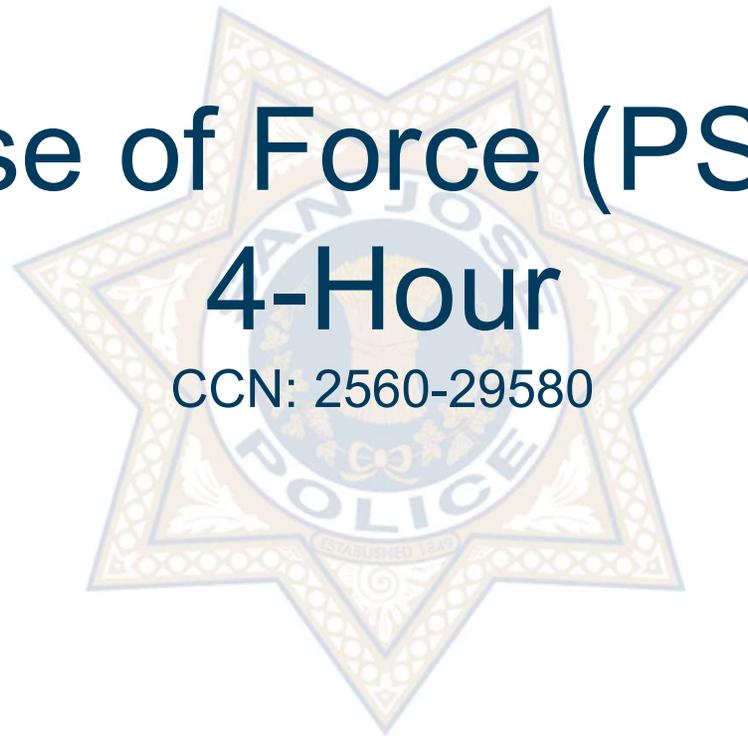


San Jose Police Department

Use of Force (PSP) 4-Hour

CCN: 2560-29580



Use of Force (PSP)

Goals & Objectives

- Increase knowledge of use of force laws.
- Increase knowledge of agency's use of force policies.
- Increase understanding of force options decision making.



Use of Force (PSP)

Legal Standards

- Constitutional Law
 - Federal Law
 - California State Law
- Federal & State Case Law



Use of Force (PSP)

Constitution of the United States

1. **4th Amendment**

- Protection against unreasonable search and seizure.
- Protection against the issuing of warrants without probable cause.

2. **14th Amendment**

- Forbids states from denying any person “life, liberty or property, without due process of law” or to “deny any person within its jurisdiction the equal protection of the laws.



Use of Force (PSP)

Federal Law

1. **Title 18, USC Section 242 (Criminal)**

- Makes it a crime for a person acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution of the United States.

2. **Title 42, USC Section 1983 (Civil)**

- Allows people to sue the government for civil rights violations. It applies when someone acting “under color of” state-level or local law has deprived a person of rights created by the U.S. Constitution or federal statutes.



Use of Force (PSP)

California State Law

Assembly Bill 392 (Effective: 01/01/20)

Penal Code Section 196: Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- A. In obedience to any judgement of a competent court.
- B. When the homicide results from the use of force that is in compliance with PC 835a.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(a):

1. The legislation finds and declares:
 - a. Force is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and sanctity of human life.
 - b. Every person has the right to be free from excessive UOF by Peace Officers acting under the color of law.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(a):

1. It is the intent of the legislature that Peace Officers use deadly force only **when necessary** in defense of human life.
2. Officers **shall** evaluate each situation in light of the particular circumstances of each case, and **shall use other available resources and techniques** if reasonably safe and feasible to an objectively reasonable officer



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(a)(3):

Peace Officers shall carefully and thoroughly evaluate the decision to use force in a manner that reflects the gravity of that authority and the serious consequences of the UOF to ensure that Officers use force **consistent with law and agency policies.**



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(a):

1. The decision by a Peace Officer to use force shall be evaluated from the perspective of a reasonable Officer in the same situation.
2. Peace Officers must understand that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions.



Force Options Simulator

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(b):

1. Any Peace Officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use **objectively reasonable force to effect the arrest, to prevent escape or to overcome resistance.**
2. The standard is unchanged.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835a(c)(1):

1. A Peace Officer is justified in using deadly force upon another person only when the Officer reasonable believes, based on the totality of the circumstances that such force is necessary for either of the following reasons:

(A) To defend against an **imminent** threat of death or serious bodily injury to the Officer or another person.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835(a)(c)(1) Cont:

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835(a)(2):

A peace officer **shall not** use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or another person.



