



# USE OF FORCE POLICY

Effective Date: 2/1/08

Revision Date: 8/4/09

Enforcement Division

Policy Number: LE 4.00.00

## I. POLICY STATEMENT

1.1 Certified Peace Officers (CPOs) will exercise force prudently for their own protection, in the protection of the life, health, or safety of others, in the protection of property, in the execution of a lawful arrest or search, or as otherwise authorized by the law. CPOs will employ objective reasonableness as a standard for appropriate levels of force.

1.2 The use of force in response to a perceived threat of imminent harm from a subject or to affect the seizure of a subject who is resisting or attempting to escape will be consistent with what is objectively reasonable considering the totality of the circumstances known to the officer at the time the force is used.

## 2. POLICY PURPOSE

2.1 The purpose of this policy is to emphasize reasonableness, both in the perception of a threat or escape attempt, and the application of force. Each circumstance is unique and reasonableness is based on the totality of the circumstances.

2.2 This policy provides guidelines for the Texas Alcoholic Beverage Commission (Commission) CPOs when confronted with a threat or resistance by a subject.

2.3 The use of force training provided by the Commission will be based on the Use of Force Policy.

## 3. DEFINITIONS

3.1 **Threat** is defined as the perception of the person's capability to do harm joined by hostile intent.

3.2 **Reasonableness:** In *Graham v. Connor*, the U.S. Supreme Court declared use of force to be a Fourth Amendment issue subject to an "objective reasonableness" standard. Specifically, the court said:

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. 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.

The "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. [490 U.S. 386, 396-97 (1989)]

3.3 **Force** is the act of compelling behavior by physical or non-physical means.

3.4 **Authorized Force** is an application that is lawful, reasonable and necessary and conforms to law, departmental policies, procedures and regulations.

3.5 **Non-Deadly Force** is force not calculated or reasonably expected to cause serious bodily injury and/or death.

3.6 **Deadly Force** is force that is known or should have been known or is intended to cause serious bodily injury or death.

**4. RESPONSE TO THREAT OR RESISTANCE GUIDE**



Level of Force	Examples
<b>Command Presence (Active Targeting)</b>	Identification of authority, physical appearance, professional demeanor, number of officers. Elevated command presence.
<b>Verbal Communication</b>	Direct order, questioning, persuasion, word choice, tone
<b>Soft Empty Hand Techniques</b>	Pressure points, takedowns, joint manipulations, physical strength control, handcuffing
<b>Chemical Irritants</b>	Use of OC spray, use of a chemical device
<b>Hard Empty Hand Techniques</b>	Distraction techniques, strikes with hands, feet, elbows, or knees
<b>Impact Weapons</b>	Expandable baton
<b>Deadly Force</b>	Firearms, any force readily capable of causing death or serious physical injury

**5. USE OF FORCE TRAINING**

5.1 Annual training for CPOs includes training in the Texas Alcoholic Beverage Commission use of force policies and the proper application of each force option. Instruction further includes the safety, care and maintenance of each weapon appropriated.

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5.2 The training division coordinates the use of force training with Office of Professional Responsibility (OPR) and the agency's use of force expert and reports the training to the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

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## 6. PROCEDURES

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- a. A CPO uses force in response to a perceived threat, or when confronted with active or passive resistance by a subject.
  - b. A CPO evaluates the subject's actions and uses a response that is objectively reasonable.
  - c. After force is used, a CPO's duties include the following:
    1. Medical review of all parties involved for injuries incurred.
    2. A CPO will complete a *Use of Force Report Form (Form)* before the end of his or her shift when:
      - A. the subject complains of injury; or
      - B. the CPO uses force greater than the nonresistant placement of handcuffs on a subject. Levels of force examples that require a report include, but are not limited to, the following:
        - i. Soft Empty Hand Techniques
        - ii. Chemical Irritants
        - iii. Hard Empty Hand Techniques
        - iv. Impact Weapons
        - v. Deadly Force
    3. The CPO will fill out one *Form per* subject for any TABC arrest, or for an arrest where the CPO is assisting another police entity.
    4. The CPO will submit the *Form to* his or her sergeant or supervisor.
  - d. **Supervisor's duties** after force is used includes the following:
    1. The supervisor will ensure that all *Forms* are entered into the agency computer system before the end of the shift.
    2. The supervisor will notify the captain by the next business day of any use of force incidents.
    3. The supervisor will send a copy of the *Form* to the captain and the training coordinator and will forward the original to the Office of Professional Responsibility (OPR).
  - e. **The captain** will note any use of force incidents in his or her *Weekly Captain's Report*.
  - f. The **Office of Professional Responsibility** will do the following:
    1. Reviews the Use of Force Report(s) to ensure proper procedures and policy were applied in each incident;
    2. Enters the incident data into the OPR's database for tracking and training
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purposes; and

3. Reports quarterly to the TABC's Administrator, Commissioners, and training division on the statistical data and documents any training adjustment recommendations to be considered.
- g. The **training coordinator** evaluates the quarterly report and coordinates training updates with OPR and the agency's use of force expert.

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## **7. FORMS**

*Use of Force Report, Form 4-410*

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## **8. RELATED INFORMATION OR DOCUMENTS**

Graham v. Connor, 490 U.S. 386 (1989)  
Tennessee v. Garner, 105 S. Ct. 1694 (1985)  
Texas Penal Code, Chapter 9.

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## **9. REVISION HISTORY**

8-04-09: The Use of Force Policy was updated as a result of the agency's after-action review of the United States Department of Justice report on the Austin Police Department's Use of Force Policy.

The primary change in the policy was to move from a "force continuum approach" to an "objectively reasonable force" model.

Also the use of force training is coordinated by the agency's use of force expert and training recommendations originate from OPR.

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