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| Outline Of the Course | 1. Introduction to the Uniform Statewide Deadly Force Policy and Training Program 2. Definitions used in the Uniform Statewide Deadly Force Policy 3. Use of Force 4. Objective Reasonableness and *Graham v. Connor* 5. Use of Deadly Force 6. Officer Responsibilities |
| Instructional  Methods | 1. PowerPoint presentation and lecture with relevant case law and real-life examples where deadly force was used. 2. Videos of police interaction with subjects to generate discussion and promote clearer understanding of the factors that officers should consider in determining the level of objective reasonable force. 3. Practical exercises for officers to practice intervention and de-escalation techniques and concepts. 4. Hypothetical scenarios and class discussions to ensure students have a clear grasp of the concepts. |

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| Course Lesson | Notes/Objectives |
| 1. Uniform Statewide Deadly Force Policy and Training Program    1. Introduction to the Uniform Statewide Deadly Force Policy       1. The Indiana Legislature in IC 5-2-1-1 directed the Law Enforcement Training Board (“LETB”) to adopt a consistent and uniform statewide policy on deadly force       2. The Uniform Statewide Policy on Deadly Force was originally adopted at an LETB meeting in November 2022, and was later amended by the Board at a regular LETB meeting held on October 23, 2023.       3. The purpose of the statewide policy on deadly force is to ensure the public safety and general welfare of the people of Indiana, and to promote equity for all segments of society.       4. The statewide policy on deadly force is a uniform, statewide policy that must, by statute, be adopted by every law enforcement agency in Indiana without modification or alteration by July 1, 2024.    2. Introduction to the Uniform Training Program on Deadly Force       1. In addition to adoption of a statewide policy on the use of deadly force, the LETB was directed to adopt a statewide training program on the use of deadly force.       2. This uniform training program explains the Uniform Statewide Deadly Force Policy and the case law relevant to the determination of the objective reasonableness of the use of force.       3. This uniform statewide training program is mandated as the framework for all instruction regarding the use of deadly force for law enforcement officers in Indiana. This training program will be taught to all basic training recruits and must be taught annually during in-service training on deadly force at every law enforcement agency in Indiana.       4. *While this training program may not be modified or altered in any way, the Board recognizes the need of agencies to use additional training tools such as scenario-based training exercises, videos showing real scenarios of use of force, and discussing relevant case law that uses the objective reasonableness test adopted in* *Graham v. Connor*.          1. *Discussion of additional cases that evaluate and reinforce the* Graham v. Connor *reasonableness factors and lessons in this training program, will not be viewed as modifying or altering the training program.*          2. *Using additional training tools such as those discussed above to evaluate the objective reasonableness of force used, or to expand upon important duties discussed in this training program, such as de-escalation and intervention, is encouraged.*    3. Uniform Statewide Deadly Force Policy       1. It is the policy of the LETB to value and preserve the sanctity of human life. Law enforcement officers shall only use force, non-deadly or deadly, in compliance with the law, this policy, and the Board established training program to further an enforcement action. Officers shall use only the force that is objectively reasonable, while protecting the safety of officers and others. Officers shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.          1. The Supreme Court developed our current standard for evaluating the reasonableness of force that is used during the seizure of an individual in *Graham v. Connor*, 490 U.S. 386 (1989).          2. The Uniform Statewide Policy on Deadly Force and this corresponding training program rely on the factors discussed in this case. Any force that is used by an officer, deadly or non-deadly, must be objectively reasonable given the totality of the circumstances known to the officer at the time that force was used.             1. “Totality of the circumstances” include the facts known to the officer, and logical and reasonable inferences, or conclusions, from those facts that are made using common sense and reason.          3. This training program will further discuss *Graham v. Connor*, as well as the circumstances that must be evaluated by the officer that is using force. 2. Definitions of Terminology Used in the Statewide Policy and Training Program    1. Chokehold IC 35-41-3-3       1. Chokehold is defined by statute as applying pressure to the throat or neck of another person in a manner intended to obstruct the airway of the other person.       2. A chokehold is defined in statute as deadly force.       3. The Uniform Statewide Defensive Tactics Training Policy and Training Program requires every law enforcement officer in Indiana to complete in-service training on vascular neck restraints.          1. The vascular neck restraint is not a chokehold, as defined by Indiana statute.    2. Deadly Force IC 35-31.5-2-85       1. Deadly force is defined by statute as force which creates a substantial risk of serious bodily injury.       2. Deadly force is not defined by the result that occurred from the force used, but rather by how likely the force applied will result in serious bodily injury, whether due to the way the force is applied, such as directing a baton strike at the head of the person, or the method of force used, such as firing a firearm.          1. A baton strike that is properly applied according to proper training, that was objectively reasonable force given the totality of the circumstances, will not become “deadly force” simply because it aggravated an unknown pre-existing condition (i.e., baton strike applied to the common peroneal nerve that dislodges a blood clot resulting in a fatal stroke).    3. De-escalation       1. De-escalation is defined in the statewide policy as actions taken, if safe and feasible to do so, in an attempt to stabilize the situation, in an effort to reduce or eliminate the necessity of using force against subjects.          1. De-escalation concepts taught in basic training include tactical communications, threat assessment, and tactics, which include creating time, distance, and barriers, when it is safe and feasible to do so.          2. Officers should rely on the skills they have trained and developed such as:             1. Critical decision making             2. Crisis recognition             3. Tactical communications             4. Suicide by cop             5. Operational tactics             6. Stepping up and stepping in          3. “Safe and feasible to do so”: Circumstances may require that force be used without any attempts for de-escalation. It is important that officers are trained in both de-escalation efforts, as well as recognition of the circumstances when it is not safe to attempt to de-escalation. De-escalation must always be balanced against the need to use force.    4. Forcible Felony       1. The term Forcible Felony is defined in the statewide policy as a felony that involves the use or threat of force against a human being in which there is imminent danger of serious bodily injury to a human being.       2. The definition in the statewide policy has been changed from Indiana’s statutory definition of “forcible felony” under IC 35-31.5-2-138 by removing the word “or” between “human being” and “in which” and adding the word “serious” to the words “bodily injury.”          1. Indiana’s statute on the use of force relating to arrest or escape, IC 35-41-3-3, states that “an officer is justified in using deadly force only if the officer (1) has probable cause to believe that deadly force is necessary (A) to prevent the commission of a forcible felony.          2. The changes to the statutory definition of “forcible felony” were necessary to be consistent with the requirements of Supreme Court cases *Graham v. Connor* and *Tennessee v. Garner* regarding the use of deadly force in circumstances where there is an imminent threat of serious bodily injury or death to the officer or another person.          3. Indiana’s statutory definition of “forcible felony” applies to other Indiana criminal statutes, such as Intimidation (IC 35-45-2-1), which do not require the level of bodily injury to be serious. For the use of deadly force to be determined to be objectively reasonable, the level must be at “serious” bodily injury.       3. It is important also to point to the Legislature’s reference to “human” being.          1. The forcible felony definition requires that the use or threat of force be directed toward a human, and not directed at property or animals, including law enforcement animals.          2. The facts and circumstances of the encounter may also present an imminent threat to the handler of the law enforcement animal, other officers, or civilians.    