COMMONWEALTH OF MASSACHUSETTS

MPTC

Municipal Police Training Committee

In-Service Training

USE OF FORCE

Version: A2025

INSTRUCTOR LESSON PLAN

The Municipal Police Training Committee (MPTC), an agency of the Executive Office of Public Safety and Security (EOPSS), serves the Commonwealth by establishing training standards, oversight, and policy guidance for policing professionals.

Title: Use of Force

Version: A2025

Course Purpose: To provide law enforcement officers with the information and training needed to review the legal standard and general concepts for the lawful use of force.

Length: 3 hours

Learning Objectives: By the end of the lesson, participants will be able to:

1. Summarize the "reverence for human life" ethic and the priority of life during a police encounter.
2. Describe various de-escalation tactics and principles officers can use when feasible to stabilize a situation.
3. Summarize the legal standards that govern when officers can lawfully use force.
4. Compare and contrast non-deadly and deadly force as well as the limitations and prohibited uses of both.
5. Define the "totality of the circumstances" and assess the relationship between the perceived circumstances, subject actions, and reasonable officer response.
6. Explain officer requirements following a use of force:
    a. render critical care
    b. duty to intervene
    c. report and reporting requirements

Instructional Methods: Direct Instruction (Lecture)
Large Group Discussion

Case References: *Commonwealth v. Adams*, 416 Mass. 558 (1993).
Commonwealth v. Klein, 372 Mass. 823 (1977).
Graham v. Connor, 490 U.S. 386 (1989).
Jennings v. Jones, 499 F.3d 2, 18 (2007).
Julian v. Randazzo, 380 Mass. 391 (1980).
Lachance v. Town of Charlton, 990 F.3d 14 (First Cir. 2021).

Tennessee v. Garner, 471 U.S. 1 (1985).
Terry v Ohio, 392 U.S. 1 (1968).

Authors: Charles DiChiara
Patrol Officer / MPTC Defensive Tactics Statewide Coordinator
Waltham Police Department

Denise S. Flagg, Esq.
Curriculum Division Manager
MPTC

Legal Review: Denise S. Flagg, Esq.
Curriculum Division Manager
MPTC

Lesson Review: Hannah Gianfriddo
Curriculum Specialist
MPTC

Lesson Approved By: Denise S. Flagg
Curriculum Division Manager
MPTC
July 2024

INSTRUCTOR NOTES

1. Delivering instructor(s) for this section must have an active MPTC instructor certification in In-Service 2025 Use of Force. One or multiple instructors may deliver the lesson at the discretion of the Program Coordinator. For lessons taught at MPTC operated academies, instructors must also have an active state contract at the time of instruction. Instructors at operated academies without an active state contract at the time of instruction will not be paid.

2. This lesson plan may contain photographs. Instructors must instruct training attendees that any duplication or dissemination of any photograph that depicts a victim of a crime, accident or emergency is prohibited by law. MGL c 271 § 51.

3. Instructors must use the "Instructor" lesson plan and deliver the lesson in its entirety. Instructor NOTES are inserted throughout the lesson plan to choreograph delivery and ensure content is presented as intended and within the prescribed timeframe.

4. This lesson utilizes adult learning principles and includes facilitated discussion questions, videos, and other instructional methods. The various instructional methods are intended to make the lesson learner-centered and provide different opportunities for student officers to spiral through the learning cycle with the goals of retaining the information and to reinforce the concepts covered in the lesson. For this reason, it is important that all activities and facilitated discussion be completed during the lesson.

5. Opportunities for facilitated discussion are provided throughout the lesson. Key takeaways are included with these discussion questions to clarify the purpose of the facilitated discussion. The takeaways help instructors confirm that student officers understand the key ideas presented.

6. Instructors are encouraged to share relevant personal work experiences and to develop additional hypothetical scenarios to help illustrate concepts in the lesson. Instructors should be mindful of the time allocated to the lesson so that all material in the lesson plan is presented.

7. "Version" numbers are used to identify the most current ROC lesson plans, visual aids, and handout materials. Instructors must confirm they have the most current ROC materials for delivery by checking MPTCtraining.com.

ICONOGRAPHY

 **Corresponding Slide Title**

 **Video**

 **Instructor Note**

 **Facilitated Discussion**

 **Refer to Handout**

 **Activity**

INTRODUCTION

The MPTC and the Peace Officers Safety and Training (POST) Commission were required to jointly promulgate regulations regarding the use of force by law enforcement officers. Because two agencies were ultimately responsible for drafting the regulations, the regulations appear in both the MPTC CMRs (550 CMR 6.00) and the POST CMRs (555 CMR 6.00).



Both CMRs should be identical. Updates to the CMRs have been made to the POST CMRs; however, due to a clerical error, the updates have not been made to the MPTC CMRs. For this reason, we refer to the POST CMRs, 555 CMR 6.00 Use of Force by Law Enforcement Officers throughout this lesson.

This issue should not be addressed with the student officers. This instructor note has been included for instructor information only, as several instructors have noticed and raised questions about it. Any questions about this issue can be directed to Denise S. Flagg, Curriculum Division Manager for the MPTC.



Introductions

Instructors should introduce themselves, share their professional backgrounds, and explain and emphasize that the primary goal of this training is to review the legal standard and general concepts for the lawful use of force.

To minimize unnecessary injury to both police and others, officers must effectively stop unlawful resistance as quickly as possible. Because the use of force by police is a seizure under the Fourth Amendment, officers must strictly adhere to applicable legal standards, agency policy, and procedural justice.



Underlying Circumstances

According to annual FBI Law Enforcement Officer Killed and Assaulted (LEOKA) statistics, officers are more likely to be assaulted or killed during the following circumstances:

- when making arrests
- during motor vehicle stops
- when violent crimes are in progress
- during domestic violence investigations
- while performing controlled substance investigations

- when suspects are under the influence of drugs or alcohol
- when people are experiencing an acute crisis due to a mental health condition

The goal of this lesson is to review foundational legal standards and general concepts when using force to stop non-deadly and deadly offender resistance.



Learning Objectives & Learning Objectives cont'd

Review the course objectives with participants.

1. Summarize the "reverence for human life" ethic and the priority of life during a police encounter.
2. Describe various de-escalation tactics and principles officers can use when feasible to stabilize a situation.
3. Summarize the legal standards that govern when officers can lawfully use force.
4. Compare and contrast non-deadly and deadly force as well as the limitations and prohibited uses of both.
5. Define the "totality of the circumstances" and assess the relationship between the perceived circumstances, subject actions, and reasonable officer response.
6. Explain officer requirements following a use of force:
    a. render critical care
    b. duty to intervene
    c. report and reporting requirements

PRIORITY OF LIFE

OBJECTIVE #1: Summarize the "reverence for human life" ethic and the priority of life during a police encounter.



Reverence For Human Life

Reverence for Human Life is the primary consideration in developing tactics and strategies to pursue our motto, "To Protect & Serve."

