NATIONAL CONSENSUS POLICY AND DISCUSSION PAPER ON USE OF FORCE

October 2017

POLICY

This National Consensus Policy on Use of Force is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States (see back panel for list). The policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.

I. PURPOSE

The purpose of this policy is to provide law enforcement officers with guidelines for the use of less-lethal and deadly force.

II. POLICY

It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

In addition, "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 question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them."[1]

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

III. DEFINITIONS

DEADLY FORCE: Any use of force that creates a substantial risk of causing death or serious bodily injury.

LESS-LETHAL FORCE: 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.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

SERIOUS BODILY INJURY: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical

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

2 Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.[2]

CHOKE HOLD: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. PROCEDURES

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment

1. to protect the officer or others from immediate physical harm,
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
   a. to protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
   b. to prevent the escape of a fleeing subject when the officer has probable

cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended

2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.[3]
3. Deadly Force Restrictions
   a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.
   b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless
      (1) the use of deadly force is justified;
      (2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and
      (3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.
   c. Firearms shall not be discharged at a moving vehicle unless
      (1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or
      (2) 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.
   d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.
   e. Choke holds are prohibited unless deadly force is authorized.[4]

E. Training

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.
2. In addition, training shall be provided on a regular and periodic basis and designed to
   a. provide techniques for the use of and reinforce the importance of de-escalation;
   b. simulate actual shooting situations and conditions; and
   c. enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.
3. All use-of-force training shall be documented.

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

4 Note this prohibition does not include the use of vascular neck restraints.

Every effort has been made to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "sample" policy can meet all the needs of any given law enforcement agency.

Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy.

DISCUSSION PAPER

This *Discussion Paper on the National Consensus Use of Force Policy* is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States. The paper reflects the best thinking of all Consensus organizations and is intended to provide background information for law enforcement agencies to consider when implementing the *National Consensus Policy on Use of Force* in their own agencies.

I. INTRODUCTION

Managing uses of force by officers is one of the most difficult challenges facing law enforcement agencies. The ability of law enforcement officers to enforce the law, protect the public, and guard their own safety and that of innocent bystanders is very challenging. Interactions with uncooperative subjects who are physically resistant present extraordinary situations that may quickly escalate. Ideally, an officer is able to gain cooperation in such situations through the use of verbal persuasion and other de-escalation skills. However, if physical force is necessary, an officer's use of force to gain control and compliance of subjects in these and other circumstances must be objectively reasonable.

While the public generally associates law enforcement use of force with the discharge of a firearm, use of force includes a much wider range of compliance techniques and equipment. These less intrusive, but more common uses of force may range from hand control procedures to electronic control weapons, pepper aerosol spray, or various other equipment and tactics.

A. National Consensus Policy on Use of Force

In recognition of the increased focus on law enforcement use of force, in April 2016, the International Association of Chiefs of Police and the Fraternal Order of Police convened a symposium to discuss the current state of policing, in general, and use of force, in particular, inviting several of the leading law enforcement leadership and labor organizations to attend. The United States Supreme Court has provided clear parameters regarding the use of force. However, how this guidance is operationalized in the policies of individual law enforcement agencies varies greatly. This creates a landscape where each agency, even neighboring jurisdictions, are potentially operating under differing, inconsistent, or varied policies when it comes to the most critical of topics.

Symposium members decided to address these disparities by creating a policy document on use of force that can be used by all law enforcement agencies across the country. The goal of this undertaking was to synthesize the views of the participating organizations into one consensus document that agencies could then use to draft or enhance their existing policies. The final product, the *National Consensus Policy on Use of Force* (*Consensus Policy*), was published in January 2017.

The *Consensus Policy* incorporates the most current information and contemporary professional judgment and is designed to provide a framework of critical issues and suggested practices from which agencies can develop their own use-of-force policies. *It is not intended to be a national standard by which all agencies are held accountable, and agencies are not required to institute the* Consensus Policy.

Rather, chief executives should use the document as a guideline, while taking into account the specific needs of their agencies, to include relevant court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements. Many chief executives might wish to make their own policies more restrictive than the *Consensus Policy*. As with any policy, before implementing these suggested guidelines, agencies should consult their legal advisors.

This paper is designed to accompany the *Consensus Policy* and provide essential background material and supporting documentation to promote greater understanding of the developmental philosophy and implementation guidelines for the *Consensus Policy*. Chief executives should use the information contained herein to better inform their decisions on whether to implement the various directives found in the *Consensus Policy* in their own agencies.