Use of Force (PSP)

California State Law

Assembly Bill 392 Continued:

Penal Code Section 835(a) Definitions:

- “**Deadly force**” means any use of force that creates a substantial risk of causing death or serious bodily injury.
- “**Imminent**” means based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person has the present **ability, opportunity and apparent intent** to cause death or serious bodily injury to the officer or another person.
- “**Totality of the circumstances**” means all facts known to the peace officer at the time, including conduct of the officer and subject preceding the use of deadly force.



Use of Force (PSP)

California State Law

Senate Bill 230 (Effective 01/01/21)

1. Requires LE agencies to maintain the UOF policies.
2. Describes 20 criteria each LE policy must include.
 - A. Guidelines of the UOF
 - B. Utilizing De-Escalation techniques and other alternatives to force when feasible.
 - C. Specific guidelines for the application of deadly force.
 - D. Obligation to report potential excessive force.
 - E. Obligation for an Officer to intercede when observing unnecessary force.
 - F. Training standards, Factors for reviewing UOF, et al.



Use of Force (PSP)

Case Study

Deputy Andrew Hall

Danville (Contra Costa County Sheriff's Office)

Time of service: 5 years (OIS #1), 7.5 years (OIS #2)

Charges OIS #1:

- (1) Felony voluntary manslaughter
- (2) Felony assault with a semi-automatic firearm

Convicted:

Assault w/a Firearm



Use of Force (PSP)

Case Study

OIS #1

November 3rd, 2018

Suspect/Victim: Laudemer Arboleda (33 years old - Deceased)

Call Type: Suspicious Person (10-66)

Location: City of Danville

Want at time of OIS: 2800 VC

Armed with: Vehicle

Force Applied: Shot 9 times



Use of Force (PSP)

Case Study OIS #1



Use of Force (PSP)

Case Study

OIS #2

March 11th, 2021

Suspect/Victim: Tyrell Wilson (32 Years old - Deceased)

Call Type: Suspicious Person (10-66)