Reverence for Human Life as a concept originated with Albert Schweitzer, a German theologian, Lutheran minister, and humanitarian. In 1952, he was awarded the Nobel Peace Prize for his development of the reverence for life ethic.[1]

According to Schweitzer, having a reverence for human life means "taking the world as it is. And the world means the horrible in the glorious, the meaningless in the full of meaning, the sorrowful in the joyful." It also means giving yourself to the person:

> "…who needs human help and sympathy. It does not allow the scholar to live for his science alone, even if he is very useful to the community in so doing. It does not permit the artist to exist only for his art, even if he gives inspiration to many by its means. It refuses to let the businessman imagine that he fulfills all legitimate demands in the course of his activities. **It demands from all that they should sacrifice a portion of their own lives for others.**"[2]

Whenever an operation designed to achieve an immediate goal, such as arresting a suspect or gathering evidence to compile a criminal investigation, causes a victim, witness, or other innocent person to be subjected to injury or death, our primary objective must be to protect that person. No arrest, conviction, or piece of evidence can outweigh **the value of human life**.

The overall objective of any tactical encounter is to gain control and safely resolve the situation. Tactical situations vary and there is not one correct way to resolve any given situation. There may be several possible ways of handling a situation. As long as the tactics involved are reasonable and proportionate, they are correct.



Safety Priority (Priority of Life)[3]g

When an officer performs their duties, they are acting on behalf of the government. For this reason, officers should keep the governmental interest in what they are doing at the forefront of their mind.

Officers are tasked with protecting and serving their communities. The community includes the people who live there, the people who work there, their fellow officers, the officers themselves, and the individuals officers come into contact with, including suspects of crimes. While the duty to serve and to protect includes a duty to each of these groups, it is not always possible to serve them all simultaneously. It is important that officers prioritize the safety of some over others when the groups are in conflict.

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[1] Western University of Health Sciences (2008). A reverence for life. https://www.westernu.edu/mediafiles/research/guiding_ethic.pdf.

[2] Schweitzer, A. (1947). Reverence for human life. In Charles Joy (Ed.), *Albert Schweitzer, An Anthology*. Beacon Press.

[3] National Tactical Officers Association. (2018). Tactical response and operations standard for law enforcement agencies. https://ntoa.org/pdf/swatstandards.pdf.

Officers should prioritize the safety of victims first, then other members of the public, then the officer, fellow officers, and other first responders, and finally, the individual who poses a risk to the other groups.



Officers Must Be Prepared to Use Force

Any interaction with members of the public is preferably resolved without resorting to the use of force. That is not always possible. No officer can decide that a situation will be resolved peacefully without the need to use force. That is because these situations involve other people who make their own decisions. Officers must be physically and mentally prepared to make fast decisions in the moment about whether force is necessary and, if so, the amount of force that is reasonable.

Whether a use of force was successful cannot be defined by the outcome. The fact that an individual was injured does not mean that the use of force failed. The fact that no one was injured does not mean that the use of force was successful. The success of a use of force must be defined by the totality of the circumstances presented, whether the tactics used by the officer were reasonable and proportionate to the circumstances, and whether the officer executed the tactic as trained.



Definition of Force

Force is the amount of physical effort, however slight, required by police to compel compliance by an unwilling individual.[4]



Discussion – Is it force?



Is it Force

<u>DIRECTIONS:</u> Go over each of the following statements with the class to determine whether the action described is a use of force situation or not a use of force situation.

1. Physically escorting a compliant individual to your cruiser.

   (No. Physically escorting or handcuffing an individual with minimal or no resistance does not constitute a use of force.[5])

2. Placing handcuffs on an individual who does not resist your attempts.

[4] 555 CMR 6.03
[5] 555 CMR 6.04(3).

(No.)

3. Yelling at a robbery suspect to "freeze."

   (No. This would constitute a seizure in the Constitutional sense; however, there is no "physical effort" so this is not a use of force.)

4. Yelling at a robbery suspect to "freeze" and drawing your firearm.

   (Maybe. This arguably could be a show of force rather than a use of force. Officers should review their department policy.)

5. Yelling at a robbery suspect to "freeze" and pointing your firearm at them.

   (Yes. 555 CMR 6.04(3) Use of force does include pointing of a firearm, electronic control weapon, conducted energy devices, or chemical weapon at a person.)

6. You are arresting a person for drug dealing. You order them to put their hands behind their back. They refuse and when you grab their arm, they start physically struggling with you. You tell them to stop resisting or you will spray them with OC spray. Is your statement about the OC spray a use of force?

   (No.)

7. You are arresting a person for drug dealing. You order them to put their hands behind their back. They refuse and when you grab their arm, they start physically struggling with you. You tell them to stop resisting or you will spray them with OC spray. They continue to resist. You take out your OC spray and warn them again. Is taking out your OC spray and warning them a second time a use of force?

   (Probably not, but officers should check their department's policy. At the very least, this would be a show of force, which would be considered a de-escalation tactic.)

8. You are arresting a person for drug dealing. You order them to put their hands behind their back. They refuse and when you grab their arm, they start physically struggling with you. You tell them to stop resisting or you will spray them with OC spray. They continue to resist. You take out your OC spray and warn them again. You spray them with OC spray.

   (Yes. Use of force does include the use of OC spray on an individual or directed toward an individual.[6])

[6] 555 CMR 6.04(3)



When can you use force?

Prior to 2020, the law regarding the use of force was primarily drawn from caselaw (court decisions). In 2020 An Act Relative to the Justice, Equity, and Accountability in Law Enforcement in the Commonwealth, commonly referred to as the police reform legislation, codified the use of force into a statute, MGL c 6E §14. Regulations regarding the use of force by law enforcement, 550 CMR 6.00, became effective as of October 1, 2021.

The statute and the regulations are read together to provide law enforcement with guidance on when and how to use force and the extent of force that would be justified in those circumstances.

555 CMR 6.04 states:

A law enforcement officer shall not use force upon another person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:

1. effect the lawful arrest or detention of a person;
2. prevent the escape from custody;
3. prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or
4. defend against an individual who initiates force against an officer.

Several words and concepts need to be defined to understand what that means. What are de-escalation tactics? What does it mean for force to be necessary and proportionate?

DE-ESCALATION

OBJECTIVE #2: Describe various de-escalation tactics and principles officers can use when feasible to stabilize a situation.



What are De-Escalation Tactics?

Officers are required to attempt to de-escalate a situation before they use force unless de-escalation tactics are not feasible based on the totality of the circumstances.[7]

[7] 555 CMR 6.04.

De-escalation tactics are proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options, and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force.[8]



De-Escalation Tactics

De-escalation tactics include but are not limited to[9]

- verbal persuasion
- warnings
- slowing down the pace of an incident
- waiting out a person
- creating distance between the officer and a threat
- requesting additional resources[10] to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in MGL c 111 § 51 1/2(a), to address a potential medical or mental health crisis.



Time = Options

Time equals options.