B. Scope of Policy

Law enforcement agencies must provide officers with clear and concise policies that establish well-defined guidelines on the use of force. It is essential that officers have a complete understanding of agency policy on this critical issue, regularly reinforced through training. Therefore, a use-of-force policy should be concise and reflect clear constitutional guidance to adequately guide officer decision making. Policies that are overly detailed and complex are difficult for officers to remember and implement and, as such, they create a paradox. While they give officers more detailed guidance, they can also complicate the ability of officers to make decisions in critical situations when quick action and discretion are imperative to successful resolutions. The *Consensus Policy* is purposefully short and provides the necessary overarching guidelines in a succinct manner, while restricting force in certain situations.

Some agencies may choose to develop separate policies on less-lethal versus deadly force. However, law enforcement use of both deadly and less-lethal force is governed by the same legal principles and, therefore, the *Consensus Policy* elects to address the entire spectrum of force in one document. While the development of individual policies on the use of specialized force equipment is a prudent approach, the legal grounds for selection and application of any force option applied against a subject should be based on the same legal principles cited in the *Consensus Policy*.

It is also not the intended scope of either the *Consensus Policy*, or this discussion document, to address issues relating to reporting use-of-force incidents; training of officers in the handling, maintenance, and use of weapons; investigation of officer-involved shooting incidents; officer post-shooting trauma response; and early warning systems to identify potential personnel problems. Instead, agencies are urged to develop separate policies addressing each of these topics.

II. Legal Considerations

Use of force may have potential civil and criminal consequences in state or federal courts or both. As scores of these actions have demonstrated, the scope and the wording of agency policy can be crucial to the final resolution of such cases. It should be emphasized that liability can arise for an involved officer; the law enforcement agency; agency administrator(s); and the governing jurisdiction.

At a minimum, agency policy must meet state and federal court requirements and limitations on the use of force, with the U.S. Constitution forming the baseline for the establishment of rights. While states cannot take away or diminish rights under the U.S. Constitution, they can, and often do, expand upon those rights. In such cases, law enforcement administrators must establish an agency policy that meets the more stringent use-of-force guidelines of their state constitution and statutory or case law interpreting those provisions. It is strongly recommended that this and other policies undergo informed, professional legal review before they are sanctioned by the agency.

A. Use of Policy in Court

Courts vary as to whether agency policy can be introduced and carry the same weight as statutory law. However, in some cases, it may be permissible to introduce at trial the issue of officer noncompliance for whatever weight and significance a jury feels appropriate. Law enforcement administrators should develop strong and definitive policies and procedures without fear that they might prove prejudicial to a future court assessment of an officer's conduct. In fact, by adopting a use-

The foregoing discussion is not meant to suggest that law enforcement agency policy must be established only with potential litigation in mind. On the contrary, law enforcement administrators should use language that properly guides officers' decision-making consistent with agency goals and values while also protecting the officer, the agency, and the community from unnecessary litigation. There is value in using verbiage from statutes, case law, and regulations in policy as a means of providing officers with clearer guidance.

Training should effectively translate the general guiding principles of agency policy and operational procedures into real-world scenarios through understanding and practice. Training shares an equal importance in agency efforts to control and manage the use of force and, as such, can have a significant impact on an agency's efforts to defend the use of force in court or other contexts.

III. Overview

A. Guiding Principles

It should be the foremost policy of all law enforcement agencies to value and preserve human life. As guardians of their communities, officers must make it their top priority to protect both themselves and the people they serve from danger, while enforcing the laws of the jurisdiction. However, there are situations where the use of force is unavoidable. In these instances, officers must "use only the amount of force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others."[4] Introduced in *Graham*, the "objectively reasonable" standard establishes the necessity for the use and level of force to be based on the individual officer's evaluation of the situation considering the totality of the circumstances.[5] This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information others communicated to the officer, ***at the time the force was used*** and "upon what a reasonably prudent officer would use under the same or similar circumstances." This standard is not intended to be an analysis after the incident has ended of circumstances not known to the officer at the time the force was utilized.

