



DEPARTMENT OF PUBLIC SAFETY
STANDARDS AND TRAINING

BASIC POLICE

Training Academy

Part Three



June 2020



STATE OF OREGON

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Basic Police

Disclaimer

*The information contained in this document is the Department of Public Safety Standards and Training (DPSST) Basic Police Course curriculum as of June 22, 2020. The intended purpose of this document is to present the **content** of a Basic Police course. For ease of use, this document is presented in alphabetical order by topic and does not reflect the actual **structure** of the Basic Police course, which is built based on best practices for facilitated adult learning.*

As such, its use without class participation and instruction is discouraged. The content of this document is not intended to serve as a substitute for or update to basic training or agency-specific policies and procedures. Law enforcement officers and agencies should always consult all laws, policies, and procedures which govern their activities and operations.



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PROCEDURAL LAW





Procedural Law 1-3

Instructional Goal:

This course is designed to develop a new officer's understanding of the legal authority to carry out duties.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify different types of encounters and the justification for that interaction
2. Analyze a situation, determine if Miranda applies, and apply when needed
3. Articulate search and seizure authority in a given circumstance
4. Identify the required contents of a search warrant

Content Outline:

Part 1- Types of Encounters

Types of Encounters

Mere Conversation

Stop

Arrest

Stop and Frisk

Federal Law

Oregon Law

Part 2- Consular Notification & Miranda

Consular Notification

Custody Interrogation

Miranda v Arizona

Part 3- Search and Seizure



Part 1- Types of Encounters and Discretion

To help ensure that the laws are applied fairly, certain rules and procedures must be enforced. This set of laws, rules, and procedures is known as procedural law.

These rules are the constitutional and statutory limitations upon how a criminal suspect may be arrested and convicted and in which evidence may be seized. Everything, from the investigation into a matter, through the trial, must follow a specific procedure outlined by law. This is in contrast to “substantive law,” which refers to the actual laws by which a crime may be charged, or which govern how the facts of the case will be accepted and presented.

Procedural law defines how law enforcement can treat suspects; not what activities are illegal.

Police-Citizen Encounters

The Fourth Amendment governs encounters between police and citizens:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

There are three generally recognized levels of encounters between police officers and citizens:

**Mere
Conversation**
(also called mere or consensual encounters)

Stop

Arrest



Mere Conversation	Stop	Arrest
<p>Mere Conversations are questioning of persons without any restraint of the person’s liberty.</p>	<p>A stop is a temporary restraint of a person’s liberty by a peace officer lawfully present in any place. A stop is not an arrest.</p> <p>ORS 131.605(7)</p>	<p>Arrest means to place a person under actual or constructive restraint or to take a person into custody to charge that person with an offense.</p> <p>ORS 133.005(1)</p>
<p>The officer can ask any question he or she wishes and obtain consent to search the person or person’s property.</p> <p>The citizen is free to leave, refuse to answer any questions or be searched, decline to identify themselves, and ask the officer to leave their property.</p>	<p>Less than an arrest, but still restrains a citizen’s free movement.</p>	<p>The citizen is not allowed to leave.</p>
<p>Requires no justification</p>	<p>Justified by reasonable suspicion</p>	<p>Justified only by probable cause</p>
<p>Example:</p> <p>An officer sees a person walking down the sidewalk and parks nearby (not blocking the person’s movements) and asks to speak to the person. The person agrees, and they talk.</p>	<p>Example:</p> <p>An officer responds to a bar fight at a local tavern, and as the officer approaches, the officer notices someone running out who has their clothing in disarray and a cut on their face. The officer says “stop” and begins to talk to the person.</p>	<p>Example:</p> <p>An officer sees a person the officer knows is the subject of an arrest warrant. After the officer confirms the warrant, the officer contacts the person and immediately tells the person he/she is under arrest.</p>



Stops

Federal Law	Oregon Law
<p>In <i>Terry v. Ohio</i>, 392 US 1 (1968), the Supreme Court held that an officer may detain suspect based upon a reasonable suspicion that:</p> <ul style="list-style-type: none"> • A crime has occurred; • Is occurring; or • Is about to occur. <p>As to whether or not a police officer may “frisk” a “stopped” person, the Supreme Court held:</p> <p>“Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous... he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.”</p>	<p>Definitions for Stop and Frisk. ORS 131.605</p> <ul style="list-style-type: none"> • A <u>stop</u> is a temporary restraint of a person’s liberty by a peace officer lawfully present in any place. A “stop” is not an arrest. • A <u>crime</u> is any offense for which a sentence of imprisonment may be imposed. • A <u>frisk</u> is an external patting of a person’s outer clothing. • A <u>dangerous weapon</u> is any instrument, article, or substance that, under the circumstances of its use, attempted use or threatened use is readily capable of causing death or serious physical injury. • A <u>deadly weapon</u> is any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury. • <u>Reasonable suspicion</u> means to hold a belief that is reasonable under the “totality of the circumstances” existing at the time and place the officer acts.



- Peace officer has the meaning given that term in ORS 133.005. The current definition is set forth below under "Arrest."

NOTES:

The officer must be able to point to "articulable objective facts" used in establishing reasonable suspicion.

"Reasonable suspicion" is not the same as probable cause.

An anonymous tip without independent observations by the stopping officer that a crime is occurring or has occurred has been found to lack sufficient reliability to support a stop. *State v. Black*, 80 Or App 12 (1986)

- Is about to commit means unusual conduct that leads a peace officer reasonably to conclude in light of the officer's training and experience that criminal activity may be afoot.



Stopping of Person ORS 131.615

- **Basis for stop** – A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the peace officer is a peace officer, make a reasonable inquiry.
- **Detention and inquiry** – Shall be conducted in the vicinity of stop for no longer than a reasonable time. “Reasonable inquiries” are limited to immediate circumstances arousing officer’s suspicion and other circumstances during detention that give rise to a reasonable suspicion of criminal activity.
- **Safety-related inquiries**– ORS 131.615 and ORS 810.410 also authorize officers, during criminal investigation stops and traffic stops, to make an inquiry to ensure “the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.”

However, this statutory authority to inquire about the presence of weapons during “noncriminal traffic investigations” has been considerably modified by case law. In State v. Rodgers/Kirkeby, 347 Or 610 (2010), the Oregon Supreme Court held that even though the statutes may authorize certain inquiries, inquiries that are “unrelated” to the reasons for the traffic stop and that increase the “duration” of the original stop constitute constitutional seizures that have to be justified by their own reasonable suspicion.

Without any particularized suspicion, questions that extend the length of a traffic stop (“undue prolongation” – see more examples below) may be unlawful if they aren’t related to the reasons for the stop.

These inquiries may be justified, under an appropriate set of facts, by the “officer safety exception.” (*Discussed below under “searches without a warrant”*)

- **Force used to effectuate stop** – The peace officer making a “stop” may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons present.



Frisk of Stopped Persons ORS 131.625

<p>The basis for frisk –</p> <p>A peace officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects that the person is armed and dangerous to the officer or other persons present.</p>	<p>Seizure of weapon –</p> <p>If in the course of the frisk, the peace officer feels an object which the peace officer reasonably suspects is a dangerous or deadly weapon, the peace officer may take such action as is reasonably necessary to take possession of the weapon.</p>
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“Such reasonable suspicion exists where: (1) the container has the physical capacity to conceal a weapon, and (2) under the totality of the circumstances, there was a reasonable suspicion that it did contain a weapon.” State v. Wiggins, 184 Or App 333 (2002). The “officer must hold a subjective belief that the object the officer feels is a weapon and must also state-specific and articulable facts to show that belief is objectively reasonable.”

Case Law Example: “Frisk” or “patdown” of stopped person vs. a more significant intrusion

State v. Rudder, 219 Or App 430 (2008)

The Oregon Court of Appeals found an officer was justified in restraining and handcuffing the defendant to conduct an officer- safety pat-down. The defendant had been stopped in a residential neighborhood in the early morning hours near the area of a residential burglar alarm; He was sweating profusely, had shaky hands, and had bulges in his pockets. However, the court found officer- safety concerns did not justify reaching into the defendant’s pocket after the pat-down did not indicate any weapons and where restraining and cuffing the defendant alleviated any potential danger.

In affirming the Court of Appeals ruling, the Oregon Supreme Court noted: “A patdown, because of its limited intrusiveness, is constitutionally permissible if it is based on reasonable suspicion of a threat to officer safety. But intrusion into a suspect’s clothing requires something more – either probable cause or some greater justification than was present here.” State v. Rudder 347 Or 14 (2009)



Case Law Examples: When is an encounter a "seizure?"

- a) "Only when the content of police questions, the manner of asking them, or other police action would convey to a reasonable person that the police are exercising their authority to detain the citizen coercively does the encounter rise to the level of a seizure." State v. Backstrand, 354 Or 392 (2013).
- b) "A 'seizure' of a person occurs under Article I, section 9, of the Oregon Constitution: (a) if a law enforcement officer intentionally and significantly restricts, interferes with, or otherwise deprives an individual of that individual's liberty or freedom of movement; or (b) if a reasonable person under the totality of the circumstances would believe that (a) above has occurred." State v. Ashbaugh, 349 Or 297 (2010).
- c) "The thing that distinguishes 'seizures,' (stops and arrests) from encounters that are 'mere conversation' is the imposition, either by physical force or through some 'show of authority,' of some restraint on the individual's liberty." Ashbaugh
- d) An officer stops a person when he or she communicates that he or she is conducting an investigation that "could result in the person's citation or arrest at that time and place"...A stop occurs "when an officer tells a person that the person has committed a violation or crime." State v. Morfin-Estrada, 251 Or App 158, rev den 352 Or 565 (2012).



Case Law Examples: Unlawful “prolongation” of scope or duration of the stop; the “unavoidable lull.”

State v. Rodgers/Kirkeby, 347 Or 610 (2010)

“In summary, Article I, section 9, and this court's case law establish the following principles that **must guide the police in their contact with motorists stopped for routine noncriminal traffic violations. Police authority to perform a traffic stop arises out of the facts that created probable cause to believe that there has been unlawful, noncriminal activity. Police authority to detain a motorist dissipates when the investigation reasonably related to that traffic infraction, the identification of persons, and the issuance of a citation (if any) is completed or reasonably should be completed. Other or further conduct by the police, beyond that reasonably related to the traffic violation, must be justified on some basis other than the traffic violation. Police conduct during a noncriminal traffic stop does not further implicate Article I, section 9, so long as the detention is limited and the police conduct is reasonably related to the investigation of the noncriminal traffic violation.**”

State v. Raney, 215 Or App 399, mod on recon 217 Or App 470, rev den, 344 Or 671 (2008).

Because the officer asked for consent to search the car while he was awaiting the results of a record check, he did not unlawfully prolong the stop of the defendant.

State v. Dennis, 250 Or App 732 (2012)

In Dennis, the officer, while conducting a traffic stop, began making unrelated inquiries instead of expeditiously processing the traffic citation. The Court of Appeals ruled that an officer unlawfully extends a traffic stop if the officer ceases to process the citation and, instead, without justification, begins making inquiries unrelated to the traffic stop.



State v. Jimenez, 357 Or 417 (2015)

In this case, a defendant was stopped for jaywalking and was asked by the trooper if he had any weapons on him. The Oregon Supreme Court, upholding the ruling of the Oregon Court of Appeals, concluded: "Article 1, section 9 of the Oregon Constitution does not permit a law enforcement officer to make such an inquiry as a matter of routine and in the absence of circumstances that indicate danger to the officer or members of the public.

In contrast, when an officer has probable cause to detain an individual and conduct a traffic investigation and the officer has reasonable, circumstance-specific concerns for the officer's safety, the officer may inquire about the presence of weapons. In that instance, the officer's inquiry is reasonably related to the traffic investigation, and reasonably necessary to effectuate it, and therefore does not violate Article 1, section 9."

When the Jimenez case was before the Oregon Court of Appeals, that court had held:

"When a person is approached by a police officer – whether the person is in an automobile, on a bicycle, or foot – for committing a noncriminal traffic violation, and the police officer and the person know that is the basis for the stop, then the officer who has approached the person must proceed to process the traffic violation, and may not launch an investigation into unrelated matters *unless the inquiries are justified by reasonable suspicion of the unrelated matter, the inquiry occurred during an unavoidable lull in the citation-writing process, or some exception to the warrant requirement applies.*"

State v. Kimmons, 271 Or App 592 (2015)

"The principles related to seizures under Article I, section 9, are categorical, as a constitutional matter, and thus **do not distinguish** between traffic and criminal matters. Therefore, it is of "no consequence" that in Jimenez, above, the inquiry occurred in the context of a noncriminal traffic investigation.



Case Law Examples: Clarification regarding requests for identification, retention of identification, and “warrant checks.”

State v. Backstrand 354 Or 392 (2013).

“We reaffirm that police requests for information or cooperation do not implicate Article I, section 9, as long as the officer does no more than seek the individual's cooperation through noncoercive questioning and conduct. A request for identification, in and of itself, is not a seizure. Nor is an officer's act of checking the validity of that identification, in and of itself, a seizure. For a request and verification of identification to amount to a seizure, something more is required on an officer's part. Either through the context, the content or manner of questioning, or the other circumstances of the encounter, the officer must convey to a reasonable person that the officer is exercising his or her authority to restrain the citizen's liberty or freedom of movement significantly.”

In State v. Thompson, 264 Or App 754, (2014), the Court of Appeals characterized Backstrand, and its companion cases Highley and Anderson, as holding that neither briefly holding a person's identification, nor calling in a person's identification to check for warrants necessarily and always means the person has been stopped. However, when an officer takes a person's identification and retains it for “more than a reasonable time,” the encounter is a stop.



ARREST

Definitions - ORS 133.005

- “Arrest” - ORS 133.005 (1) means to place a person under actual or constructive restraint or to take a person into custody to charge him with an offense.
- “Peace officer” (ORS 133.005 (3)) means a member of the Oregon State Police; a sheriff, constable, marshal, or municipal police officer; a reserve officer; a police officer commissioned by a university under ORS 352.383 or 353.125; an investigator of a district attorney’s office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon; a humane special agent as defined in ORS 181A.345; a regulatory specialist exercising authority described in ORS 471.775 (2); an authorized tribal police officer as defined in ORS 181A.680; or a judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540.

NOTE:

An arrest is more than a stop.
“Offense” includes crimes and violations. ORS 161.505

Who May Make an Arrest? ORS 133.220

- A peace officer under a warrant;
- A peace officer without a warrant;
- A parole and probation officer under a warrant;
- A parole and probation officer without a warrant for violations of conditions of probation, parole or post-prison supervision;
- A private person;
- A federal officer.



Arrest by Private Person ORS 133.225

- A private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime.
- A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer.
- To make the arrest, a private person may use physical force as is justifiable.

Arrest by a Peace Officer; Procedure ORS 133.235

- A peace officer may arrest for a crime at any hour of any day or night.
- A peace officer has the authority to arrest without a warrant per ORS 133.310 (1), and the officer may arrest anywhere in the state regardless of the location of the crime.
- The officer shall inform the person to be arrested of the officer's authority, and if the arrest is under a warrant, **shall** show the warrant, unless... [Circumstances make it] ...impracticable.
- The officer may use physical force as justified to make the arrest. See ORS 161.235; ORS 161.239 and ORS 161.245

The peace officer may enter premises in which the officer has probable cause to believe the person to be arrested to be present. *But see below*

The Oregon Supreme Court, in *State v. Olson*, 287 Or 157 (1979), held that application of this subsection (ORS 133.235 (5)) to a warrantless entry would be unconstitutional where there are no exigent circumstances.

The leading federal case on this issue is *Payton v. New York*, 445 US 573 (1980). The *Payton* ruling made clear that police officers need an arrest warrant or probable cause plus exigent circumstances in order to make a lawful entry into a suspect's home.

However, also be aware of the ruling in *Steagald v. United States*, 451 US 204 (1981). The issue in *Steagald* was whether, under the Fourth Amendment, a law enforcement officer may legally search for the subject of an arrest warrant in the home of a third party without first also obtaining a search warrant.

The Court concluded that a search warrant must also be obtained, absent exigent circumstances or consent. The Court reasoned that an arrest warrant alone was not adequate to protect the Fourth Amendment interests of persons not named in the warrant, when their homes are searched.

The officer must "knock and announce" his identity, authority, and purpose before entering the premises.



Arrest by Peace Officer with a Warrant

- An arrest warrant is an order from the court directed to a peace officer who serves the warrant by arresting the person named in the warrant and bringing him before the court.
- Content and form of warrant of arrest ORS 133.140

A magistrate issues a warrant of arrest only upon probable cause that the person has committed the crime complained of and shall:

- Be in writing;
- Specify the name of the person to be arrested;
- State the nature of the crime;
- State the date when issued and the county or city where issued;
- Be in the name of the State of Oregon or city where issued, be signed by and bear the title of the office of the magistrate having authority to issue the warrant;
- Command any peace officer, or any parole and probation officer for a person who is being supervised by the Department of Corrections or a County Community Corrections agency to arrest the person for whom the warrant was issued;
- In special circumstances, waive "knock and announce" requirements;
- Specify the amount of security for release

Authority to Issue Warrant ORS 133.120

- Only a magistrate may issue an arrest warrant.
- Magistrates are defined in ORS 133.030 as:
 - Supreme Court judges
 - Court of Appeals judges
 - Circuit Court judges
 - County judges and justices of the peace
 - Municipal judges



- A judge of the Supreme Court or Court of Appeals may issue a warrant of arrest for any crime committed or triable anywhere in the state.
- Arrest warrants issued by all other magistrates are limited to crimes committed or triable only within the jurisdiction of their court.