5. Serious Bodily Injury IC 35-31.5-2-292       1. Serious bodily injury is defined by Indiana statute as impairment of the physical condition which creates a substantial risk of death or causes (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus.       2. Some case law has identified the meaning of these terms:          1. Serious permanent disfigurement.             1. In *James v. State*, 755 N.E.2d 226 (Ind. Ct. App. 2001), the Court of Appeals used Webster’s Third New International Dictionary to define permanent as “continuing or enduring without fundamental or marked change” and disfigure as “to make less complete, perfect or beautify in appearance or character: deface, deform, mar.”             2. In the *James* case, the officer had several teeth removed following the incident of battery on a law enforcement officer. Although the officer replaced the missing teeth with false teeth, the court held that the large hole in the officer’s gumline and permanent loss of original teeth qualified as “permanent disfigurement.”          2. Extreme pain.             1. This is a determination for the trier of fact based on testimonial evidence and will vary case by case.             2. For example, in *Thayer v. State*, 41 N.E.3d 306 (Ind. Ct. App. 2015), the Indiana Court of Appeals upheld a conviction where testimony of “debilitating pain and headaches” was sufficient for the trier of fact to find “extreme pain.”          3. Permanent or protected loss or impairment of a bodily member (limb) or organ.             1. Protracted is defined as lasting for a long time or longer than expected or usual.             2. Some examples from Indiana case law include a fractured nose that required surgery, compromised vision for an extended time due to an eye injury, and loss of grip in the hand due to tendon and ligament damage due to the battery.    6. Deadly Weapon IC 35-31.5-2-86       1. Deadly weapon is defined in Indiana statute as:          1. A loaded or unloaded firearm.          2. A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used; could ordinarily be used; is intended to be used; is readily capable of causing serious bodily injury.          3. An animal (as defined in IC 35-46-3-3) which is readily capable of causing serious bodily injury, and which is used in the commission or attempted commission of a crime.          4. A biological disease, virus or organism which is capable of causing serious bodily injury.          5. The term does not include a taser (as defined in IC 35-47-8-3); an electronic stun weapon (as defined in IC 35-47-8-1); a chemical designed to temporarily incapacitate a person; or another device designed to temporarily incapacitate a person; if the device is used by a law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer's training and while lawfully engaged in the execution of official duties.       2. It includes a weapon or device that is readily capable of causing serious bodily injury.       3. If the object (taser, chemical spray, and/or non-lethal device) is used by a law enforcement officer in the lawful execution of the officer’s duties and consistent with training the officer received, it is not a deadly weapon, however, in the hands of an untrained civilian, the same object would meet the definition of “deadly weapon.”    7. Levels of Resistance   There are three levels of resistance:   * Passive, * Active, and * Forcible.   These terms have been defined in the Statewide Policy on Deadly Force based on relevant case law. Indiana’s General Assembly has not defined these terms in statute.   * + 1. Passive Resistance        1. Passive resistance is a non-forcible act that is intended to impede, hinder, or delay complying with a lawful order or effecting an arrest (e.g., “going limp,” “dead weight,” ignoring a lawful command, or holding on to something while disobeying verbal orders to release, wherein no force is directed toward the officer).           1. Passive resistance is non-compliance with a direct order, such as “step out of the car” or “Put your hands on the wall.” Response: “No.”        2. Indiana’s criminal statute, resisting law enforcement, requires that person use strength, power, violence to qualify as “force” in forcible resistance (as required in *Runnells v. State*, 186 N.E.3d 1181 (Ind. Ct. App. 2022)). Passive non-compliance would not qualify as “forcible” resistance under this statute.        3. The courts have found that significant force is not objectively reasonable against a person who is only passively resisting, in other words being non-compliant.           1. For example, in the case of *McAllister v. Price*, 615 F.3d 877 (7th Cir. 2010), the driver was having a diabetic episode and could not respond to the officer’s questions. The driver was exhibiting signs of a medical concern.   The officer took McAllister out of the driver’s seat by force. The court characterized it as “throwing” McAllister to the ground, resulting in an injury to his hip.  In ruling that the motion for summary judgment should be denied (meaning the lawsuit continues), the court said a jury might conclude this force was excessive given that it was used against a non-resisting subject.   * + - * 1. Compared to *Padula v. Leimbach*, 656 F.3d 595 (7th Cir 2011): similar fact pattern as above. Clement was a driver having a diabetic episode. Arriving officers smelled the odor of alcohol and Clement was unresponsive in the driver’s seat.   As officers woke Clement, he swung his arms at the officers who then removed him from the car. Clement fell to the ground (he made his body “dead weight”/heavy).  On the ground, Clement began actively resisting the officer’s attempts to handcuff. He kicked at officers, flailed his arms, and swung his head. Officers then changed the force being applied, applying a baton and a leg strike.  The court, in granting the motion for summary judgment, said this was a “fluid situation; as the struggle with Clement escalated, the officers appropriately increased their force in order to keep the situation under control.”   * + 1. Active Resistance        1. Active resistance is a physical action that prevents an officer from being able to lawfully exercise their duties (e.g., subject walking away after being told to stop, subject fleeing from arrest, or subject tensing/pulling away/breaking officer’s grip involving force demonstrated by the individual’s use of power, strength, or violence directed at or against the officer).        2. Active resistance is an action that uses strength, power, and violence (as required in *Runnells v. State*, 186 N.E.3d 1181 (Ind. Ct. App. 2022)) to move away from the officer; i.e., yanking the arm away during handcuffing, lunging away from the officer who is trying to control the subject, using strength to keep the hands/arms under the subject’s body, and moving quickly away or running from the officer.           1. It is important to remember for arrests involving forcible resistance, or to accurately describe the level of resistance during a use of force incident, the officer must use descriptive terms to accurately describe the amount of force being used by the subject to attempt to get away, or prevent the officer from gaining control, or to attempt to attack the officer and prevent the officer from gaining control.   The following testimony was found not to be enough for forcible resistance criminal conviction:  Leaning or pulling away (*AC v. State*, 929 N.E.2d 907 (IN Ct App 2010))  Twisted and turned (*Ajabu v. State*, 704 N.E.2d 494 (IN Ct App 1998))  Pulled away (*K.W. v. State*, 984 N.E.2d 610 (Ind. 2013))  More accurate terms to describe strength, power, violence amounts of resistance might be “yanked” his arm away, “lunged” away, pulled his arm with such force that he broke the officer’s grasp, or caused the officer to fall forward with the amount of force used to pull away.   * + 1. Forcible Resistance        1. Forcible resistance is the use or imminent use of force (non-deadly or deadly) directed toward an officer which interferes with the law enforcement officer’s rightful exercise of their duties (e.g., hitting, punching, use of instruments or weapons).        2. Forcible resistance is a forceful action, using strength, power, and violence as required in *Runnells v. State*, 186 N.E.3d 1181 (Ind. Ct. App. 2022), directed toward the officer.     2. Evaluate the need for the use of force given these two situations:        1. Situation 1: the subject is refusing to exit the car and has not committed a crime. The officer is towing the car because the vehicle is incapacitated. The officer orders the person to exit the vehicle prior to the tow. The person remains seated in the driver’s seat, with his hands in his lap and refuses to exit the vehicle.           1. Discuss various methods to get Subject 1 out of the vehicle without using force objectively unreasonable given the totality of the circumstances.        2. Situation 2: The officer has reasonable suspicion that the person is armed and dangerous. The subject very closely resembles the description of a recent armed robber, is in the near vicinity of the crime, and is extremely nervous during the stop. The officer conducts a traffic stop of the subject, orders the subject out of the car and the subject refuses to exiting, while also refusing to remove his hands from his sweatshirt pocket.           