The totality of the circumstances can include, but is not limited to, the immediate threat to the safety of the officer or others; whether the subject is actively resisting; the time available for the officer to make decisions in circumstances that are tense, uncertain, and rapidly evolving; the seriousness of the crime(s) involved; and whether the subject is attempting to evade or escape and the danger the subject poses to the community. Other factors may include prior law enforcement contacts with the subject or location; the number of officers versus the number of subjects; age, size, and relative strength of the subject versus the officer; specialized knowledge skill or abilities of the officer; injury or level of exhaustion of the officer; whether the subject appears to be affected by mental illness or under the influence of alcohol or other drugs; environmental factors such as lighting, terrain, radio communications, and crowd-related issues; and the subject's proximity to potential weapons.

The decision to employ any force, including the use of firearms, may be considered excessive by law and agency policy or both, if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation. It is important to note that in *Graham*, the U.S. Supreme Court recognized that law enforcement officers do not need to use the minimum amount of force in any given situation; rather, the officer must use a force option that is reasonable based upon the totality of the circumstances known to the officer at the time the force was used. Use-of-force decisions are made under exceedingly varied scenarios and often on a split-second basis. Based on this fact,

4 ASCIA, CALEA, FOP, FLEOA, IACP, HAPCOA, IADLEST, NAPO, NAWLEE, NOBLE, and NTOA, *National Consensus Policy on Use of Force*, January 2017, 2, http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf.

5 *Graham*, 490 U.S. at 396.

of-force policy in clear and unequivocal terms, agencies can prevent more serious consequences for themselves, their officers, and their jurisdiction.

B. Federal Guidelines for Use of Force

There are two landmark decisions by the United States Supreme Court that guide law enforcement use of force: *Tennessee v. Garner* and *Graham v. Connor.*[1] Following is a brief review of each case.

Tennessee v. Garner. In *Garner,* a Memphis, Tennessee, police officer, acting in conformance with state law, shot and killed an unarmed youth fleeing over a fence at night in the backyard of a house he was suspected of burglarizing. The court held that the officer's action was unconstitutional under 42 U.S.C. 1983, stating that "such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."[2]

The court ruled that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. Thus, even where an officer has probable cause to arrest someone, it may be unreasonable to do so through the use of deadly force.

Graham v. Connor. In *Graham,* a diabetic man seeking to counter the effects of an insulin reaction entered a convenience store with the intent of purchasing some orange juice. After seeing the line of people ahead of him, Graham quickly left the store and decided instead to go to a friend's house. An officer at the store, Connor, determined Graham's behavior to be suspicious and proceeded to follow and then stop the car in which Graham was a passenger. Graham was subsequently handcuffed and received multiple injuries, despite attempts to inform Connor and the other responding officers of his medical condition. Graham was released once Connor confirmed that no crime had been committed in the store, but later filed suit alleging excessive use of force.

The court ruled that claims of law enforcement excessive use of force must be analyzed using an "objective reasonableness" standard. Specifically, the court stated "[t]he Fourth Amendment 'reasonableness' inquiry 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. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."[3]

C. Defining a Reasonable Use of Force

The potential of civil or criminal litigation involving deadly force incidents also necessitates close scrutiny of the language employed in a use-of-force policy by legal authorities. Law enforcement administrators should work closely with knowledgeable attorneys in determining the suitability of the use-of-force policy to their local requirements, needs, and perspectives. Deliberation over phrasing or word usage might seem inconsequential or excessive, but such terms can, and do, have significant consequences in a litigation context.

The use of commonly employed terms and phrases, even though well intentioned, can cause unexpected and unnecessary consequences for the officer and the agency. For example, phrases like "officers shall exhaust all means before resorting to the use of deadly force" present obstacles to effective defense of legitimate and justifiable uses of force. Such language in a policy can unintentionally impose burdens on officers above those required by law.

1 *Tennessee v. Garner, 471 U.S. 1 (1985); Graham v. Connor, 490 U.S. 386 (1989).*
2 *Garner,* 471 U.S. 1.
3 *Graham,* 490 U.S. at 396–397.

state and federal courts have recognized that law enforcement officers must be provided with the necessary knowledge and training to make such decisions, in addition to attaining proficiency with firearms and other less-lethal force equipment and force techniques that may be used in the line of duty.

B. De-Escalation

De-escalation is defined as "taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."[6] The term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal. In most instances, the goal of de-escalation is to slow down the situation so that the subject can be guided toward a course of action that will not necessitate the use of force, reduce the level of force necessary, allow time for additional personnel or resources to arrive, or all three.

