

**Unit 1 Use of force concepts and legal authorities**

**28.1 Explain the legal authorities for the use of force.**

- A. Legal authorities
  - i. Deadly Force - PC 9.01(3)
  - ii. Justification as a Defense - PC 9.02
  - iii. Confinement as Justifiable Force - PC 9.03
  - iv. Threats as Justifiable Force - PC 9.04
  - v. Reckless Injury of Innocent Third Person - PC 9.05
  - vi. Civil Remedies Unaffected - PC 9.06
  - vii. Arrest and Search – PC 9.51
- B. Case studies
  - i. Estate of Ceballos v Bridgwater, 09-10412 (2010).
  - ii. Okonkwo v. Fernandez, 2003 WL 22227858 (2003).
  - iii. Graham v. Connor, 490 U.S. 386 (1989).
- C. Related cases
  - i. Brower v. Inyo County, 489 U.S. 593 (1989).
  - ii. Saucier v. Katz, 121 S. Ct. 2151 (2001).
  - iii. Osabutey. v. Welch, 857 F.2d. 220 (1988).
  - iv. Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987).
  - v. Harlow v. Fitzgerald, 457 U.S. 800 (1982).

**28.2 Explain the justification(s) for use of force.**

- A. General justification
  - i. Public Duty – PC 9.21
  - ii. Necessity – PC 9.22
- B. Protection of Persons
  - i. Self-Defense – PC 9.31
  - ii. Deadly Force in Defense of Person – PC 9.32
  - iii. Defense of Third Person – PC 9.33
  - iv. Protection of Life or Health – PC 9.34
- C. Protection of Property
  - i. Protection of One's Own Property - PC 9.41
  - ii. Deadly Force to Protect Property - PC 9.42
  - iii. Protection of Third Person's Property - PC 9.43

- iv. Use of Device to Protect Property - PC 9.44
- D. Special Relationships
  - i. Parent-child - PC 9.61
  - ii. Educator-student - PC 9.62
  - iii. Guardian-incompetent - PC 9.63
- E. Custody and Escape
  - i. Custody - PC 38.01(1)
  - ii. Escape - PC 38.01(2)
  - iii. Prevention of Escape from Custody - PC 9.52
  - iv. Maintaining Security in Correctional Facility - PC 9.53
- F. Affirmative Defense
  - i. Civil Immunity - CPRC 83.001
  - ii. Tennessee v. Garner, 471 U.S. 1 (1985).

#### **REQUIRED ACTIVITY:**

The instructor must develop at least three scenarios that demonstrate the legal authorities for the use of force. The scenarios must cover police and suspect encounters involving the different circumstances covered by the legislation above. The scenarios must be applicable to the learner's context and vary in the following:

- Suspect(s) eventually displaying a firearm.
- Distance between the suspect(a) and the officer(s).
- Bystander group dynamic surrounding the incident.

Each scenario must be followed by a discussion in the format determined as most appropriate by the instructor. The discussion must focus on:

- Identifying appropriate level of force and under what legal authority.
- Identifying who, what, where, why and how it applies to communications, such as report writing and proper articulation of facts.
- Recognizing officer accountability if an innocent third party is injured, applicable civil remedies and under what legal authority.

#### **28.3 Discuss concepts regarding use of force.**

- A. Cases relevant to Texas
  - i. Use of Force
    - 1. Fraire v. City of Arlington, 957 F.2d 1268 (1992).
    - 2. Graham v. Connor, 490 U. S. 386 (1989).
    - 3. Brother v. Klevenhagen, 28 F. 3d 452 (1994).
  - ii. Taser

1. Jackson v. City of Schertz, Texas, 2007 WL 4205709 (2007).
2. City of Waco v. Williams, 209 S.W.3d 216 (2006).
- iii. Shooting at a moving car
  1. Hathaway v. Bazany, 2007 WL 3200413 (2007).
- B. Other relevant Circuit Court cases
  - i. Handcuffing
    1. Baskin v. Smith, 50 Fed Appx. 731 (2002).
  - ii. Pepper Spray
    1. Martinez v. New Mexico Dept. of Public Safety, 47 Fed. Appx. 513 (2002).
    2. Jennings v. Jones, 2007 WL 2339195 (1st Cir. 2007).
  - iii. Seizure at Gunpoint
    1. Robinson v. Solano County, 278 F.3d 1007 (2002).
  - iv. Use of Canine as Force
    1. Kuha v. City of Minnetonka, 328 F. 3d 427 (2003).
    2. Robinette v. Barnes, 854 F. 2d 909 (1988).
  - v. Hog-Tie/Hobble Tie
    1. Cruz v. Laramie, 239 F.3d 1183 (2001).