1. Discuss how this situation is different from situation 1. Is it objectively reasonable to use a different amount of force to gain compliance? Why?        3. In Situation 1, the subject has not committed a crime, has not threatened the officer, and is being merely passively non-compliant. An officer who grabs the driver and quickly throws the driver to the ground, may be found to have used objectively unreasonable force. An officer may be justified in using force, this force must be objectively reasonable given the circumstances.        4. In Situation 2, there is reasonable suspicion to believe the person has committed a violent crime involving a weapon. The officer will likely be legally justified in using a different amount of objectively reasonable force to gain compliance over the subject’s hands, which are hidden in a sweatshirt, in this scenario versus Situation 1 because of these additional factors.     3. Understanding the differences between levels of resistance is essential to objectively reasonable use of force. Case law is clear that significant force is not objectively reasonable against a person who is being only passively non-compliant. This does not mean that an officer must stand by and allow the subject to be non-compliant (remain in the vehicle that needs to be towed). The objective reasonableness of the force used will be evaluated given the totality of the facts in the situation.     4. When Passive Resistance Becomes Active Resistance        1. Passive resistance may turn into active resistance.           1. For example, holding onto a steering wheel is passive resistance; however, if an officer attempts to remove the hands and the subject reacts by tensing or pulling away using power, strength, or violence, then this becomes active resistance.           2. Another example is Situation 1 discussed above. If the officer is reasonably following the department’s inventory policy and needs to tow the vehicle, the driver must exit. If the officer opens the door to assist the non-compliant driver in exiting, and the driver now kicks/punches the officer (forcible resistance), the resistance level has changed, and the force that is objectively reasonable has changed.        2. Understanding when passive resistance (no use of significant force) becomes active or forcible resistance (more force may be objectively reasonable) is essential for officers.  1. Force    1. “Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham v. Connor*, 490 U.S. 386 (1989)    2. Use of reasonable force       1. Although this is a statewide policy regarding the use of deadly force. It is important for officers also to understand the concept of reasonable non-deadly force, and when the use of deadly force becomes justified.       2. Under IC 35-41-3-3, the Indiana legislature states that an Indiana law enforcement officer is justified in using reasonable force when the officer reasonably believes that the force is necessary to enforce a criminal law or to effect a lawful arrest.          1. What is “reasonably necessary” is an evaluation of the objective reasonableness under *Graham v. Connor*, which as the leading U.S. Supreme Court case, governs the reasonableness of force for every officer.          2. What is “reasonably necessary” under the statute depends on why the force was used, including the level of resistance, the level of crime being enforced, and the type of threat posed to the officer or another, and the type, amount, and duration of the force that was applied. The totality of the facts and circumstances known to the officer throughout the force application will be considered.       3. The legislature, in IC 35-41-3-3(g) recognizes that an officer may have to use force in defense of the officer or another per the self-defense statute IC 35-41-3-2. A law enforcement officer is justified in using reasonable force against a person to protect the officer or a third person from what the officer reasonably believes to be the imminent use of unlawful force.          1. The criminal liability defense of self-defense is available to an officer, just as it would be to another citizen.          2. An officer may be justified in using reasonable force in a situation where the subject is presenting the officer with “pre-fight indicators,” such as establishing a fighting stance in front of the officer, reaching for an object that reasonably is going to be used as a weapon, clenching fists, exhibiting heavy breathing, or puffing of the chest, for example. The force used must be objectively reasonable given the reasonably perceived threat.    3. Use of deadly force       1. Indiana’s statute on deadly force states that it is justified when it is necessary to prevent the imminent threat of serious bodily injury to the officer or a third person, or to prevent the commission of a forcible felony, and has given a warning if feasible.          1. Remember that the term forcible felony is defined in the statewide policy as a felony that involves the use or threat of force against a human being in which there is imminent danger of serious bodily injury to a human being.             1. This means that an officer may be justified in using deadly force to stop a person who is indicating an intention, or is attempting to, inflict serious bodily injury on another.       2. We know from the ruling by the US Supreme Court in *Tennessee v. Garner* that deadly force may be objectively reasonable when there is an imminent threat of serious bodily injury to another human being, either the officer using the force, or third-party.       3. Any time an officer is using deadly force, whether due to the imminent threat of serious bodily injury or the commission of a forcible felony, the officer must give a warning when it is feasible to do so.          1. Feasible is defined as “capable of being done or carried out.” *Merriam-Webster Dictionary*.          2. This warning should be clearly communicated.             1. There is no requirement that an officer say “[COMMAND] or I will shoot” to be a clearly communicated warning. For example, phrases such as “Drop the gun” or “Don’t reach for the gun”, combined with an officer who has a firearm drawn and pointed at the individual receiving the command would be a clearly communicated warning.             2. Emergency vehicle equipment such as lights or siren on a vehicle being used as a stationary roadblock may also be that “clearly communicated warning.”    4. Imminent       1. Imminent is defined as “ready to take place, happening soon; often used of something bad or dangerous seen as menacingly near” *Merriam-Webster* dictionary       2. Lexipol has suggested the following definition to its agencies: “Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if a law enforcement officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent threat of serious bodily injury may also exist if the person is capable of causing serious bodily injury without a weapon and the officer reasonably believes the individual intends to do so.”       3. Imminent includes the opportunity, means/ability, as well as the intention, or willingness, to cause bodily injury. The courts have ruled that simply because someone has a weapon does not automatically show an imminent threat of serious bodily injury.          * 1. For example, *Weinmann v. McClone*, 787 F.3d 444 (7th Cir. 2015), the Seventh Circuit has found that possession of a deadly weapon, standing alone, does not automatically indicate that the threat is imminent.            2. It is essential that an officer be able to articulate specific, articulable facts that the individual presents with an imminent threat of causing serious bodily injury, meaning ability, means, and intent to cause serious bodily injury or death.            3. In this case, Officer McClone was performing a wellness check on a man who was suicidal and had locked himself in a garage with a shotgun. The officer forced entry into the garage within three (3) minutes of arriving, did not first attempt to communicate with the man, and shot the man alleging that the shotgun was pointed in the officer’s direction, although not directly at the officer. Weinmann alleges that he did not point the shotgun, even in the direction of the officer, or indicate any intention to use it against the officer.            4. The Court ruled in denying the motion for summary judgment (meaning, the lawsuit continues) that the case turns on the trier of fact’s determination of whether the man had the shotgun simply laying in his lap, making no threats toward the officer to use the shotgun, or whether the man indicated a threat to use the shotgun against the officer.    5. Force related to arrest or escape       1. The statewide policy states that the use of deadly force against persons who are either being arrested, or are attempting/are escaping, shall be restricted to when the officer has probable cause to believe that deadly force is necessary:          1. To prevent the commission of a forcible felony, which has been defined in the statewide policy; or          2. To arrest a person the officer has probable cause to believe poses an imminent threat of serious bodily injury to the officer or a third person, adding the word “imminent” to threat to be consistent with the ruling in *Graham v. Connor*; and          3. A warning has been given to the subject, if feasible.       