When officers are able to slow down the pace of an incident, their options for a positive outcome increase. It allows for more information or resources to become available, it give other officers the chance to arrive on scene and offer assistance.



De-Escalation Tactics Must Be Feasible

In some situations, police may be able to use de-escalation communication techniques to calm individuals and avoid (or minimize) using force. When this is an option, officers must take it. Remember, the CMRs say: a law enforcement officer shall not use force upon another, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances.[11]

Emotionally hostile people will often try to dominate a situation by yelling, insulting, provoking, and being unreasonable. Underlying reasons for hostility include but are not limited to: fear

[8] MGL c 6E § 1.
[9] MGL c 6E § 1.
[10] MGL c 6E § 1.
[11] 555 CMR 6.04(1).

(rational or irrational), mental illness, and alcohol or drug influence. Emotional hostility can also be a sign of forthcoming physical violence.

When interacting with emotionally hostile suspects, the priority for police is to ensure the safety of everyone involved.



POST Guidance on De-Escalation for Minors

The POST Commission was required to provide guidance to law enforcement as to developmentally appropriate de-escalation and disengagement tactics and other alternatives to the use of force for minor children.[12]

When developing this guidance, POST tried to balance the goals of improving the safety of children, the needs of the community, and the well-being of law enforcement officers while increasing trust between officers and the communities they serve.



Refer to Handout- POST guidance on Developmentally Appropriate De-escalation and Disengagement Tactics, Techniques and Procedures and Other Alternatives to the Use of Force for Minor Children



Facilitated Discussion Question

1. **How are children different from adults?**

   Takeaways:

   - *Children demonstrate less emotional self-regulation in emotionally charged situations*
   - *Children have increased susceptibility to external influences such as peer pressure and immediate incentives*
   - *Children are less able to make judgments and decisions that require future orientation.*
   - *Minor children have a propensity for rash, impulsive, and poorly considered actions, especially when faced with emotionally-charged situations where the time for deliberation is limited and they lack access to an adult or other person who can help them consider options and consequences- often when with peers.*
   - *Due to their developmental immaturity, they are less likely than adults to respond favorably to transactional policing approaches, accurately apprise*

[12] Section 119 of Chapter 253 of the Acts of 2020.

officer behavior and experience police stops as a deterrent to criminal behavior.

2. **Do these differences affect how an officer interacts with children?**
   Takeaways:
   - *Yes. Officers cannot expect a child to respond to a situation the way an adult would.*

3. **What are some things an officer can do to de-escalate a situation involving a minor child?**
   Takeaways:
   - *Answers will vary. During interactions with minor children, officers should be particularly aware of minor children's normal developmental tendencies to react anxiously and distrustfully to police presence.*
   - *When feasible, officers should approach minor children in a non-confrontational manner to diffuse tension while maintaining safety.*
   - *The guidelines offer nine specific ways officers can de-escalate a situation involving children. Instructors should use their discretion regarding how in-depth they cover this material, keeping in mind that student officers have reviewed the guidelines during the Juvenile Investigation lesson.*



Tactical De-Escalation

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with an individual and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of a situation.

De-escalation is **both a tactic and an outcome**. Numerous different techniques may be used to de-escalate any given situation. The word, in and of itself, is not a tactic.

Police officers who develop proper de-escalation skills and techniques, apply them when appropriate, and mitigate the need to use force, will improve job performance and enjoy many other desired benefits including:

- Gaining voluntary compliance
- Defusing volatile situations
- Mitigating unintended consequences
- Enhancing safety for both the officer and the public
- Contributing to police legitimacy



Core Concepts of Tactical De-Escalation

Tactical de-escalation begins with an awareness of who you are. Core concepts of tactical de-escalation include:

1. **Self-Control:** You learned about emotional intelligence during the first week of the academy, where you work to achieve the highest level of emotional intelligence.
2. **Relationship Management:** Relationship management is the ability to understand one's own emotions and those of others in order to interact effectively. Be self-aware and use self-control to refrain from under-reacting or overreacting.
3. **Effective Communication:** Police officers must effectively communicate at all times, especially during conflict and stressful events. Effective communication includes being:
    - Direct (e.g., "Please step back" or "Please do not do [X]")
    - Clear (e.g., "Please stand still and face away from me" or "Turn around and put your hands behind your back.")
    - Concise. Keep instructions simple. (e.g., "Stop resisting!" or "Do not move!" or "Turn around, now!")
    - Avoid accusatory statements. (e.g., "You should not have done [X]")
4. **Respect** is the cornerstone of human interaction. Recognize that you are speaking with a fellow human being in crisis. Abandon all preconceived notions based on personal beliefs, ideologies, or biases.
5. **Expectations and Consequences.** Make your expectations known and tell them the consequences for failing to comply. (e.g., "If you do not stop [X], I will [X]" or "*You will be arrested if you assault him*).
6. **Honesty**. Be honest with the individual. If they are requesting information regarding the interaction, relay as much information to them as is feasible at the time.
7. **Scene Assessment and Management**: Officers have to be prepared to take action at any time.
8. **Consider Your Options**: You must consider your options and alternatives to reduce the amount of force needed. For example, request and wait for backup to arrive when possible. Time spent using de-escalation techniques can provide more time for backup to arrive.

9. **Actively listen.** Using active listening and "I" statements (e.g., "What I heard you say was [X].")
10. **Acknowledge emotions and feelings.** (e.g., What I heard is that you are angry because [X]." Do not try to use logic to explain them.
11. **Ignore toxic statements.** Do not address irrelevant, negative or toxic statements (e.g., "I don't have to put up with this! Why are all cops [expletive]?")
12. **Embrace silence.**
13. **Be empathetic.** Identify the issue and show the subject that you have empathy for the situation they're involved in. Attempt to establish a rapport with them. People want to be respected and have their story heard. During crisis events, officers have to get through the emotions and get to the story.
14. **Respect personal space.** Principles of TIME, DISTANCE, and COVER should be applied in order to provide the opportunity for better decision making. Do not immediately close distance with the individual unless officer safety is an issue. If a person is too close, officers have less time to make decisions and take action. Distance from people will vary according to officer observation and perceptions.
15. **Use non-threatening/non-verbal body language.** Avoid officer body language that portrays arrogance or disinterest. Attempt to put the individual at ease.
16. **Control emotions.** Officers should keep a pulse on their emotional thermometer and not let temper get the best of them. Use patience and professionalism.
17. **Identify the individual's feelings.** Use communication skills to hear out the individual and identify what the core issue is. Allow them to vent when appropriate.
18. **Ignore challenging questions.** Officers must remain calm and professional. Do not let an individual get "under your skin" or "push your buttons." Do not engage in debate or back and forth.
19. **Take decisive action when necessary.** Officers should make sure adequate time is given for venting; however, if action is necessary, then the office must take decisive action. Responding to a situation that requires action with hesitancy can place the public, the officer, and the individual in danger.
20. **Choose your battles.** Do not make more out of an issue if it is not going to benefit a potentially positive outcome. Keep in mind the governmental interest involved. What is the government's interest in gaining compliance from the individual? If the person poses no danger to others, or yourself, do you need to take further action? Officers

must always keep the bigger picture in mind and re-evaluate your goals and the actions you are taking. Keep in mind the WIN principle – what's important now.