**INSTRUCTOR NOTE:** Discuss the different Circuit Courts and explain Texas is in the 5th Circuit.

#### **28.4 Describe psychological aspects of the use of force.**

- A. The role of law enforcement in an arrest.
  - i. In a physical arrest, the police role is essentially defensive.
    1. Defined as “serving to protect,” “devoted to resisting or preventing aggression or attack.”
    2. An officer’s initiative to confront a law violator is not aggressive.
    3. It is one designed to defend and protect the community from criminality.
  - ii. Issues may arise from employing use of force against a combative but unarmed law violator without applying reasonable alternatives.
  - iii. An officer needs a range of decision-making tools that permit use of exactly the degree of control that constitutes reasonable force.
- B. Concept of Control
  - i. Control is the degree of influence the officer must exert over the violator to take them safely into custody.
  - ii. Control is a “two-way street.”
    1. An officer must be in complete self-control to be able to control a violator.

- a. Self-control is one of the greatest assets in dealing with a law violator.
  - b. Self-control results from the development of confidence in one's skills.
  - c. Self-control is achieved through training and practice, both on and off duty.
- iii. The objective of using control is to elicit violator cooperation.
- C. Emotions, Behavior and Prejudices
  - i. An arrest can be both a physical and emotional event for the officer and arrestee.
  - ii. Emotional responses are often the direct result of uncertainty.
  - iii. Uncertainty may also result in compensating behavior, such as
    1. Hesitation
    2. Verbal abuse
    3. Bluff
    4. Unnecessary force
  - iv. Officer's awareness of their own prejudices and behaviors can reduce the likelihood of conflict.
  - v. Officer's commitment to firm but fair behavior can reduce problems and danger associated with a physical arrest.

#### **REQUIRED ACTIVITY:**

The instructor must develop at least one scenario that highlights the ethical role of a law enforcement professional. The scenario must include a subject insulting an officer based on their personal appearance or lifestyle. As a result, the officer must act in a manner which escalates the conflict.

Each scenario must be followed by a discussion in the format determined as most appropriate by the instructor. The discussion must focus on:

- Identifying the ramifications of letting one's emotions affect their duty performance.
- Identifying what professionalism entails and how an officer's actions affect the department's reputation.
- Identifying their ethical role as a law enforcement professional.

#### **28.5 Identify deciding factors for use of force when affecting an arrest.**

- A. In every arrest situation, the officer must be firm and prepared to protect themselves and others.
- B. Force must be controlled and used wisely with a purpose.
- C. Only the amount of force reasonably necessary to make the arrest should be used.
- D. An officer should consider the following factors when assessing the level of force that is reasonable under the circumstances:

- i. Is the suspect submitting peacefully or resisting?
- ii. Is the suspect armed?
- iii. What is the nature of the crime?
- iv. Does the suspect have a previous arrest record or history showing a pattern of violence?
- v. How many suspects are involved?
- vi. How much support from other officers is available?
- vii. What is the risk that the force chosen might cause injury to a bystander or other officers?

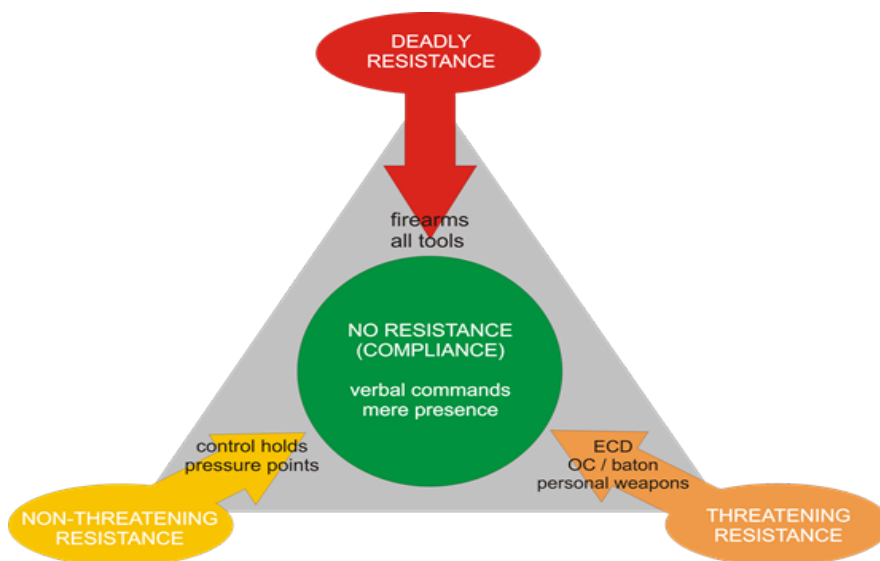
**28.6 Identify moral considerations and forces affecting an officer's decision to use deadly force.**

- A. Statutory and case law, as well as whether deadly force is justifiable under the circumstances presented.
  - i. Can deadly force be avoided without risk of injury or death to the officer or others?
- B. Administrative or departmental policy should be at least as restrictive as the law.
- C. Informal organizational norms, which reflect law enforcement's informal culture, may or may not be stricter than legal or agency restrictions.
- D. Individual choice or conscience also impact the inner controls of the officer.