De-escalation is not a new concept and has been part of officer training for decades. Historically, de-escalation has been employed when officers respond to calls involving a person affected by mental illness or under the influence of alcohol or other drugs. In these situations, an officer is instructed to approach the individual in a calm manner and remain composed while trying to establish trust and rapport. Responders are taught to speak in low, or nonthreatening tones, and use positive statements such as "I want to help you" intended to aid in the process of calming the subject. Awareness of body language is also significant. For example, standing too close to an angry or agitated person might cause them to feel threatened.

Another de-escalation technique is tactical repositioning. In many cases, officers can move to another location that lessens the level of danger. An example is an incident involving an individual with a knife. By increasing the distance from the individual, officers greatly reduce the risk to their safety and can explore additional options before resorting to a use of force, notwithstanding the need to control the threat to others.

Many of these steps—speaking calmly, positioning oneself in a nonthreatening manner, and establishing rapport through the acknowledgment of what the person is feeling—are easily transferred from Crisis Intervention Training for persons affected by mental illness to de-escalation encounters with people in general. While these tactics are recommended steps, officers must continually reassess each situation with the understanding that force may be necessary if de-escalation techniques are not effective.

One concern with de-escalation is that it can place officers in unnecessary danger. By overemphasizing the importance of de-escalation, officers might hesitate to use physical force when appropriate, thereby potentially resulting in an increase in line-of-duty deaths and injuries. Consequently, it should be stressed that de-escalation is not appropriate in every situation and officers are not required to use these techniques in every instance. If the individual poses a threat of injury or death to the officer or another, the officer must be permitted to use the level of force necessary to reasonably resolve the situation.

Agencies should strive to encourage officers to consider how time, distance, positioning, and especially communication skills may be used to their advantage as de-escalation techniques and as potential alternatives to force and to provide training on identifying when these techniques will be most useful to mitigate the need for force.

6 *National Consensus Policy on Use of Force*, 2.

C. Force Models

The variety of compliance options available to law enforcement officers in a confrontational setting can be referred to as a force model. Using the variety of different options found in this model, officers are expected to employ only a degree of force that is objectively reasonable to gain control and compliance of subjects. Some agencies may refer to this as the use-of-force continuum. However, the use of the term "continuum" is often interpreted to mean that an officer must begin at one end of a range of use-of-force options and then systematically work his or her way through the types of force that follow on the continuum, such as less-lethal force options, before finally resorting to deadly force. In reality, to maintain the safety of both the officer and others, an officer might need to transition from one point on the continuum to another, without considering the options in between in a linear order. For instance, when faced with a deadly threat, it is not prudent to expect an officer to first employ compliance techniques, followed by an electronic control weapon, and only then use his or her firearm. For this reason, the use of a continuum is strongly discouraged. Instead, force models are preferred that allow officers to choose a level of force that is based on legal principles, to include the option of immediately resorting to deadly force where reasonable and necessary.

As noted previously, many law enforcement agencies prefer to develop separate less-lethal and deadly force policies. In addition to the comments previously made on this topic, there are several other reasons why the *Consensus Policy* combines these into a single use of force policy. But perhaps most importantly, integrating both deadly and less-lethal force guidelines into one policy serves to illustrate and reinforce for the officer the concept of the use of force as an integrated, or response, model. By placing both sets of guidelines under one heading, an officer consulting the policy is encouraged to view force on a broader, more integrated conceptual basis.

Effective guidance for law enforcement officers on use of force, whether with firearms or by other means or tactics, must recognize and deal with force in all its forms and applications and with the officer's ability to adjust his or her response as the subject's behavior changes.

Whether an agency chooses to adopt a force model or continuum, the various levels of force must be defined and the guidelines for their use must be clearly outlined in agency policy and reinforced by training. Policies must also enumerate and address all force options permitted by the agency. Per the *Consensus Policy*, these levels should include less-lethal force and deadly force.

D. Defining Deadly and Less-Lethal Force

The *Consensus Policy* employs the terms deadly force and less-lethal force. Deadly force is defined as "any use of force that creates a substantial risk of causing death or serious bodily injury."[7] The most common example of deadly force is the use of a handgun or other firearm.

Less-lethal force is "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."[8] This includes, but is not limited to, an officer's use of come-along holds and manual restraint, as well as force options such as electronic control weapons, pepper aerosol spray, and impact projectiles. It does not include verbal commands or other nonphysical de-escalation techniques.