2. *Tennessee v. Garner*, 471 U.S. 1 (1985)          1. The facts of the case are as follows:             1. Garner was fleeing the scene of a burglary. An officer gave chase and cornered Garner near a fence.             2. The officer was able to see Garner and believed him to be a teenager, of slight build, and believed he was unarmed because he saw no sign of a weapon.             3. The officer told Garner to stop but Garner began climbing the fence in an attempt to escape arrest. The officer shot Garner to prevent the escape and Garner later died.             4. At the time, Tennessee allowed officers to use all necessary means to make an arrest after giving notice of an intent to arrest.          2. The US Supreme Court held that the use of deadly force against an apparently unarmed fleeing suspect who posed no danger was unreasonable. The Court stated that to justify using deadly force, the subject must pose an imminent threat to the officer or others and stated, “it is not better that all felony suspects die than that they escape.”          3. The Court acknowledged that burglary may be a serious crime, but it is not so dangerous as to automatically justify the use of deadly force. A person who is not armed should not automatically be considered physically dangerous simply because the person has broken into a dwelling at night.          4. The Court held that deadly force may only be used to prevent escape when there is probable cause to believe the suspect poses a significant threat, which we refer to as an imminent threat of serious bodily injury to another.       3. The statewide policy on deadly force follows the ruling in *Garner* and restricts the use of deadly force against a person in custody who is attempting to escape from custody to only those situations where the officer has probable cause to believe deadly force is necessary to prevent the escape of the person from custody for whom there is probable cause to believe poses an imminent threat of serious bodily injury to the officer or a third person; and the officer has given the person a warning, if feasible.          1. Deadly force cannot be used simply to prevent the escape of a person from custody, or to prevent the escape of a person from arrest who has committed a felony.       4. An officer is justified in using the same force to prevent the escape of a person from custody that would be objectively reasonable to take the same person into custody for arrest, given the totality of the facts and circumstances known to the officer at the time force was used.       5. A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.          1. Penal facility is defined in IC 35-31.5-2-232 as a state prison, correctional facility, county jail, penitentiary, house of correction, or any other facility for confinement of persons under sentence, or awaiting trial or sentence, for offenses.          2. What force is “necessary”, which is the word used in the Indiana Use of Force statute, IC 35-41-3-3, again comes from an evaluation of the totality of the facts and circumstances known given the ruling in *Graham*, even in the situation of an escape or an attempted escape from a penal facility.          3. It is important to realize that *Garner* and *Graham* require the officer to have probable cause to believe that there is an imminent threat of serious bodily injury to the officer or another person prior to using deadly force, even in the circumstance of a prison break. The totality of the circumstances must be considered in determining the objective reasonable force needed.             1. Most often, circumstances involved in such an attempted escape involve weapons, injury to staff or inmates in the prison, imminent danger to the community while a fugitive, and a willingness to use violence to succeed in the escape. Further, it is a reasonable inference to believe that individuals who are committed to a penal facility present an imminent threat to others.             2. For example, an inmate who is climbing over the exterior fence of the prison to escape is a different circumstance than the inmate who is accidentally released who is walking out of the front door of the prison due to a clerical error. 2. *Graham v. Connor*, 490 U.S. 386 (1989): The standard on which every use of force is evaluated comes from the ruling in *Graham*.    1. Facts of the Case       1. Graham was a diabetic who asked a friend to drive him to the store for orange juice to counteract an insulin reaction. At the store, Graham quickly saw that the line was too long and “hastily” entered and then left the store.       2. The officer, observing this quick exit, conducted an investigative stop based on reasonable suspicion that criminal activity was afoot.          1. Ask students whether an investigative stop (*Terry* stop) is legal here. The standard for the stop is reasonable suspicion to believe crime is afoot. The officer observed two individuals quickly drive to a store, enter, and exit quickly. The facts and circumstances would warrant a reasonable and prudent person to believe crime is afoot.       3. On the investigative stop, the friend/driver told Officer Connor that Graham was suffering from a “sugar reaction.” Connor requires that the occupants wait at the scene of the traffic stop while he investigates the potential theft or robbery.       4. While waiting for back-up, Graham exits the car, runs around it twice, and passes out.          1. Ask students if the level of reasonable suspicion has dissipated or is still present. A reasonable person would continue to believe Graham was engaging in, or just engaged in, criminal activity.       5. Backup Officer arrives and approaches Graham on the sidewalk, forcibly handcuffing him.       6. Officers grab Graham, carry him to the police car and place him face down on the hood. He is later thrown headfirst into the police car.       7. Officers later determine that no crime was committed (there is no longer reasonable suspicion of criminal activity) and they drive Graham home and release him. Graham suffered a broken foot, cuts on wrist, bruises, and a shoulder injury.    2. Standard regarding the reasonable use of force       1. The Supreme Court developed this standard in *Graham*:          1. To determine if the officer’s use of force was reasonable, the Court conducts a careful balancing of the nature and quality of the intrusion on the person’s right to be free from unreasonable seizures of their person, against the countervailing government interests at stake.          2. Reasonableness is determined from the perspective of a “reasonable officer on the scene” (considering the totality of the facts and circumstances known at the time).             1. This is an objective standard, meaning it is not determined based upon this officer’s decision-making, but rather an objective “reasonable officer” in the same situation given the facts known, reasonable inferences from those facts, meaning logical conclusions from those facts, and the totality of the circumstances.          3. “Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application’, however its proper application 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 officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” These factors are imperative in a decision regarding how reasonable, meaning how necessary, was the force used.             1. Severity of the crime:   Why is the severity of the crime important to how reasonable the force or seizure of the person was?  The more violent the crime, the more violent the offender, the greater the need in arresting the suspect at the scene.  If the crime inherently involves violence, a reasonable inference is the individual is more likely willing to use force against the officer. While this is not an automatic conclusion, it should be considered by the officer given the other facts known at the time.  Certain misdemeanor crimes, unless witnessed by a law enforcement officer, are not even “outright” arrestable crimes under IC 35-33-1-1.   * + - * 1. How imminent is the threat posed:   The Supreme Court uses the word “immediate,” which has been expanded in case law to be “imminent,” which does not require that the threat be immediate. The question the officer must answer, and the court will later answer, is how likely is it that the threat will be carried out?  Does the individual have the ability to present a threat, does the individual have the opportunity to present a threat, and is the officer or another in imminent jeopardy that the threat will be carried out?  What has been said? What has the officer observed that indicates there is a threat, and that threat is imminent?   * + - * 1. How severe is that threat:   Is the threat likely to cause bodily injury? Serious bodily injury? The reasonableness of the force that was applied will be evaluated based on the severity of the threat faced.   * + - * 1. And is the suspect using strength, power, violence to resist arrest actively or forcibly, or is this merely non-compliance with a direct order without any use of force against the officer?   Recall the cases previously discussed regarding passive non-compliance versus active resistance or forcible resistance. Reasonableness of the force used is determined based on the level of resistance the officer is facing at the time the force is applied.  The resistance level must be continuously evaluated throughout the duration of the force, which will be further discussed later.   * 1. Was the seizure reasonable?      1. Every situation involving the use of force, including force used during an arrest, investigative stop, or any other seizure of the person, both deadly and non-deadly, will be evaluated using the standard given to us in *Graham*.      2. The question is: would a reasonable officer on scene, react in a similar manner when faced with the same facts and circumstances known at the time by the officer who used force?         1. *Graham* recognizes that reasonable force is not always equivocal to the minimum amount of force that was necessary to gain compliance. It would be impossible to adopt a standard of “minimum force necessary.” The standard for use of force is not to be viewed under the vision of 20/20 hindsight.         2. The underlying intent or motivation of the officer who used the force will not be considered, as it is an objective standard.            1. This does not mean that the words uttered may not have other consequences for the officer, however, it should not be considered in a reasonableness determination.         3. The objective reasonable officer standard “allows 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.”      3. Reasonableness is an examination of the totality of the circumstances to determine whether the intrusion on the Fourth Amendment interests (the seizure) was reasonable, or justified, given the countervailing governmental interests at stake, meaning reasonable given the severity of the crime, the threat posed to others, how imminent that threat is, and the level of resistance used by the subject against officers.   2. Nature and Quality of the Intrusion on the Person      1. Remember that the standard of reasonableness from *Graham* is determined by a careful balancing of the nature and quality of the intrusion on a person’s right to be free from unreasonable seizures of their person, against the countervailing government interests at stake.      2. The nature and quality of the intrusion is the “What.” It is the intrusion on the person’s right to be free from unreasonable seizures. The “What” examines the type of force used, or the nature of the force, and the quality of the force used, meaning the amount, severity, and duration of the force applied.         1. The nature of the force used might be an empty hand technique, such as an open hand, closed hand, or kick, or the use of an object to inflict force, such as a flashlight, vehicle, baton, chemical spray, conducted energy weapon (taser), less-lethal force, or firearm.         2. The quality of the force is an evaluation of the amount of force applied, the severity of the force, and the duration of the force.            1. Force may become more severe given how many times it is applied, the duration of the application, the pressure behind it, multiple forms of force, and/or multiple officers applying force.   Striking a resisting subject once is not the same quality or amount of force as striking the subject ten times.  We will discuss *Cyrus v. Town of Mukwongo*, a Seventh Circuit case on Slide 28.   * 1. Objective Reasonableness      1. This is the “Why;” it is the countervailing government interests that were at stake that made the use of force necessary. Each use of force encounter will be considered based on a totality of the circumstances approach.      2. The slide contains a list of questions/factors that should be asked by the officer (quickly) before and during the use of force to evaluate the “need” for force. Every officer using force should be considering these questions/factors throughout the duration of the use of force situation:         1. Is the subject resisting? Is the resistance level merely passive or non-compliant? Or is the subject demonstrating active or forcible resistance, by using strength, power, violence as required by *Runnells v. State*, 186 N.E.3d 1181 (Ind. Ct. App. 2022)?         2. Does the subject pose an imminent threat to the safety of the officer or others? “Imminent” is characterized by the ability to inflict injury and the willingness to inflict the injury. What level of injury is the subject capable of inflicting? Has the subject indicated a willingness to inflict injury on the officer or a third-party?         3. Is the subject armed with or have access to a weapon? Is that weapon a deadly weapon?         4. Did the subject indicate, verbally or with body language, an intention to harm the officer or a third person?         5. Has the subject just committed a crime? How severe is the crime suspected? Does the crime involve injury, serious bodily injury, or death?         6. Did the subject charge the officer?         7. Is the subject attempting to flee and presenting an imminent threat of serious bodily injury or death to a third-party?      3. There might be additional factors considered, such as:         1. A size disparity between the officer and the subject, which would affect the level of injury the subject could inflict on the officer given the level of resistance the officer is encountering.         2. The number of officers on scene compared to the number of resisting subjects on scene.         3. The number of third parties who are placed at risk by the subject’s continued resistance.         4. Known mental illness and/or known intoxication of the subject.         5. Prior encounters with the subject, which provides some known information to the officer concerning the ability and willingness of the subject to harm the officer.         6. The subject’s response to the officer’s de-escalation actions or attempts.      4. Again, the court will evaluate the “What”, the nature and quality of the force that was used.         1. The trier of the fact looks first at the force that was used and then back at the reasons for the force. These are the questions the trier of fact will ask:            1. What was the level of force used by the officer?            2. Was the officer’s response/force proportional to the level of resistance encountered and threat that was imminent?   Meaning, how severe was the application of force?  How many times was the force applied?  How long was application of force?   * + 1. Proportionality        1. “It’s the totality of the circumstances, not the first forcible act, that determines objectively reasonableness.”           1. As facts and threats are being added or reduced, so should the decision regarding the objectively reasonable amount of force be changing as well.           2. In *Cyrus v. Town of Mukwonago*, 624 F.3d 856 (7th Cir. 2010), the officer applied the taser at least 6 times, and maybe up to 12 times. The totality of the force used may be increasingly severe the more times the force is applied.   Facts of this case are:  The officer is called because an individual with a known mental illness (bipolar with symptoms of schizophrenia), clothed only in a robe, was found near a new home under construction acting strangely. The homeowner called Cyrus in as a trespasser. When Officer Czarnecki arrived, he saw Cyrus, who was known to be mentally ill, naked except for a robe standing near the house. Cyrus stated that he lived there; the officer told him he was mistaken, he was on private property, and needed to leave. Cyrus turned to walk toward the house and the officer fired his Taser at Cyrus, causing him to fall to the ground. The officer ordered him to remain on the ground, however, Cyrus attempted to stand, wobbled, and fell back to the ground. The second officer had arrived on scene at this time.  “Though he knew Cyrus was unarmed, Czarnecki hit him with the Taser again; after this second shock, Cyrus barrel-rolled four or five times down the driveway.” His hands were under his body, and they attempted to grab them but could not dislodge his hands. Czarnecki drive-stunned Cyrus “several times over the next minute or so.” There is conflicting evidence as to the total times: at least 6 (2 times prior to the barrel-roll and 4 times on the ground). There may have been up to 12 pulls.  Eventually they handcuffed him, rolled him over, and found he was not breathing. He later was pronounced dead. District court granted summary judgment for defendant (the case was dismissed against the officer).  The officer argued to the court that because the first taser use was reasonable, the other deployments should also be reasonable because “once an officer is justified in using a particular level of force to effectuate an arrest, he can continue to use that same level of force until the suspect is apprehended.”  The Court replied: “Not so. Force is reasonable only when exercised in proportion to the threat posed.”  The 7th Circuit Court of Appeals overturned the order granting summary judgment and instead ruled that there were enough material (meaning “important to the outcome”) disputed facts here that the case should be taken to the jury. The Court said, “the amount of force used bears directly on whether that force was a reasonable response to the situation faced by the officer.”  Further, the court said the jury could reasonably conclude that the force used was unreasonable given the facts and circumstances of this case: at most he was suspected of committing a misdemeanor crime, he did not display any violent or aggressive behavior, he did not forcibly resist attempts to handcuff him, he was unarmed and had no ability to access a weapon, and the officer knew him and knew he had a mental illness and had never acted violently toward the officer in the past.   * + - * 1. The Court distinguished this case from *Dockery v. Blackburn*, 922 F.3d 458 (7th Cir. 2018), where Dockery continued to resist Officer Blackburn actively and forcibly by flipping over onto his back, kicking at officers, quick rolling toward the smaller female officer with his legs and arms outstretched after being tased. Dockery continued to resist, attempting to roll away from the officers who were attempting to apply handcuffs to Dockery. The Court granted summary judgment for Officer Blackburn (dismissing the case against the officer).   “We have two guideposts in an excessive-force case like this one. The first is that an officer’s use of a Taser against an actively resisting subject either does not violate a clearly established right or is constitutionally reasonable…The second guidepost is that an officer may not use significant force (like a Taser) against a ‘nonresisting or passively resisting’ subject. *Abbott v. Sangamon County*, 705 F.3d 706 (7th Cir. 2013).   * + - 1. Proportionality between the nature and quality of the force applied, given the facts and circumstances known to the officer at the time will be considered as a factor in determining whether the force used was objectively reasonable.       2. Throughout the encounter, the officer must continuously evaluate the reasonableness of the force being used and whether that force is “necessary” to gain and/or maintain control of the subject.          1. Remember that the term “necessary” is used by the Indiana Legislature in the use of force statute. “Necessary” means the objectively reasonable force needed to gain and/or maintain control given the level of resistance the subject is exhibiting and the ability and intention to use imminent force against the officer.       3. For example in the case of *Becker v. Elfreich*, 821 F.3d 920 (7th Cir. 2016):          1. The facts are:   Becker was wanted on a felony warrant and was inside of a house. Officers called up to Becker to surrender; he did not come downstairs.  Officer Elfreich released her apprehension canine to find Becker. At the time the canine was sent, Becker had started walking down the stairs to the officers with hands in full view. The canine latched onto Becker and Becker’s hands remained above his head.  The canine was not ordered to be removed from Becker until after Becker was handcuffed.  This was a motion for summary judgment.   * + - * 1. The 7th Circuit found that under the totality of the circumstances, a jury could find that this force was excessive because of the level of resistance changed after the canine apprehended Becker.   The court stated the initial release of the canine to find Becker may have been objectively reasonable, however the continued application of the same force may be excessive as there was no active resistance after Becker surrendered.  The court stated, “in every arrest there is a possibility that the individual is armed and that does not justify allowing [the canine] to continue to bite Becker while [officers] pulled Becker down the three steps and handcuffed him.”   * + - * 1. What the court is saying in this case is that the officer must continue to evaluate the objectively reasonableness of the force being applied given the level of resistance posed, whether there is an imminent threat to the safety of officers or others, and the severity of the crime and circumstances posed by the individual.  1. Use of Deadly Force    1. Remember the standard for the use of deadly force: A law enforcement officer is justified in using *deadly force* if the officer has probable cause to believe that deadly force is necessary to prevent the imminent threat of serious bodily injury to the officer or a third person or the commission of a forcible felony, and has given a warning, if feasible.    2. Imminent Threat of Serious Bodily Injury: We are now going to discuss a few cases that discuss when there is an “imminent” threat and when that threat rises to the level of “serious bodily injury.”       1. *Tom v. Voida*, 654 N.E.2d 776 (Ind. Ct. App. 1995)          1. The facts are:             1. Officer Voida is responding to a dispatch. Along the way, she sees Tom, who falls from his bicycle and is now on the ground. Officer Voida, not yet suspecting Tom of any crime, stops to help.             2. When Officer Voida stops and calls out to Tom to see if he is hurt, Tom begins to walk away. At some point as Officer Voida is attempting to ensure Tom is not hurt, Tom begins to run away from the officer.             3. Officer Voida then begins to chase Tom. The Court later determines that at this moment, Officer Voida had reasonable suspicion to believe that Tom was engaging in criminal activity, and the foot pursuit was reasonable.             4. Officer Voida catches up with Tom and attempts to handcuff him, which the Court found was a reasonable method of executing an investigatory stop and, that even if it rose to the level of arrest, there was probable cause to arrest Tom for resisting law enforcement.             5. Resistance 1: Tom forcibly resists Officer Voida’s attempts to handcuff him. During this forcible resistance, Tom repeatedly hitting Officer Voida’s head on the concrete, and at some point, steps on her head. She loses her strength and Tom begins to flee from her again.             6. Resistance 2: Voida then continues the chase, now to additionally arrest Tom for Battery. She catches Tom and there is again forcible resistance. Tom punches Officer Voida in the face. She cannot reach her chemical spray during the forcible resistance, so Officer Voida pulls her gun and pushes herself away from Tom.             7. Officer gives Tom three warnings, and he instead runs toward the officer twice with hands raised and arms spread wide.             8. Officer shoots and kills Tom as he runs toward her with arms wide.          2. The Court held that deadly force was objectively reasonable in this case given the totality of the circumstances.             1. The initial attempt of Officer Voida to handcuff Tom was based on reasonable suspicion of criminal activity and any further use of force was applied after Officer Voida had developed probable cause to arrest Tom for resisting law enforcement and battery on an officer.             2. Deadly force was only applied after Tom inflicted serious bodily injury on the officer and continued to pose an imminent threat of additional serious bodily injury when he indicated his intention to do so by advancing toward Officer Voida with his arms outstretched during the second encounter, reasonably believed to be an intention to continue his violent attack.          3. A few important facts to discuss regarding this case:             1. Circumstances can quickly change in the encounter that alters the need to use force. This change includes both the need to increase, as well as the need to decrease the level of force that is objectively reasonable.   This situation began as an attempt to help someone in need and quickly rose to the level of reasonable suspicion of criminal activity and then ultimately to probable cause to make an arrest.   * + - * 1. The Court found deadly force was objectively reasonable even though Tom had no deadly weapon available. Courts have stated that the presence of a weapon does not always indicate an imminent threat of serious bodily injury. The absence of a weapon also does not automatically bar the objectively reasonable need to use deadly force.   In this situation, Officer Voida reasonably concluded that Tom had both the ability and the willingness or intent to inflict serious bodily injury because of the actions during the initial resistance encounter, and therefore, it was objectively reasonable to conclude that he had the same ability and willingness/intention in the second resistance encounter when he turned to attack again.   * + 1. *Plumhoff v. Rickard*, 572 U.S. 765 (2014)        1. In this case:           1. Rickard led the police on a vehicle pursuit. Officers’ attempts to stop the vehicle using a “rolling roadblock” were unsuccessful. The pursuit at times hit speeds over 100 mph. Rickard was temporarily stopped at one point after hitting a police vehicle. Officers approached the vehicle with weapons drawn and Rickard’s tires started spinning, indicating he was pressing on the accelerator.           2. An officer fired 3 shots into the car, Rickard then reversed and maneuvered onto another street forcing an officer to step away to avoid being hit.           3. Rickard was fleeing down the street and additional officers fired 12 more shots into the vehicle; a total of 15 shots were fired.           4. Rickard lost control and crashed, and both Rickard and the passenger died.        2. The Supreme Court, in finding that the officers acted reasonably in using deadly force, determined that Rickard showed by his actions that he had the means, the opportunity, and the willingness to continue to pose an imminent threat of serious bodily injury to others on the roadway. The Court determined that a reasonable officer could have concluded from Rickard’s conduct, which included repeated attempts to escape the temporary block and pressing on the accelerator, that he was intent on resuming his flight, which would again pose a threat of serious bodily injury to others on the road.     2. *Henning v. O’Leary*, 477 F.3d 492 (7th Cir. 2007)        1. In this case:           1. Officers were attempting to arrest Henning for a probation violation. Henning attempted to move away from the officer attempting to handcuffing him and the officers placed him on the ground.           