**Unit 2 Unit 2 Use of force options and alternatives**

**28.7 List force options available to peace officers.**

**INSTRUCTOR NOTE:** Instructors are encouraged to use a use of force model similar to the Dynamic Resistance-Response Model (DRM), presented below for reference.



- A. Professional presence
- B. Verbal communications
- C. Weaponless strategies
  - i. Takedowns
  - ii. Come-along holds
- D. Weapon strategies
  - i. Chemical/electrical means
  - ii. Stun guns
  - iii. Baton or impact weapons
- E. Deadly force

**28.8 Identify the principal considerations in applying use of force.**

- A. Ineffective control
  - i. The level of force is less than the subject's level of resistance.
- B. Excessive control
  - i. The level of force is unreasonably greater than the subject's level of resistance, potentially causing preventable injury.
- C. The force used should be no more than a reasonable officer would use under the total circumstances of the situation.
- D. Follow departmental policy and the law.

**REQUIRED ACTIVITY:**

The instructor must develop a scenario that demonstrates different force options and levels. The scenario must include an incident in which the suspect is being verbally combative and refusing to remove their hands from their pockets. The scenario must describe different potential officer responses, ranging in both force option and level.

The scenario must be followed by a discussion in the format determined as most appropriate by the instructor. The discussion must focus on:

- Can an officer demand a suspect to take their hands out of their pockets?
- If the suspect refuses, what force can be used and under what authority?
- Are there any force alternatives to ordering a person to take their hands out of their pockets? What risks do they pose, if any?
- What was the most appropriate officer response in this situation? Under what authority is it possible?

**28.9 Discuss the impact of an officer's professional presence.**

- A. A scene has its own dynamic long before an officer arrives.
- B. As they enter the scene, the officer's presence will impact current dynamics.

- C. Officers must be able to think of the scene as it was before they entered it, as well as what it becomes while they are present.
- D. Officers must remain alert to the dynamics of the people present and whether elements within a group may be supportive or hostile to the officer's duty performance.

**28.10 Identify communication strategies used when dealing with the public.**

- A. Communication is an important professional skill.
  - i. 97% of an officer's duties involve verbal skills.
  - ii. Only about 3% of contacts require physical force.
- B. Elements of communication
  - i. Words, touch, body movement
  - ii. Content
  - iii. Voice and tone
  - iv. Non-verbal, raised eyebrows, and posture.
- C. Message perception
  - i. 7% of the time a message is received due to content.
  - ii. 33% of the time a message is received due to voice.
  - iii. 60% of the time a message is received due to non-verbal/body language.
  - iv. This means that approximately 93% of the time, a message is received and interpreted based on how something is said rather than what is said.
- D. Improper listening is not paying attention to what is said.
  - i. An example is merely waiting for the opportunity to speak as soon as someone finishes talking.
- E. Communication is a professional skill, not just luck.
- F. Peace officers must communicate under uniquely stressful conditions:
  - i. To people who do not want to talk or listen.
  - ii. To emotionally charged individuals.
  - iii. In dangerous circumstances.
  - iv. While being watched by others.
  - v. To people who dislike and/or mistrust peace officers.
  - vi. Most people respond positively to reasonable requests from a peace officer.
  - vii. Frustrated people often resist.
  - viii. Upset people are often incapable of acting reasonably and will not respond to appeals of reason.
  - ix. Commands or orders are usually met with resistance.

- x. An officer must trust tactics which redirect behavior.
- xi. Maintain disinterest (objectivity, free from bias, impartial, it does not mean uninterested, unconcerned, or mechanical)
- xii. Learn to allow people to express frustration.
- xiii. Actively listen.
- xiv. Do not take things personally.

**28.11 Identify elements that an officer must recognize and control in every encounter.**

**A. Problem**

- i. Analyze and identify the problem.
- ii. Enables an officer to plan an approach.
- iii. Problems often change as confrontation progresses.

**B. Audience**

- i. Everyone encountered is part of the audience.
- ii. Audience reaction
  - 1. Receptive
  - 2. Hostile
  - 3. Critical
- iii. Read audience and adapt tactics appropriately.
- iv. If an individual has a friend in the audience, it may be helpful to enlist their help to reason with and persuade that individual to follow the officer's orders.