21. **Allow time for reflections.** Often times an individual will reach a point of catharsis (self-realization) and realize that the issue at hand may not be worth their energy.
22. **Allow time for decisions.** Give the individual the opportunity to make the right decision on their own. If the safety of others or of the officer becomes an issue, then immediate action should be the response.
    - Our instincts might tell us to react defensively to the level of energy and emotion that somebody else is pouring out in front of us, but the best thing we can do is take a mindful pause, however slight, and realize that we've been there too.
    - We've all felt incredible pain, overwhelming stress, or been overcome by an indecipherable wave of emotion at some point in our lives. It's what makes us human, and that humanity is the same thing that makes us capable of safely and effectively de-escalating a person or situation away from crisis.
    - Officers should remember that they are human and so is the person they are dealing with. Officers are no better than the individual they are interacting with, they are just in a different life position. Their interaction can greatly influence the future of the individual's life.



If De-Escalation Doesn't Work, Now What?

555 CMR 6.04:

A law enforcement officer shall not use force upon another person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:

1. effect the lawful arrest or detention of a person;
2. prevent the escape from custody;
3. prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or
4. defend against an individual who initiates force against an officer.

Assuming that de-escalation tactics were attempted and failed or were not feasible, what does it mean for force to be necessary and proportionate?

USING FORCE LAWFULLY

OBJECTIVE #3: Summarize the legal standards that govern when officers can lawfully use force.



Proportionate

Excessive force can occur if the officer's response to a situation is more than reasonable. Conversely, it can be unsafe if the officer's response is less than reasonable. That is why it is important for officers to be mentally and physically prepared to use the amount of force that is proportionate to the totality of the circumstances they face.

The word "proportionate" is hard to define. The Merriam-Webster Dictionary defines it as an adverb that means proportionately.

If we can't define the word, how do we know what it means for a use of force to be proportionate?

Although the word itself may be hard to define, the concept is likely familiar to most people.



Proportionate Example



Facilitated Discussion Question: Proportionality in Action



Have participants read the following scenario and respond to the following questions.

You are at the grocery store with your 12-year-old child. At checkout they ask for a candy bar and you tell them "no." When you get back to the car and start putting the bags in the trunk you see the child fiddling with something in their hoodie pocket. You tell them to show you what they have and they pull out the candy bar that has not been paid for.

1. **What do you do?**
   Takeaways:
   - *Answers will vary. Instructor should provide more information to the students to engage in discussion and show how more information may change the answer. For instance, does the answer change if the child is generally mischievous and is often in trouble but responds well to being grounded or having electronics taken away. What is the answer if this is a child that has*

never been in trouble before? Does it matter if the child lies about how they got the candy bar? Does it matter if the child bursts into tears and begs for forgiveness?

Emphasize that there is not just one right answer to this. There are going to be a wide range of potential actions you as the parent can take in that situation which will be appropriate.



Now tell the class that the child is not 12 years old. Now they are 4 years old. Will they be taking the same action?

The class will likely say that their actions would be different. Ask them why that is. Ultimately what it comes down to is that a punishment appropriate for a 12-year-old would not be appropriate for a 4-year-old because it would be too harsh. It would be disproportionate because the facts are different. A four-year-old does not have the same ability to differentiate between right and wrong.



Putting Proportionality in Context

Keeping in mind the concept of proportionality, what does that mean when officers use force?

555 CMR 6.04 states:

A law enforcement officer shall not use force upon another person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:

1. effect the lawful arrest or detention of a person;
2. prevent the escape from custody;
3. **prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or**
4. defend against an individual who initiates force against an officer.



Facilitated Discussion Question



Have participants read the following scenario and respond to the following questions.

Officers are working at a college football game and approach a group of fans that are getting unruly. The officer sees that there is one fan in particular who is yelling and cursing at fans of the opposing team, taunting them, and getting closer and closer to the other fans. The fan is ignoring their friends who are begging them to shut up. After all attempts by officers to calm the fan down have failed, officers place the fan under arrest. The fan does not go willingly and multiple officers put hands on the fan to physically escort them out of the stadium. While officers are trying to get the fan out of the stadium, the fan slaps one of the officers across the face. The officer strikes the fan and the fan becomes compliant.

1. **Does this scenario meet the requirements of 555 CMR 6.04 (3)?**
   Takeaways:
   - *Answers will vary. The answer really depends on the details: how many officers? How big is the fan? Is the fan intoxicated?*



Video- Police Officer Punches Miami Fan After Being Slapped



Video – Police Officer Punches Miami Fan After Being Slapped

This video features an officer from Miami who punches a woman in the face after she had slapped him.



Facilitated Discussion Question



After watching the video, have participants respond to the following question.

1. **Does watching the video change anyone's mind?**
   Takeaways:
   - *Answers will vary.*
   - *The woman in this case was charged as a result of her actions. She agreed to enter a diversion program where she agreed to pay a fine, serve 50 hours of community service, attend an anger management course and write a letter of apology to the officer. The officer was cleared of any wrongdoing.*



When Can Officers Use Force?

555 CMR 6.04 states:

A law enforcement officer shall not use force upon another person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:

1. effect the lawful arrest or detention of a person;
2. prevent the escape from custody;
3. prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or
4. defend against an individual who initiates force against an officer.

Officers should note that there is no provision for the use of force to preserve or prevent the destruction of evidence.

We now turn to consider what levels of force we can use.



Use of Force is a Seizure

The use of force by police is a seizure under the Fourth Amendment. In *Terry v. Ohio*, the Court ruled that taking a person into custody may require police to use *"*some degree of physical coercion*"* that ultimately limits or prevents freedom of movement.

Even when the use of force is justified, officers must remember their obligation to reverence for human life and their duty to serve and protect. These obligations apply to the individuals against whom the officer used force.



Graham v. Connor (1989)

In *Graham v. Connor,* 490 U.S. 386 (1989), the court established that a use of force during an arrest or an investigatory stop of an individual is a seizure under the 4th Amendment.

When evaluating a use of force, courts will examine whether the officers' actions are "*objectively reasonable*" in light of the facts and circumstances confronting the officer at the time without regard to any underlying intent or motivation.

The Court did not rule on the actions of the officers.



The Opinion of the Court

Chief Justice William Rehnquist delivered the unanimous opinion of the Court:

> "*The test of reasonableness under the 4th Amendment is not capable of a precise definition or mechanical application...Its proper application requires careful attention to the facts of each particular case, including the* ***severity of the crime at issue****, whether the suspect poses an* ***immediate threat*** *to the officer or others, and whether he is* ***actively resisting arrest*** *or* ***attempting to evade arrest by flight*** *...*" (citations omitted) Id. at 396.



