

Florida Basic Recruit Training Program: High Liability CMS Criminal Justice Defensive Tactics CJK_0051

Use of Force—Force Guidelines for Correctional and Correctional Probation Officers

Objectives

- FA605.1.B. Identify the legal sources that address use of force issues.
- DT501.2.A. Identify elements of the Florida Statutes as related to the use of force by criminal justice officers.
- DT501.2.E. Explain the provisions of Chapters 944 and 945, F.S., related to the use of force by state correctional and correctional probation officers.
- DT501.2.B. Explain that subject resistance and officer response may change rapidly.
- DT501.2. Apply the legal authority for an officer's response to a subject's resistance.
- DT501.1.D. Explain the concept of objective reasonableness.
- DT501.2.C. Explain escalation, de-escalation, and disengagement.
- DT501.1.B. Explain how the injury potential to an officer may affect his or her response.
- DT501.2.B.1. Define *passive resistance*.
- DT501.2.B.2. Define *active resistance*.
- DT501.2.B.3. Define *aggressive resistance*.
- DT501.2.B.4. Define *deadly force resistance*.
- DT501.2.B.5. Define *physical control*.
- DT501.2.B.6. Define *nonlethal weapon*.
- DT501.2.A.1. Define *deadly force*.
- DT501.2.A.2. Identify the essential criteria to determine the justification of the use of deadly force.
- DT501.2.D. Identify the subject's ability, opportunity, and intent as it relates to the officer's response to resistance.
- DT501.1.A. Identify various situational factors that may influence the use of force.
- DT501.1. Apply reasonable and necessary force to given situations.

Chapter 776, F.S. governs use of force by criminal justice officers. Even though the statute refers to "law enforcement" officers, the legal guidelines regarding use of force also apply to correctional and correctional probation officers. The statute identifies two general areas in which an officer's use of force is justified: to apprehend a subject and make an arrest, or to defend self or others. (FA605.1.B.)

Section 776.05, F.S., addresses the issue of an officer using force to make an arrest:

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance—or threatened resistance to the arrest. The officer is justified in the use of any force:

1. Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
2. When necessarily committed in retaking felons who have escaped; or

3. When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

- a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
- b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person. (DT501.2.A.)

While Chapter 776, F.S., applies in general to all criminal justice officers, Chapter 944, F.S., is specific to the use of force by state correctional and correctional probation officers. Chapter 945, F.S., establishes that the Department of Corrections has jurisdiction over the supervisory and protective care, custody, and control of inmates and offenders. (DT501.2.E.)

Section 944.35, F.S. provides:

(1)(a) An employee of the department is authorized to apply physical force upon an inmate only when and to the extent that it reasonably appears necessary:

- 1. To defend himself or herself or another against such other imminent use of unlawful force;
- 2. To prevent a person from escaping from a state correctional institution when the officer reasonably believes that person is lawfully detained in such institution;
- 3. To prevent damage to property;
- 4. To quell a disturbance;
- 5. To overcome physical resistant to a lawful command; or
- 6. To administer medical treatment only by or under the supervision of a physician or his or her designee and only:
 - a. When treatment is necessary to protect the health of other persons, as in the case of contagious or venereal diseases; or
 - b. When treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death.

Appropriate force is the amount of force reasonably necessary to make an arrest. This is called “objective reasonableness.” The U.S. Supreme Court said in *Graham v. Connor*, 490 U.S. 386 (1989), that the reasonableness of a particular use of force must be judged from the perspective of how a reasonable officer on the scene would respond, rather than from the 20/20 perspective of hindsight. To determine if an officer’s actions were objectively reasonable, the courts look at the facts and circumstances the officer knew when the incident occurred. Courts recognize that criminal justice officers must make split-second judgments about the amount of force needed in a particular situation under circumstances that are tense, uncertain, and rapidly evolving (DT501.2.B).

The officer's reasons for using force must be consistent with constitutional and statutory law, as well as agency policy and training guidelines. The Supreme Court has made clear that use of force is a seizure under the Fourth Amendment. Correctional officers must also consider that use of force may violate the Eighth Amendment's prohibition of cruel and unusual punishment.

An officer's agency may establish the specific techniques, tactics, and applications that an officer may use in an encounter with a resistant subject.