**C. Constraints**

- i. Determine if there are any obstacles to effective communication and, if possible, eliminate them.
- ii. Examples included but are not limited to:
  - 1. Time of day
  - 2. Weather
  - 3. Location
  - 4. External noise
  - 5. Officer's mood
  - 6. Individual's values and beliefs
  - 7. Individual's signs of being under the influence
  - 8. Individual's signs of physical or mental disability

**D. Ethical Presence**

- i. An expression of self-control.
- ii. Use words to state purpose, not to express personal feelings.



- iii. Maintain a professional attitude.
- iv. Behavior perceived as hasty, irrational, or unfair, makes an officer seem unethical.

**28.12 Identify best practices in redirecting someone's behavior using verbal persuasion.**

- A. Listen
  - i. Differentiate the real problem from the symptoms of the problem.
  - ii. Establishes what priorities the officer must respond to.
  - iii. Determines the context of the event.
- B. Empathize
  - i. Understand the other person's state of mind.
  - ii. See through the eyes of the other person.
- C. Ask
  - i. Use questions to gain control by causing others to report to you.
  - ii. Questions help direct attention away from the problem.
  - iii. Questions buy time.
  - iv. Questions demonstrate concern.
- D. Paraphrase
  - i. Repeat what you have learned in your own words.
  - ii. Forces an individual to stop talking and listen.
  - iii. Helps ensure the officer accurately understands the situation.
- E. Summarize
  - i. State the resolution clearly.
  - ii. Allows the officer to conclude the situation.
  - iii. Officer provides the bottom line.
- F. Types of verbal appeals
  - i. Ethical appeal
    - 1. Based upon position as a professional officer.
    - 2. Assures other people.
    - 3. Persuades others of the officer's desire for a positive outcome.
    - 4. Useful when dealing with upset and highly emotional individuals.
  - ii. Rational appeal
    - 1. Based on use of reasoning.
    - 2. Appeals to common sense, good judgment, or community standards.
    - 3. Shows that solution is reasonable and most likely to produce results.

4. Valuable when dealing with individuals experiencing a strong sense of right and wrong.
- iii. Practical appeal
  1. Based on an urgent need to change a particular circumstance.
  2. Based on the beliefs and value system of the person.
  3. Ignores long-term consequences.
  4. It is a short-term solution.
  5. Allows for the officer to adapt and persuade others of their similarities.
- iv. Personal appeal
  1. Based on addressing an individual's needs and desires.
  2. Allows for officers to set aside their personal values.
  3. Useful when dealing with headstrong people who insist on getting their own way.
- G. Situations where words are not effective.
  - i. When a person seriously threatens bodily harm to an officer or the general public, an officer's control is compromised.
    1. Sometimes a person combines aggressive words and actions.
    2. Words and gestures alone are not an attack.
    3. Sometimes a person displays conflicting signs because words suggest one thing, whereas actions indicate another.
      - a. A good principle to remember is when words and actions disagree, trust actions.
      - b. Actions can also be misleading, but whenever words and actions disagree, be alert and ready to use force.
  - ii. When a suspect begins walking or running away, or escapes from custody.
  - iii. When an officer is forced to repeat the same words or ideas, they should conclude that the person is not being persuaded.
  - iv. When repeated refusal by a person to comply with a reasonable request constitutes a need for more than words.
  - v. When a person is unreceptive to alternatives after repeated appeals.

#### **REQUIRED ACTIVITY:**

The instructor must develop a scenario to assist students in identifying the officer's authority during a traffic violation. The scenario must include a traffic stop where a suspect appears nervous and refuses to provide identifying information or sign the citation.

The scenario must be followed by a discussion in the format determined as the most appropriate by the instructor. The discussion must focus on:

- Exemplifying the different verbal appeal types in the context of the traffic stop.
- Determining an approach to establish communication with the suspect, considering the best practices previously discussed.

### **28.13 Identify communication strategies used when dealing with violence and assault calls.**

**INSTRUCTOR NOTE:** This section covers circumstances unique to stressful crime scene(s) in domestic settings, where use of force decisions require good judgement and discretion skills.

- A. Recent Violence Against Women (VAWA) legislation has helped provide peace officers with more detailed information when assessing and responding to domestic violence and assault calls.
- B. While a significant majority of officer skills in judgement and discretion involve verbal skill to de-escalate a situation, research has shown that domestic violence calls are the most dangerous for responding officers.

**INSTRUCTOR NOTE:** Current statistics regarding this topic can be found at periodical publications by the Community Oriented Policing Services (United States Department of Justice), in collaboration with the National Law Enforcement Officers Memorial Fund.