The Opinion of the Court, cont'd

The Court reasoned:

> "*The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving -about the amount of force that is necessary in a particular situation.*" Id. at 396-397.

TYPES OF FORCE

OBJECTIVE #4: Compare and contrast non-deadly and deadly force as well as the limitations and prohibited uses of both.



Arrests and Detention

An officer, "attempting a valid arrest has the right to use the force which is necessary to overcome physical resistance by the person sought to be arrested."[13]

An officer making an arrest should, unless it cannot reasonably be done, tell the person that they are under arrest.[14]

[13] *Julian v. Randazzo*, 380 Mass. 391, 396 (1980).
[14] *Commonwealth v. Klein,* 372 Mass. 823 (1977).

A law enforcement officer shall use only the amount of force necessary against an individual who is engaged in passive resistance to effect the lawful arrest or detention of said individual and shall use de-escalation tactics where feasible.[15]

Passive resistance is an individual who is noncompliant with officer commands that is nonviolent and does not pose an immediate threat to the officer or the public.[16]



Arrests and Detention (cont'd)

Except to temporarily gain, regain, or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual's chest or spine, and shall not force an individual to lie on their stomach. In no event may a law enforcement officer intentionally sit, kneel, or stand on an individual's neck or head.[17]

A law enforcement officer shall not obstruct the airway or limit the breathing of any individual, nor shall a law enforcement officer restrict oxygen or blood flow to an individual's head or neck. An individual placed on their stomach during restraint should be moved into a recovery position or seated position as soon as practicable.[18]



Be Prepared to Take Action: Command Presence

Most police encounters are positive and cooperative. Officers maintain or gain compliance using command presence, mutual respect, and effective communication skills.

Command Presence does not mean that you escalate your demeanor. It can be accomplished with respect. It requires you to look and act professionally, with knowledge and integrity; but also requires you to maintain a good position, stance, situational awareness, and relative positioning.



Officer Stance

An effective officer stance provides balance and leverage.

- feet shoulder width apart
- knees bent slightly
- strong leg and hip away
- stand upright with back straight

[15] 555 CMR 6.04(2)
[16] 555 CMR 6.03.
[17] 555 CMR 6.04(6).
[18] 555 CMR 6.04(7).

- hands in front of body

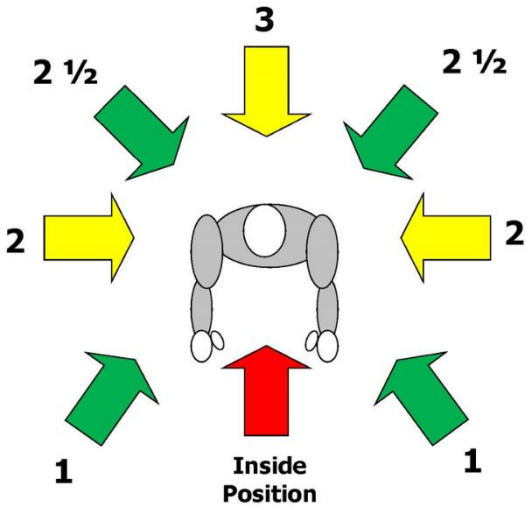
Distance and Positioning

Officer position, in relation to the individual is critical for safety, maintaining tactical advantage, and using force effectively. The amount of distance kept between the officer and the individual should be proportional to the officer reaction time.

For example, officers have less time to make decisions and use force effectively if the individual resisting is too close. The amount of distance the officer should keep from the individual will vary according to location, officer perceptions, and totality of circumstances.

Officers should use the following positions of approach.

- **Keep away** and do not approach the individual from the "Inside Position." Individuals have greater leverage and can generate more power here.
- Approach from #1 position when in front of the individual and be ready to move into 2½ position.
- Approach from or move into the 2½ position when attempting to handcuff a suspect.
- Avoid remaining inside positions 2 and 3 for any length of time. Individuals can generate power (i.e., 90° angle movement) and strike effectively when an officer is in positions 2 or 3.





When Command Presence is Not Enough

Command presence, professionalism and respect will often allow officers to maintain the safety to a situation. It is important for officers to recognize that it will not always work. When the safety of the public, officers, or the individual officers are dealing with are at risk, offices must be prepared to take action. There are several tactics officers can use to maintain the safety of everyone involved.



Contact Controls

Contact controls are light touch tactics designed primarily to escort, guide or direct the individual. Contact controls may not be a use of force under 555 CMR 6.00. For example, an officer uses contact controls when taking someone into custody. If that person is cooperative with officers, this would not be considered a use of force.

Contact controls include: leverage, strategic stabilization and direction, etc.



Compliance Techniques

Compliance techniques are used to stop resistance and gain compliance. Compliance techniques include non-weapon grabs, holds, pressure points and joint locks, non-deadly weapons (e.g., OC) or any combination. These techniques are used to stop the individual's resistance as quickly as possible.



Impact Techniques

Impact techniques are impact techniques used by officers to stop an aggressive or violent behavior. These techniques include both less-lethal weapons and weaponless tactics.

All law enforcement officers shall be properly trained and certified in the use of any less-lethal weapons before being authorized to carry or use such force options.[19] Officers should refer to their department's policy regarding the use of specific less-lethal weapons.

As with any use of force, de-escalation tactics must be attempted and failed or not feasible prior to any use of force and the use of force must be reasonable and proportionate to the totality of the circumstances.

[19] 555 CMR 6.04(5).



Non-Deadly Force v. Deadly Force

Use of force is divided into two categories: non-deadly force and deadly force.

Non-deadly force is defined as: any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.[20]

Deadly force is defined as physical force that can reasonably be expected to cause death or serious physical injury.[21]

Any use of force must be reasonable and proportionate.

The law places certain limitations on the use of deadly force.



Limitation on the Use of Deadly Force

A law enforcement officer shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm, and:



Limitation on the Use of Deadly Force (cont'd)

(a) The imminent harm poses an imminent danger of death or serious bodily injury to the officer or another person;

(b) The officer attempts as many de-escalation tactics that are feasible under the circumstances, including utilizing barriers where feasible; and

(c) The officer uses only the amount of force that is objectively reasonable.[22]

(d) Where feasible based on the totality of the circumstances, officers shall verbally identify themselves as police officers and issue some warning before using deadly force.[23]

[20] 555 CMR 6.03.
[21] 555 CMR 6.03.
[22] 555 CMR 6.05(1).
[23] 555 CMR 6.05(6).



Limitations on the Use of Deadly Force (cont'd)

Before the Massachusetts statute and CMRs were in place, the United State Supreme Court dealt with the issue of deadly force with respect to fleeing felons in *Tennessee v. Garner,* 471 US 1 (1985). In this case the court ruled that police may use deadly force to stop a fleeing suspect from escaping if:

- the suspect threatens the officer with a weapon; **OR** there is probable cause to believe the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm; **AND**
- deadly force is necessary to prevent escape; **AND**
- where feasible, some warning was given.