The difference between deadly and less-lethal force is not determined simply by the nature of the force technique or instrument that is employed by an officer. Many force options have the potential to result in the death or serious bodily injury of a

7 *National Consensus Policy on Use of Force*, 2.
8 Ibid.

subject under certain circumstances. For example, a police baton, if used properly in accordance with professionally accepted training guidelines, is not likely to cause death. But it can result in the death of subjects when used inappropriately by an officer who lacks training, or in situations where blows are accidentally struck to the head or other vulnerable area of the body. The same could be said for a variety of other equipment used by law enforcement officers. Therefore, a key to understanding what separates deadly force from less-lethal force has to do with the likelihood that a given use of force will result in death, whether it involves a handgun or other weapon or even an object that may be close at hand.

Use of force that is likely to cause death or serious bodily injury is properly judged using a reasonable officer standard—how would a reasonably prudent law enforcement officer act under the same or similar circumstances?[9] This standard is an objective test. That is, it is not based on the intent or motivation of the officer or other subjective factors at the time of the incident. It is based solely on the objective circumstances of the event and the conclusion that would be drawn by a "reasonable officer on the scene."[10]

In determining the proper degree of force to use, officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be a threat of death or serious bodily harm. Officers have the option of using less-lethal force options where deadly force is not authorized, but may use only that level of force that is objectively reasonable to bring the incident under control.

E. Additional Definitions

Understanding of additional terms is helpful for the following discussion.

Exigent circumstances are "those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."[11]

An *immediate*, or *imminent, threat* can be described as danger from an individual whose apparent intent is to inflict serious bodily injury or death and the individual has the ability and opportunity to realize this intention.

IV. PROCEDURES

A. General Provisions

The *Consensus Policy* begins by providing general guidance that holds true for all situations involving the use of force. First, officers must continually reassess the situation, where possible, and ensure that the level of force being used meets the objective reasonableness standard. In situations where the subject either ceases to resist or the incident has been effectively brought under control, the use of physical force should be reduced accordingly. If the level of force exceeds what is necessary to control a subject, then the officer can be subject to allegations of excessive force.

Physical force should not be used against individuals in restraints unless failure to do so would result in the individual fleeing the scene or causing imminent bodily injury to himself or herself, the officer, or another person. Damage to property should not be considered a valid reason to use force against an individual in restraints. There might also be instances where handcuffed individuals are able to run from officers in an attempt to escape. In these situations, physical force may be allowable per policy, but only the minimal amount of force

9 Serious bodily injury is defined as "injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ."

10 *Connor*, 490 U.S. at 396.

11 Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

necessary to control the situation should be used—deadly force will almost always be prohibited in these cases.

As previously stated, the ultimate goal of law enforcement officers is to value and preserve human life. Therefore, the *Consensus Policy* requires officers to provide medical care to anyone who is visibly injured, complains of injury, or requests medical attention.[12] This should be undertaken after the officers have ensured that the scene is safe and it is practical to do so. In addition, officers should only provide care consistent with their training, to include providing first aid. Additional appropriate responses include requesting emergency medical services and arranging for transportation to an emergency medical facility.

When verbal commands are issued, the individual should be provided with a reasonable amount of time and opportunity to respond before force is used, with the understanding that such a pause should not "compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime."[13] This is to prevent instances where officers use force immediately following a verbal command without providing the subject with an opportunity to comply and might also apply in such situations where an electronic control weapon is used and the individual is physically incapable of responding due to the effects of the weapon.

While the *Consensus Policy* strives to prohibit excessive force, the reality is that excessive force can occur no matter how well-crafted the policy or extensive the training. In these situations, it is crucial that other officers at the scene intervene to prevent or stop the use of excessive force. By requiring a pro-active approach to these situations and encouraging accountability for all officers on the scene, agencies can work toward preventing excessive uses of force.

Finally, while it is not the scope of the *Consensus Policy* or this document to provide specific guidelines on these topics, agencies must develop comprehensive policies for documenting, investigating, and reviewing all uses of force. Agency transparency to the public regarding these policies will help to foster public trust and assure the community that agencies are aware of and properly responding to use of force by their officers. Moreover, force review will help to assure that agency policies are being followed and will give the agency the opportunity to proactively address deficiencies in officer performance or agency policy and training or both.