- <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-w0858-pub.pdf>
- C. Most calls involve two subjects providing contradicting narratives regarding an unverifiable event. The officer cannot make assumptions based on gender stereotypes. For instance, an officer should not assume a female caller is the victim in a domestic violence incident involving a male and a female. The goals are to:
    - i. Establish if the dots connect and the stories line up.
    - ii. Protect the victim and hold the right person(s) accountable.
    - iii. It can be a challenge to achieve these goals while maintaining both the officer and the victim's safety.

### **REQUIRED ACTIVITY:**

The instructor must develop three distinct scenarios likely to be encountered by learners when responding to a domestic or family violence call. The scenarios must reflect circumstances common to the learners' duty stations. They must include different subjects' ages, relationship types, and demeanors. At least one scenario must involve a firearm threat.

Each scenario must be followed by a discussion in the format determined as most appropriate by the instructor. The discussion must focus on:

- Assessing immediate risks to both officers and subjects.
- Recognizing any situational factors or communication challenges that may escalate the situation.
- Discussing communication strategies to prevent conflict escalation.

#### **28.14 Recognize criteria relating to a professional peace officer's use of force.**

- A. A professional peace officer employs theoretical knowledge under constantly changing and unpredictable circumstances.
- B. Criteria for assessing whether a person is acting professionally.
  - i. Ability to communicate effectively with individuals outside of their professional field.
  - ii. Ability to accurately assess the situation and define the problem.
  - iii. Ability to know when to move from words to force.
    - 1. There is no clear-cut simple answer.
    - 2. As a professional, an officer's use of force is:
      - a. Selective
        - The officer knows what kind of force and how much to use.
      - b. Appropriate
        - It is used in a controlled and purposeful manner.
  - iv. Ability to return to words and verbal strategies once the threat to an officer's safety (or other's safety) is over.
  - v. Knowledge to recognize indicators that individuals may be under the influence or experiencing a mental or physical disability.
  - vi. Ability to self-evaluate performance.
  - vii. Capability of describing and characterizing personal performance to superiors.
    - 1. An officer must be consciously competent to know the reasons for their actions in any given situation.

#### **28.15 Identify typical procedures following an officer-involved shooting.**

**INSTRUCTOR NOTE:** Emphasize that each department has its own procedures and that the officer should follow those procedures. Instructors should discuss evidentiary procedures common to use of force incidents and the involved officer's role.

- A. Applicable cases and codes
  - i. *Garrity v. New Jersey*, 385 U.S. 493 (1967).
  - ii. Chapter 614, Sections 614.021, 614.022 and 614.023, of the Texas Government Code.
  - iii. *Guthery v. Taylor*, 112 SW3d 715 (2003).
  - iv. *City of Seagoville v. Lytle*, 227 S.W.3d 401 (Tex. App.–Dallas 2007, no pet.).
  - v. For civil service cities, see Chapter 143 of the Local Government Code.
  - vi. For Sheriff's Civil Service, see Chapter 158 of the Local Government Code.
- B. Internal Affairs Investigations

- i. Officers should be aware of their department's policy and procedures concerning internal affairs investigations.
- ii. Where there is the possibility of criminal charges being filed, many departments will conduct separate investigations because of *Garrity v. New Jersey*.
- iii. 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, they may be disciplined.
  2. This information is not admissible in a criminal trial under *Garrity v New Jersey*. If 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 38.22 of the Code of Criminal Procedure.
  3. Texas statutes provide guidelines for investigations.

### **Unit 3 Excessive use of force and the Crew Resource Management**

#### **28.16 Identify possible consequences from excessive use of force.**

- A. Federal Laws
- B. Conspiracy against rights of citizens
  - i. Title 18, Section 241 United States Code Annotated.
- C. Deprivation of rights under color of law
  - i. Violations of the Civil Rights of Person in Custody, Section 39.04 Vernon's Annotated Texas Penal Code.
  - ii. Title 18, Section 242 United States Code Annotated.
- D. Federal civil rights complaints are investigated by the FBI.
  - i. Number of yearly complaints, investigations, and grand jury presentations.
  - ii. Focus on clearly offensive, deliberate, and willful misconduct.
  - iii. If an agency is taking swift decisive action to punish misconduct, it may defer to that administrative process.
  - iv. No good faith defense for criminal violations

**INSTRUCTOR NOTE:** Locate current statistics from the aforementioned FBI report and share with learners as appropriate.

#### **28.17 Define Crew Resource Management (CRM).**

- A. A management model which provides every crew member with an active voice during situations where human error can have a devastating effect.