Authority of Peace Officer to Arrest without Warrant ORS 133.310

- A peace officer **may** arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:
 - A felony;
 - A misdemeanor;
 - An unclassified offense equal to or greater than the maximum penalty allowed for a class C misdemeanor
 - Any other crime committed in the officer's presence
- A peace officer **may** arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio, or other modes of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.
- A peace officer **shall** arrest and take into custody a person without a warrant when the officer has probable cause to believe:
 - Person has violated a "restraining order," a "protective order for victims of sexual abuse," or a temporary "emergency protective order"; or
 - Person has violated a "foreign restraining order"; or
 - Person has been charged with an offense and is presently released under ORS 135.230 to 135.290, and the person has failed to comply with a no-contact condition of release agreement.
 - A peace officer or other officer with the power of arrest may arrest a probationer without a warrant for violating any condition of probation (ORS 137.545)



Probable Cause Defined ORS 131.005 (11)

“Probable cause” means there is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.

NOTE: Probable cause in Oregon has both a subjective and an objective component. An officer must subjectively believe that an arrest is lawful and that belief must be objectively reasonable in the circumstances. *State v. Owens*, 302 Or 196 (1986).

The arresting officer may make a warrantless arrest based on probable cause known to a different officer and unknown to the arresting officer at the time of the arrest. However, the state must prove the existence of probable cause by a preponderance of the evidence if the warrantless arrest is later challenged. *State v. Crawford*, 91 Or App 587 (1988)

Probable Cause Determination after Arrest

In County of Riverside v. McLaughlin, 500 US 44 (1991), the U.S. Supreme Court held that absent extraordinary circumstance, the Fourth Amendment requires that a person in custody on a warrantless arrest is entitled to a judicial determination of probable cause within 48 hours.

This rule requires that the officer file a sworn probable cause statement/affidavit with the court when lodging a suspect in custody.

Please refer to the sample Probable Cause Statement form at the end of this handout.



Criminal Citation ORS 133.055 – 133.070

- A police officer may issue a citation for:
 - Misdemeanors
 - Felonies subject to misdemeanor treatment
 - Violations
 - A criminal citation is not the same as a uniform traffic citation

- Domestic disturbances are exceptions ORS 133.055 (2)
 - Police shall arrest and take into custody the alleged or potential assailant if there is probable cause to believe:
 - An assault (includes strangulation) has occurred between “family or household members,” or
 - One such person *has placed the other in fear* of imminent serious physical injury. This is more than Menacing, which only requires an attempt to put the other in fear. Mandatory arrest for Menacing is triggered by a victim actually placed in fear. Remember your definition of “imminent.”



- The citation issued shall contain:
 - The name of the court in which the cited person is to appear;
 - The name of the person cited;
 - A complaint containing at least: Name of court, name of the public body bringing action and name of the defendant;
 - Readily understandable statement of the crime and date, time and place of the alleged crime; and
 - Peace officer's certification of sufficient grounds to believe person named in complaint committed the offense;
 - Time, date and place at which the person cited is to appear in court;
 - If a private person made the arrest, the arresting person's name;
 - Whether a complaint or information has been filed at the time the citation was issued; and
 - Statutory warning about a failure to appear warrant.

Statutory FTA Warning:

"This citation is not a complaint or information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in the citation. If you fail to appear and a complaint or information has been filed, the court will immediately issue a warrant for your arrest."



Part 2- Consular Notification and Miranda

CONSULAR NOTIFICATION AND ACCESS - ORS 181A.470

Oregon law requires all police officers to be trained to “Understand the requirements of the Vienna Convention on Consular Relations and identify situations in which the officers are required to inform a person of the person’s rights under the convention.”

Summary of requirements pertaining to foreign nationals:

- When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
- In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national’s wishes.
- Consular officials are entitled to access to their nationals in detention and are entitled to provide consular assistance.
- When a government official becomes aware of the death of a foreign national consular, officials must be notified.
- When a guardianship or trusteeship is being considered concerning a foreign national who is a minor or incompetent, consular officials must be notified.
- When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national’s nearest consular officials so that they can provide whatever consular services they deem appropriate.



Steps to follow when a foreign national is arrested or detained:

- Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents, the foreign national travels.

- If the foreign national's country is not on the mandatory notification list:
 - Inform the foreign national, without delay, that he or she may have his or her consular offices notified of the arrest or detention and may communicate with them. (Suggested statement provided below)

"As a non-U.S. citizen who is being arrested or detained, you may request that we notify your country's consular officers here in the United States of your situation. A consular official may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your consular officers at this time?"

- If the foreign national asks that consular notification be given, notify the nearest embassy or consulate of the foreign national's country without delay. (Suggested notification fax sheet found at the end of Student Resource)

- Forward any communication from the foreign national to his or her consular officers without delay.



- If the foreign national's country is on the list of **mandatory notification countries**:
 - Notify that country's nearest embassy or consulate, without delay, of arrest/**detention**. (You may use the suggested fax sheet for making the notification.)
 - Tell the foreign national that you are making this notification and inform him or her (without delay) that he or she may communicate with his or her consular officers. (Suggested statement provided below)

"Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. Also, you may communicate with your consular officers. You are not required to accept their assistance. Still, your consular officers may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things. Please sign to show that you have received this information."
 - Forward any communication from the foreign national to his or her consular officers without delay.
 - Keep a written record of the provision of notification, and actions are taken.



Mandatory Notification Countries and Jurisdictions

Albania	Georgia	Russia
Algeria	Ghana	Saint Kitts and Nevis
Antigua and Barbuda	Grenada	Saint Lucia
Armenia	Guyana	Saint Vincent and the Grenadines
Azerbaijan	Hungary	Seychelles
The Bahamas	Jamaica	Sierra Leone
Barbados	Kazakhstan	Singapore
Belarus	Kiribati	Slovakia
Belize	Kuwait	Tajikistan
Brunei	Kyrgyzstan	Tanzania
Bulgaria	Malaysia	Tonga
China (including Macedonia and Hong Kong) (see 1 below)	Malta	Trinidad and Tobago
Costa Rica	Mauritius	Turkmenistan
Cyprus	Moldova	Tuvalu
Czech Republic	Mongolia	Ukraine
Dominica	Nigeria	United Kingdom (see 3 below)
Fiji	Philippines	Uzbekistan
Gambia	Poland (see 2 below)	Zambia
	Romania	Zimbabwe

1 Notification is not mandatory in the case of persons who carry the "Republic of China" passports issued by Taiwan.

Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office (TECRO), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

2 Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., "green card" holders). Otherwise, upon the nation's request.

3 The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands, along with other island territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate.



Foreign Embassies and Consulates in the United States

Information regarding foreign embassies and consulates in the United States is available from the Department of State. Consular notification should be made to the officer nearest the place of arrest or detention. Washington, D.C., information is generally for embassies to the United States; numbers for other locations are for consular offices outside of Washington or, in the case of some countries without embassies or consular offices in the United States, for the country's mission to the United Nations in New York.

A list of numbers may be obtained from the Office of Public Affairs and Policy Coordination Bureau of Consular Affairs, telephone 202-647-4415 (after hours 202-647-1512); facsimile 202-736-7559 or by visiting the consular notification website at

<https://travel.state.gov/content/travel/en/consularnotification.html>.

CUSTODY AND INTERROGATION

Miranda v. Arizona, 384 US 486 (1966)

In Miranda, the Supreme Court held that if a person is subjected to custodial police interrogation, any statements obtained from there, whether incriminating or exculpatory, is not admissible unless the prosecution demonstrated that sufficient procedural safeguards were afforded the accused.

Elements of Miranda Warning

The Supreme Court required that before questioning, the accused must be advised:

- That he or she has the right to remain silent;
- That any statement made may be used against the accused;
- That the accused has the right to an attorney before and during questioning, and
- That an attorney may be appointed to represent the accused if the accused is unable to afford one.



A person should be advised of the Miranda rights if:

P

- The police are **present**; and

C

- The police take the suspect into **custody**; and

I

- The police are going to **interrogate**

Custody (Federal – 5th Amendment analysis)

- In Miranda, the Court specified that the Miranda rule applied to questioning initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.
- The test is not what the suspect himself believed (i.e., subjective test)
- Apply objective test: how a reasonable person in the suspect's position would have understood the situation. Berkemer v. McCarty, 468 US 420 (1984)
- Miranda does not apply when the defendant's freedom to depart is not restricted in any way. Oregon v. Mathiason, 429 US 492 (1977)



- **Place of Interrogation:**
 - Police station = custodial; exception; Mathiason volunteer.
 - Jails = custodial
 - Homes = generally non-custodial; some exceptions
 - Places of business = usually non-custodial; exceptions
 - Automobiles = generally not custodial; State v. Smith, 298 Or 704 (1985)

- **Juvenile suspects** – The U.S. Supreme Court has held, “so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child’s age will be a determinative or even a significant factor in every case. It is, however, a reality that courts cannot simply ignore.” J.D.B. v. North Carolina, 564 US 261 (2011).

Custody (Oregon Analysis)

- If the police place a person in either full custody or “compelling circumstances,” they must give that person Miranda warnings before questioning him or her. See State v. Burdick, 186 Or App 460 (2003).
 - When determining whether a situation was compelling, “the relevant inquiry is how a reasonable person in the person’s position would have understood the situation,” based on the totality of the circumstances.

- In deciding whether a reasonable person would conclude the circumstances were compelling, the Oregon Supreme Court has considered the following non-exclusive host of factors:
 - The location of the encounter;
 - The length of the encounter;
 - The amount of pressure exerted on the defendant; and
 - The defendant’s ability to terminate the encounter. State v. Roble – Baker, 340 Or 631 (2006)



The “overarching inquiry is whether the officers created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract.”

- The Oregon Court of Appeals has also considered several factors in determining whether the circumstances of an encounter were “compelling,” including:
 - The number of officers present;
 - Whether the suspect was physically restrained with handcuffs or confined in a patrol car;
 - Whether officers used force or displayed weapons;
 - The duration of the detention;
 - The demeanor of the officers in engaging and questioning a suspect;
 - The language used by the officers;
 - Whether sirens or flashing lights were present; and
 - Whether the suspect had been expressly confronted with incriminating evidence at the time of the questioning. State v. Shirley, 221 Or App 12 (2008)

None of these factors are to be applied “mechanically.” Instead, “the Miranda warnings are necessary to ensure that a person’s statement is truly the product of free choice and not involuntary or the product of his will being overborne.” State v. Shirley, 221 Or App 12 (2008)



"Compelling circumstances" case examples:

State v. Shaff, 343 Or 639 (2007)

Officers responded to a 911 call about an injured woman at the defendant's trailer. After the defendant let them inside, they spoke with him without reading him his Miranda rights. While the victim spoke with one officer outside, the primary officer overheard her state that she had merely fallen. Regardless, he asked the defendant why the victim would say that she had been assaulted. The Oregon Supreme Court held:

- 1) The fact defendant was not free to leave did NOT create "compelling circumstances." He was detained for only a brief time, no more than a typical traffic stop. Also, he was questioned in his own home, not at the police department, and the officer did not raise his voice, threaten defendant, or engage in a show of force to coerce the defendant to answer;
- 2) The officer's show of authority was, at most, a stop. The fact that defendant was not free to leave did not, in and of itself, make the setting compelling;
- 3) The trial court had implicitly found that the officer acted appropriately and courteously in inquiring about the victim's welfare;
- 4) The mere fact the one statement by the officer had a "false premise" did not create coercion; instead, the question is "what effect the information that the statement conveyed would have had on a reasonable person in the suspect's position;" and
- 5) Confronting a suspect with evidence of guilt, without any "heightened level of activity" on the officer's part, does not render the circumstances "compelling."



State v. Saunders, 221 Or App (2008)

The defendant was convicted of various sexual crimes involving minor children, based in part on statements he made to police during questioning at his home without Miranda warnings. The interviewing detectives confronted him with the incriminating evidence. At that point, when he asked to get up to get cigarettes, one of the detectives told him to sit down and retrieved the items for him. The Court of Appeals held that confronting the defendant with incriminating evidence in a “police dominated atmosphere” did not create compelling circumstances in this case. Under *Shaff*, the confrontation of a defendant with incriminating evidence does not create compelling circumstances unless it is done in a “coercive” manner. Here there was no evidence the detectives confronted the defendant in a coercive way. Likewise, their request that the defendant “please sit down” did not, by itself, make the situation compelling.

State v. Shirley, 220 Or App 606 (2008)

A plainclothes officer contacted the defendant after seeing him make an apparent drug buy. The officer identified himself, then saw the defendant swallow “very hard,” which caused the officer to believe the defendant was attempting to dispose of the drugs he just purchased. He told the defendant to spit it out, and the defendant denied he had anything. The officer told him he just watched him buy drugs, and the defendant opened his mouth to reveal a piece of candy. Then the officer noticed a packaged piece of rock cocaine on the ground almost directly under the defendant. The officer handed it to another officer and told the defendant it didn’t “matter” because they found his drugs. He also told the defendant he didn’t need to lie and that it was “disrespectful” for him to lie about the drugs. At that point, the defendant admitted he bought it for \$10. The Oregon Court of Appeals held the defendant’s statement was made under compelling circumstances, and the failure to give Miranda warnings required suppression. Before the officer saw the cocaine on the ground, he had lawfully stopped defendant based on reasonable suspicion. That temporary restraint on the defendant’s liberty did not create compelling circumstances. However, once the officer saw the cocaine on the ground, a reasonable person in defendant’s situation would have believed that he was going to be placed in custody. The officer’s subsequent comments about lying being “disrespectful” constituted interrogation regarding whether the defendant had possessed the cocaine, and those comments prompted the defendant’s admission without the benefit of a Miranda warning.



State v. Roble – Baker, 340 Or 631 (2006)

Officers detained the suspect and questioned her for five to six hours at the police station and confronted her with questions that assumed her guilt. The Oregon Supreme Court found compelling circumstances requiring Miranda warnings for statements to be admissible.

State v. Burdick, 186 Or App 460 (2003)

At least seven officers forcibly entered a home (not Burdick's) pursuant to a search warrant for drugs. Officer ordered Burdick and other occupants to the floor at gunpoint, handcuffed them for 15 to 30 minutes, and after removing the handcuffs, confined them on the porch while the officers continued searching the house and interviewing the occupants. After being released from handcuffs, Burdick asked if he could leave to go to work. A detective asked Burdick if he had any drugs on him. Burdick produced a pipe, some meth, etc. He then was allowed to leave. The Court of Appeals ruled the detective should have given Burdick Miranda warnings before questioning him. "Considering all the circumstances, the situation was, at a minimum, compelling... The officers' actions created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract."

Interrogation

- Interrogation, under Miranda, means "either express questioning or its functional equivalent."
- Interrogation "refers not only to express questioning but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect."
- "Interrogation" does not include routine booking questions put forth by corrections officers.

Volunteered Statements

- A statement made at any time that is not in response to a question by any law enforcement officer.
- Volunteered statements of any kind are not barred by the Fifth Amendment and are not affected by the Miranda decision.
- Police are not required to stop and advise a person who enters a police station and states a wish to confess to a crime.
- Test for voluntariness is "totality of circumstances."



Admission vs. Confession ORS 136.425

Admission A statement by the accused of facts pertinent to an issue and tending, in connection with proof of other facts, to prove the accused's guilt.	Confession A statement by the accused disclosing his guilt of the crime with which he is charged, and excluding the possibility of reasonable inference to the contrary.	Corroboration A confession by itself is not sufficient to warrant the conviction of the defendant without some other proof that the crime has been committed.
Example: While talking to a theft suspect, the suspect admits to being at the location of the theft during the time of the theft.	Example: When talking to a theft suspect, the suspect admits to taking the missing items and knowing it was wrong.	Example: The theft suspect not only confesses to taking the missing money but tells you where he/she is hiding those items which you eventually recover.

State v. Manzella, 306 Or 303 (1988)

- Case law typically established a distinction between “confessions” as acknowledgments of guilt and “admissions” as acknowledgments of fact.
- A “confession” must have been made after the commission of the crime in question, for the purpose of acknowledging the speaker is guilty of some criminal offense.
- If in the course of the “confession,” the accused admits one or more elements of the crime charged, the State must produce “some other evidence” (corroboration) of that element.



Waiver of Rights

Under Miranda, a defendant's waiver of constitutional rights must be:

Voluntary

Knowing

Intelligent

"Voluntariness, of course, is always a requirement for admission of a defendant's incriminating statements. Even warned statements might be inadmissible if they are not otherwise voluntary." State v. Vondehn, 348 Or 462 (2010).

"We acknowledge, of course, that a defendant is entitled to demonstrate (whether by the defendant's testimony or otherwise) that the defendant's waiver was not knowing. So, for example, a defendant may demonstrate that he or she did not understand the warnings due to cognitive or linguistic limitations." Vondehn.