B. De-Escalation

Procedurally, whenever possible and appropriate, officers should utilize de-escalation techniques consistent with their training before resorting to using force or to reduce the need for force. In many instances, these steps will allow officers additional time to assess the situation, request additional resources, and better formulate an appropriate response to the resistant individual, to include the use of communication skills in an attempt to diffuse the situation. However, as previously stated, de-escalation will not always be appropriate and officers should not place themselves or others in danger by delaying the use of less-lethal or even deadly force where warranted.

C. Less-Lethal Force

In situations where de-escalation techniques are either ineffective or inappropriate, and there is a need to control a noncompliant or actively resistant individual, officers should consider the use of less-lethal force. In these cases, officers should utilize only those less-lethal techniques or weapons the agency has authorized and with which the officer has been trained. As with any force, officers may

12 Note that "providing medical care" does not necessarily require that the officer administer the care himself or herself. In some situations, this requirement may be satisfied by securing the skills and services of a colleague, emergency medical personnel, etc.

13 *National Consensus Policy on Use of Force*, 3.

use only that level of force that is objectively reasonable to bring the incident under control. Specifically, the *Consensus Policy* outlines three instances where less-lethal force is justified. These include "(1) to protect the officer or others from immediate physical harm, (2) to restrain or subdue an individual who is actively resisting or evading arrest, or (3) to bring an unlawful situation safely and effectively under control."[14]

As noted in the prior discussion of the force model, use of force can range widely. Therefore, law enforcement officers should have at their disposal a variety of equipment and techniques that will allow them to respond appropriately to resistant or dangerous individuals. The *Consensus Policy* does not advocate the use of any specific less-lethal force weapons. Instead, the appropriateness of any such weapon depends on the goals and objectives of each law enforcement agency in the context of community expectations. Less-lethal weapons and techniques are being continuously introduced, refined, and updated, so law enforcement administrators must routinely assess current options and select equipment that is appropriate for their agency. A critical element of that decision-making process is an assessment of the limitations of each device or technique, and environmental factors that might impact its effectiveness. However, it is suggested that law enforcement agencies ban the use of several types of less-lethal impact weapons that are designed to inflict pain rather than affect control. These include slapjacks, blackjacks, brass knuckles, nunchucks, and other martial arts weapons.

D. Deadly Force

Authorized Uses of Deadly Force. As with all uses of force, when using deadly force, the overarching guideline that applies to *all* situations is that the force must be "objectively reasonable under the totality of the circumstances." The *Consensus Policy* identifies two general circumstances in which the use of deadly force may be warranted. The first instance is to "protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury."[15] Second, law enforcement officers may use deadly force "to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended."[16] In such cases, a threat of further violence, serious bodily injury, or death must impose clear justification to use deadly force.

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

If a decision has been made to employ deadly force, a law enforcement officer must, whenever feasible, identify himself or herself, warn the subject of his or her intent to use deadly force, and demand that the subject stop. This requirement was made clear

14 *National Consensus Policy on Use of Force*, 3.
15 *National Consensus Policy on Use of Force.*
16 Ibid.

in the Garner decision. If issuing a verbal warning presents a heightened risk to the safety of the officer or another person, the officer may employ deadly force without delay.

Deadly Force Restrictions. Deadly force is prohibited when the threat is only to property. In addition, officers should avoid using deadly force to stop individuals who are only a threat to themselves, unless the individual is using a deadly weapon such as a firearm or explosive device that may pose an imminent risk to the officer or others in close proximity. If the individual is attempting to inflict self-harm with means other than a deadly weapon, the officer should consider less-lethal options and de-escalation techniques, if practical.

Warning Shots. Perhaps the most debated inclusion in the *Consensus Policy* is the allowance for warning shots. Their inclusion in the *Consensus Policy* should not prevent an agency from establishing a more restrictive policy on the topic. Defined as "discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury," warning shots are inherently dangerous.[17] However, the *Consensus Policy* outlines very strict guidelines for their use in an effort to address this threat, while still providing latitude for officers to use this technique as a viable alternative to direct deadly force in extreme and exigent circumstances. The *Consensus Policy* states that warning shots must have a defined target, with the goal of prohibiting shots fired straight up in the air. In addition, warning shots should only be considered if deadly force is justified, so in response to an immediate threat of death or serious bodily injury, and when "the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used."[18] Finally, the warning shot must not "pose a substantial risk of injury or death to the officer or others."[19]

Essentially, the intent of the *Consensus Policy* is to provide officers with an alternative to deadly force in the very limited situations where these conditions are met.