Location: City of Danville

Want at time of OIS: VC, 148 PC, 417/245 PC

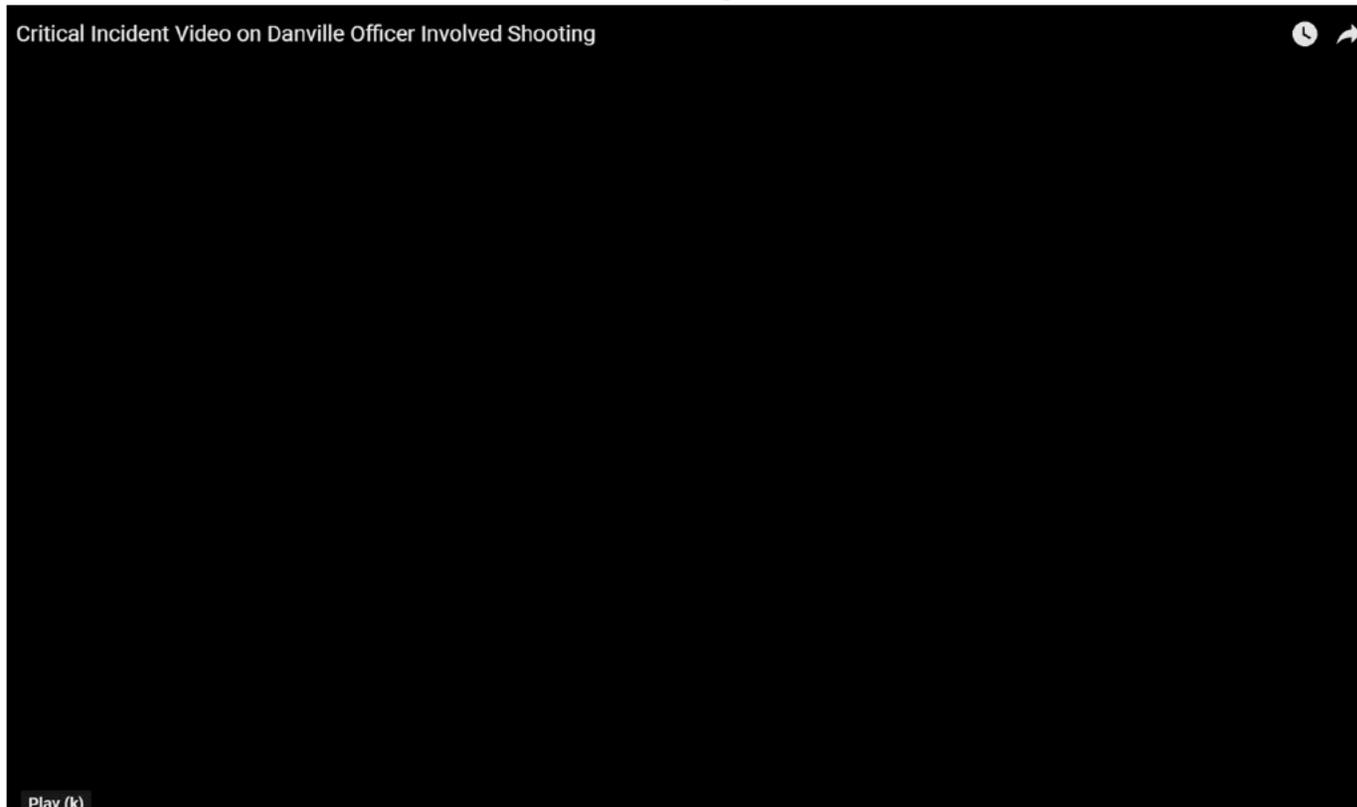
Armed with: Knife

Force Applied: Shot 1 time



Use of Force (PSP)

Case Study OIS #2



Use of Force (PSP)

Case Law

Foundational Case Law

Graham vs. Connor, 490 U.S. 386 (1989)

- Severity of the crime at issue
- Whether the suspect posed an immediate threat
- Active resistance to arrest or escape by flight

Types of resistance

- Active
- Passive
- Flight



Use of Force (PSP)

Case Law

Foundational Case Law

2. *Tennessee vs. Garner*, 471 U.S. 1 (1985)
 - Fleeing Felon/Reasonableness Standard
 - How has 835a changed this case law for us?

3. *Hayes vs. County of San Diego*, (2013)
 - Tactical Conduct
 - SJPDM L2602.5 arose from case.



Use of Force (PSP)

SJPD Department Policy

L2601 UOF General Provisions:

Officers may use force to:

- Effect a detention
- Effect an arrest
- Prevent an escape
- Overcome resistance

(In self-defense or in defense of others)

The type and degree of force will be objectively reasonable and based upon the facts and circumstances of the situation.



Use of Force (PSP)

SJPD Department Policy

L2602.1 Deadly Force:

An officer is justified in using deadly force upon another person only when the officer reasonable believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

- To defend against an **imminent threat** of death or SBI to the officer or another person.
- To apprehend a fleeing person for any felony that threatened or resulted in death or SBI, if the officer reasonable believes that the person **will cause** death or SBI to another unless immediately apprehended.



Use of Force (PSP)

SJPD Department Policy

L2602.1 Deadly Force:

Warnings

When feasible, officers shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.



Use of Force (PSP)

SJPD Department Policy

L2602.5 Tactical Conduct

- Core Transaction
- Level of Urgency
- Threat Assessment
- Cover, Concealment, Distance & Time
- Crisis Intervention Team

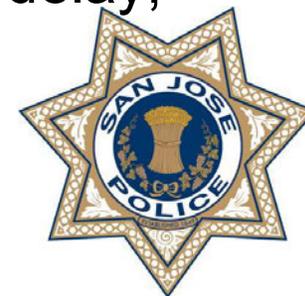


Use of Force (PSP)

SJPD Department Policy

L2604 General Responsibilities When Force is Used:

- Officers need not retreat or desist in the reasonable UOF.
- No requirement that officers use a lesser intrusive force option.
- When confronted by force or resistance, an officer may use an objectively reasonable higher level of force to overcome that resistance.
- Notification to next rank above them without unnecessary delay, when reportable force is used



Use of Force (PSP)

SJPD Department Policy

L2605 Supervisor's Responsibility:

- Respond to scene to evaluate and actively participate in the investigation.
- Assign collection and preservation of: physical evidence, documentary and testimonial evidence (photography, video recordings, electronically recorded statements)
- Approval of General Offense Report including narratives or supplementals (Passing review to another supervisor requires Watch commander approval)



Use of Force (PSP)

SJPD Department Policy

L2605 Supervisor's Responsibility Cont:

- Supervisor shall attempt to interview the suspects(s).
- Supervisor or command shall submit a Narrative/Supplemental report as well as automated use of force template.
- Ensure department member(s) using force complete the automated use of force template for each suspect.
- Read and review all reports associated with the incident for completeness.
- Exception: When an OII occurs, the investigation shall be conducted consistent with Santa Clara Co. OII guidelines.



Use of Force (PSP)

SJPD Department Policy

C1402 General Responsibilities (Standards of Conduct):

- Department members will become thoroughly familiar with these rules and regulations and will abide by them. They will observe and obey all:
 1. Federal, state and local laws.
 2. General, Special and Members Orders of the Department.
 3. Provisions of the SJPD Duty Manual.
 4. Other lawful orders of their superiors.