When a translation of the Miranda rights has been given, our inquiry is whether the concepts have been expressed rather than whether the words have been accurately translated. State v. Corona, 60 Or App (1982).

Courts will presume the defendant did not waive his rights; a waiver cannot be inferred from silence. Determination of whether waiver occurred depends upon "the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." North Carolina v. Butler, 441 US 369 (1979).

The explicit assertion of Miranda rights is not necessary; these rights exist whether or not the accused claimed them. The critical inquiry is whether a waiver occurred and whether it was free, voluntary, and involved no police persuasion. State v. McGrew, 38 Or App 493 (1979).



Signed or written waiver is not required, though when a defendant is asked if he or she understands Miranda rights, signs a Miranda card, and says, "Yes," waiver of rights occurs. State v. Anderson, 30 Or App 257 (1977).

Unnecessary to articulate waiver following warnings; rather, clear and unambiguous conduct by person advised of rights that includes a willingness to answer questions sufficient to establish waiver. State v Davison, 252 Or 617(1969). Answering police questions following Miranda warnings is evidence of a waiver of rights under Article I, section 12. State v. Collins, 253 Or 74 (1969).

An officer's testimony that he advised a suspect of each right under Miranda is generally sufficient proof that the suspect was so advised.

Assertion of Rights

In Miranda, the Supreme Court held that if a defendant "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning."

"An accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease." Fare v. Michael C., 442 US 707 (1979). Under the Oregon Constitution, Article I, section 12, when a suspect makes an equivocal request for counsel, the police may ask only "further questions seeking clarification of the suspect's intent." State v. Charboneau, 323 Or 38 (1996).

"An accused...having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him unless accused himself initiates further communication..." Edwards v. Arizona, 451 US 477 (1981)

- Edwards applies to the second officer, who is unaware of earlier invocation.
- It also applies to questioning about separate charges, whether related or unrelated. Arizona v. Roberson, 486 US 675 (1988)
- "Initiated" means any statement by the suspect that evinces "...a willingness and a desire for a generalized discussion about the investigation; [and] not merely a necessary inquiry arising out of the incidents of the custodial relationship." Oregon v. Bradshaw, 462 US 1039 (1983)



Massiah and Brewer: Suspects represented by counsel

- In Massiah v. United States, 377 US 201 (1964), the Supreme Court held statements made by the defendant after indictment were not admissible when made in the absence of counsel.
- In Brewer v. Williams, 430 U.S. 387 (1977), the Supreme Court held that Sixth Amendment right to counsel precludes eliciting incriminating statements from a custodial defendant in the absence of counsel when formal criminal proceedings have commenced, counsel represents the defendant. The police promised not to discuss the case without counsel.



Part 3- Search and Seizure

SEARCH AND SEIZURE: WITH A WARRANT

Fundamental Principles

<p>United States Constitution – Fourth Amendment</p>	<p>Oregon Constitution – Article 1, Section 9</p>
<p>“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”</p>	<p>“No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched and the person or thing to be seized.”</p>

In State v. Owens, 302 Or. 196 (1986), the Oregon Supreme Court defined “search” and “seizure” in terms of the interests protected by the Oregon Constitution:

“Article 1, Section 9, protects privacy and possessors’ interests. A ‘search’ occurs when a person’s privacy interests are invaded.”



What about “abandoned property?”

The Oregon Supreme Court, in State v. Cook, 332 Or 601 (2001), identified three legal principles applicable to the analysis:

1. First, the determination of whether a defendant has relinquished a constitutionally protected interest in an article of property involves both factual and legal questions, which [the] court reviews in the same manner that it reviews other search and seizure questions....
2. Second, because Article 1, section 9, protects both the possessory and privacy interests in effects, property law concepts of ownership and possession are relevant, though not always conclusive, in the factual and legal determination whether a defendant relinquished all constitutionally protected interests in an article of property.
3. Finally, for constitutional purposes, the question to be resolved [is] whether the defendant's statements and conduct demonstrated that the relinquished all constitutionally protected interests in the articles of property....”

Later, in State v. Brown, 348 OR 293 (2010), the Court rejected those Court of Appeals' opinions since Cook, which appeared to add a requirement that the defendant indicated an intent to “permanently” relinquish the property. No proof of “permanent relinquishment” is required.

In balancing the inherent tension between the constitutional provisions of “reasonable searches” and “probable cause warrants,” the courts acknowledge that the requirement of a warrant is preferred and that the government must establish that a warrantless search was necessary and reasonable under the circumstances.

General rule: “searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.” Chimel v. California, 395 US 752 (1969)



What about “curtilage?”

Article I, Section 9, provides protection not only to an individual’s house proper but also to the area surrounding the house, known as the curtilage. Under the Oregon Constitution, a warrantless intrusion onto residential curtilage is presumptively a trespass, unless the entry is privileged or the defendant has given express or implied consent. A trespassory intrusion onto the curtilage of a person’s home violates Article I, section 9.

The “curtilage” of a home is the land immediately surrounding and associated with a person’s residence.

Search Warrants – General Requirements ORS 133.545

- A search warrant may be issued only by a judge (magistrate)
- Jurisdiction of warrant depends upon jurisdiction of the judge.
- Application for a search warrant may be made only by a district attorney, a police officer, or by a “special agent” as described in ORS 131.805.
- The application shall conform to ORS 133.565 and be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that the objects of the search are in the places, or in possession of the individuals to be searched. If an affidavit is based in whole or in part on hearsay, the affidavit shall set forth facts bearing on any unnamed informant’s reliability. It shall disclose, as far as possible, how the information was obtained.
- The application may be in writing, or the judge may take an oral statement under oath. The oral statement shall be recorded, and a copy of the recording submitted to the judge who took the oral statement. The judge shall certify that the recording of the sworn oral statement is a true recording of the oral statement under oath and shall retain the recording as part of the record. The recording shall constitute an affidavit. The applicant shall retain a copy of the recording and shall provide a copy of the recording to the district attorney if the district attorney is not the applicant.



- The written affidavit and warrant may be submitted by FAX or similar electronic transmission. The affidavit may have a notarized acknowledgment or affiant may swear to affidavit over the telephone. Affiant must note on affidavit if oath administered telephonically. The judge's declaration must be filed with the return.

- A judge may authorize the execution of a search warrant outside of the judicial district in which the court is located if the judge finds that:
 - The search relates to one of the following offenses involving a victim who was 65 years of age or older at the time of the offense:
 - Criminal mistreatment in the first degree as described in ORS 163.205 (1)(b)(D) or (E);
 - Identity theft;
 - Aggravated identity theft;
 - Computer crime;
 - Fraudulent use of a credit card;
 - Forgery in any degree;
 - Criminal possession of a forged instrument in any degree;
 - Theft in any degree; or
 - Aggravated theft in the first degree;

 - The objects of the search consist of financial records; and

 - The person making an application for the search warrant is not able to ascertain at the time of the application the proper place of trial for the offense described in paragraph (a) of this subsection.



Contents of Search Warrant ORS 133.565

- Dated and addressed to an officer authorized to execute it;
- The warrant shall state, or describe with particularity:
 - The identity of the issuing judge and date;
 - The name of the person to be searched, or the location and designation or the premises or places to be searched;
 - The things constituting the object of the search and authorized to be seized; and
 - The period of time, not to exceed five days, after execution...within which the warrant must be returned.
- Unless authorized otherwise, the warrant shall be executed between the hours of 7:00 a.m. and 10:00 p.m. and within five days from the date of issuance.

Execution of Search Warrant ORS 133.575

- A search warrant may be executed only within the period and at the time authorized by the warrant and only by a police officer.
- Before entering the premises, the executing officer shall give appropriate notice of the identity, authority, and purpose of the officer to the person to be searched.

NOTE: Under Oregon law, a search warrant cannot provide advance authority for police to enter without knocking and announcing. Determination of the need to forgo knocking and announcing can be made only at the time of entry. State v. Arce, 83 Or App 185 (1986)
- Before undertaking any search or seizure according to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched.



Objects of Search and Seizure ORS 133.535

- Evidence of or information concerning the commission of a criminal offense;
- Contraband, the fruits of a crime, or things otherwise criminally possessed;
- Property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; and
- A person for whose arrest there is probable cause or who is unlawfully held in concealment.

List of Things Seized ORS 133.595

- Promptly upon completion of the search, the officer shall:
 - Make a list of the things seized,
 - Deliver a receipt embodying the list to the person from whose possession they were taken or the person in apparent control of the premises or vehicle from which they were taken.
 - If vehicle or premises are unoccupied or there is no one present in apparent control, leave the receipt suitably affixed to the vehicle or premises.

Search Warrants: Case law regarding digital evidence

The Court of Appeals has ruled that a search warrant, which authorized a search of the entire hard drive of a digital device, was unconstitutionally overbroad since the officer's affidavit did not create a nexus to the specific type of things to be searched within the device, in this case, a phone.

The decision in State v. Mansor, 363 Or 185 (2018) affects any search warrant that is seeking to search, seize and analyze digital evidence items such as cell phones, laptops, thumb drives, etc.

For example, an officer may have probable cause to look at a drug dealer's text messages. The warrant shouldn't be written so broadly as to authorize the officer to search through the suspect's photos, calendar items, browser history, and/or to search for items that significantly predate the believed illegal conduct. Instead, the officer's affidavit would need to articulate a nexus to each type of data the officer seeks.



The court said, “the warrant must identify, as specifically as reasonably possible in the circumstances, the information to be searched for, including, if relevant and available, the period during which that information was created, accessed, or otherwise used.” Mansor, 363 Or at 218. This means the warrant itself should list the subject of the search, or the officer should specifically include a reference incorporating the affidavit into the warrant to help guide the examiners' understanding of the limits of the search.

The court also recognized that a “forensic examination likely would need to examine, at least briefly, some information or data beyond that identified in the warrant.” Mansor. If the officer discovers evidence outside the scope of the warrant, the officer should immediately stop and seek a further warrant to expand the scope of the search. In that second affidavit, the officer must identify the facts that support a search warrant exception (e.g., plain view) for the discovery of the evidence outside the scope of the original warrant.

SEARCH AND SEIZURE: WITHOUT A WARRANT

Search Incident to Arrest

The Oregon Supreme Court has held that unlike federal search and seizure law, a valid custodial arrest does not alone give rise to a unique right to search. Such a warrantless search must be justified by the circumstances surrounding the arrest. See State v. Caraher, 293 Or 741 (1982)

Under Article 1, Section 9, of the Oregon Constitution, there are three valid justifications for a search incident to a lawful arrest:

To protect the officer's safety and/or prevent escape;	To prevent the destruction of evidence; and	To discover evidence relevant to the crime for which the defendant is being arrested.
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A pat-down or limited search for weapons to protect the officer or to prevent escape would be justified whenever a person is taken into custody. State v. Owens, 302 Or 196 (1986). Beyond that limited search, however, a further search incident to arrest conducted to protect officer safety or to prevent escape must be reasonable, taking into account all the facts surrounding the arrest.

The justifications for always allowing some limited warrantless search incident to arrest are clear. The proximity of an officer to an arrestee during arrest and handcuffing makes it imperative that the arrestee not have immediate access to a weapon or tool of escape that might be easily concealed and reachable even if the arrestee were handcuffed...but...when the immediate danger of handcuffing and arresting a suspect has passed. The officer has determined that the arrestee has no means of escape concealed on his person...any further search incident to arrest must be justified by specific and articulable facts. State ex rel Juv. Dept. v. Singh, 151 Or App 223 (1997).

Once police have seized a closed container from an arrestee, the threat to officer safety from any item within that container has dissipated, and the police can protect themselves by taking steps short of searching while waiting to obtain a search warrant. Singh.

A police officer who, while investigating a crime, develops probable cause to believe another crime has been committed may conduct a search for evidence that is relevant to the latter crime and that reasonably could be concealed on the arrestee's person or in the belongings in his or her immediate possession at the time of the arrest. State v. Crampton, 176 Or App 62 (2001).

As long as the search is for evidence of the crime for which the arrest was made, and such evidence reasonably could be concealed on the arrestee's person or in the belongings in his or her immediate possession at the time of the arrest, no "container rule" blocks the intensity of the incidental search. Owens.

A search to discover evidence of the crime of arrest may be justified even if the defendant has been removed from the area in which an officer believes that evidence may be located. In those circumstances, the search will comport with Article I, section 9, even though the defendant no longer has control over the area searched, as long as the evidence reasonably could be found in that area and



the search is otherwise reasonable in time, scope, and intensity. State v. Washington, 265 Or App 532 (2014).

A search may be considered "incident to arrest" even though it preceded the arrest. See State v. Anfield, 313 Or 554 (1992).

Summary of relevant cases concerning police authority to search, "incident to arrest," for officer protection and/or means of escape:

State v. Hoskinson, 320 Or 83 (1994)

Facts: After arresting the defendant for driving while suspended, the officer handcuffed the defendant and then conducted a "pat-down search" of the defendant's person. During the pat-down, the officer took a wallet from the defendant's back pocket. Officer opened it and looked inside. On direct, the officer was asked if he had any indication from looking at the wallet before opening it that it may contain a weapon or a means of escape. He said he "could not tell that by not opening it up." On cross, he said, "its normal practice for myself to obtain the wallet and see if there are any weapons or any indications of things that would be used to escape that would alert myself to search the subject more thoroughly and extensively for additional means of escape." The trial court said it was a valid search conducted to protect officer safety and to prevent escape.

Ultimately, the Oregon Supreme Court, after analyzing the history of Caraher and Owens, said, "...a further search incident to arrest conducted to protect officer safety or to prevent escape must be reasonable, taking into account all the facts surrounding the arrest. Thus, an officer may conduct a further protective search (after pat-down) if he or she develops a reasonable suspicion, based on specific and articulable facts, that the person in custody poses a serious threat of harm or escape and that a search would lessen or eliminate that threat."

The court in the ruling said that the officer's warrantless search of defendant's wallet was not justified under the "officer-safety prong" of the search incident to arrest exception, noted the following: Officer testified he searched defendant's wallet because it was his "normal practice" to do so. Officer testified he had no specific reason to believe the defendant's wallet contained a weapon or means of escape. He



testified his training and experience led him to believe that the wallet could have contained one of those items, but he could not tell until he opened it.

Therefore, the court found, there was nothing to suggest the officer had a *reasonable* suspicion defendant posed an immediate threat of escape or harm.

State v. Lumpkin, 133 Or App 265 (1995)

The court in Lumpkin referred to the ruling in Hoskinson as “the constitutional standard for determining when, after conducting a limited, pat-down search for weapons, an officer may conduct a more extensive search incident to arrest to protect officer safety or to prevent escape.”

In ruling that the officer was justified in removing a pouch from the defendant that he felt during the pat-down, the court said: “The officer here gave very clear reasons as to why he was concerned that the object that he felt might have contained a weapon: Despite his repeated instructions to the defendant to keep his arms spread out on the trunk of the police car, defendant twice pulled his arms and hands in toward the midsection of his body and out of officer’s view, exactly where the officer felt the unidentified object.” The court concluded the officer’s belief was reasonable.

State v. Sopiwnik, 176 Or App 127 (2001)

Officer testified he becomes concerned for his safety when somebody “bails out of a car,” as this indicates the person intends to fight or flee. He believes a person is a flight risk or may become confrontational when the person is fidgety and does not make eye contact. In his experience, people involved with theft crimes (like the defendant) are often involved with drugs and often have weapons. He was particularly concerned defendant might have small weapons such as razor blades, needles, or knives or that he might have a handcuff key or some other small tool that could be used to pick the handcuff lock.

Officer then described his “search incident to arrest.” “What I do is I go through the pockets. I check – I pat the outside, and then I go actually into the pockets because I don’t want to miss anything. I don’t want to bring a weapon into the jail. I don’t want to have him have access to a weapon while he is in the back seat of my patrol car, which is going to hurt me.” He follows this procedure “every time,” he makes an arrest.



In this case, the officer found nothing during exterior pat-down, but when going through pockets of the defendant's thick jacket, found meth.

The court reminded that under Caraher, "A valid custodial arrest does not by itself authorize a search." Under Owens, "Reasonable steps taken to prevent a detainee from escaping or from harming others in the area may fall within the officer-safety justification...An initial pat-down of the exterior of the clothing of a person in custody is always justified to protect the officer's safety." Then the court cited the ruling in Hoskinson, quoted above.

Looking at Hoskinson and the facts of this case, the court said, "The fact that officer reaches into the pockets of everyone he arrests did not necessarily make his decision to search the interior of this defendant's pockets unreasonable. The decisive questions are whether, irrespective of his normal practice, the officer believed that defendant posed a threat to officer safety and whether such a belief was reasonable. The court ruled that the circumstances of this case, "coupled with the officer's training and experience, gave rise to a reasonable belief that the defendant posed a risk to officer safety."

State v. Weems, 190 Or App 341 (2003)

Officer testified that she, after patting down the defendant, searched him "for officer safety." She did not testify why she believed the removal of items from the defendant's pockets was warranted. "The testimony from the officer is she conducted a search, during which she discovered the bundle and removed it." She explained she "checked all the pockets...I did just a pat-down. Well, I guess it would be a search because when you, on a felony warrant, the practice is, they'd be arrested. We do the processing at Hermiston, and then they are taken to the county jail."