2. While on the ground, Henning continued to forcibly resist officers’ attempts to handcuff. During the encounter, officers used hand strikes, chemical spray, and a baton to attempt to gain control of Henning.           3. During the struggle, an officer’s gun became missing, and a gun was observed under Henning, whose hand was also out of view. Officers testified that Henning’s finger reached for the trigger.           4. A warning was given to Henning who then started to roll over with his hands still not visible. An officer shot Henning.        2. The Court held that the use of deadly force was objectively reasonable given the totality of the circumstances in this case:           1. Henning posed a substantial and imminent risk of serious bodily injury to officers. His hand was at least near a loose gun under his torso, he was continuously actively and forcibly resisting officers. Officers resorted to deadly force only when there was the addition of the officer’s firearm under Henning’s body near his hand and after issuing warnings to Henning, he began rolling over/turning his torso when the officer attempted to reach for the gun.        3. The court stated that police officers cannot be expected to wait until a resisting arrestee has a firm grip on a deadly weapon before taking action to ensure their safety. The circumstances in this case indicated that the threat of serious bodily injury Henning posed to the officers attempting to handcuff him was imminent.   1. Vehicle Pursuits      1. Use of Police Vehicle as Weapon         1. Officers shall only use police vehicles as a weapon in situations where deadly force is allowed by law.            1. This does not include the use of a precision immobilization technique (PIT) maneuver when the officer is using the maneuver in compliance with the officer’s training guidelines.   A PIT maneuver conducted pursuant to training guidelines is not deadly force.   * + - 1. If an officer is not properly trained to use a PIT maneuver, or if the PIT maneuver is used in a manner outside of the training guidelines, it will be considered deadly force, which requires probable cause to believe that the subject poses an imminent threat of serious bodily injury or death to the officer or another person.          1. *Scott v. Harris,* 550 U.S. 372 (2007)   In this case, officers were attempting to conduct a traffic stop of Harris for a speeding violation. Harris drove his vehicle away from the officer, leading officers on a vehicle pursuit on a two-lane road at high rates of speed at night. There were other cars on the roadway, which the US Supreme Court, after reviewing video footage, determined were forced to the shoulder to avoid being hit in the pursuit.  Officer Scott conducted a PIT maneuver to end the pursuit while Harris was traveling at a high rate of speed, which resulted in serious bodily injury to Harris.  The Supreme Court found that Harris posed an actual and imminent threat to the lives of many others. They stated, “we think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability.”  The Court would not establish a rule requiring the police to end vehicle pursuits simply because the driver is putting other motorists in danger. “It is obvious the perverse incentives such a rule would create: every fleeing motorist would know that escape is within his grasp, if he only accelerates to ninety (90) miles per hour…”  Indiana’s officers must refer to their agency’s vehicle pursuit policy regarding continued pursuits and the factors that should be considered in evaluating the continued need for the pursuit. The statewide policy containing minimum standards for vehicle pursuits details such factors that should be considered in this evaluation.   * + 1. Roadblocks        1. *Brower v. County of Inyo*, 489 U.S. 593 (1989):           1. In this case, Brower is fleeing from police in a stolen vehicle at night driving at a high rate of speed in the pursuit. Officers set up a roadblock by placing a semi-trailer completely across the highway in the path of the flight, as well as concealing it behind a curve with no illumination, and the headlights of a police vehicle aimed in a way to blind Brower on the approach to the curve. There was a fatal collision to end this vehicle pursuit because of this roadblock.           2. It is important to remember that the use of deadly force requires officers to give a warning when feasible prior to using deadly force. Remember the minimum standards for roadblocks in Indiana, which requires a warning through visibility, as well as providing the driver with an opportunity to stop prior to contact with the object used in the stationary roadblock.        2. The statewide minimum standard for vehicle pursuits requires that any roadblock that is used must follow the following protocol:           1. Use emergency lighting on any authorized emergency vehicle being used in the roadblock.           2. The roadblock shall be set up where there is clear visibility to traffic in all directions.           3. The subject must be able to see the roadblock and have sufficient time and distance to stop prior to encountering the roadblock.     2. Use of Force and Firearms        1. Officers shall not discharge any warning shots.           1. An objectively reasonable discharge of a firearm in the direction of an individual against whom deadly force is allowed by law, with the intent to assist an officer or third-party who is in imminent danger, is not considered a warning shot.        2. Officers shall not discharge a firearm at or from a vehicle, except in situations where deadly force is allowed by law.  1. Officer Responsibilities    1. Officer Responsibilities under the Statewide Policy       1. An officer shall not use force against a person who is merely verbally abusive.          1. This is clearly established in case law. It is important to remember that an officer cannot claim protection under qualified immunity when the officer has been given notice through clearly established law.             1. When a person is verbally abusing an officer, and there is not probable cause to make an arrest, the officer may not use force against the person.             2. If the words rise to the level of a crime, such as clear threats that meet the elements of Intimidation, or the volume of the speech rises to the level of unreasonable noise that continues after the person is advised to stop, meeting the elements of Disorderly Conduct, the officer may make the arrest. The officer must use only objectively reasonable force to do so, given the level of active or forcible resistance from the subject and the imminent threat the subject poses to the officer.       2. An officer shall not use a chokehold except in situations where deadly force is allowed by law.          1. Chokehold is defined by Indiana statute as deadly force. A chokehold, by statute, may only be used in situations where deadly force is objectively reasonable.    2. De-Escalation       1. Remember that de-escalation is defined as actions taken, if safe and feasible to do so, in an attempt to stabilize the situation. These actions are undertaken in an effort to reduce or eliminate the necessity of using force.       2. An officer has an obligation under the statewide policy to attempt to engage in de-escalation prior to using force when it is safe and feasible to do so.          1. What does safe and feasible mean?             1. Agencies should use scenario-based training to teach the concept of “safe and feasible.”       3. De-escalation is a mandatory topic for annual in-service training under IC 5-2-1-9(g). This statewide training program on the use of deadly force does not replace an agency’s de-escalation training and does not meet the statutory requirements for in-service de-escalation training.          1. Agencies may add de-escalation training during this section of the training program or may train de-escalation in another in-service training.          2. Each agency should evaluate the needs of the agency and its officers to determine how best to train in de-escalation practices. Training could be included in any or all of the psychomotor skill in-service training, or as a separate scenario-based training exercise.          3. Law enforcement agencies must conduct in-service training in de-escalation annually in accordance with IC 5-2-1-9(g).    3. Duty to Intervene       1. Under the Statewide Policy on Deadly Force, every officer, regardless of their rank in the agency, or their level of experience on scene has a legal obligation or duty to intervene.          1. The statewide policy states that an officer who is present on scene and observes another officer using force that the officer has reason to know is excessive under the circumstances, shall have a duty to intervene when it is safe and feasible to do so.             1. The next few slides in the presentation will discuss the legal obligation to intervene, how an officer may intervene, and the responsibilities of the agency in training an officer on proper intervention.          2. The statewide policy requires that an officer who intervenes must immediately report the incident to a supervisor or commanding officer.       