognize and deal with force in all its forms and applications.

Finally, from a legal perspective, any use of force, whether inherently deadly or not, is governed by the same standard: an officer can only use that level of force that is objectively reasonable to bring a subject under control.

B. Authorized Uses of Deadly Force

The model policy identifies two general circumstances in which the use of deadly force may be warranted. The first instance is to protect police officers or others from what is reasonably believed to be a threat of death or serious bodily harm. A prior revision of this model policy eliminated use of the term *imminent* in reference to the threat that a suspect may pose to the officer or others in order to justify the use of deadly force. The term *imminent threat* is commonly used by law enforcement agencies in this context to underscore the need to withhold using deadly force until certain of the threat. However, this may impose an added burden upon officers by requiring them to ascertain how this applies and what *imminent* means in specific situations. It may also impose a burden of proof upon officers in court settings that is unnecessary.

Second, police officers may use deadly force to prevent the escape of a fleeing violent felon who the officer has probable cause to believe will pose a significant threat of death or serious physical injury to the officer or others. In this case, the more demanding test of probable cause must be employed before deadly force can be used. In such cases, a threat of further violence or death must impose clear justification to use deadly force; for this reason the model policy uses the term *violent felon*.

For example, use of deadly force would be justified in instances where an officer attempts to stop the escape of a fleeing violent felon whom the officer has identified him or her as one who had just committed a homicide, and who is armed or is likely to be armed in light of the crime. However, the potential escape of nonviolent felons may not pose the same degree of risk to the public or the officer, and use of deadly force to prevent his or her escape would not be justifiable under the model policy.

Because there can be a greater risk of error in these circumstances, some agencies prefer to disallow or seriously limit the use of deadly force in the case of fleeing felons. Those who prefer this approach point to the problem associated with positive identification of suspects and that, even in the case of repeat violent offenders, one often cannot predict an offender's future behavior. Given these and related problems, this approach assumes that if an error is to be made, it is best that it be made on the side of restraining the use of deadly force where fleeing felons are concerned.

If a decision has been made to employ deadly force, a police officer should, whenever possible, identify himself or herself and demand that the subject stop. This requirement was made clear in the *Garner* decision. Typically, the phrase "stop—police" can be used, although similar commands that make an officer's intent clear can be employed.

C. Shooting to Stop Aggressive Behavior

Where the use of deadly force is justified, training should teach an officer to fire his or her weapon to stop a subject from completing a potentially deadly act. The phrase "shoot to kill" is not only inaccurate in practice but generally proves insensitive and prejudicial to the layman and inflammatory and misleading in a court action where the policy of the agency is called into question.

The popular cinematic and television characterization of the police does not reflect the abilities of most officers under actual combat shooting conditions. Research in major metropolitan police departments, in fact, reveals miss rates of between 42 and 82 percent of rounds fired during actual deadly force confronta-

tions.

Statistics also reveal that about 90 percent of shooting incidents last three seconds or less. Within this period, a police officer takes appropriate steps to stop the threat and rarely, if ever, has the chance to engage in decision making about the degree of injury that will be inflicted. The realistic motivation is primarily reactive and designed to stop the threat or the aggressive behavior and protect one's life.

Attempts to shoot to wound, injure, or otherwise incapacitate a suspect are unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for police officers and others. Under special conditions, however, it may be necessary to permit or even direct that shots be fired to kill. Sniper teams used to extricate a hostage from an armed suspect and other related scenarios employing special weapons and tactics may be among those circumstances that constitute such an exception. Therefore, with these factors in mind, for maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot to stop at center body mass.

When using deadly force, the officer must always consider the potential risk to innocent bystanders. It is unacceptable to knowingly risk injury or death to bystanders in order to apprehend a suspect. On the other hand, in this as in other cases of use of deadly force, police officers must be able to balance the ultimate good of action versus inaction. For example, rare instances may develop in which failure to react to a serious threat would likely result in the loss of life. Under such circumstances, it may be justifiable to accept reasonable risks to others rather than accept the probable loss of life if no actions are taken.

Officers should not be expected to, nor should they, act in a manner that will likely result in their or another's death or serious injury solely because of concern over the potential risk to bystanders. Reasonable prudence to protect innocent bystanders should underlie all use-of-force confrontations.

D. Warning Shots

Earlier versions of the *Model Policy on Use of Force* advocated the prohibition of warning shots. This and the previous revision of the original model policy, while discouraging the use of warning shots, take the position that there are circumstances in which warning shots may be justified and a blanket prohibition is not justifiable. With this recognition, it is more prudent to provide allowances for such contingencies in a use-of-force policy along with appropriate safeguards.

However, before proceeding, it should be emphasized that warning shots are a highly risky undertaking and they should be used only under the most extreme circumstances. Nothing in the position of the model policy is meant to imply that warning shots should be considered as a generally acceptable and reasonable option for use-of-force encounters. On the contrary, warning shots, while permitted under the model policy, should be regarded as extreme measures that may only be taken under highly unusual circumstances and generally when all other reasonable alternatives have been exhausted or would be perceived as unacceptable.