The court cited Owens as authority for the officer's pat-down of the defendant. However, the court found that the officer's further search was "not justified because, after the pat-down, there was no evidence that the defendant posed an immediate threat of injury to the officers present."



Federal law

- Federal search incident to arrest is not as restrictive
- Under the Fourth Amendment, officers have an automatic ability to search incident to arrest for weapons and evidence. The officer may search the arrestee and everything worn by the arrestee. U.S. v. Robinson, 414 US 218 (1973)
- The scope of the search is limited to the arrestee's person and the area within his immediate control, i.e., "the area from within which he might gain possession of a weapon or destructible evidence." Chimel v. California, 395 US 752 (1969).
- Under the Fourth Amendment, as interpreted by Arizona v. Gant, 556 US 332 (2009), an officer may search a vehicle incident to a lawful arrest of a recent occupant "only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."

Oregon's "Officer Safety Doctrine"

The Oregon Supreme Court has held that certain actions taken by police officers to protect the safety of officers (or others present) do not violate Article I, Section 9. The most comprehensive discussion of the officer safety doctrine (which effectively functions as a warrant exception) is found in State v. Bates, 304 Or 510 (1987). In Bates, the Court held:

"Article I, Section 9 of the Oregon Constitution does not forbid an officer to take reasonable steps to protect himself or others, if, during the course of a lawful encounter with a citizen, the officer develops a reasonable suspicion, based upon specific and articulable facts, that the citizen might pose an immediate threat of serious physical injury to the officer or others then present."



The Court further noted:

"...it is not our function to uncharitably second guess an officer's judgment. A police officer in the field frequently must make life-or-death decisions in a matter of seconds. There may be little or no time in which to weigh the magnitude of a potential safety risk against the intrusiveness of protective measures. An officer must be allowed considerable latitude to take safety precautions in such situations. Our inquiry, therefore, is limited to whether the precautions taken were reasonable under the circumstances as they reasonably appeared at the time the decision was made." (Emphasis added).

"The requirement of specific, articulable facts relates only to whether an officer reasonably suspected an immediate threat...Beyond that, the doctrine asks only whether safety precautions chosen by the officer were reasonable under the perceived circumstances. The state is not required to justify the choice of one reasonable precaution over another." State v. Foster, 347 Or 1 (2009).

Moveable Vehicles: "Automobile Exception"

Under Article 1, Section 9, "automobiles that have just been lawfully stopped by police may be searched without a warrant and without a demonstration of exigent circumstances when police have probable cause to believe that the automobile contains contraband or criminal evidence." State v. Kock, 302 Or 29 (1986). The automobile must have been mobile at the time of the stop. State v. Brown, 301 Or 268 (1986)

The search may be of the interior of the vehicle, closed containers therein, and the trunk of the vehicle, including closed containers therein, if the evidence sought could reasonably be located there.

The rule does not apply if the vehicle is parked, immobile, and unoccupied at the time police come upon the vehicle.



The Oregon Supreme Court in State v. Kurokawa-Lasciak, 351 Or 179 (2011), rejected the notion that any operational vehicle is “mobile” under the automobile exception. The Court made clear that the exception has only two requirements:

The vehicle must be mobile at the time that police first encounter it in connection with a crime.	Probable cause must exist for the search of the vehicle.
---	--

What does it mean to be encountered by police in connection with “a crime?” According to the Court of Appeals, the automobile exception applies regardless of whether the lawful stop of a moving vehicle is for a traffic violation or a crime. Of course, the officer must then develop probable cause to believe the car contains contraband or evidence of a crime during the stop. State v. Bliss, 283 Or App 833 (2017).

Additionally, while an officer will generally see a car in motion, mobility can also be established by auditory means. In State v. Anderson, 361 Or 187 (2017), officers overheard a phone call between an informant and the suspect that the suspect was arriving at the buy location but never saw the vehicle in motion. The Court found this was sufficient to establish mobility.

Lastly, while the officer must establish both prongs (i.e., mobility & PC), those prongs don’t have to be related to each other. In State v. George, 287 Or App 312 (2017), officers stopped a vehicle that matched the description of an assault suspect. When the officer approached, the officer realized that the driver was not the assault suspect. The officer also saw an open container of alcohol near the passenger. The officer contacted the passenger and smelled the odor of an alcoholic beverage. The officer then opened the door to get the beer can and smelled marijuana. The Court found this was a valid search because the vehicle was mobile at the time it was encountered in connection with the assault. Even though that dissipated, the officer developed PC that it contained contraband or evidence of a crime.



Exigent Circumstances

- This exception requires both probable cause and an exigency.
- “An exigent circumstance is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect’s escape or the destruction of evidence.” State v. Stevens, 311 Or 119 (1991)
- The exigent circumstances must exist both:
 - For the item you wish to seize; and
 - During the time frame in which you wish to seize it.

An exigent circumstance is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect’s escape or the destruction of evidence.

NOTE: The state should provide testimony regarding the estimated time required to get a warrant, including a telephonic warrant, and why it was impracticable at the time.

- The search must be limited to the exigency that justified it.
- A person’s history of assault and resisting arrest does not necessarily constitute exigent circumstances justifying noncompliance with the knock and announce requirement. State v. Arce, Or App 185 (1986)
- A police officer cannot create exigent circumstances by his or her own action or inaction.
- Federal law and minor offenses: The Ninth Circuit has held that “an exigency related to a misdemeanor will seldom if ever, justify a warrantless entry into a home.” Lalonde v. County of Riverside, 204 F3d 895 (2000). Further, the Ninth Circuit characterized the US Supreme Court as having “suggested that exigent circumstances can rarely if ever, support entry into a home to investigate or arrest someone for a misdemeanor offense.”



What about animals?

The Oregon Supreme Court has ruled that “the exigent circumstances exception to Article I, Section 9, is not limited [as the defendant had argued] to circumstances in which human life is threatened. [In the case at issue] the officer had probable cause to believe that a crime [animal neglect] was in progress and, based on specific, articulable facts, determined that warrantless action was necessary to prevent an ongoing criminal act from causing further serious imminent harm to the victim of the crime - an animal entitled to statutory protection. In those circumstances, the exigent circumstances exception permitted the officer’s actions.” State v. Fessenden/Dicke, 355 Or 759 (2014).

The “emergency aid” exception and significance of “community caretaking.”

- “Emergency aid” is a recognized exception to the warrant requirement; “community caretaking,” standing alone, is not.

ORS 133.033, The “community caretaking” statute, provides:

“Except as otherwise expressly prohibited by law, any peace officer of this state is authorized to perform community caretaking functions.

Community caretaking functions means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public.

As used in this section, “community caretaking functions” means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public. “Community caretaking functions” includes, but is not limited to:

- The right to enter or remain upon the premises of another if it reasonably appears to be necessary to:
 - Prevent serious harm to any person or property;
 - Render aid to injured or ill persons; or
 - Locate missing persons.



- The right to stop or redirect traffic or aid motorists or other persons when such action reasonably appears to be necessary to:
 - Prevent serious harm to any person or property;
 - Render aid to injured or ill persons; or
 - Locate missing persons...."

In State v. Martin, 222 Or App 138 (2008), the Court of Appeals distinguished between "community caretaking" and the "emergency aid" exception":

"ORS 133.033 does not independently establish as an exception to the warrant requirement. Rather, it provides legislative authorization for... a particular class of searches, subject to many of the same constitutional constraints that operate to limit other searches, including the warrant requirement. A lawful community caretaking search, in other words, must first be within the universe of police action described in ORS 133.033. Then it must also fall within one of the constitutional exceptions to the warrant requirement."

The Oregon Supreme Court has articulated that the "need to render emergency aid or prevent serious injury or harm is an appropriate justification for an immediate, warrantless entry under Article 1, Section 9." In State v. Baker, 350 Or 641 (2011), the Court thus concluded that an "emergency aid" exception to the warrant requirement is justified when:

"Police officers have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm."



The Oregon Court of Appeals has held the exception may, in appropriate cases, extend to “warrantless searches or seizures that law enforcement officers reasonably believe are necessary to render immediate aid or assistance to **animals**.”

Consent to Search

Key Factors Indicating Voluntariness of Consent	Factors Showing Non-Consent
Advice of Miranda rights Advice of right to refuse consent Knowledge of right to refuse consent Congenial and uncoercive atmosphere Absence of threats or promises Unequivocal consent Conduct indicating the defendant agrees to the search	Police lies Threats to commit illegal acts Failure to advise the person of rights Custody may override the voluntariness of consent Uninvited police entry

Scope of Consent: Police may not go beyond the physical boundaries established by the consent.



Case Law Discussion-Scope of Consent

State v. Blair, 361 Or 527 (2017)

Deputies responded to a report that armed suspects were chasing a man in a public park. When they arrived, they found the defendant, who was dirty, agitated, and couldn't hold still or respond to questions. The deputies determined that the report about being chased by armed suspects was likely not "completely true." The defendant mentioned that he had left his stuff, including his backpack, up at the park. A sergeant went with the defendant to find his backpack, and when they found it, the sergeant asked the defendant if he could search it. The defendant said, "Yeah, go ahead." The sergeant opened the backpack and found an opaque Fred Meyer grocery bag that was tied shut, which he opened. Inside, he found a bag of psilocybin mushrooms, and the defendant was charged with PCS. The defendant moved to suppress the evidence, as he claimed that opening the closed bag inside his backpack exceeded the scope of his consent. He also claimed that his consent was not voluntary since he was high on mushrooms when he gave it. The sergeant testified that when he asked to search the backpack, he intended to search for weapons and controlled substances, but that he had not communicated that to the defendant. The Oregon Supreme Court, who reversed the Oregon Court of Appeals and remanded to the trial court for more fact-finding, ruled: "The logic behind the consent exception supports a focus on the defendant's actual understanding and intent with respect to the scope of her consent to a search, but what a person says is often the best indicator of what the person intended. In light of those considerations, we think that the nature of the inquiry should be described in the following way: In determining whether a particular search falls within the scope of a defendant's consent, the trial court will determine, based on the totality of circumstances, what the defendant actually intended. That determination is a factual one.

However, where – based on the totality of circumstances- the defendant's intent concerning the scope of consent is unambiguously expressed, that manifestation of intent is controlling. In that way, what a reasonable person would understand by his or her choice of unambiguous words or other indication of intent will bear its expected weight in citizen-police interactions. Such clarity in expression will be further promoted when officers requesting consent make clear to a suspect what the objects of the requested search are and what level of scrutiny is sought."



State v. Winn, 361 Or 636 (2017)

The defendant entered a courthouse, and her purse went through the x-ray machine. There were signs on the wall, letting people know that they were subject to search and that firearms and dangerous weapons were prohibited in the building. The officer looking at the x-ray saw items that she thought might be drug-related, so she asked the defendant for permission to run the purse through a second time. Defendant agreed. After the second scan, she asked the defendant, "May I please search your purse?" The defendant consented to the search, and the officer opened an opaque make-up compact that contained meth. The defendant was charged with PCS and moved to suppress the evidence because the search exceeded the scope of her consent (she didn't know or expect that the officer would open her make-up compact).

The Oregon Supreme Court reversed the Oregon Court of Appeals, and remanded back to the trial court for more fact-finding, ruling:

"In light of Blair, (NOTE: Winn and Blair were "companion cases" when they went to the Court of Appeals, and the Oregon Supreme Court similarly considered them together) we initially consider whether, in light of the surrounding circumstances, defendant unambiguously manifested consent—or denial of consent—to the opening of any small closed containers, like the compact in question, that [one] might encounter while searching the purse. We conclude that she did not: As in Blair, given the surrounding circumstances, the defendant's affirmative response to [the] generalized request to search gave rise to competing inferences concerning the scope of her consent... Because the evidence in the record would support either of those opposing inferences, we cannot conclude that defendant's unqualified expression of assent to [the] request to search her purse by hand was unambiguous concerning the scope of her consent. Instead, the scope of consent determination requires the resolution of those competing inferences. The trial court's written decision indicates that the court did not resolve that factual issue. Accordingly, as in Blair, we must remand to the trial court to determine the scope of defendant's consent under the correct standard.



Jointly Occupied Property

- The U.S. Supreme Court in Georgia v. Randolph, 547 US 103 (2006), held: "A physically present inhabitant's express refusal to consent to a police search is dispositive as to him regardless of the consent of a fellow occupant."
- As a practical matter, this means a police entry based on, e.g., sister's consent and over brother's objection means that any evidence found thereby is inadmissible against brother under the Fourth Amendment.
- However, the court noted if police obtain consent to search from someone with authority over premises (in Oregon actual versus apparent authority is required), there is no obligation to seek out and ask a co-occupant who is not physically present and who otherwise is not expressly objecting.
- Further, the court observed if the police have some other lawful basis for entry, e.g., exigent circumstances, etc., that does not depend on consent, they can ignore the co-occupant's objection.

Third-Party Consent

- A third-party consent is valid only to the extent the party has actual authority to consent to search commonly held property.
- An officer's good faith belief that a third party has authority to consent is irrelevant to the legal determination.
- A third party has "actual authority" to consent to a search only if he or she has "common authority as shown by that person's joint use or occupancy of the premises before validly authorizing the search."



- The “scope of a person’s authority [to consent] depends on the level of access that the co-occupants have agreed on.”
- Authority to consent to a search of an area is not necessarily coextensive with authority to consent to a search of personal items within that area. With “respect to items of personal property within jointly occupied space, a co-occupant’s actual authority to consent to a search depends on that person’s use of, or access to, those items.”
- Minors – age is but one factor in analyzing if consent was knowing and voluntary.

Significance of *State v. Hall*, *State v. Unger*, and related cases, to consent to search and “exploitation.”

- Whenever the state has obtained evidence following the violation of a defendant’s Article I, section 9 rights, it is presumed that the evidence was tainted by the violation and must be suppressed. *State v. Unger*, 356 Or 59 (2014).
- The state may rebut this presumption by establishing that the disputed evidence “did not derive from the preceding illegality.” *State v. Hall*, 339 Or 7 (2005).
- When a defendant challenges the validity of his or her consent based on prior police illegality (illegal stop or search), the state bears the burden of demonstrating that the consent was voluntary and was not the product of police exploitation of that illegality.
- When determining whether a defendant’s consent to search is the product of exploitation of police misconduct, courts are to consider the totality of the circumstances, including the temporal proximity between the misconduct and the consent; the existence of any intervening or mitigating circumstances; the nature of the misconduct, including its purpose and flagrancy and whether the police took advantage of it; and the voluntariness of the consent. *Unger*



- The Supreme Court observed in Hall and reaffirmed in Unger that exploitation of police misconduct might exist if the police seek the defendant's consent solely as a result of knowledge of inculpatory evidence obtained from their unlawful conduct.

Inventory Search

- In State v. Atkinson, 298 Or App 1 (1984), the Oregon Supreme Court addressed inventory policies. Non-investigatory inventories of the contents of impounded vehicles (and personal property seized from a person being taken to a secure facility) are a search warrant exception under the Federal Constitution.
- Under Article 1, Section 9, of the Oregon Constitution, law enforcement agencies may adopt and administer inventory policies to protect private property.
- The inventory must be conducted pursuant to a properly authorized administrative program, designed and systematically administered so that the inventory involves no exercise of discretion by the law enforcement person directing or taking the inventory.
- The person performing the inventory must not deviate from the established protocol.
- The scope of the inventory must be reasonable in relation to its purpose. Weber v. Oakridge School Dist. 76, 184 Or App 415 (2002) rev den, 335 Or 422 (2003).
- Generally, the property is to be listed by its outward appearance; no closed opaque container may be opened to determine what if anything is inside it so that the contents may be inventoried in turn. State v. Ridderbush, 71 Or App 418 (1985).
- The exception to the rule above is that an inventory policy may authorize officers to open closed containers that are "designed to or likely to contain" valuable items. State v. Williams, 227 Or App 453 (2009).



- Any object discovered in plain view, while conducting the inventory according to policy, including the contents of glove compartments, consoles, and vehicle trunks, maybe inventoried and seized. State v. Keller, 265 Or 622 (1973).

Open View and Plain View

Oregon courts generally distinguish between two kinds of plain view:

Open View	Plain View
<p data-bbox="142 869 764 957">Where there is no physical intrusion by an officer into a constitutionally protected area.</p> <p data-bbox="115 1033 792 1173">If there is open view and no physical intrusion into a protected area, there is no violation of the Fourth Amendment or Article I, section 9.</p>	<p data-bbox="878 869 1458 957">Where there is a physical intrusion into a constitutionally protected area.</p> <p data-bbox="829 1033 1507 1173">If there is a plain view, and there is an intrusion, the Fourth Amendment and Article I section 9 require:</p> <ul data-bbox="873 1199 1500 1671" style="list-style-type: none">• The prior intrusion must be a lawful intrusion by the officer to gain a lawful advantage to view the evidence;• There must be immediate probable cause to believe the evidence is seizable.• The officer has a lawful right of access to the object itself.