Use of Force (PSP)

SJPD Department Policy

C1402 General Responsibilities (Standards of Conduct):

Upon observing or otherwise becoming aware of a violation of the rules, procedures or policies as set forth in this manual, **each department member is obligated to report such violation** to a superior officer. Additionally, sworn personnel shall:

- Report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.



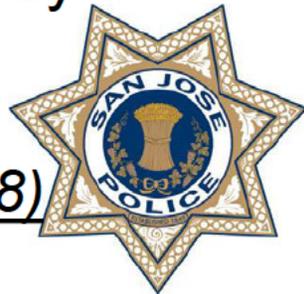
Use of Force (PSP)

SJPD Department Policy

C1402 General Responsibilities (Standards of Conduct):

Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

Duty to Intercede (Penal Code 13519.10(b)(2), 7286(b)(8))



Use of Force (PSP)

Case Study

July 23rd, 2021

Suspect/Victim: Kyle Vinson

Call Type: Trespassing (602 PC)

Location: Aurora, Colorado

Want at time force applied: Trespassing
(Had warrant for DV unknown to Officers)

Armed with: Unarmed

Force Applied:

- Hand(s) around throat for 39 seconds.
- Struck with handgun 13 times.



Use of Force (PSP)

Case Study



Use of Force (PSP)

Case Study

Group Discussion:

Tactical Considerations
Strategic Communications
First Aid
Command & Control
835(a) PC
Tactical Conduct



Use of Force (PSP)

Case Study

Officer: John Haubert – Resigned
(Aurora PD, Colorado)

Time of Service: 3 years

Charges:

1. Attempted first-degree assault
2. Second-degree assault
3. Felony menacing
4. Official oppression
5. First-degree official misconduct



Use of Force (PSP)

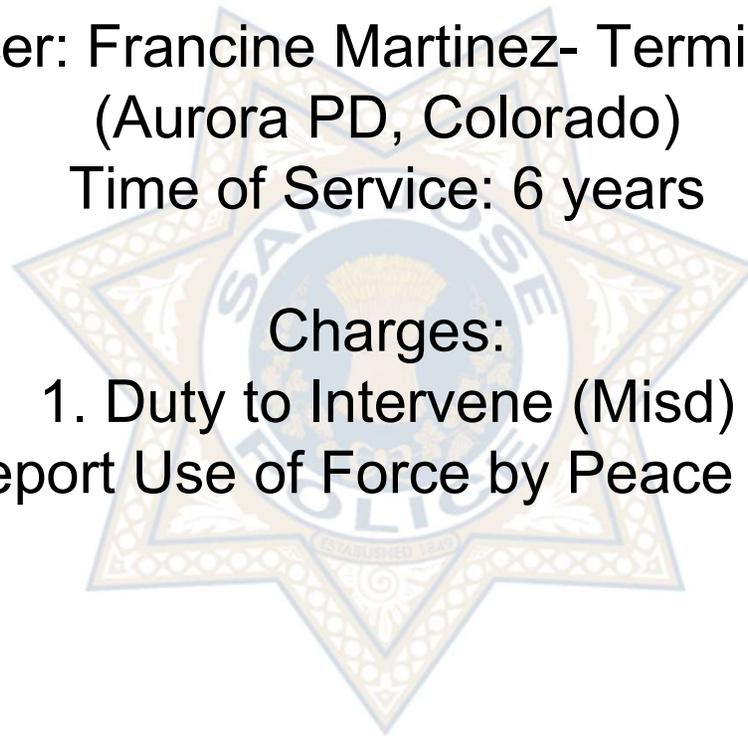
Case Study

Officer: Francine Martinez- Terminated
(Aurora PD, Colorado)

Time of Service: 6 years

Charges:

1. Duty to Intervene (Misd)
2. Duty to Report Use of Force by Peace Officer (Misd)



Use of Force (PSP)

Case Study

August 25th, 2021

Suspect/Victim: Robert Anderson (38 Years old - Deceased)

Call Type: Parking Violation (22500 VC)

Agencies Involved: CHP, Del Norte Co. S/O

Location: Crescent City

Want at time of OIS: 273.5 PC, 664/187 PC on P/O

Armed with: Knife

Force Applied: Shot



Use of Force (PSP)

Case Study



Use of Force (PSP)

Case Study



Use of Force (PSP)

Case Study

Group Discussion:

Tactical Considerations
Strategic Communications
First Aid
Command & Control
835(a) PC
Tactical Conduct
Officer positioning/crossfire



Use of Force (PSP)