2. All law enforcement officers, whether in a supervisory role or not, have both a legal duty and an ethical obligation to prevent and/or intervene in excessive force by their colleagues. An officer cannot avoid this obligation simply because a higher-ranking officer is present.          1. An officer who is present and fails to intervene to prevent other officers from violating the constitutional rights of citizens may be equally liable in a federal civil action when that officer had reason to know that 1) excessive force was being used, 2) a citizen was being unjustifiably arrested, and/or 3) that an officer was committing any constitutional violation, and the officer had a realistic opportunity to intervene to prevent the harm from occurring.             1. It is essential for officers to understand what force is objectively reasonable, and when force becomes unreasonable.             2. An officer “has reason to know” when the officer is aware of all the facts and circumstances known to the officer using the force.             3. *Yang v. Hardin*, 37 F.3d 282 (7th Cir. 1994)   Officer Brown takes the property of Yang while present on scene taking a report. Officer Hardin is present during the entire encounter. Yang attempts to take the property back from Officer Brown and follows the officers to the patrol car.  Officer Brown then uses force, attempting to get Yang away. Officer Hardin is present and does not attempt to verbally or physically intervene and does not attempt to call for a supervisor.  Hardin is sued by Yang for failing to intervene. The 7th Circuit court allows the lawsuit to proceed against Hardin, finding that a reasonable jury could conclude that Officer Hardin had a realistic opportunity to intervene.   * + - * 1. An officer has a duty to intervene not only when excessive force is being used, but also when the officer is aware that there is not probable cause to make an arrest, and a fellow officer falsely arrests a person for a crime.         2. An officer has a duty to intervene not only when excessive force is being used, but also when the officer is aware that the constitutional rights of a person are being violated, for example, an officer who does not intervene when fellow officers enter a person’s residence without a warrant, exigent circumstances, or knowing and voluntary consent authorizing entry.     1. Liability for Failure to Intervene        1. The officer who does not attempt to intervene, or makes a half-hearted attempt to intervene, as well as the officer who is unsuccessful in intervening, may continue to face civil liability consequences.           1. Courts have concluded that only if a reasonable jury could not possibly conclude that the officer could have intervened, would the officer be granted leave from civil liability consequences. *Abdullahi v. City of Madison*, 423 F.3d 763 (7th Cir. 2005).   If the officer files a motion for summary judgment, asking to be dismissed from the lawsuit, the court will evaluate whether a reasonable jury might be able to conclude that the officer had an opportunity to intervene.  If the court finds that the officer had a realistic opportunity to intervene, the officer will remain in the lawsuit until a decision is made about the objective reasonableness of the force that was used.  The court has concluded, when discussing at what point there was a realistic opportunity to intervene, that it is when the officer “at a minimum could have called for a backup, called for help, or at least cautioned [the officer using the excessive force] to stop.” *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994).   * + - 1. “A realistic opportunity [to intervene] means a chance to warn the officer using excessive force to stop.” *Miller v. Gonzalez*, 761 F.3d 822 (7th Cir. 2014).          1. In the *Miller* case, Miller fled from Officer Gonzalez, who lost sight of Miller. Miller surrendered to another officer who was assisting and was laying on the ground, being compliant, when Officer Gonzalez jumped a fence and landed on Miller, breaking Miller’s jaw. The officer to whom Miller had surrendered was standing near Miller at the time. That officer was sued by Miller for failing to intervene in the force used. The court in this case concluded that the officer who did not use the force had no realistic opportunity to intervene, as the officer could not have anticipated the one, swift action of force by Officer Gonzalez.     1. Methods of Intervention        1. Officers must decide which intervention technique to use given the totality of the circumstances of each situation.        2. There are a variety of methods that can be used to intervene in a situation involving clear excessive force.           1. Redirection of the officer both verbally and physically           2. Calling for a supervisor           3. Physically restraining the officer        3. It is important to understand that this list is not in sequential order, where one method must be attempted before moving to the next. An officer is not required to start at verbal redirection and work through the methods to physical restraint. If physical restraint is most appropriate, given the circumstances, the officer must so intervene.        4. If the chosen method to intervene is not acknowledged, meaning it does not have an effect, the intervening officer must use another option to stop the excessive force from continuing.        5. The primary objective of intervention is to prevent clear violations of an individual’s constitutional rights.           1. An officer must intervene when it is safe and feasible to do so.           2. If a method of intervening will compromise the safety of the intervening officer, then that method is not safe and feasible and the officer must choose another method, such as calling for a supervisor.   For example, if two officers are on scene and Officer 1 is attempting to handcuff an actively resisting subject and sees Officer 2 using excessive force on a compliant, restrained subject, it is not safe and feasible for Officer 1 to leave the actively resisting subject to physically intervene with Officer 2. Officer 1 may need to verbally intervene in Officer 2 or call for another officer or supervisor to assist.   * + 1. Intervention techniques, scenarios, practical exercises: During this time, agencies should discuss proper intervention techniques and scenarios consistent with the Uniform Statewide Policy on Deadly Force.        1. Intervention techniques may also be reviewed during annual in-service training in defensive tactics. Officers who are well-trained, through scenario-based training exercises, will better understand the duty to intervene, how best to intervene given the circumstances presented, and will be more confident in the outcome.        2. Agencies should put officers through practical exercises on best methods of intervention, and exercises promoting officer recognition of an attempt to intervene by another officer.   1. Officers Responsibilities After Force is Used      1. Officers must stop using force when the subject is properly secured and is no longer actively or forcibly resisting law enforcement.         1. For example, if the subject has been handcuffed but continues to attempt to stand up and run, or is actively kicking at officers, it may be objectively reasonable to use some degree of force to re-gain control of the subject.         2. When a subject is being compliant and has been properly secured, however, it is not objectively reasonable for an officer to use any force against that individual.      2. If a subject is injured, either by the force used or by other means, appropriate medical aid must be applied as soon as it is safe and practical to do so.      3. Officers must follow agency policies and procedures in completing the appropriate reports and/or notifications after force was used.         1. Agencies should have policies concerning notification requirements and reporting requirements following an incident involving force.      4. Regardless of an agency’s policy and procedure, under the statewide policy on the use of deadly force, an officer must immediately notify a supervisor, or the appropriate command personnel, if the force used involves serious bodily injury or death to a subject. | Slides 1-2  This portion of the Introduction section does not have to be discussed at every in-service training. This is an informational section for law enforcement agencies and officers to better understand what it means to have a consistent and uniform statewide policy and training program.  The introduction to the training program is an informational section for law enforcement executive staff and training staff. This portion of the introductory section does not have to be discussed at every in-service training.  Slide 3  Instructors may start at this slide during in-service training.  Slide 4  These are the terms defined by the LETB in the statewide policy on deadly force.  Slide 5  Slide 6    Slide 7  Slide 8-9  Slide 10  Slide 11  Slide 12  Slide 13  Slide 14  Slide 15-17  Slide 18  Slide 19  Slides 20-24  Slide 25  Slide 26  Slide 27  Slide 28  Slides 29-30  Slide 31-32  Slide 33  Slides 34-35  Slides 36-37  Slide 38  Slide 39  Slide 40  Slide 41  Slide 43  Slide 44  Slide 45  Slide 46  Slide 47  Slide 48  Slide 49  Slide 51  Slide 52 |