**Department of Public Safety Standards and Training
 Probable Cause Statement and Data Sheet**

Reliable Eyewitness Confession/Admission/Provable Lie Physical Evidence Connecting Defendant to Crime

I offer the following information based upon my information and belief:

Name of Arrestee _____ DOB _____

Crime(s) Alleged _____

Date of Crime(s) _____ Date of Arrest _____

Location of Crime(s) _____ Location of Arrest _____

Other Arrestees _____

Victim(s) of Crime _____ DOB _____

Victim Address _____ Victim Phone _____

Witness (es) Adult Minor _____

Injury _____ Loss/Damage _____ Value _____

Summary of Probable Cause _____

Submitted by _____

(Sign and Print Name, Print DPSST#, Department and Date Completed)

State of Oregon,) Under penalty of perjury, I declare that I have examined this statement and
 County of _____) to the best of my knowledge and belief, it is true, correct, and complete and is based on
) all information of which the preparer has any knowledge.

Subscribed and sworn to before me this _____ day of _____, 20__

 Deputy Clerk of the Court

- I find that probable cause exists to believe the arrestee committed the crime(s).
- I find that insufficient probable cause exists, so the defendant must be released on this charge.
- No decision is needed because the defendant has been released.

Judge _____ Date _____ Time _____



**SUGGESTED FAX SHEET FOR NOTIFYING CONSULAR OFFICIALS OF ARRESTS OR
 DETENTIONS**

SUBJECT: NOTIFICATION OF ARREST OR DETENTION OF A NATIONAL OF YOUR COUNTRY

DATE/TIME: _____

TO: Embassy/Consulate of _____ in _____, _____
 (COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____
 Address _____
 City _____ State _____ Zip Code _____
 Telephone (____) _____ Fax (____) _____

***We arrested/detained the following foreign national, who we understand is a national of your
 country, on _____.***
 (DATE)

Name: _____
 Date of Birth/Place of Birth: _____
 Nationality/Country: _____
 Passport Issuing Nation: _____
 Passport Number: _____

This person has been or may be charged with the following offense(s):

For more information, **please call** _____ between the hours of _____
 Please refer to **case number** _____ when you call.

ADDITIONAL INFORMATION:



Check Your Understanding

<p>What are the main points? Summarize the main points into your own words.</p>	<p>Give examples</p>	<p>What do you still need to know or spend more time with?</p>



What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time with?

REPORT WRITING





Report Writing 1-3

Instructional Goals:

This course is designed to:

1. Develop a new officer's report writing skills to document information discovered and received during an investigation effectively.
2. Develop a new police officer's understanding regarding the proper procedures for preparing a police report for criminal prosecution.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the principles of report writing and note-taking.
2. Demonstrate the ability to correctly construct samples reports, notes, and documents given the necessary information.

Content Outline:

- Importance of Police Reports
- Report Writing Process
- Four Pillars: Clear, Concise, Complete, Accurate
- Report Sections
- Review
- Assignment



Part 1

Why should police officers care about report writing? The excitement of responding to emergencies and helping to stabilize situations is the foundation for an officer's awareness that the officer is making a positive impact on society daily. The boredom of sitting to write a report can lead many officers to shortcut the process and the final product. While report writing is not the most exhilarating, nor glamorous, part of police work, it is an essential tool to ensure long-term success. A well-written police report communicates vital information to the reader while reflecting the professionalism of the writer. A poorly drafted report confuses facts, is missing essential information, and is usually the basis for either a dismissal by the prosecutor or a successful cross-examination by a defense attorney.

A police report is likely written under less than ideal conditions. However, it is also likely that this report will be transmitted to a multitude of agencies and individuals. These other entities use police reports to perform essential functions in their fields. These different individuals also have the opportunity to critically review the report for a greater length of time than the officer who authored the report. Before an officer decides to shortcut a report, the officer should consider the importance of the report not only to the officer and the officer's agency but to all the other persons who review the report.

While agencies may have different forms and formats, the fundamental process of writing a report does not vary. Additionally, report writing, like any other task, improves with experience. Therefore, to ensure a quality report on the first day of your career, as well as the final day of your career, you should follow the same report writing procedure. Report writing is similar to investigating since a routine procedure that is repeated on each occasion builds skills and increases the likelihood of a quality end-product. The process of writing a report starts from the time an officer begins his or her shift, continues through the investigation, and culminates in the actual written document.



The Importance of Police Reports

Even the most basic of police reports are reviewed by someone other than the reporting officer. Police reports are official government documents that are used not only in the criminal justice system but in a variety of other government agencies and business organizations, as well as the general public. Given this importance, an officer should take the time necessary to communicate relevant factual information in a manner that reflects the officer's professionalism.

Consider the many ways in which a police report is used:

<p>Importance to Law Enforcement</p>	<p>To the officer writing the report:</p> <ul style="list-style-type: none"> ● For review before a hearing or trial ● Can be the basis of cross-examination and affects one's reputation ● Portrays professionalism and pride <p>To other officers or detectives inside or outside the reporting officer's agency who continue the investigation or assist in another investigation.</p> <p>To supervisors who:</p> <ul style="list-style-type: none"> ● Evaluate officer performance ● Determine personnel needs during shifts and patrol locations ● To crime analysts who track statistics ● To grant writers who apply for funding ● To attorneys who defend you and your agency from lawsuits <ul style="list-style-type: none"> ○ False arrest ○ Excessive force ○ Wrongful death ○ etc.
<p>Importance to Prosecutors</p>	<p>To evaluate the case and probability of successful prosecution by identifying strengths and weaknesses in the case.</p> <p>To make charging decisions</p> <ul style="list-style-type: none"> ● Are there sufficient facts to satisfy the elements of each crime? ● Are there potential defenses, and are they likely to succeed? ● Is the evidence subject to suppression? <ul style="list-style-type: none"> ○ Was the scope of the contact/stop reasonable? ○ Was the search/seizure legal? ○ Were the statements voluntary? ● Was force used, and if so, was it reasonable? <p>To plan trial tactics</p> <p>To make decisions regarding witnesses</p>



	<p>To evaluate the admissibility of testimony To evaluate physical exhibits and evidence To comply with disclosure obligations</p> <ul style="list-style-type: none">● General (ORS 135.815)● Case law and legislation:<ul style="list-style-type: none">○ Brady v. Maryland, 373 US 83 (1963)○ The state must disclose any material that tends to:<ul style="list-style-type: none">▪ Exculpate the defendant,▪ Negate or mitigate the defendant's guilt or punishment, or,▪ Impeaches a person the state intends to call
Importance to Defense Attorneys	<p>To identify strengths and weaknesses in the prosecution's case To determine the possibility of successful motions to suppress To evaluate defense theories (e.g., self-defense, GEI, etc.) To plan cross-examination of the officer and other witnesses</p>
Importance to Corrections Officers	<p>To evaluate offenders' needs, dangerousness, supervision level, conduct while on release and truthfulness</p>
Importance to Juvenile Departments / Oregon Youth Authority	<p>To evaluate youths' conduct, risk of recidivism and determine the appropriate level of intervention</p>
Importance to Child Welfare Workers	<p>To evaluate the threat of harm to children, assess parenting strengths and weaknesses, and determine the appropriate level of intervention</p>
Importance to mental health professionals	<p>Assess the defendant's ability to aid and assist in his or her defense and potential guilty except for insanity (GEI) issues Determine danger to self, others, or inability to provide self-care</p>
Importance to other professionals	<p>Forensic evaluators Insurance adjusters Investigators for licensing boards Private investigators, etc.</p>



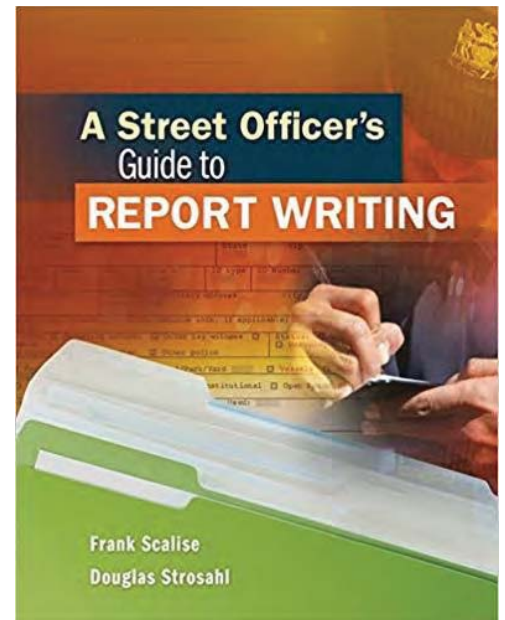
The Report Writing Process

As previously mentioned, the process of writing a high-quality report, just like the procedure to follow for a thorough investigation, is something that can be learned and repeated.

For the report Writing series, DPSST is using the book "A Street Officer Guide to Report Writing." This book was checked out to you at orientation. To prepare for class, please review the following chapters:

- Chapter 2 - CLEAR
- Chapter 3 - CONCISE
- Chapter 4 - COMPLETE
- Chapter 5 - ACCURATE

These four pillars will provide the foundation for the Report Writing series. They will be the criteria upon which your reports will be evaluated.



Document Complete and Accurate Information

Before you write a report, you must first capture the necessary information. To best preserve, the factual evidence you are witnessing, begin taking accurate and thorough notes as soon as the scene is safe. When documenting information in your field notebook, try to obtain as much relevant information as possible. The following table includes some examples of facts to record in your investigation if they are pertinent to your investigation.



People	Vehicles	Bicycles	Weapons
<p>Full legal name</p> <p>Aliases, nicknames, and street names</p> <p>Gang names and affiliations</p> <p>Gender</p> <p>Date of birth</p> <p>Race, ethnicity, nationality, origin</p> <p>Physical descriptions (height, weight, hair, eyes, etc.)</p> <p>Scars, marks, tattoos, outstanding features</p> <p>Clothing (if needed for identification)</p> <p>Identification numbers (driver's license, SSN, alien registration, etc.)</p> <p>Address (mailing address, physical address, directions)</p> <p>Home, work, cellular, message, etc. number</p> <p>Occupation – even though unemployed s/he may have an occupation</p> <p>Place of employment, including hours/shift worked</p> <p>Vacation or travel plans (if needed as a potential witness)</p>	<p>License plate number, state of issue, and VIN</p> <p>Color, make, model, year, etc.</p> <p>Customization, bumper stickers, other identifying modifications</p> <p>Previous damage and expected damage (hit and run)</p> <p>Description of vehicle contents</p> <p>Location of keys</p> <p>Name and location of the owner</p> <p>Value</p>	<p>Make, model name and number</p> <p>Size and color of the frame</p> <p>Serial number, owner applied number</p> <p>City or county license tag information</p> <p>Equipment (light, kickstand, etc.)</p> <p>Customization, previous/expected damage</p> <p>Owner's name and address</p> <p>Value</p>	<p>Type (revolver, semi-automatic handgun, shotgun, knife)</p> <p>Manufacturer, model</p> <p>Caliber</p> <p>Serial number, owner applied number</p> <p>Finish, distinctive features, condition</p> <p>Modification, accessories</p> <p>Origin, if it can be determined (handmade, stolen, purchased)</p> <p>Value</p>



Audio and Visual Recording

While the primary tool for documenting facts at the scene is your field notebook, there are other tools for recording information. An audio or visual recording is a useful way to supplement field notes to write the most thorough report. However, officers should not rely on electronic equipment as a substitute to field notes given that equipment may fail.

Since technology rapidly changes and different agencies use varied equipment, a thorough discussion of specific devices is not possible in this class. Despite the differences in equipment, some generalities remain.

Benefits of Recording	Downsides of Recording
<ul style="list-style-type: none">● Permanent record of exact statements/events● Helpful to review during report writing to refresh recollection● Captures events in a level of detail beyond the written report	<ul style="list-style-type: none">● Equipment failure<ul style="list-style-type: none">○ Do not rely on as sole means of writing report (i.e., notes)○ Challenged by the defense (e.g., purposeful, inept, etc.)● Notification of recording can be forgotten<ul style="list-style-type: none">○ Can lead to suppression of recordings● Knowledge that statements are being recorded can make the encounter seem more formal or could limit disclosures● The entire encounter can be scrutinized for minor mistakes



Tips for success

- Test equipment at the beginning of shift if possible
- Build a routine to remember turning on and off at the appropriate time during and after the event
- A routine introduction also helps you remember to notify that the encounter is being recorded
- Certain cameras can be refocused to capture events more clearly

Mandatory Recording of Certain Interviews

While recording events is almost always a useful tool in thoroughly documenting investigations. State law mandates that custodial interviews in law enforcement facilities be electronically recorded in certain investigations.

See ORS 133.400- Recording of Custodial Interviews

- The requirement for recording includes investigations for aggravated murder and Measure 11 offenses (found in ORS 137.700 and .707).
- While there are some exceptions to this law, it is best practice to record any interview in a law enforcement facility.
- A law enforcement facility includes any agency building, a courthouse, and any jail or detention facility, to include juvenile detention.
- Failure to record the interview leads to a jury instruction regarding the legal requirement to record and the superior reliability of electronic recordings when compared with testimony.



Part 2

Completing the investigation and taking good notes has led to the point where you are ready to sit down and write the report. Before writing a detailed narrative, it's a good idea to remind yourself that nearly everyone that reads your report will have no idea of the events that you record. Therefore, you must communicate effectively by explaining the relevant facts that you observed with your five senses.

Follow the four pillars, as described in the book "A Street Officer's Guide to Report Writing."



First Person

Although it should go without saying, you must write your report in the first person. Do not write from the third-person observing your investigation. You are the person writing the report, and you should simply use "I" to refer to the actions you take. Historically, officers have referred to themselves in a report as "this officer" or "the undersigned writer." Using these phrases instead of "I" generally confuses the reader and impairs the readability of your report.

Professional

Even though we must be professional every time we write a report, that does not mean we must unnecessarily use big words. Since we communicate to a vast range of audiences, we are most effective using commonly understood words. Reports should be written as though the writer is speaking face-to-face with the reader.

Remember, good writing is simple writing. Put words together in sentences that are easy to understand. Do not overwhelm the reader; communicate the information most simply and directly as possible. Do your best to avoid long sentences and uncommon abbreviations (e.g., CSO, LPO, etc.). Also, avoid police jargon: proceeded v. drove, went; advised v. told, said; contacted v. wrote, telephoned, spoke with; utilized v. used.



The task is not only to express ideas but also to make an impression on the mind of the reader. Reports are meaningless unless the reader is informed, gains an understanding of a situation, or is moved into action. With that in mind, we will briefly review some common pitfalls and how to avoid them.

Date References

Dates and times are also essential in good police report writing. Exact dates or narrow date ranges are critical on a variety of legal issues (e.g., the statute of limitations, adult vs. juvenile charging decisions, etc.). Therefore, if the exact date is unknown, you must narrow the window of time as much as possible. If the interviewed person's memory of the month and year is unclear, use seasons, birthdays, holidays, school years, etc., to narrow the window of time in which the event occurred.

Pronoun Usage

When frequently referring to a person in a sentence, it is common to use a pronoun (e.g., he, she, they, etc.) rather than a name. Appropriate pronoun usage is concise and improves the readability of a sentence. Keep in mind that the pronoun must relate to the last-named person. Using multiple pronouns in a sentence can confuse who is performing the action.

For example:

- The judge agreed that he was impaired when Powers committed the assault.
- Littleton told her that her sergeant called, and she left a message that she should clean out her locker.

Opinions and Conclusions:

Do not include opinions expressing personal approval or disapproval and never make an unsupported opinion. Opinions on the credibility of victims and witnesses are always provided to the defense when relayed to the prosecutor in a report, e-mail, or conversation. Therefore, avoid opinions on the credibility of witnesses.



You may include opinions on subjects other than credibility when they assist the reader in understanding the information presented. Opinions are conclusions you make based on your training and experience. When writing your report, you should clearly label your opinion and include the facts which support that opinion.

For example:

"I noticed that Mr. Jones had bloodshot and watery eyes, slurred speech, an odor of an alcoholic beverage on his breath, and was unsteady on his feet. From these observations, and based on my training and experience, I formed the opinion that Mr. Jones was under the influence of alcohol."

Similar to opinions, conclusions may be included in your report when they are factually supported. While you should generally avoid making legal conclusions (e.g., search warrant exceptions, serious physical injury, etc.), conclusions that are common interpretations of events observed, and that are not necessarily formed based on your training and experience, may be included. However, always describe the facts supporting your conclusion. Writing a conclusion without identifying the facts is not persuasive and cannot substantiate the elements of a crime.

Compare the following:

Unsupported Legal Conclusion	Factual Observation
It appeared the victim was physically injured.	I saw a one-inch cut on the victim's left forearm that was bleeding.
The suspect braked when he saw me.	Shortly after I saw the suspect vehicle, the front end dipped down sharply, and the vehicle quickly decelerated.



Past Tense

Reports should always be written in the past tense as the events you are documenting have already happened. However, when you are quoting someone, the quotation should be in the present tense, as that is how the statement was made. Therefore, the only shifting of tenses should occur in quotations, and not in any other place in your report. Consistent writing in the correct tense helps the reader to understand the sequence of events.

Active Voice

Also, you should always write your report in an active, rather than passive voice. An active voice is when the subject of the sentence does the action. A passive voice is when the subject of the sentence has an action done to it. The active voice is preferable because it identifies the person who does the action or who can testify to the fact. Using a passive voice creates an ambiguity where the reader is forced to guess who the actor is. Compare:

Active	Passive
I found a bloody knife on the kitchen counter.	A bloody knife was found in the kitchen.

