

BULLET POINT REVIEW

DPD USE OF FORCE PROPOSAL (12/29/2016)

Section 105.01 (1) Purpose

- +++: Notes need of officers to make forcible arrests, overcome resistance, defend selves
- +++: Notes right of offices to act in self defense
- ---: Defines “inappropriate force” as failing to meet requirements of “necessary, reasonable and appropriate”
- ---: “Appropriate” creates subjective rather than objective standard for use of force

Section 105.01 (2) Definitions

- +++: Views use of force based on totality of circumstances
- +++: Views force from perspective of “reasonable officer” without benefit of hindsight
- ---: “Appropriate” creates subjective rather than objective standard for use of force

Section 105.01(3) Types of Resistance

- +++: Clearly and accurately defines types/levels of resistance

Section 105.01(4) Force Guiding Principles

- +++: Acknowledges that officers may be required to decisively intervene/use force
- ---: “Appropriate” creates subjective rather than objective standard for use of force
- ---: Mandates retreat as a tactical option
- ---: Retreat is contrary to training
- ---: Mandates that “officers ensure have not placed themselves in jeopardy

Section 105.01(5) Factors to Consider in Determining Whether to Use Force

- +++: Outlines factors to be considered consistent with *Graham v Connor*
- +++: Acknowledges that officers need not exhaust options before increasing level of force
- +++: Clearly outlines considerations for use of deadly weapons, chemical agents, and impact weapons

Section 105.01(11) Deadly Weapons

- +++: Properly outlines objective rather than subjective standard to be applied
- +++: Properly viewed from perspective of reasonable officer under totality of circumstances
- ---: Mandates (when feasible) rather than encourages officers to identify themselves prior to use of deadly force
- ---: Mandates (when feasible) rather than encourages officers to express intention to use deadly force prior force being utilized

Section 105.01(13) Moving Vehicles

- ---: Written as absolute prohibition for discharge weapon at operator of motor vehicle

- ---: Ignores potential that motor vehicle may itself be used as a deadly weapon against public and/or officer
- ---: Ignores recent international events where motor vehicle used as weapon of terrorism

Section 105.01(15) Responsibility to Provide Medical Attention

- +++: Properly defines first priority of officer to be scene safety
- ---: Creates strict prohibition in removal of contraband from mouth of suspect
- ---: Suggests that officers should not intervene when narcotics have been ingested
- ---: Mandates that officer should allow ingestion to continue and officers should merely alert responding medical personnel.

CONCLUSION

- **Emphasize that use of “appropriate and necessary” in evaluation of use of force incidents is contrary to *Graham v Connor***
- **“Appropriate and Necessary” creates a subjective standard which can be applied at whim of evaluator**
- **“Appropriate and Necessary” creates likelihood that City will be exposed to greater exposure to civil damages**
- **Use of deadly force against a suspect threatening with replica weapon would be reasonable under totality of circumstances but by definition not “appropriate and necessary” when viewed in hindsight.**