A law enforcement officer shall not use deadly force at any point in time when there is no longer an objectively reasonable belief that an individual currently and actively poses an immediate threat of serious bodily harm or death, even if deadly force would have been justified at an earlier point in time.[24]

Serious bodily harm means bodily injury that results in:

- ✓ Permanent disfigurement
- ✓ Protracted loss or impairment of a bodily function, limb, or organ, or
- ✓ A substantial risk of death.[25]

Officers must remember to keep in mind the governmental interest any time they use force, including the use of deadly force. An officer may not use deadly force against a person who poses only a danger to themselves.[26]



Prohibited Uses of Force

Chokeholds:

> A law enforcement officer shall not use a chokehold or other tactics that restrict or obstruct an individual's breathing or oxygen or blood flow to an individual's head or neck.[27]

[24] 555 CMR 6.05(5).
[25] 555 CMR 6.03.
[26] 555 CMR 6.05(3).
[27] 555 CMR 6.05(2).

A chokehold is defined as the use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of a law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing bodily injury, unconsciousness, or death.[28]



Discharging a Firearm into Motor Vehicles[29]

A law enforcement officer shall not discharge any firearm into or at a moving motor vehicle unless, based on the totality of the circumstances, including the risk of safety to other persons in the area, such discharge is objectively reasonably necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm; and only if the following conditions exist:



Discharging a Firearm into Motor Vehicles (cont'd)[30]

- A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted or are not present or practical, which includes moving out of the path of the vehicle;
- Officers have not intentionally positioned themselves in such a way as to create a likelihood of being struck by an occupied vehicle (e.g., surrounding a vehicle at close proximity while dismounted);
- The officer is not firing strictly to disable the vehicle; and
- The circumstances provide a high probability of stopping or striking the intended target.

TOTALITY OF CIRCUMSTANCES

OBJECTIVE #5: Define the "totality of the circumstances" and assess the relationship between the perceived circumstances, subject actions, and reasonable officer response.

[28] 555 CMR 6.03.
[29] 555 CMR 6.05(4).
[30] 555 CMR 6.05(4).



Totality of the Circumstances

When determining whether a particular use of force is *objectively reasonable* courts will consider the *totality of circumstances* from the perspective of a reasonable officer on the scene. *Graham* set forth three factors the court should consider when making this determination:

- What was the type and severity of crime involved in the stop or arrest?
- Did the individual pose an immediate threat to officers or others?
- Was the individual actively resisting arrest or attempting to escape custody by flight?

The court did not find that one factor was more important than another when reviewing the use of force. However, the immediacy of a threat is a critical factor for officers when using force.



Totality Triangle

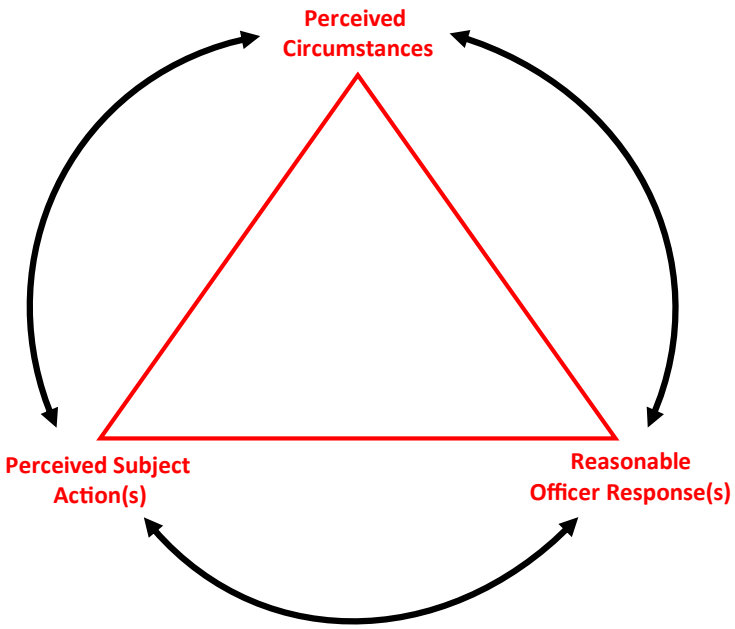
The Totality Triangle depicts the three elements that must be considered in determining whether an application of force was objectively reasonable.

Perceived Circumstances - the officer's perspective of the totality of the circumstances and threat presented. This includes the officer's assessment of the severity of any crime, the existence of an immediate safety threat to the officer or others, and the degree of compliance/non-compliance from the subject.

Perceived Subject Action(s) - the officer's perception of the subject's action(s) and the resistance and threat presented by those actions.

Reasonable Officer Response(s) - the "balanced" response(s) appropriate for the reasonable officer to take based upon the totality of the circumstances based on the officer's perceived circumstances and perceived subject actions.

Totality Triangle (cont'd)



Observe, Orient, Decide, Act (OODA Loop)

The "360-degree" threat assessment of the Totality Triangle is rooted in tactics. The "OODA Loop," also known as the "Boyd Cycle," is the information processing cycle developed in the 1970s by John Boyd, an American Air Force Colonel and military strategist. His goal in developing the model was to find a competitive edge over an adversarial opponent. The way to do this was to increase the OODA Loop speed, i.e. think and make decisions quicker.

It is a simple yet complex summation of how the human brain processes information and how humans react in turn:

1. **OBSERVE.** First, you observe what is going on around you using your senses.
2. **ORIENT.** Next, you orient to what is happening around you and contextualize it with information rooted in your long-term memory, including training—both good and bad—life experiences and your genetic heritage.
3. **DECIDE.** After processing this information, you must come to a conclusion about your surroundings and decide whether to act or react.
4. **ACT.** The final stage, if there truly is one, is physical action. To process through the OODA loop, you must perform a physical action to implement your decision. If your action is appropriate and effective, you gain the upper hand. You can often process

through more OODA loop cycles at a faster tempo than your adversary, which ultimately leads to victory.[31]

Boyd didn't imagine that people transition through each stage of the OODA Loop in consecutive order. Rather, he described an iterative process in which information might travel through multiple "feedback loops" during a decision-making process.[32] In other words, the cycle allows for information processing to be distributed by say, for example, a changing circumstance or change in perceived subject action by an officer in a situation.



Perceived Circumstances

The officer's unique individual perception of the scene (alongside the subject's actions) is critical when deciding how much force to use. Officers must look at each situation or the *totality of the circumstances* and continually assess, plan, and act.

Objective reasonableness is not determined by any particular tactic or weapon used but rather by all surrounding circumstances that caused the officer to make the decision. This includes, but is not limited to the following factors:[33]

- Is the individual capable of carrying out the action or threat?
- Is the individual in a position to use their capabilities? Is the threat posed by the individual *imminent*?
- Did the individual show intent by overt act, word, or deed?



Officer Perception

What one officer may perceive as a threat, another may not. The force used by an officer in response to a given situation, such as using a specific tactic or weapon (e.g., OC vs. punch) may be different from what another officer would have done. Differences in how one officer would perceive a situation and their tactic/weapon choice do not automatically mean the force used by one over another was unreasonable.