**INSTRUCTOR NOTE:** Below are two case studies used to define and explain CRM. The instructor

is encouraged to use alternative case studies if those are more applicable to the learner's context.

- 1977 Tenerife Crash Case Study
  - Federal Aviation Authority. (2012, July 1). *Tenefire Accident (1977)*. <https://www.youtube.com/watch?v=vqrfNVwp5n8>
  - Smithsonian Channel. (2018, Jan 5). *This 1977 Plane Crash Occurred Right on the Runway*. [https://www.youtube.com/watch?v=36XzwJqo\\_tg](https://www.youtube.com/watch?v=36XzwJqo_tg)
- United Flight 173 Portland Oregon Case Study
  - American Abilities Television Network. (2015, Feb 6). *Air Crash Investigation United Flight 232 'Impossible Landing'*. Retrieved from YouTube: <https://www.youtube.com/watch?v=S4tFVfG0t8w&t=11s>

## **28.18 Describe the benefits of using Crew Resource Management.**

**INSTRUCTOR NOTE:** Refer to Senate Bill 69 and Code of Criminal Procedure § 2.1387. Please note that Intervention Required for Excessive Force, General Duties of Officers, Code of Criminal Procedure § 2.1387 has been repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(1), effective January 1, 2025.

- A. The Crew Resource Management concept provides a concrete practical tool for real world situations.
- B. Supports Duty to Intervene.
  - i. Addressing the concerns of all team members will likely slow a scene down and allow rational thought to overcome emotions.
  - ii. Peace Officers are human and subject to the same emotions as others.
    - 1. Personal problems that lower their tolerance for the chaos they encounter as part of their job.
    - 2. Frustration when a subject is being un-cooperative.
      - a. Frustration from one scene may follow the officer to the next.
    - 3. Preconceived notions regarding how a subject will act based on previous experiences with that person, whether recent or more longstanding.
    - 4. Anger when witnessing horrific acts or their outcomes.
  - iii. Oftentimes the team assists in keeping these emotions in check.
    - 1. A crewmember may recognize a partner's emotions.
      - a. Speaking louder
      - b. Heavy breathing
      - c. Flushed skin
      - d. Clenching fist

- e. Threatening word choices
- iv. Using CRM tools, a crew member can intercede before their partner's or co-worker's emotions become regrettable actions.
- C. Fosters communication between crew members and outside resources.
- D. Maintains accountability for all personnel involved.
- E. Alleviates emotional responses by involving all parties.
  - i. People support what they help create.
  - ii. When people have a voice in the matter, they become part of the team and have a stronger emotional desire for the team's success as a result.

#### **28.19 Discuss how the Crew Resource Management model applies to law enforcement.**

**INSTRUCTOR NOTE:** Refer to Senate Bill 69 and the CCP § 2.1387 and 2.33. Please note that effective January 1, 2025, both CCP § 2.1387, Intervention Required for Excessive Force, and CCP § 2.33, Law Enforcement Policy on Use of Force by Drone, have been repealed and relocated under Chapter 2B as § 2B.0251 and § 2B.0253, respectively.

- A. George Floyd, Derek Chauvin, Thomas Lane, and LTC Roger Stinson.
  - i. On June 15, 2020, Houston Police Chief Art Acevedo, forwarded a department-wise e-mail originally drafted by Roger Stinson LTC USA Retired.
    - 1. LTC Stinson was a US Army Rotor Wing pilot for many years extensively trained in CRM.
    - 2. He noted a CRM issue between Officers Derek Chauvin and Thomas Lane during the George Floyd incident.
      - a. Lane was in his first week as a full-time patrol officer after completing the Field Training Program the previous week.
      - b. Chauvin was Lane's Field Training Officer and had a direct role in Lane's career until the week prior to this incident (Alfonseca, 2021).
  - ii. Body camera footage shows the following conversation between Lane and Chauvin while the latter had his knee on the back of Floyd's neck:
    - 1. Lane: "Should we roll him on his side?"
    - 2. Chauvin: "No, he's staying put where we got him."
    - 3. Lane: "I just worry about the excited delirium or whatever."
    - 4. Chauvin: "That is why we have the ambulance coming."
    - 5. Lane: "OK"

**INSTRUCTOR NOTE:** Video source is CNN. (2020, August 4). Leaked Bodycam Video Shows New Details of George Floyd's Arrest. Retrieved 11 04, 2022, from <https://www.youtube.com/watch?v=ESGXmWh0z7c>