Authority to Use Force

Much litigation against criminal justice officers is not about the amount of force used, but whether the use of force was permitted at all. Though the law grants criminal justice officers the right to use force, this right is conditioned on their official authority.

Correctional officers have full-time authority over inmates due to the inmates' adjudication and suspension of civil rights. A law enforcement officer's authority to use force is established by the officer's reasonable belief that a crime has been, is being, or is about to be committed. Absent this belief, known as reasonable suspicion, a law enforcement officer has no authority over a subject, and thus no permission to use any amount of force at all. (DT501.2.)

Levels of Force

The courts have used the term *objective reasonableness* to describe the process for evaluating the appropriateness of an officer's response to a subject's resistance (DT501.1.D.). Force decisions may escalate and de-escalate rapidly in relation to the perceived threat. An officer's goal is to achieve subject compliance. *Compliance* is the verbal and/or physical yielding to an officer's authority without apparent threat of resistance or violence.

Escalation, De-Escalation, and Disengagement

Escalation, de-escalation, and disengagement are important concepts in making legally and tactically sound, reasonable responses to resistance. *Escalation* is increasing the use of force or resistance. *De-escalation* is decreasing the use of force or resistance. *Disengagement* is discontinuing a command or physical use of force, for example, by breaking away from a subject (DT501.2.C.). Officers are legally permitted to escalate their use of force as the subject escalates his or her level of resistance. The officer's choices are determined by the subject's actions and the risk of physical harm posed to the officer or others (DT501.1.B.). Once the officer achieves control or compliance, he or she must de-escalate the use of force. Under certain circumstances, disengagement may be the best tactical option, for example, when the officer is waiting for backup, when the officer is injured or outnumbered, or when the suspect has superior firepower.

Force Guidelines

The *Force Guidelines* provide a framework for making decisions involving the reasonable use of force by criminal justice officers. The structure of the Force Guidelines is based on constitutional considerations and case law and describes appropriate decision making in a fluid and dynamic

situation. The Guidelines consider the relationship between subject resistance and various situational factors in determining the officer's response options.

Subject Resistance Levels

Passive resistance is a subject's verbal and/or physical refusal to comply with an officer's lawful direction causing the officer to use physical techniques to establish control. (DT501.2.B.1.)

Some examples of passive resistance include the following:

- The subject refuses to move at the officer's direction.
- The subject peacefully protests at a political event in a public location.
- The subject refuses to take his hands out of his pockets or from behind his back.

Active resistance is a subject's use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling, to prevent the officer from establishing control over the subject. (DT501.2.B.2.)

Some examples of active resistance include the following:

- The subject physically anchors himself to a person or object to prevent himself from being removed.
- The subject braces or pulls away from the officer when the officer grips the subject's arm.
- The subject attempts to run when the officer touches or attempts to grab the subject's arm or shoulder.

Aggressive resistance is a subject's attacking movements toward an officer that may cause injury but are not likely to cause death or great bodily harm to the officer or others. (DT501.2.B.3.)

Some examples of aggressive resistance include the following:

- The subject balls up his fist and approaches the officer.
- The subject pushes the officer back as the officer tries to take the subject into custody.
- The subject grabs any part of the officer's body.

Deadly force resistance is a subject's hostile, attacking movements with or without a weapon that create a reasonable perception by the officer that the subject intends to cause and has the capability of causing death or great bodily harm to the officer or others. (DT501.2.B.4.)

Some examples of deadly force resistance include the following:

- A subject refuses to drop a knife when ordered to by the officer and moves toward the officer.
- A subject shoots or points a gun at an officer or other person.
- A subject tries to run an officer down in a vehicle.

Officer Response Options

Officers should always try to resolve a situation with the least amount of force necessary. Command presence and verbal communication often will defuse many volatile situations. Sometimes, however, these are not enough or officers may not have an opportunity to use them. An officer may have to use physical force to gain control of the situation. Physical force includes physical control, nonlethal weapons, and deadly force. Officers need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead, officers need to respond with all the force reasonably necessary for the circumstances in each specific situation.

Physical control is achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices, takedowns, and striking techniques. (DT501.2.B.5.)