Location Factors

Location can impact officer perceptions and decisions. This includes, but is not limited to the following:

[31] Stephens, D. (2013, 18 September). *Understanding the OODA Loop.* Police Magazine. https://www.policemag.com/training/article/15347734/understanding-the-ooda-loop.
[32] Decision Lab. (n.d.). *The OODA Loop*. https://thedecisionlab.com/reference-guide/computer-science/the-ooda-loop.
[33] "Use of Force" (Glynco, GA: Federal Law Enforcement Training Center, January 2006), Page 19.

- Visibility (e.g., lighting; weather; etc.)
- Ground/floor surface (e.g., elevated, uneven, slippery, etc.)
- Distance between fixed or moving objects
- Availability of traditional or non-traditional weapons
- Presence of innocent third persons
- Back-up availability



Perceived Subject Actions

Perceived circumstances is just one piece of the totality of the circumstances that inform what a reasonable officer response will be to any given situation. Perceived subject actions is another important piece of the totality of the circumstance's officers must consider when deciding their next move.



Subject vs. Suspect

One of the three G*raham* factors is the type and severity of the crime, but not every individual an officer encounters will be involved in criminal activity. 555 CMR 6.00 states that officers are allowed to use force in four instances:

1. effect the lawful arrest or detention of a person;
2. prevent the escape from custody;
3. prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm while protecting the safety of the officer or others; or
4. defend against an individual who initiates force against an officer.

Any of these situations could apply to individuals who are suspected of criminal activity or not.

Just because an individual is not a suspect, does not mean that the officer is prohibited from using force against the person. An officer should consider whether the person is a suspect or merely a subject because it goes directly to the consideration of the governmental interest in the officer's actions. The government usually has a greater interest in a criminal suspect than a subject. The governmental interest would also be higher if the crime involved is one of violence.

While the individual's status as either suspect or subject is important, officers must consider the totality of the circumstances when evaluating their options. Regardless of the individual's status

as either suspect or subject, the officer's actions must be objectively reasonable based on the totality of the circumstances.[34]



Perceived Subject Actions

The officer's perception of the individual's resistance and threat presented. Was the individual actively resisting or attempting to evade arrest?

There are many factors that go into an officer's perception of the situation:

- individual's age, height and weight
- individual's strength, skill level
- individual's body language
- individual's communication
- weapon possession / use by individual
- officer's prior knowledge of individual (criminal history, mental health history, violence)
- individual's influence of alcohol/drugs; can diminish an individual's capacity to feel the pain needed for compliance.



Skill Level

Individual's skill level as demonstrated or perceived by the officer. This includes but is not limited to the following:

- strength
- stamina
- performance



Body Language

Read the individual's behavior and body language to be proactively cognizant of potentially hazardous conditions (use the principal of distance when applicable). This will allow additional time to make better informed decisions.

Some body language cues are unintentional physiological responses to stress that may indicate forthcoming resistance. Potential pre-attack indicators could include, but are not limited to the following:

- Clenching: individual may clench fists or teeth, or present erratic finger movements.

[34] *Lachance v. Town of Charlton*, 990 F.3d 14 (First Cir. 2021).

- Unusual sweating: Sweating on palms, bridge of nose or profuse sweating during cold temperatures.
- Target glancing: individual repeatedly looks at officer's duty belt equipment and positioning.
- Scanning: individual repeatedly looks around, behind and away from officer. May indicate desire to find escape route or non-traditional weapon within location.
- Dressing-down: individual removes clothing, jewelry, glasses, or other item that would impede ability to physically resist.
- Dressing-up: individual tightens belts, re-ties shoelaces, adjusts (e.g., pulls up pants) clothing in preparation to physically resist.
- Staring: individual intentionally stares directly at officer's face without looking away.



Subject Communication[35]

Some individuals may also make statements that indicate imminent resistance.

- Direct threats - overt warnings to officers (e.g., "I am going to kick your ass.")
- Repeated phrases – individual repeats the same question or statement. This may indicate that their mental focus is on preparing to resist and not communicating.
- Incoherent – individual mumbles, uses incomplete sentences, or presents sudden increase in word cadence (per seconds). This may indicate influence of drugs/alcohol or their focus is on preparing to resist.
- Hate speech - name calling, racist, sexist, or other profane language.

Officers should be mindful that they will be dealing with individuals from various cultural and ethnic backgrounds when assessing the communication and actions of individuals. Review Communication Skills for specific information on communicating with people with limited English proficiency or with disabilities and with children, teenagers, and older adults.



Perceived Subject Actions

An individual's actions can be categorized into different categories: compliant, passive resistant, active resistant, or aggressive/combative.



Instructors should give examples or demonstrate what each of these categories may look like.

[35] "Subject Control/Arrest Techniques" (Salemburg, NC: North Carolina Justice Academy, 2015), Pages 24-25.

Compliant

Individuals are fully cooperative and offer no resistance. The majority of individuals whom officers encounter are compliant.

Passive Resistance

Passive resistance is defined as… "an individual who is noncompliant with officer commands that is nonviolent and does not pose an immediate threat to the officer or the public."[36]

Such an individual is uncooperative but does not make any overt physical action or body movement while resisting.

Active Resistance

The individual's resistance becomes more active in scope and intensity. The individual intentionally uses overt physical action, physical strength, or body movement to resist.

Aggressive/Combative

Officer attempts to gain lawful control are countered by active aggression or combative behavior by the individual.



Reasonable Officer Response

A reasonable officer response to any situation is informed by the totality of the circumstances which are based on the officer's perceived circumstances and perceived subject actions.



Officer Factors

To use force lawfully and effectively, officers must be physically and mentally prepared and use reasonable and proportionate force.

Awareness (Self and Situational)

No two use-of-force events are identical. What works for one officer may not work for another. What worked during a previous use of force event may not work the next time.

Circumstances facing officers are often tense, uncertain, and rapidly evolving. Officers must recognize their own limitations and continuously re-evaluate the totality of circumstances while using force.

[36] 550 CMR 6.03.

Mental and Physical Readiness
Officer health is directly related to decision making under stress. Officers must be physically and mentally prepared to use force.

Confidence
Confidence in skill level and ability comes from a combination of practice and mental and physical preparedness.

Use Back-up
Requesting and waiting for back-up to arrive before using force can be effective. The presence of multiple officers may discourage an individual from using force to resist.

Disengage / Transition
If an officer is unable to gain a position of safety or advantage quickly, they must know when to disengage, escape, or transition to another tactic or weapon.



Reassess

During circumstances that are tense, uncertain, and rapidly evolving, officers must recognize their own limitations, and continuously re-evaluate the totality of circumstances. Re-evaluate the individual's behavior throughout the interaction. Be vigilant of any triggers that may escalate the individual's behavior.

During the encounter, recognize when the individual is becoming compliant. As the situation evolves, so must your response to it. A tactic may be reasonable and appropriate at the beginning of an encounter but not later on as the individual calms down and becomes compliant.