While a large majority of police departments prohibit warning shots, some permit their use under restricted conditions. In many cases, these are agencies that operate in rural environments where the potential harm to innocent bystanders from warning shots is minimal. A shot fired in the air may also serve as a call for assistance by an officer where a life-threatening situation exists or when attempts are being made to prevent the escape of

a dangerous felon. In addition, in extraordinary situations, warning shots have been used to successfully defuse escalating and potentially life-threatening assault situations. One example is the use of a warning shot to impress upon a hostile crowd an officer's intent to employ deadly force to protect himself or herself or others.

Police departments that permit warning shots must provide sufficient training to officers to ensure their appropriate use. Police officers must be cautioned that the use of warning shots, if later deemed inappropriate, may make the officer subject to disciplinary action, civil litigation, or both.

These cautions are even more important in urban and suburban environments where there is added danger of errant shots striking innocent bystanders. In addition, warning shots can and have been mistaken for a shooting exchange that precipitates the use of gunfire by other officers or the suspect(s). Once the first shot is fired in a hostile confrontation, it is often difficult to control other shooting reactions.

On the basis of these and related considerations, the model policy takes the position that "Generally, warning shots should not be fired."

E. Shots at or from Moving Vehicles

Another modification addressed in revisions of the *Model Policy on Use of Force* involves shots fired at or from moving vehicles. Generally, the likelihood of misses and subsequent risks of errant shots harming innocent parties is increased under these conditions. It is also improbable that an officer could stop a vehicle or its operator in this manner without causing death or serious injury. Therefore, these are among the factors that counsel against such actions other than in the most extreme circumstances.

The model policy takes the position that "Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and in the immediate defense of life." It is understood that this policy may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgement, attending to the spirit of the policy. Any deviations from the provisions of the policy shall be examined rigorously on a case by case basis. The involved officers must be able to articulate clearly the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Again, training is essential in implementing this policy. Officers must recognize that such actions are only permitted under extreme circumstances and, because they generally involve a higher potential risk, they carry a higher burden of justification for use. It must be understood that the use of firearms under such conditions often presents an unacceptable risk to innocent bystanders. Handguns are generally ineffective in attempts to disable a motor vehicle, if in fact this is the intent of their use. And even if successfully disabled, the vehicle will most likely continue under its own power or momentum for some distance thus creating another hazard. Moreover, should the driver be wounded or killed by shots fired, the vehicle will almost certainly proceed out of control and could become a serious threat to officers and others in the area.

Most conventional police firearms, in fact, will normally fail to penetrate automobile bodies, or steel-belted automobile tires that are in motion, and frequently do not penetrate auto safety glass. Again, as in the case of the use of warning shots, firing at a motor

vehicle is an extreme measure that may only be taken under highly unusual circumstances and generally when all other reasonable alternatives would be perceived as unacceptable.

There are circumstances in which trained tactical officers with appropriate weaponry may take such actions if deemed appropriate by command personnel. Even under these circumstances, such actions should be taken only if the action does not permit an unreasonable risk to officers or others, when reasonable alternatives have been exhausted, when failure to take such action would probably result in death or serious bodily harm, and then only when due consideration has been given to the safety of innocent bystanders. In many cases involving the discharge of firearms at a moving vehicle, it is based on the contention that the driver was intentionally attempting to run the officer down. One of the simplest alternatives to the use of a firearm in this instance is to move out of the vehicle's path and seek cover.

F. Nondeadly Force

Where deadly force is not authorized, officers may use only that level of force that is objectively reasonable to bring a subject under control. This is the same objective standard used in determining whether deadly force is warranted.

As noted in the prior discussion of the force continuum, use of force can range widely from verbal coercion to the use of deadly weapons. Therefore, police officers must have at their disposal a variety of equipment and techniques that will allow them to respond appropriately to resistant or dangerous individuals. These include, but are not limited to, skills in verbal persuasion, unarmed self-defense tactics, use of come-along holds, use of restraint and physical compliance measures, and use of departmentally approved nondeadly weapons such as pepper spray, the stun gun, PR-24, baton and related devices. Without these and other alternatives at their disposal, there is a greater likelihood that officers may employ tactics that are inappropriate or excessive or that serve to aggravate or escalate a confrontation.

Police agencies must provide specialized training with equipment and force techniques authorized by their agency if they are to minimize the risk of complaints of excessive force. In this context, departmental training in this area should include a segment on handgun retention tactics and techniques. Statistics on police officers killed feloniously over more than a decade reveal that about 15 percent of police homicides were perpetrated by assailants using the officer's own handgun. This fact underscores the importance of developing skills necessary to thwart such attacks.⁵ It also suggests that departments should be cognizant of holster selection and allow use only of those that balance ready access to the handgun with security of the firearm. Trick holsters and loose-fitting holsters should not be authorized. A proper holster should hold the firearm snug to the hip and have a reasonably tight safety strap. Design of the holster should allow the officer to grip the handgun so that it will be ready to be fired when removed.