Report Length

Do not confuse the length of a report with the quality of a report. Use as few words as possible to record the necessary facts, but do not use so few words that the necessary facts are omitted. The words that are written in the report are the words that must stand. If you testify to facts not included in your report, the defense will challenge their validity, why your report was incomplete, and your competence. Remember, communicate professionally.



Report Sections/Headings

While agency formatting varies, most reports have similar components.

Face sheet- Includes data

Face sheet format differs from department to department, depending on the needs of the agency for record-keeping and data entry purposes.

Common information:

- Date and time of occurrence, exact or range
- Location of occurrence
- Type of occurrence (crime, collision, runaway, etc.)
- Involved parties (Suspect, Victim, Witness, etc.)

Body of Report (Narrative)

The headings discussed here are possible headings. Your agency may use all or some of these or may use different heading titles. Your agency may also use a different order of headings than set forth below.

Summary – An introduction or paraphrasing of events in the report. This is similar to a PC statement, but may be less detailed.

- **When-** Begin with "On" the date and time; or "Between" the time frame of the significant event(s).
- **Include the following when possible:**
 - **What-** Name of the crime or significant event
 - **Who-** Name of the suspect or description if unidentified
 - **Who-** Name of the victim and any injuries
 - **Where-** State the location
- **At the end include the status of the case (i.e., arrest vs. open case)**



Mentioned – A list of people in the report (note this may be different agency to agency).

- Name every person discussed during the investigation
- Your agency may include a brief description (i.e., role identifier) after each name as to how that person was related to the case, (e.g., victim, witness, suspect, informant, assisting officer, etc.)
- Include contact information
- Not necessary to place the person on the face sheet and in the mentioned section, unless agency policy requires

Action Taken / Narrative – A chronological list of the things the investigating officer did plus the reasons for the activity.

- Sequence of events – the narrative must be in chronological order to describe events in a logical sequence.
 - It helps develop a clear mental picture
 - It allows the reader to follow the investigation in a progressive manner
 - It prevents the distortion of critical information regarding the elements of the crime
- Listed in the order in which the officer conducted the investigation
- Not necessarily the order that the events first occurred
- Statements in the narrative:
 - If your agency does not use a separate statement section, include statements as they occurred in chronological order of your investigation.



- If your agency uses a separate statement section, do not include what people said during their interviews, unless it is necessary to explain the reasons for the officer's next investigative activity, if so, be brief.
- Narrative Content: The WHO, WHAT, WHERE, WHEN, WHY, and HOW to represent the basic information a report should contain.

If suggested by your facts, clearly describe or document the following:

- Circumstances of initial contact, including probable cause or reasonable suspicion
 - Justification for entry into building, residence, vehicle
 - Identification of suspect and all other persons involved in the incident
 - Miranda time and suspect's response (voluntariness)
 - Statements and specific quotes when possible
 - Clearly identify who did what to whom
 - Legal basis for the search for and seizure of evidence (e.g., consent, search incident to arrest, automobile exception, exigent circumstances, etc.)
 - Description of evidence processing and disposition
 - Time, date and location of arrest
 - If force was used: a full description of the force, the circumstances necessitating the use of force, the suspect's actions, any contributing factors, your verbal commands, all injuries and any post-care (suspect, officer, others)
 - Probable cause or elements of each charge
 - Disposition of suspect, suspect's property, and suspect's vehicle
- Statements – Interviews with witnesses and suspects
 - Write the person's name, followed by "told me" or "stated," followed by that person's statement.
 - Include the giving of Miranda warnings and responses



- Action Recommended / Case Status – Suggestions for what the next investigative step(s) should be.
 - Can be a simple statement (e.g., cleared by arrest, referred to detectives, etc.)
 - If not closed, what are the next steps in the investigation?
 - Do not include any opinions as to what the ultimate disposition of the case should be.

Review



Summary- Contains the **Who, What, Where, and When** in a brief 1 – 2 sentences. More complex reports may be 1 – 2 paragraphs. Should include information on the outcome if possible (i.e., Smith was charged with Assault IV).

Narrative- Contains the **Who, What, Where, When, Why, and How** in every report. Write in:

Chronological Order

1st Person

Professional

Past Tense

Active Voice



PC Statement- It contains the basic information needed to lodge the suspect and for the prosecutor to make a charging decision.

Summarize the facts, but do not state legal conclusions. Compare:

The suspect caused physical injury to the victim	I saw a two-inch gash on the victim's forehead that was bleeding profusely. The suspect admitted hitting the victim in the face.
--	--

Include enough facts to substantiate the **elements** of **every** charged crime.

If there are insufficient facts:

- The judge may not find probable cause and will release the suspect
- The prosecutor may not be able to charge an offense that will maintain the suspect in custody or any offense at all



Out-of-Class Assignment: Video Report

Directions:

- Submit the report electronically per your training coordinator's instructions. You will have received instructions from your Class Coordinator on how to title and save this report.
- Use the scenario provided by your instructor as the basis for your report.
- The report must be computer generated and saved as a "Word" document.
- Any information you include should be written with attention to detail.
 - e.g., don't write "a neighbor's house" instead of "the house at 123 Main Street, located north of Smith's vehicle".
- The report must include:
 - A Summary
 - A complete narrative of all observations and actions
 - Collection and logging of ALL physical evidence;
 - A "Probable Cause Statement." You will find a template for this statement at the bottom of the report form.
- A finding of "Meets Standards" is required for a passing grade; however, a finding of "Does Not Yet Meet Standards" on the report will result in a need to remediate the report.
- A copy of this report, the instructor critique/s, and any remediation reports may be provided to your hiring agency. This will be a standard procedure for all reports you write while here at the academy.

You may be asked to testify in Mock Trial on any of the reports you write at the academy.



	Excellent	Average	Developing	Beginning
Clear	All of the report is easily understandable to the reader.	Most of the report is easily understandable to the reader.	Some of the report is easily understandable to the reader.	Few parts of the report are easily understandable to the reader.
	Includes all 10 of the following: <ul style="list-style-type: none"> • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice 	Includes 7-9 of the following: <ul style="list-style-type: none"> • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice 	Includes 4-6 of the following: <ul style="list-style-type: none"> • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice 	Includes 3 or fewer or none of the following: <ul style="list-style-type: none"> • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice
Concise	The report contains only pertinent facts.	The report contains mostly pertinent facts, with little extraneous material.	The report contains some pertinent facts, with some extraneous material.	The report contains few pertinent facts with much extraneous material.
Complete	The report includes all relevant facts, observations, and actions taken.	The report includes most of the relevant facts, observations, and actions taken.	The report includes some of the relevant facts, observations, and actions taken.	The report includes few or none of the relevant facts, observations, and actions taken.
	Includes all of the following: <ul style="list-style-type: none"> • Elements of the Crime • Who, What, When, Where, Why, and How 	Includes most of the following: <ul style="list-style-type: none"> • Elements of the Crime • Who, What, When, Where, Why, and How 	Includes some of the following: <ul style="list-style-type: none"> • Elements of the Crime • Who, What, When, Where, Why, and How 	Includes few or none of the following: <ul style="list-style-type: none"> • Elements of the Crime • Who, What, When, Where, Why, and How
Accurate	The report includes all specific, correct information.	The report includes most of the correct information.	The report includes some of the correct information.	The report includes any information that is not correct. The report contains assumptions.

Remediation Required: _____ Yes _____ No

Instructor _____ Date _____



OPSA Police Department CAD Event

PRIMARY UNIT:	59	OTHER UNIT(S):	52	Officer Andy Bechdolt					
DISP:	0855	ER:	0855	ARR:	0902	CLR:	1059		
CALL TIME:	0852	DATE:	Today's Date						
TYPE:	ASSLT - Assault								
LOCATION:	313 Harry Minto Court, Salem, OR 97317								
CALLER:	Michael Williams								
CALLER ADDRESS:	319 Harry Minto Court			PHONE:	503-555-1217				
CALL NOTES:	TMA - 0852: Neighbor being assaulted by an unknown male. TMA - 0853: Unknown subject has left the scene in a grey Jeep, unknown direction of travel. RAI - 0855: 2nd caller, reporting to be the victim, is refusing medical attention TMA - 0940: Follow up at 490 Jack Williams Ave, suspect contact TMA - 0947: One in custody, transporting to the jail TMA - 0952: Subject lodged at the jail								
LIC:	ZWE783	COLOR:	GREY	MAKE:	JEEP	MODEL:	CHEROK	YEAR:	2004
ASSOCIATED PERSONS									
ROLE:	Victim/Complainant			NAME:	Myers, Corban Dean		DOB:	10/15/1979	
RACE:		SEX:		HGT:		WGT:		AGE:	
ADDRESS:	313 Harry Minto Court			CITY:	Salem	STATE:	OR	ZIP:	97317
PHONE:	(503) 555-1424								
ROLE:	Suspect			NAME:	Read, Michael		DOB:	1/1/1988	
RACE:	W	SEX:	M	HGT:	6'1"	WGT:	177	AGE:	
ADDRESS:	490 Jack Williams Ave			CITY:	Salem	STATE:	OR	ZIP:	97317
PHONE:	(503) 555-3141								
ROLE:	Witness/Complainant			NAME:	Williams, Michael		DOB:	9/11/1977	
RACE:		SEX:		HGT:		WGT:		AGE:	
ADDRESS:	319 Harry Minto Court			CITY:	Salem	STATE:	OR	ZIP:	97317
PHONE:	(503) 555-1217								





Check Your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time with?

RESILIENCY





Resiliency 1

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Recognize symptoms of trauma and job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

Content Outline

- Overview
 - What is Resiliency?
 - Setting the Stage for 16 weeks
- Developing awareness for 16 weeks
 - Vicarious Trauma
 - Triggers
 - Recognizing Tactical Thinking Errors
 - Developing Stress Reduction
- Developing Strong Resiliency Factors
 - Creating a Resiliency Log

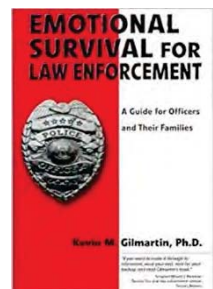


Congratulations on your decision to be part of the law enforcement profession. For some, this will be their first exposure to the profession, while others will have been involved as cadets, reserves, military police, or law enforcement from another state. What everyone shares is their commitment to make our communities safer and to protect those who are at risk for harm.

Resiliency

An ability to recover from or adjust easily to misfortune or change
(Merriam Webster dictionary)

The law enforcement profession is a helping profession, and as other helping professions (doctors, nurses, therapists), you will be exposed to trauma. You will receive training on trauma and how to have a trauma-informed approach in your interactions. One of the skills that you will develop as part of your training is the ability to have empathy for people you encounter. One of the strengths of empathy is being genuine with a person that is experiencing distress or pain. When you practice empathy, you are taking on the emotion the person is experiencing, and your brain records the emotion, not distinguishing it as belonging to you or another person. Your training here will incorporate the development of resiliency as an essential part of your profession. When you know you are prepared for what to expect, you can develop resiliency that will increase your effectiveness as a law enforcement professional and help you have longevity in your career.



You have received a copy of Kevin Gilmartin's book *Emotional Survival for Law Enforcement*. You are strongly encouraged to read this book and share it with your family and friends that are part of your support system. In this book, Gilmartin talks about developing a resilience plan. During your sixteen weeks in the academy, you will have many learning experiences. The basic practices that you establish at the academy you will find you implement and sustain when you return to your agency. We would like you to develop a resiliency plan to focus on the next 16 weeks that you can practice. You will be receiving information throughout the academy (classes on Stress First Aid, Resiliency, Trauma, Nutrition, and Exercise), which will enhance your plan. Your ability to include a resiliency plan into your professional growth will increase your success, satisfaction, and longevity in this exciting career.



Developing Awareness for 16 Weeks

Vicarious trauma is defined as a transformation in the helper's inner sense of identity and existence that results from utilizing empathy when listening to clients' trauma-content narratives. Vicarious trauma is what happens to your neurological (or cognitive), physical, psychological,

Vicarious Trauma

A transformation in the helper's inner sense of identity and existence that results from utilizing empathy when listening to clients' trauma-content narratives.

emotional, and spiritual health when you listen to traumatic stories day after day or respond to traumatic situations *while having to control your reaction*.

A transformation occurs to your inner-self as well as your perception of the world around you, which can cause severe impairment—depression, anxiety, addiction.

(Vicarious Trauma Institute)

Vicarious Traumatization

One additional aspect of traumatic exposure affects primarily the workers who help trauma and disaster victims. These people include psychologists and other mental health professionals, but also the emergency workers -- EMTs, physicians, fire, police, search & rescue, etc. -- exposed to an overdose of victim suffering. These professions are at-risk for secondary traumatization. Known by various names -- compassion fatigue, secondary or vicarious traumatization, and "burn out," the symptoms here are usually less severe than PTSD-like symptoms experienced by direct victims in a disaster. But they can affect the livelihoods and careers of those with considerable training and experience working with disaster and trauma survivors. Individuals who experience vicarious traumatization should seek appropriate professional help.

What are some examples of incidents that can cause vicarious traumatization in policing?



Triggers

There are many reasons that individuals chose to enter into law enforcement. It is not unusual for someone who has experienced adverse events in their life either personally or as a witness to want to make a difference. A law enforcement career may be the way an individual can feel empowered to have an impact on change in a positive way.

We bring our experiences, positive and negative, into our professional life. As a law enforcement professional, you are dealing with people who may be at their most vulnerable, and the situations may be negative. We are human, and we may identify with a situation from personal experience, and this may invoke a response in us. We all have triggers that are psychological stimuli (may be smell, sound, sight) that connects us to a personal experience. Being aware of the vulnerabilities that you bring can help you anticipate experiencing an emotional response. As an example, you may have lost someone close to you to a terminal illness, and engaging with a person in the field who has a terminal illness may invoke an emotional response in you.

You will be getting information during your time in the academy about trauma and our responses to it. Being aware of triggers can help you to start incorporating into your resiliency plan how you can best process them.

Tetris

As we talk about triggers, there will be times during the academy experience where you may have a triggered response, or you may have a negative experience. Research has shown that one method to reduce potential trauma response is to have the survivor play the game Tetris. This is a game where you place different shape blocks together without gaps. It is easily accessed through app stores. The process of playing Tetris involves using analytical skills and keeps a trauma memory from getting seated in the limbic system of the brain. If you have an opportunity to try playing Tetris if you are triggered or have a negative experience, try this and see if you find it helpful.



Recognizing Tactical Thinking Errors

Law Enforcement is an exciting, rewarding profession, and it has challenges with the responsibility officers have to protect the safety of our communities and enforce the law. It is not uncommon to develop negative thinking patterns that may influence how we perceive ourselves, the people we work with, and our world view. You may hear the term "stinking thinking" at some point in your career. You may recognize some of these thinking errors emerging while you are at the academy. Being aware of tactical thinking errors may help you avoid them by incorporating a strategy into your resiliency plan.

All or Nothing Thinking	Black and white thinking. Only two extremes can exist. Example: Something/someone is either "all good" or "all bad" or only one person is "right," and everyone else is "wrong."
Overgeneralizing	A single negative gets applied to all situations. Terms like "I never, you never, it always, I always" may indicate. Example: "I always get the runaway calls."
Magical Thinking	Making an unrealistic connection between two ideas. Example: "If I had left 10 minutes later"
Disqualifying the Positive	Seeing the negative and minimizing the positive. Example: "My grade on the test was just okay and probably won't be that high again."
Super Powers	Mind Reading – believing you know what other people are thinking, "He doesn't like me." Fortune Telling – predicting how things will turn out before they happen, "He will never pass agility."
Emotional Reasoning	Your emotions are the truth – because I feel it, it must be true. Example: "I don't feel confident, so I must be a failure."
Labeling	Applying a negative label to yourself. Examples: "I'm lazy" or "I'm a loser."
Self-blame/Blame Others	You see yourself as the reason for an adverse event that you did not have any control over. Example: "It happened because I was not able to stop it from happening." Or you blame others. Example: "We are in debt because my spouse is irresponsible."

Source: Adapted from Counseling Cops, 2014



Developing Resiliency Protective Factors

Being in the academy is hopefully a rich learning experience for you; however, there can be many stresses you experience while you are here. One stress that is universally felt by students is the time away from family and friends. Being able to develop a resiliency plan in the academy will help you to cope with stress and grow with the experience. At the end of this section, you have been provided a 16-week log. This log is in your workbook. You will make brief entries weekly into six different areas. These areas are the building blocks for a resiliency plan that will support you throughout your career. There will be two additional classes on resiliency, and you will review your log during each of these classes.

Healthy Eating

You will receive classes on nutrition during your time at the academy. Many times, healthy eating is one of the first areas that is sacrificed when people are under stress. Having a good understanding of the importance of nutrition and practicing healthy eating will provide a good foundation for sustainability in this area. You will keep a nutrition log in your nutrition classes, which you will be able to also use in this area of your resiliency log.