> "*When an individual has been forcibly restrained by several officers, has ceased resisting arrest for several seconds, and has advised the officers that the force they are already using is hurting a previously injured ankle, we cannot think of any basis for increasing the force used to such a degree that a broken ankle results*."[37]

AFTER USE OF FORCE

OBJECTIVE # 6: Explain officer requirements following a use of force: (a) render critical care, (b) duty to intervene, (c) report and reporting requirements.

[37] *Jennings v. Jones*, 499 F.3d 2, 18 (2007).



After Force

1. **Request an ambulance and render critical care as needed.** The use of force can result in pain or injuries to either the person involved or the officer.

    a. Officers shall always provide appropriate medical response to individuals who are exhibiting signs of or complaining of injury or illness following a use of force when safe and tactically feasible.[38]

    b. Officers should note in their report any medical attention that was provided. If medical treatment is offered and declined by the individual, that should be included in the report as well.

2. **Notify the supervisor.** Consult your department policy for other steps you are required to take after a use-of-force incident.

3. **Debriefing.** Whenever a use of force occurs, officers should be able to debrief the situation with other officers or, if necessary, supervisors. The goal of debriefs should not be to criticize the officer's actions, especially with the advantage of 20/20 hindsight. Instead, debriefs should focus on the officer's perception and what actions they took. The key question is: Were the actions taken reasonable based upon the totality of the circumstances as perceived by the officer? The next question is: What could the officer have done differently?

    a. Having honest and frank conversations about the use of force is important to the officer's growth and development. Policing is a profession, and as a professional, an officer should take opportunities to learn from all situations not just mistakes.



Use of Force Reports

Your report must document the totality of the circumstances (perceived circumstances, subject actions, and your reasonable response). Write your report with enough detail and description so that the factfinder (judge or jury) will understand what happened.

A use of force must be reasonable and proportionate in light of the totality of the circumstances facing the officer. Reasonableness is based on facts, not conclusions. It is important to use specific facts in the report instead of subjective conclusions.

Important details to include in a use of force report:

- Description of environment, space, lighting, barriers, etc.

[38] 555 CMR 6.04(4) and 555 CMR 6.05(7).

- Number of officers versus the number of subjects
- Any de-escalation tactics employed
- The officer's size, age, and conditions versus those of the subject(s) – gender is irrelevant.
- Previous history of violence known at the time of the incident
- Previous history in general
- Any psychiatric history known at the time of the incident
- Any evidence of drug or alcohol use
- Presence of bystanders and the possible threat to them
- The specific actions of the subject or persons throughout the incident – how they reacted to your commands or use of force throughout the situation
- Duration of action – how long did it last?
- How you used the time to your advantage and what you did relative to command and control, planning, and de-escalation attempts.
- Injuries to the officers or others including medical aid provided
- Level of exhaustion or fatigue of the officer
- Level of resistance while being restrained
- The availability of weapons – obvious weapons or weapons of opportunity
- Whether force applied resulted in injury to the suspect or did not affect or injure the suspect
- Whether medical aid was requested by or offered to the subject



Required Reporting

Agency requirements

Your agency has a policy that details when a use of force report must be filed. At a minimum, all agencies require that a report be made when the situation involves an officer-involved injury or death.[39]

It is your responsibility to be familiar with your department's policy.

Reporting required by the CMRs

In addition to the reporting requirements of your agency, the law requires reports be written in certain situations.

[39] 555 CMR 6.07(1).

Use of certain tactics for crowds

If a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, conducted energy devices, electronic control weapons, tear gas or any other chemical weapon, or a dog against a crowd, the law enforcement officer's appointing agency shall file a report with the POST Commission detailing all measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using said weapons.[40]

When an officer witnesses another officer using excessive force

An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with uniform protocols. The officer' written statement shall be included in the supervisor's report.[41]



Duty to Intervene

Officers responding as backup officers have an obligation to prevent the excessive use of force from being used by other officers.[42]

An officer present and observing another officer using or attempting to use physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the observed officer's use of unnecessary or unreasonable force, regardless of the rank of the officer so observed, unless intervening would result in imminent harm to the officer or another identifiable individual.[43]

NOTE: Any harassment, intimidation, or retaliation against any officer who either intervened to prevent or stop an excessive force incident or made or intended to make a report or is required to make a report regarding the witnessed excessive force, shall be reported immediately to an appropriate supervisor and will not be tolerated. Any such harassment, intimidation, or retaliation may result in decertification by the POST Commission.[44]

[40] 555 CMR 6.08(4).
[41] 555 CMR 6.07(4).
[42] *Commonwealth v. Adams*, 416 Mass. 558 (1993).
[43] 555 CMR 6.06.
[44] 555 CMR 6.07(7).

Video- Los Angeles Incident

Video – Los Angeles Incident

This video summarizes a use of force incident under investigation that occurred in Westminster California. The Westminster officer in the video can be seen repeatedly punching a handcuffed woman during an arrest. Two other officers on scene immediately took action to intervene.

Facilitated Discussion Question

After watching the video, have participants respond to the following question.

Were the actions the officers took reasonable? Were there other actions the officers should have taken?

Takeaways:

- *Answers will vary. There are several ways that the officers could have reacted. As with any use of force, there is no one "right" way to intervene and officers should not be judged with the benefit of hindsight. The question is not should the officer have used other tactics than the ones they used. As long as an officer acted quickly and reasonably to stop the excessive use of force, they have met their obligation.*
- *This video demonstrates that intervening does not mean that an officer needs to take another officer to the ground to stop an excessive use of force. The officers here acted quickly when they observed the other officer punching the woman. The intervening offices also did not lose control of the woman while the intervened, which could have put the safety of her, the public and the officers at risk.*

Civil Liability

As we explained in the beginning of this lesson, the use of force is a seizure under the Fourth Amendment. Officers who use excessive force violate a person's Fourth Amendment rights.

Officers who use excessive force are subject to various penalties, including:

- discipline by the officer's employing agency
- suspension or decertification by POST
- criminal charges.
- Civil liability. Officers can be sued by the individual under 42 U.S.C. § 1983 for the use of excessive force.



Use of Force Model

The use of force model was developed in the 1970's as a way for instructors to try to explain the concepts involved with the use force. The MPTC adopted the model used by the Federal Law Enforcement Training Center (FLETC). The model was helpful because there was no caselaw at that time that instructors could refer to when teaching this important topic.

Tennessee v. Garner, 471 U.S. 1 (1985) which established the fleeing felon rule was not decided until 1985 while *Graham v. Connor*, 490 U.S. 386 (1989) was not decided until four years later. Since these cases were decided, the model has been removed from various law enforcement agencies' training, including the Department of Justice, the FBI, and FLETC in favor of training that focuses on caselaw and constitutional decision making.

For all of these reasons, the use of force model is being phased out of MPTC curricula. We will no longer be teaching the model in the police academy or in any of our specialized lessons.

WORKS CITED

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