- B. In his e-mail, LTC Stinson discussed the dangers of Excessive Professional Courtesy.
  - i. “It is when a junior pilot or crew member demonstrates excessive professional courtesy or excessive deference to a more senior pilot and trust in that senior crew-member’s experience and judgment. It’s this “Excessive Professional Courtesy” that can lead to a lack of preventative action, leading to accidents causing serious injuries or deaths. That is why aircrews address eliminating “Excessive Professional Courtesy” during every crew-brief prior to flight.”
- C. Applying CRM on a Police Scene
  - i. Traditionally the primary officer on a scene has ultimate authority.
    - 1. It was often heard “my scene, my decisions.”
    - 2. Supervisors would even extend excessive professional courtesy to the primary officer.
    - 3. In other cases, a supervisor may take ultimate authority upon arrival on scene and have excessive professional courtesy extended to them by all other officers.
    - 4. Every officer present is responsible for what happens on the scene.
      - a. Rodney King Riots
      - b. Eric Garner incident
      - c. Freddy Gray incident

**INSTRUCTOR NOTE:** The instructor is encouraged to use alternative case studies if those are more applicable to the learner’s context. The purpose is to illustrate collective legal responsibility in the aftermath of an incident.

- D. TCOLE Published Model Policies (House Bill 3712 (87R)):
  - i. Duty to Intervene and Duty to Report Excessive Force.
  - ii. Prohibition Against Chokeholds.
  - iii. Duty to Render Aid.
- E. The CRM Model for Police Scenes
  - i. Between Officers on scene
    - 1. Every responder must acknowledge the concerns of all other responders on a scene.
      - a. Primary and secondary
      - b. Partners
      - c. Veterans and beginners
      - d. Field trainer and Probationary Police Officer or trainee
      - e. Supervisor and subordinates



2. When the scene allows, explain to the junior officer or subordinate the issues with their thought or concern.
    - a. The senior officer must first truly listen to the concerns, mentally contemplate the idea, and clearly articulate why they are not applicable in that situation.
    - b. If the senior officer is unable to do so, then the point is likely valid and must be further investigated.
  3. While a senior officer or supervisor may need to proceed with their plan of action regardless of objections, they must ensure:
    - a. Time constraints limit their ability to explain in order to prioritize public safety.
    - b. They can articulate the specific errors in their objections at a later time as a training opportunity.
  4. An idea should not be disregarded based solely on an officer's years of experience or command status.
  5. Consider the knowledge junior officers bring to the team.
    - a. Recent academy training regarding legal and tactical aspects of the profession.
    - b. May have prior professional experience in other relevant fields.
      - Corporate Negotiations
      - Corrections
      - Law
      - Military
      - Sales
    - c. May have other advanced academic degrees.
- ii. Between Police and Non-Police resources
1. Other responders
    - a. Fire
    - b. Medical Personnel
    - c. EMT's
    - d. Hospital Staff
  2. Legal Professionals
    - a. DA's Office
    - b. Municipal Legal Departments
  3. Public Works
    - a. Water

- b. Electric
  - 4. Property Owners
  - 5. Wrecker Drivers
- iii. Civilian subjects of the event
  - 1. Complainants
  - 2. Witnesses
  - 3. Suspects
- iv. Bystanders or anyone who may assist.
  - 1. Medical assistance
  - 2. De-escalation assistance
    - a. A bystander may share a common culture or know the subject and have prior experience with successfully de-escalating the situation.
  - 3. Background information or other relevant intelligence
  - 4. External resources
    - a. While outside resources may be valuable, officers must be mindful and use their best judgement to determine their applicability and appropriateness.
    - b. Continuous training and experience will assist officers in determining who, when, where, and to what extent an outside resource may be trustworthy and safe to be utilized.

**INSTRUCTOR NOTE:** Emphasize that officer and scene safety are the most important.

## **28.20 Recognize the Crew Resource Management in the field.**

- A. Get attention.
  - i. Use a loud and clear voice get the crew member's attention.
  - ii. Address the individual by name, title, or rank.
- B. State your concern.
  - i. State what you see in a direct manner.
  - ii. Own your emotions about it.
    - 1. Example: "I am concerned for the health and safety of the suspect."
- C. State the problem as you see it.
  - i. Be specific and concise.
    - 1. Example: "It seems he is suffering from positional asphyxia."
- D. Suggest a solution.
  - i. When necessary, acknowledge possible objections to the solution.

- ii. Provide a solution that best resolves your concerns while also considering its possible consequences.
    - 1. “The suspect is securely detained and does not seem to be a threat anymore. I think we should roll them over to ease their breathing.”
- E. Obtain agreement.
  - i. Get the member to either agree or provide an alternative solution that will resolve your concern.
    - 1. “Does that sound good to you?”
    - 2. “Do you agree?”
    - 3. “What are your thoughts?”
- F. Time-sensitive situations
  - i. Avoid personal pronouns.
    - 1. Example: “You’re looking the wrong way.”
  - ii. Instead, use titles or names, then describe the issue.
    - 1. Dialogue example
      - a. “Danny, the suspect is approaching your right side.”
      - b. “Roger, sarge. Covering right side.”
      - c. “Danny, I’m going non-lethal.”