Shots Discharged at Moving Vehicles.[20] The use of firearms under such conditions often presents an unacceptable risk to innocent bystanders. Even if successfully disabled, the vehicle might continue under its own power or momentum for some distance thus creating another hazard. Moreover, should the driver be wounded or killed by shots fired, the vehicle might proceed out of control and could become a serious threat to officers and others in the area. Notwithstanding, there are circumstances where shooting at a moving vehicle is the most appropriate and effective use of force.

Officers should consider this use of deadly force only when "a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle," or when the vehicle is intentionally being used as a deadly weapon and "all other reasonable means of defense have been exhausted (or are not present or practical)."[21] Examples of circumstances where officers are justified in shooting at a moving vehicle include when an occupant of the vehicle is shooting at the officer or others in the vicinity or, as has happened recently, the vehicle itself is being used as a deliberate means to kill others, such as a truck being driven through a crowd of innocent bystanders. Even under these circumstances, such actions should be taken only if the action does not present an unreasonable risk to officers or others, when reasonable alternatives are not practical, when failure to take such action would probably result in death or serious bodily injury, and then only when due consideration has been given to the safety of others in the vicinity. In cases where officers believe that the driver is intentionally attempting

17 *National Consensus Policy on Use of Force*, 3.

18 *National Consensus Policy on Use of Force*, 4.

19 Ibid.

20 For information regarding United States Supreme Court cases addressing firing at a moving vehicle, see *Plumhoff v. Rickard*, 134 S. Ct. 2012 and *Mullenix v. Luna*, 577 U.S. ___ (2015) and the accompanying *amicus curiae* brief.

21 *National Consensus Policy on Use of Force*, 4.

to run them down, primary consideration must be given to moving out of the path of the vehicle. The *Consensus Policy* recognizes that there are times when getting out of the way of the vehicle is not possible and the use of a firearm by the officer may be warranted.

Shots Discharged from a Moving Vehicle. When discussing whether or not officers should be permitted to fire shots from a moving vehicle, many of the same arguments can be made as firing at a moving vehicle. Most notably, accuracy of shot placement is significantly and negatively affected in such situations, thereby substantially increasing the risk to innocent bystanders from errant shots. Therefore, the *Consensus Policy* prohibits officers from discharging their weapons from moving vehicles unless exigent circumstances exist. In these situations, as with all instances where exigent circumstances are present, the officer must have an articulable reason for this use of deadly force.

Choke Holds. For the purposes of this document, a choke hold is defined as "a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation."[22] In the most common choke hold, referred to as an arm-bar hold, an officer places his or her forearm across the front of the individual's neck and then applies pressure for the purpose of cutting off air flow. These are extremely dangerous maneuvers that can easily result in serious bodily injury or death. Therefore, the *Consensus Policy* allows their use only when deadly force is authorized.[23]

E. Training

While it is crucial that law enforcement agencies develop a clear, concise policy regarding the use of force, it is equally important that officers are completely familiar with and fully understand the policy and any applicable laws. Therefore, officers should receive training on their agency's use-of-force policy and any accompanying legal updates on at least an annual basis. Training should also be provided on all approved force options and techniques permitted by agency policy, along with regular refresher training that includes a review of the policy and hands-on, practical training. In addition, officers should also receive regular and periodic training related to de-escalation techniques and the importance of de-escalation as a tactic, as well as training designed to "enhance officers' discretion and judgment in using less-lethal and deadly force."[24]

Firearms training should simulate actual shooting situations and conditions. This includes night or reduced light shooting, shooting at moving targets, primary- or secondary-hand firing, and combat simulation shooting. Firearms training should attempt to simulate the actual environment and circumstances of foreseeable encounters in the community setting, whether urban, suburban, or rural. A variety of computer-simulation training is available together with established and recognized tactical, exertion, and stress courses.

Law enforcement administrators, agencies, and parent jurisdictions may be held liable for the actions of their officers should they be unable to verify that appropriate and adequate training has been received and that officers have successfully passed any testing or certification requirements. Accordingly, agencies must provide responsive training, and all records of training received by officers must be accurately maintained for later verification.

22 *National Consensus Policy on Use of Force*, 2.

23 A note regarding choke holds–the vascular neck restraint is not included in the definition of "choke hold" and thus its use is not restricted to deadly force situations.

24 *National Consensus Policy on Use of Force*, 4.

CONTRIBUTING ORGANIZATIONS

This document is the result of a collaborative effort among the following organizations.