Sleeping

Sleep is an essential part of a healthy lifestyle. This is one area where the majority of students notice a significant change from their pre-academy life. You may find some changes/challenges with sleep over the next sixteen weeks. Increased physical stress from ORPAT, PT, DT, and some possible minor (hopefully not major) injuries can have an impact on sleep. Increased mental exercise in learning a large amount of new and diverse information can affect sleep. Studying for exams late into the night or early in the morning increases sleep needs. Driving home and getting back to the academy late or very early to maximize time at home, unfamiliar surroundings, and sharing a living space with a person you did not know before the academy decrease sleep opportunities. All of these factors have an impact on sleep, and the opposing needs and opportunities can cause a "double whammy"!



Sleep deprivation can have a direct impact on your ability to learn, process, and retain information. It can decrease your ability to problem-solve. When we are sleep deprived, our ability to control our appetite is reduced, and we can eat foods that are high in sugar and fats, which harms our bodies. We are not as alert when we are sleep deprived and may experience spatial disorientation resulting in slower reaction times and increase the potential for injury. Sleep deprivation also increases the risk of heart disease. In your career, you will experience various working shifts. Working the night shift can have an impact on your sleep by disrupting the circadian clock and making quality sleep difficult. Please review the handout "The Effects of Sleep Deprivation" from the International Association of Chiefs of Police at the end of this section.

With all this information, it becomes clear why having sleep included in the log is essential. Some strategies can have a positive impact on getting quality sleep. Sleep hygiene is a term used to describe what a person could do to improve their sleep. Some sleep hygiene practices are:

- Reduce caffeine- Don't consume caffeine in the afternoon or evening. Everyone has an individual sensitivity level for caffeine. If you are a caffeine drinker, experiment with what time is best for you to stop drinking caffeine so it will not interfere with your sleep.
- Limit alcohol- Drinking late at night can disturb your sleep. Alcohol may feel like it can help you relax, but it can interfere with your REM sleep. Reliance on alcohol to help you sleep can lead to alcohol dependence.
- Eliminate nicotine- Nicotine is a stimulant and can make it difficult to relax.
- Avoid narcotics and other sedative drugs. Narcotics can include muscle relaxers and sedatives, as they may interfere with your sleep and dream cycles.
- Spend less time in bed- If you find you are not able to sleep, get out of bed, and do something else until you become sleepy. You are creating the association in your brain that the bed is for sleeping.
- Keep a regular schedule- Try to have a routine bedtime and morning rising time.



- Limit naps during the day if it interferes with going to sleep or staying asleep. Limit naps to no more than two 15 minutes naps per day. This may change in the future if/when you work graveyard shifts. Napping or splitting sleep is a very successful strategy for officers on a graveyard shift.
- Create a "sleeping" environment- Have a good comfortable mattress. Use curtains or blinds to create a dark room and have the room temperature cooler than daytime temperature. If your sleep is being disturbed by noise, create a "white noise" with a machine or by turning a radio dial between two FM stations. Take a lukewarm, NOT HOT, bath, or shower before bed. You want to have a reduced body temperature when you go to bed. Have a light snack (no sugar or caffeine) or warm herbal tea or milk.
- Have interesting things to do during the day. (This will not be a problem when you are at the academy).
- Find a "wind" down routine that works for you. Read a book (avoid activating or exciting themes), do a crossword puzzle, draw, pray, meditate. Find what will work for you.
- Exercise. The recommended amount is 20 minutes of exercise that increases your heart rate at least three times a week. (This will not be a problem while at the academy).
- Use visualization. This is discussed below.
- Avoid bright white light (especially daylight) and light from phones and tablets.
- Keep a constant routine when possible.



Stress Management Techniques

Breathing

You will receive information on diaphragmatic breathing in the Fitness and Nutrition course. This will be an essential skill for you to develop for stress management.

Visualization

Visualize putting away your interactions from the day. This technique can be used at the end of the day. Picture the events of the day or the people you interacted with as individual objects and then put them in their "place."

For example:

Picture sailboats on the water	Picture books
Each sailboat has a different colored sail, and each sailboat represents an event you had during the day. Picture each sailboat moving through the water and being tied up at a dock. When you have tied up all the sailboats to the dock, you have closed the events for the day.	Think about the people you had a significant interaction with today. Picture each person like a book – different colors, sizes, thickness, hardcover, paperback. Take each person in the image of a book and place them on a shelf in a library. In the end, all the books will be on a shelf.

You can use any visualization that works for you with the idea that each item has an assigned image that is put into a final resting place to close your day.

Some additional visualizations that promote relaxation and stress reduction could include:

- Favorite place. Picture yourself in your favorite place. What do you see, what are you wearing, do you feel the wind or the sun?
- Creating. Imagine painting a picture, the colors, the details. Some people picture building a house or arranging furniture in a room.



Reflection

Another technique that people find helpful is doing a reflection at the end of the day. A positive reflection is suggested. An example would be to name three things at the end of the day that was positive or that you enjoyed.

Mental Grounding

There are several different ways to do mental grounding. Some examples include:

- **Connecting to your current environment.** Look around the area you physically are in. Observe the area in detail: different colors in the room, what are the materials in the room (tile floor, wood podium), what is the furniture in the room, how many windows in the room, how many doors, are there clocks in the room, exit signs, fire extinguishers, etc.
- **Distraction:** think of a category and name as many things in that category as you can. Examples: cities in Oregon, state capitals, teams in a specific sport, presidents, TV shows, names of different candy bars.
- **Numbers.** Start at 100, subtract 5, take the new number and subtract 5, keep going until you reach 0.

Physical Grounding

This technique focuses on your physical body. Some examples include:

- **Focus on the sense of touch.** Wiggle your toes and focus on what they are touching. Do they feel warm, cold, constricted? Sit in a chair. What part of your body is in contact with the chair (back of upper legs, buttocks, lower back). Is the chair hard, soft? Pick up something in your hand (pen, book, phone). What does the object feel like in your hands? Hard, soft, rigid, flexible, warm, cold? Think about the air in the room, what is the temperature – warm, cold, do you feel the air moving?
- **Progressive Muscle Relaxation.** Start at your feet. Tighten the muscles in your toes and feet. Hold for 5 seconds and release. Tighten the muscles in your calves, hold for 5 seconds, and release. Tighten the muscles in your glutes and hold for 5 seconds and release. Tighten the muscles in your abdomen and hold for 5 seconds and release. Tighten muscles in your upper back and shoulders, hold for 5 seconds, and release. Tighten the muscles in your upper arms, hold for 5 seconds and release. Tighten the muscles in your hand/make a fist,



hold for 5 seconds, and release. Tighten the muscles in your jaw, hold 5 seconds, and release. Tighten the muscles in your forehead, hold for 5 seconds, and release.

Soothing Grounding

This technique focuses on things in our life that we find comforting, relaxing. Some examples may include:

- **Favorites.** Think of your favorite things – favorite color, a favorite song, favorite TV show, favorite movie, favorite sport, favorite car, favorite person, favorite celebrity, favorite historical person.
- **Places.** Think of a place where you would feel completely relaxed. It can be a real or imaginary place. Think of the place in detail – what does it look like, what are the colors, what are the features, what would the temperature be, what are the sounds you would hear.

Building Strong Support Systems

One of the cornerstones of having a successful resiliency strategy is to have strong support systems. Support systems can include:

Spouse
Children
Other Family Members
Friends: Non-Law Enforcement
Friends: Law Enforcement
Peer Support
Faith Community

What support systems did you use during the week? This is an opportunity to see if you have a pattern of the same support system and think about growing your support system.



Resources

We reach for resources during a time of need. As Law Enforcement professionals, you will be expected by your community to have or be aware of how to find a resource. You must have good resources for yourself. The best way to develop resources is to identify them at a time of least stress/need. You are going to hear a lot of resource information during your time at the academy. Many of the instructors are former law enforcement, and they will share resources with you that they have developed over their professional careers. We suggest you may want to start creating a resource directory while at the academy that will follow you in your career.

We will start you off with one resource suggestion:

Safe Call Now – a resource for someone in the field of law enforcement to talk anytime, 24/7
www.safecallnow.org





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The Body Keeps The Score: Brain, Mind, and Body in the Healing of Trauma

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Shift Work: Disrupted Circadian Rhythms and Sleep—Implications for Health and Well-being

Stephen M. James & Kimberly A. Honn & Shobhan Gaddameedhi & Hans P.A. Van Dongen

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International Critical Incident Stress Foundation <https://icisf.or>



Resiliency 2

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Recognize symptoms of trauma and/or job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

Content Outline

Review 16 Week Log

- Insights
- Challenges
- Resources developed

Overview of Stress

- Physiological Reactions to Stress
- Emotional Reactions to Stress
- Cognitive Reactions to Stress
- Cumulative Stress



Review 16-week log

You are halfway through the academy – congratulations! You have received a lot of information in a short period. You can see the light at the end of the tunnel – GRADUATION and beginning your law enforcement career with your agency. This has been a lot of work, and you should feel a sense of pride and growing confidence that you have entered into the second phase of the academy.

Over the last eight weeks, you have had the opportunity to keep a log in six areas. Now is the time to reflect on the information you have recorded to date. You may remember from the Resiliency 1 class that an essential part of having a long professional career AND a good quality of life is having a strong foundation. A strong foundation increases your resiliency when you are challenged with both the daily stress you experience at work and home, as well as during times of intense stress.

What is the information from the log telling you? Let's take a closer look:

Healthy Eating

In Week 1 you had a Nutrition class. In the Nutrition class, you kept a ten-day nutrition journal. Some questions to think about:

What was one piece of new information that you learned from the class and/or the nutrition journal that you did not know before?



Were you able to apply that knowledge over the last seven weeks?

Sleeping

Which of the sleep hygiene practices did you use in the last seven weeks?

Is there an additional one that you would be willing to try in the next seven weeks? If yes, indicate which one.

Stress

During the last seven weeks, the topic of stress has been discussed in several classes. Today, we will look at stress in more detail. Below are some questions for you to review as you reflect on the last seven weeks in the area of stress:



STATE OF OREGON
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING
Basic Police

What part of your daily life did you notice you experienced stress (academic, physical, home, relationships, financial)?

When you review the positive technique/skill that you used every week, is there one that you used the most? Did you try different techniques/skills?

What insight do you have about your stress over the last seven weeks, and your ability to identify it and apply a stress-reduction technique?

What adjustments will you make in the next seven weeks based on the insight(s) you have?



Thinking Errors

In Resiliency 1, we looked at thinking errors that can have a significant impact on us. Everyone experiences one or more of these thinking errors, and it is the ability to recognize them and adjust the thinking that keeps us from getting into a downward spiral. The thinking errors we discussed were:

All or Nothing Thinking

Overgeneralizing

Magical Thinking

Disqualifying the Positive

Super Powers

Jumping to conclusions or
catastrophizing

Emotional Reasoning

Labeling

Self-blame/Blame

Others/Guilt

As you reflect on the last seven weeks, were you aware of experiencing a thinking error? Which one(s)?

Was there one specific thinking error you found you experienced more than any other? If yes, is this a thinking area that you realize you experienced in your life before the academy and was just now aware of it?



Once you were aware of the thinking error, what did you do to change your thought process?

What insight can you apply to the next seven weeks to thinking errors?

Support Systems

Having a support system is one of the most powerful protective factors you can have for resiliency. The support systems you brought with you to the academy are the ones that will be there for you when you leave. As you reflect over the past seven weeks:

Did you use more than one support system, or did you primarily use one?

Were you able to build a new support system from your classmates? Roommate? Other classes?



What insight do you have that you can apply to the next seven weeks for support systems?

Resources

Having resources is the key to a robust and enduring resiliency plan. Building a realistic directory of resources so that you can access them when you need them is proactive. As you reflect over the last seven weeks:

Were you able to add a new resource every week?

Did you learn of new resources in class? From other students? From the media or the internet?
Other sources?



What insight into developing resources will you take forward and apply to the next seven weeks?

Overview of Stress

Stress is no new experience for you. Attending the academy is expected to be stressful, and in some areas, it is designed to create stress. As you know, stress is not a bad thing. When you physically stress a muscle, it causes the muscle to get stronger, and depending on the amount of stress; the muscle can grow. It is when stress causes a negative impact that you need to make adjustments.

Here is a brief list of how stress affects people:

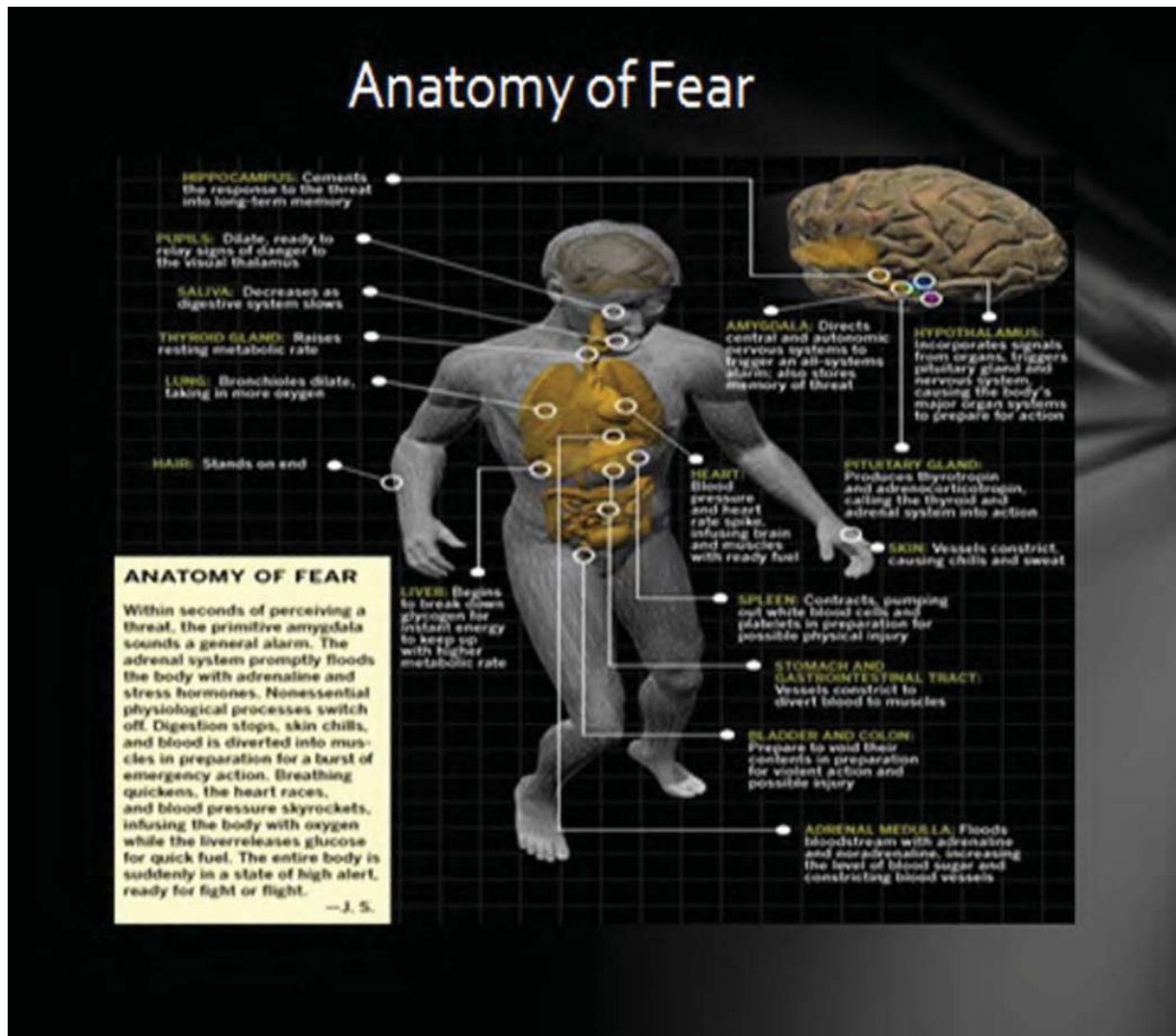
- Apathetic
- Angry
- Decision Making
- Disillusioned
- Erratic Behavior
- Fatigue
- Health Effects: Tension/Headaches, Blood Pressure, Cardiovascular Health, GI Problems,
- Substance Abuse, Illness/Suicide
- Increased Conflict
- Loss of Coordination
- Malcontent/Disgruntled
- Performance
- Personal/Family Issues
- Quality of Life
- "Us vs. Them"



Stress has an impact in all areas of our lives, physiological, emotional, and cognitive. We will take a more in-depth look at these three areas.

Physiological Reactions to Stress

Our bodies will physically experience stress. When the brain receives signals that we are in an immediate stress situation, it may interpret it as a danger signal to your safety and respond. Review the visual below and note all the areas that can be impacted when you have a stressful experience.





You can see the extent of the body's response to a stressful experience that it interprets as causing a potential threat to your safety. In the Behavioral Health Awareness class, you learned how a person responds to a crisis. When you experience elevated stress exposure, your body interprets that as a crisis.

When you continue to have stress responses to stressful situations, we can develop prolonged stress. Some of the symptoms of prolonged stress include:

- Loss of coordination
- Erratic Behavior
- Fatigue

These are signs we can be aware of in ourselves and our co-workers. The sooner we can identify signs of possible maladaptive responses, the easier it will be to neutralize them and return to a normal baseline.