A *nonlethal weapon* is a weapon that is not fundamentally designed to cause death or great bodily harm (DT501.2.B.6.). Some examples of nonlethal weapons include electronic control devices (ECD); dart-firing stun guns, such as Taser®; expandable batons; flashlights; and chemical agent sprays.

Deadly force is force that is likely to cause death or great bodily harm (DT501.2.A.1.). Some examples of deadly force include use of a firearm, eye gouges, empty-hand strikes to the throat, and impact-weapon strikes to the side of the neck.

Section 776.06, F.S., states:

(1) The term “deadly force” means force that is likely to cause death or great bodily harm, and includes, but is not limited to:

- a The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
- b. The firing of a firearm at a vehicle in which the person to be arrested is riding.

Section 776.07, F.S., states:

(2) A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

Use of deadly force may be an officer’s first and only appropriate response to a perceived threat. Deadly force does not necessarily mean that someone died from the force used. It can cause great bodily harm or no harm at all. For example, returning fire is deadly force even if the officer misses the target.

The officer must base his or her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he or she, a fellow officer, or another person, faces imminent danger of death or great bodily harm. (DT501.2.A.2.)

Factors for Deciding the Use of Deadly Force in Situations Not Involving Escape

Officers use three criteria for making deadly force decisions: ability, opportunity, and intent. (DT501.2.D.)

Ability refers to the subject having the means to carry out his or her intent to cause death or great bodily harm. An officer must determine whether the subject has the necessary means to cause death or great bodily harm to the officer or others. A weapon is not required; a subject must only have the apparent ability to carry out his or her intention. If the subject seems physically able to cause death or great bodily harm, then he has the ability. For example, a 6'4", 250-lb. muscular man threatening to do bodily harm to an officer does not necessarily need a weapon. By virtue of his size and physical condition, he has the apparent ability.

Opportunity means the subject is capable of carrying out an intention to cause death or great bodily harm to the officer or others. The subject's weapon often determines opportunity. For example, a suspect armed with a knife may not be an immediate threat to an officer standing far away. However, the same person standing closer or carrying a firearm certainly has the opportunity to carry out his intent to cause death or great bodily harm.

Intent is a reasonably perceived, imminent threat to an officer or another person based on the subject's actions. It is a perception derived from the totality of the circumstances.

Officers should use the amount of force necessary and reasonable for the situation. If ability, opportunity, and intent are present and the officer cannot control the threat using lesser means, then deadly force is justified. Remember that when resistance de-escalates, so must your response.

Objective Reasonableness

Totality of circumstances is a term the court uses to refer to all facts and circumstances known to the officer at the time or reasonably perceived by the officer as the basis for a use of force decision. The courts will look at the totality of circumstances in determining whether the decision was objectively reasonable and, therefore, legally justified. The totality of circumstances includes consideration of the subject's form of resistance, all reasonably perceived factors that may have an effect on the situation, and the response options available to the officer.

Some situational factors may be as follows:

- severity of the crime
- subject is an immediate threat
- subject's mental or psychiatric history, if known to the officer
- subject's violent history, if known to the officer
- subject's combative skills
- subject's access to weapons
- innocent bystanders who could be harmed

- number of subjects versus number of officers
- duration of confrontation
- subject's size, age, weight, and physical condition
- officer's size, age, weight, physical condition, and defensive tactics expertise
- environmental factors, such as physical terrain, weather conditions, etc. (DT501.1.A.)

The Force Guidelines recognizes that officers make use of force decisions based on the totality of circumstances at the time of the incident. Circumstances are fluid and dynamic. Formulating a valid response requires continual assessment as the situation changes.

Use of Force Reporting

Most agencies require a special report anytime an officer uses force to control a subject. Officers need to clearly articulate the specific basis for their decisions regarding the use of force. For example, if deadly force was used, the officer should state exactly what the subject did that created the perception of the subject's ability, opportunity, and intent to cause death or great bodily harm. Simply stating "The suspect threatened me." is not sufficient.

Officers should remember that whatever is written on a use of force incident report will be seen by not only supervisors but also by a prosecutor, defense attorney, judge, and potentially many others. Officers should be careful to include every factor used in their use of force decision since factors added later will be viewed with suspicion.

Force Guidelines

The Decision Making Process