**28.21 List factors used by the courts to determine excessive force in a case.**

- A. Officers can be held personally liable for using excessive force.
- B. Reasonable force may be used to effect an arrest when an officer has probable cause for that arrest.
- C. The 4th Amendment limits the level of force that may be used to reasonable force.
- D. Reasonableness is based on individual facts and circumstances of the situation.
- E. The need for force will be evaluated, as the feasibility or availability of alternatives are considerations.
- F. The extent of injury inflicted will be evaluated.

**INSTRUCTOR NOTE:** See Civil Practice and Remedies Code, Section 101.055 Vernon's Texas Code Annotated.

**REQUIRED ACTIVITY:**

The instructor must develop a scenario that demonstrates the civil liabilities and legal remedies for excessive use of force. The scenario must consist of a suspect being argumentative and uncooperative towards an officer, but not physically aggressive. In response, the officer applies force during the arrest that would not be considered objectively reasonable per departmental or agency policy.

The scenario must be followed by a discussion in the format determined as most appropriate by the instructor. The discussion must focus on:

- Determining if the use of force was objectively reasonable and explaining why.
- Articulating if a subject is legally able to respond to any physical force applied by the officer and under what authority.

G. Applicable cases:

- i. Tennessee v. Garner, 471 U.S. 1 (1985).
- ii. Graham v. Connor, 109 S.Ct.. 1865 (1989).
- iii. Gordon v. State, 707 S.W.2d 626 (Tex. Cr. App. 1986).

H. Other possible considerations:

- i. The nature of the offense.
- ii. Actions of present third-parties.
- iii. An existing emergency situation.
- iv. Arrestee's behavior.
- v. Arrestee's physical size, strength, and weaponry.
- vi. Arrestee's known character.
- vii. In general, an action is unreasonable if a reasonable individual 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.
- viii. If an officer's conduct in discharging their weapon creates a danger recognizable as such by a reasonable and similarly situated officer, they will be held accountable to others as the proximate result of their conduct.

I. The officer's liability is affected by the agency's written directives.

- i. Written directives of an agency may be used both in support of and against the officer or agency.
- ii. An officer using more force than allowed by the agency's written directives increases their vulnerability to legal liability.
- iii. The potential for a conflict of interest arises in the legal defense that an officer was following agency policy and procedures in the use of force and is entitled to a good faith defense.
  1. This argument, especially if the officer is called as a witness, could increase the local agency's exposure to monetary liability.
  2. Some legal experts have maintained that officers and local governments should have separate attorneys for this reason.
  3. Officers should seek legal advice as to the correct course of action in this matter.

- iv. The officer's liability is affected by not following prudent police procedures prior to the decision to use force.
  1. Failure to follow proper procedures can make a situation more dangerous.
  2. Failing to follow prudent procedures in stopping and confronting suspects may increase the risk that force be used.
  3. An officer can be found liable in their justified use of deadly force if their negligent conduct created a danger for themselves or others.
- v. An officer may face possible personal liability for failure to stop other officers from using excessive force in their presence.
  1. Code of Criminal Procedure, Article 2A.051

**INSTRUCTOR NOTE:** Please note that, effective January 1, 2025, CCP § 2.13, Duties and Powers, has been repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(1), and Chapter 2 of the Code of Criminal Procedure has been replaced by Chapters 2A and 2B.

2. A peace officer supervisor has an affirmative duty to intervene and stop officers engaging in excessive force in their presence.
  3. A non-supervisory officer has an affirmative duty to intervene to stop officers and/or supervisors engaging in excessive force in their presence.
- J. Applicable cases:
- i. Davis v. Rennie, 264 F3d 86 (1st Cir. 2001).
  - ii. Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994).

#### **REQUIRED ACTIVITY:**

The instructor must develop at least three scenarios to assist learners in identifying the most appropriate use of force justification. The scenarios must reflect circumstances commonly faced by learners in their local professional context. They must describe police and suspect encounters and include varied levels of threat and suspect dynamics.

Each scenario must be followed by a discussion in the format determined as most appropriate by the instructor. Depending on scenario context, the discussion may include:

- Articulating if a subject is legally able to respond to any physical force applied by the officer and under what authority.
- Articulating what use of force option is the most appropriate to be applied by the officer and why.
- Identifying non-verbal cues that can help officers determine the most appropriate force option.
- Discussing applicable civil liabilities and legal remedies for officer's excessive use of force.

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