The National Law Enforcement Policy Center does not advocate the use of any specific nondeadly force weapons. The appropriateness of any such weapon depends largely on the needs and desires of each police department in the context of the community in which it operates and in accordance with the service demands and typical force scenarios faced by its police personnel. In addition, nondeadly weapons and techniques are being continuously introduced, refined, and updated. As such, police administrators must routinely assess current equipment and make judgments on selection and use that are appropriate to

their department. A critical element of that decision-making process is an assessment of the limitations of each device or technique, and the potential for its abuse or failure. A synopsis of these factors was developed in regard to several of the more popular nondeadly force weapons by Americans for Effective Law Enforcement, Inc.⁶

The National Law Enforcement Policy Center recommends however, that police departments ban the use of several types of weapons. These include slapjacks, blackjacks, brass knuckles, nunchucks, fighting stars, and other martial arts weapons. In addition, police agencies should consider serious limitations on the use of the police flashlight as an impact weapon.

G. Reporting Use of Force

Accurate and timely reporting of use-of-force incidents is an essential part of the process of monitoring and controlling such responses. The immediacy and mechanism for such reporting should depend on the nature of force used and the degree of injury involved. The National Law Enforcement Policy Center has developed a model policy on use-of-force reporting that is available upon request.

H. Departmental Response to Uses of Force

Use of deadly force has serious departmental and community implications. The integrity of a police department and its relationship to the community are often measured by the professionalism and impartiality that it brings to investigations of police uses of force in general and deadly force in particular.

Involvement of law enforcement officers in deadly force encounters can also have debilitating emotional effects upon not only the officers directly involved but those who may have indirect contact with the incident, such as emergency communications personnel. In this regard, law enforcement agencies must be prepared not only to conduct a professional investigation of the force incident but also be prepared to deal effectively with any emotional trauma affecting involved officers and other agency personnel.

The above two concerns are addressed in the *IACP Model Policies on Officer-Involved Shooting Investigations* and *Post-Shooting Incident Procedures*. It is recommended that agencies involved in the development or refinement of use-of-force policies obtain a copy of these two policies for reference and guidance.

I. Training

The issue of firearms training has been purposely excluded from the *Model Policy on Use of Force* as it is addressed in depth in the *Model Policy on Firearms* published by the policy center. However, the importance of training in the appropriate use of both deadly and nondeadly force necessitates that several key points be made in this regard.

First, civil rights litigation has made it abundantly clear that law enforcement agencies have a responsibility to ensure that police officers are adequately trained in the use of all weapons that they are permitted to carry on and off duty. This includes not only firearms but all nondeadly force equipment such as pepper spray. Police administrators, departments, and parent jurisdictions may be held liable for the actions of their officers should they be unable to verify that appropriate and adequate training has been received and that officers have successfully passed any testing or certification requirements. Police departments must provide responsive training, and all records of training received

by officers must be maintained accurately for possible verification later.

Backup handguns and other firearms should be subject to the same procedures for departmental registration, routine inspection, training and qualification as the on-duty handgun.

Finally, firearms training with respect to the use of deadly force cannot be limited to routine firearm qualifications and proficiency testing. It is recommended that all officers authorized to carry firearms be required to qualify with each authorized firearm on at least a semiannual basis. Quarterly qualification is a desirable objective. But, in addition to proficiency testing, it is strongly recommended that police agencies provide (1) routine instruction and periodic testing on the agency use-of-force policy and (2) instruction and practical exercises in making decisions regarding the use of deadly force.

In the latter instance, it is important that an element of firearms training include realistic use-of-force simulation exercises. This includes night or reduced light shooting, shooting at moving targets, strong-hand or weak-hand firing, and combat simulation shooting. Firearms training should attempt to simulate the actual environment and circumstances of foreseeable encounters in the community setting, whether urban, suburban, or rural. A variety of computer-simulation training is available together with established and recognized tactical, exertion, and stress courses. In essence, acceptable firearms training and evaluation are no longer limited to target practice. Scrutiny of firearms training will normally include an evaluation of the relevance and utility of such instruction.

Endnotes

¹ Copies of these documents may be obtained by contacting the National Law Enforcement Policy Center, International Association of Chiefs of Police, Alexandria, Virginia.

² *Graham v. Connor*, 490 U.S. 386 (1989).

³ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁴ *Graham v. Connor*, 490 U.S. 386 (1989).

⁵ "Handgun Retention," *Training Key* #373, International Association of Chiefs of Police, Alexandria, Virginia (1988).

⁶ "Use of Force Tactics and Non-Lethal Weaponry," *Alert*, No. 3, Americans for Effective Law Enforcement, Inc., Chicago (1988).

This project was supported by Grant No. 2000-DD-VX-0020 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice or the IACP.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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