Emotional Reactions to Stress

We can experience a full range of emotions when we react to a stressful situation.

- Agitation
- Apprehension
- Anger
- Anxiety
- Delayed Response to Calls for Service (Last One to Arrive)
- Depression
- Denial
- Emotional Outbursts
- Feeling Abandoned
- Feeling Lost
- Feeling Isolated
- Feeling Numb
- Fear
- Grief
- Guilt
- Inappropriate Emotional Response
- Irritability
- Loss of Emotional Control
- Panic
- Sadness
- Shame
- Startled
- Worry About Others
- Wanting to Hide
- Wanting to Limit Contact with Others

Source: Adapted from the International Critical Incident Stress Foundation



Stress can have an impact on our thinking (cognitive) reactions:

Cognitive Reactions to Stress

- Blaming Someone
- Change in Awareness of Surroundings
- Confusion
- Difficulty Calculating
- Difficulty Concentrating
- Difficulty Making Decisions
- Difficulty Problem Solving
- Disorientation (especially time and place)
- Heightened or Lowered Alertness
- Hypervigilance
- Intrusive Images
- Memory problems
- Nightmares/Distressing Dreams
- Poor Abstract Thinking
- Poor Attention Span
- Slowed thinking
- Seeing the event over and over
- Suspiciousness
- Uncertainty

Critical Incident Stress Reactions

A definition of a “critical incident” is that it can be any event that has a stressful impact sufficient enough to overwhelm the usually effective coping skills of an individual. Critical incidents are abrupt, powerful events that fall outside the range of ordinary human experiences. These events can have a strong emotional impact, even on the most experienced officer or deputy. (Officer.com October 15, 2007)

Critical Incident Stress Reactions, in many cases, can be less intensive when a person is aware of what to expect. The stress reactions you have listed above can be part of critical incident stress reactions. Please review the handout in your resource on Critical Incident Stress Reactions. Review the “things to try” portion of the list. Each department will have policies and procedures in place that you will learn about if you are involved in a critical incident.



Cumulative Stress

Cumulative stress is the stress that builds up over time. This stress may be caused by repeated exposure to crises and traumatic events on the job as well as events that occur in our personal life. While law enforcement officers are trained professionals, it is expected they will experience times in their professional careers when stress levels will exceed basic stress. Cumulative stress can have a significant impact on an officer's resiliency and productivity. Cumulative stress is challenging since it is hard to recognize. Something that seems minor to others may cause a severe stress reaction in someone who is experiencing cumulative stress.

Work/Life Balance

In the last unit on resiliency, we will look at creating a work/life balance at the start of your career. If you have a strong work/life balance, you will have a healthier and better quality of life both professionally and personally. You will also have a strong foundation to transition to retirement or your "next" career at the end of your law enforcement profession. Over the next seven weeks, think about how you are balancing the demands of the academy, your agency, and your personal life. In the next unit, you will be able to use your insights to help develop a long term resiliency plan moving forward.

Resiliency 3

In week 16, you will have Resiliency 3. At that time, you will have the opportunity to do a final review of your 16-week log. You will get a chance to reflect on the skills you have practiced and identify which ones worked best for you that you can take forward. We will get to meet some amazing people who will share their experiences around resiliency and how important it is to actualize the information into practice for your career. You will develop a plan for you and your family that you can take with you. You will have an opportunity to use your experience at the academy for future students and "pay it forward."



Resiliency 3

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Recognize symptoms of trauma and/or job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

Content Outline

- Awareness of Five Personality Characteristics
- Police Suicide
- Coping with Stress
- Grounding
- Work/Life Balance
- 16-Week Log
- Success Plan



Congratulations! You have completed the academy and will soon be recognized for your achievement in your upcoming graduation. This is a significant accomplishment, and it is essential to continue the positive momentum as you transition full time to your agency. You have constructed the foundation for a strong resiliency plan that you can implement and build on to ensure you will have a long and satisfying career in your chosen profession.

Awareness of 5 Potential Characteristics that can Occur

There are many reasons someone may choose the field of law enforcement. The common thread that connects all the reasons is the desire to help others and to make a difference. When Law Enforcement gets involved in a person's life, it is usually because the person is experiencing a crisis or creating an unsafe situation by violating the law. The daily exposure to the negative side of our world will take a toll on an individual. Five negative responses have been identified as the most common and can be a sign that an officer may be at risk for a stress reaction. Being aware of these negative responses can help an officer, their family, and their support system develop protective factors that will increase their resiliency.

Being aware of some of the frequently seen warning signs. Awareness can help officers and their families or support systems build protective factors to increase resiliency. The five most common warning signs that officers may experience are:

- **Loss of Innocence**
 - "The primary price that I think I've paid was something of a loss of innocence, seeing things that I never wanted to see and doing things that I never wanted to do. That loss of innocence has been devastating."

- **Cynicism**
 - "Society's social problems are much worse than we can repair."
 - "We are just here to pick up the pieces time and time again."
 - "Cops aren't the ones that are going to fix the system. It has to be someone else."
 - "We're screwed!"



- **Constricted Affect**
 - “The only emotion that you can show effectively is anger. That’s acceptable. All others are weak, so you live on the anger, and you live on the jokes, you adopt gallows humor that keeps you going.”
 - “You drink over it, have sex over it, party over it, buy more toys, or work a lot, rather than face our feelings.”

- **Loneliness**
 - “I was the loneliest man in the world. I felt like there was nowhere to go but down. It was just like life was just too hard to live.”

- **Isolation**
 - “I feel like I’m alone in a room full of people because I don’t have anything in common with them.”
 - “Can only hang out with other cops because nobody else understands” This may be true, but “civilians” have a lot to offer in our quest to be “normal.”

Police Suicide

Suicide rates for law enforcement are higher than the general population. The impact of trauma exposure, cumulative stress, and Post Traumatic Stress Disorder can potentially lead to suicide. Awareness of the risk to law enforcement officers is increasing, and agencies are responding. Providing education and resources to officers starting at the academy and continuing when the officer returns to their agency is an essential part of reducing suicide. Peer support is a critical component in creating a robust and healthy environment for officers. Recognizing the warning signs of suicide raises awareness for an officer, for their co-workers, and provides information to the officer’s family.



In the Mental Health Awareness class, we learned about suicide and warning signs. As we review the signs, put them in the context of a law enforcement setting. How might these signs look if you were experiencing them or observed them in a co-worker?

- Threaten to harm self
- Prior suicide attempt(s)
- Disturbance in sleep/appetite/weight
- Constricted thinking, all or nothing, black or white
- Increased risk-taking behavior
- Has plan and means for suicide
- Emotionless/numb
- Angry/agitated
- Sad/depressed
- Hopeless, not future-oriented, giving away valued possessions
- Problems at work/home
- Recent loss (status, loved one)
- Under investigation
- Socially isolated/withdrawn
- Increased consumption of alcohol/drugs

Post-Traumatic Growth

Over the last sixteen weeks, we have looked at the impact trauma, and trauma exposure has on an individual. In the Resiliency series, we have looked at the impact trauma exposure can have directly on law enforcement. You have been provided information to help you build skills and develop strong resiliency plans for a solid foundation. There is relatively recent research that suggests that individuals who experience trauma may also report positive change and growth that has resulted as part of their trauma exposure.

Post-traumatic growth is defined as the “experience of individuals whose development, at least in some areas, had surpassed what was present before the struggle with crises occurred. The individual has not only survived, but has experienced changes that are viewed as important, and that goes beyond the status quo” (Tedeschi and Calhoun, 2004). Individuals have described profound changes in their view of “relationships, how they view themselves, and their philosophy of life (Joseph and Linley, 2006).



Coping with Stress

As we have learned over the past 16 weeks, stress has an impact on all areas of your life. In class, we will have a facilitated discussion on what coping can be applied to the four main areas of stress. Below is a section for each area of stress that will be discussed, and you may want to use this area to record suggestions of coping skills that you may be interested in utilizing.

Physical

I would use the following coping methods for physical stress:

Cognitive

I would use the following coping methods for cognitive stress:

Emotional

I would use the following coping methods for emotional stress:



Spiritual

I would use the following coping methods for spiritual stress:

Stress Coping Techniques and Grounding Skills

In Resiliency 2, you were introduced to several different types of grounding. In the Veterans Awareness class, you were able to practice five senses (physical) grounding. In your weekly log over the past 16 weeks, did you use a grounding technique in the Stress column? Is there a grounding technique that you found felt natural and was most helpful?

List of Grounding Techniques:

- Breathing
- Mental Grounding
- Physical Grounding
- Soothing Grounding
- Reflection
- Visualization

List three grounding techniques below that you are able to incorporate into your life as you move forward:

1. _____
2. _____
3. _____



Work/Life Balance

When you start to work full time as a law enforcement officer, it is exciting. It is not dull, and each new day brings new experiences. There are “highs” in your days that produce adrenalin, and you are building close relationships with your peers who are sharing your experiences. You will develop a sense of humor and connection to specific circumstances that you share only with a select few individuals that also experience them. This is part of a professional phase known as The Academy and Probation and the Honeymoon Phases. These are fun and rewarding times. These are also the most critical time for you to establish a work/life balance. If you have a strong work/life balance, you will have a healthier and better quality of life both professionally and personally. You will also have a strong foundation to transition to retirement or your “next” career at the end of your law enforcement profession.

In your sixteen-week log, you identified your support systems. It is essential to have support systems outside the profession of law enforcement. You will naturally develop support systems within the profession. When you are outside of work, it is important to be fully present in your life. Set up a clear boundary with yourself that when you are not at work, you will not be distracted by work and focus on engaging in your life. If you are on an on-call status, let the people in your life know that you may need to respond to work. This will help you to engage and stay connected to your life and respond to work if and when required.

Part of a work/life balance is attending to the needs you have in a balanced way so that no one area takes over. You already have work covered in this wonderful career you have chosen. Let’s take a look at the Life side.



- **Family** – how are you connected to your family? If you have a relationship, what can you do to ensure that you have open communication and experiences you share outside of your work life? Working on projects, sharing interests (books, movies, and physical activity), social interactions with friends all are areas that you and your relationship can share. If you have children, taking an interest in their stage of development and being involved in their lives is important and rewarding. Having regular contact with your parents and siblings and other family members helps keep the connections strong and valued. Everyone’s family will look different, but think of ways that you can stay involved in the relationships with family members.
- **Friends** – Having friends outside of law enforcement is an essential strategy that helps us with our perspective and can keep things in context. One way of balancing desensitization is having people in our lives that are not part of the profession. It helps us keep an eye on our barometer and recognize there aren’t “bad guys” around every corner or behind every closed door.
- **Interests/Hobbies** – Think about what you liked to do before you entered into law enforcement. Is that something that you can re-activate and keep in place? Are there new hobbies/interests that you would like to begin?
- **Personal Care** – What can you do just for yourself for personal care? When we can have some time just for ourselves, it allows us to “recharge.” We are better able to engage in our lives and our responsibilities when we have had some time to take care of ourselves.



Success Plan

The one thing that you have learned over the last 16 weeks is that you will change as you enter and grow in your law enforcement career. Having a Resiliency Success Plan is a proactive way of anticipating what you will need. Please look at the Resiliency Success Plan template at the end of this section. You can start to make entries into the sections that you want in place for a Resiliency Success Plan. You have the log you have been working on and the experiences you brought with you to inform what you want to put into this plan. The plan is meant to and will change over time as you grow. Who do you want to share the plan with? Think of the support system you have developed to date. Who would you feel safe and confident would be able to talk to you if they see an area of the Resiliency Success Plan that was in jeopardy? Select at least one and up to three people you want to give a copy of the plan.

When you look at the template for the Resiliency Success Plan here is what a sample entry could look like:

Physical

- What I will do:
 - Enroll in a gym membership and go three times a week.
- How will I know it is working?
 - I will work out at the gym three times a week
- How will I know it is NOT working?
 - I will start missing days at the gym and go less than three times a week. I will have different excuses for why I am not able to go.
- What do I want my support person to say?
 - You wanted to go to the gym three times a week, and it looks like you may have changed that plan? Did you decide to do something else for physical activity? Is there anything I can do to help?



Summary

Over the last sixteen weeks, you have received three Resiliency courses. You have been provided information on the profession, areas where there are strengths, and where there may be some challenges. You have been offered a variety of different skill suggestions that you can personalize to your use. The most important learning is that you have a plan for resiliency so that you will have a healthy and quality career and life after the academy. Congratulations again on your accomplishment!



Resiliency Success Plan

Physical

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.



Cognitive

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.



Emotional

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.



Spiritual

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.



Additional Resources

Books:

- Bulletproof Spirit
Captain Dan Willis
- Emotional Survival For Law Enforcement
Kevin M. Gilmartin, Ph.D.
- I Love A Cop
Ellen Kirschman, Ph.D.
- Increasing Resilience in Police and Emergency Personnel
Stephanie M. Conn

ROLES AND RESPONSIBILITIES





Roles and Responsibilities

Instructional Goals:

This course is designed to:

1. Develop a new officer's understanding of sources of authority and legitimacy in their role as a law enforcement officer.
2. Develop a new officer's understanding of various police functions, the corresponding authority, and mindset for effective policing.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify sources of authority and legitimacy.
2. Articulate responsibilities and duties as a law enforcement officer.
3. Explain the significance of building partnerships with the community for a law enforcement officer.
4. Identify proactive policing techniques that can help build partnerships or solve problems in the community.

Content Outline:

Role/Responsibility/Authority/Duty

Primary Categories of Police Functions

Service Delivery

Order Maintenance

Law Enforcement

Mindset-The Warrior and The Guardian

The Role of Community in Policing

Community Partnerships

Organizational Transformation

Problem-Solving



Part 1

Policing is complex; ordinary humans are given a role and tasked with responsibilities that exceed ordinary. In this role, you are trusted with a tremendous amount of power, the power to arrest, the power to use force (even deadly force). You are trusted to be an ethical and effective decision-maker. You are often given the discretion to decide how to handle a situation. That same discretion impacts perceptions of fairness. You will learn more about discretion when you cover implicit bias. You are expected to manage all of these responsibilities in a particular way, and every decision you make will be scrutinized by others (media, courts, communities, your peers, and your superiors). You must undertake these tasks in a manner that is legal and respectful to community members and is in keeping with local priorities.

Discretion-
 The decision-making power afforded to police officers that allows them to decide a course of action.

Before you can get started learning about all the various tasks that you will need to become proficient in, you must first develop a strong foundation for who you are as a person and a strong understanding of your role and responsibilities in law enforcement.

Role	Responsibility	Authority	Duty
The function assumed or part played by a person in a particular situation.	The state or fact of having a duty to deal with something or having control over someone. The state or fact of being accountable or blameworthy for something. The opportunity or ability to act independently and make decisions without authorization.	The power or right to give orders, make decisions, and enforce obedience.	A moral or legal obligation, a responsibility. A task or action that someone is required to perform.

How do you know what your roles and responsibilities are in policing? Where is your instruction manual? Who dictates these?



The first source dictating your roles and responsibilities is the law (Federal and State). Both the United States Constitution, as well as the Oregon State Constitution, provides you the framework by which you operate. You will need to develop a comprehensive understanding of both as well as stay informed of case law as it is generated. You are responsible for performing your various roles and responsibilities in a way that protects everyone's constitutional rights. You will cover more about this in your law classes, in particular Civil Rights and Liabilities.

The public's perceptions about the lawfulness and legitimacy of law enforcement are an important criterion for judging policing in a democratic society. Lawfulness means that police comply with constitutional, statutory and professional norms. Legitimacy is linked to the public's belief about the police and its willingness to recognize police authority.

National Institute of Justice

The second (and related) source is that the community dictates your roles and responsibilities. As an officer, you are a servant of the community, all of the community, not just the favorable sections. This relationship is more than the "I pay your salary" bit; public trust and cooperation are critical to effective policing and are lost when police engage in unconstitutional or unprofessional conduct. Your actions impact officers everywhere.

Legitimacy is a quality possessed by an authority, a law, or an institution that leads others to feel obligated to obey its decisions and directives.

Always remember that it is a privilege to serve in this role. You were called out of many to serve your community. Serve with humility.



Let's begin by examining three primary categories of police functions.

Service Delivery/ Customer Service	Order Maintenance/ Peacekeeping	Law Enforcement
<p>Police are public servants, and this carries a huge weight of responsibility.</p> <p>Some duties include:</p> <ul style="list-style-type: none"> ● Non-enforcement based conversations ● Providing education ● Helping stranded motorists ● Giving directions ● Locating missing persons ● Aid <p>Community Caretaking (ORS 133.033)</p>	<p>Police establish order in two ways, including:</p> <ol style="list-style-type: none"> 1. Preventing disorder 2. Restoring order when it has been disrupted. <p>Some duties include:</p> <ul style="list-style-type: none"> ● Intervening in situations that threaten public order ● Enforcing civil ordinances ● Directing traffic ● Settling disputes ● Patrol 	<p>Enforcing a law means to ensure the law is followed.</p> <p>Some general duties include:</p> <ul style="list-style-type: none"> ● Detect ● Investigate ● Apprehend ● Detain

Strategies to accomplish these objectives will vary by agency. One way to distinguish between the strategies is to compare reactive vs. proactive policing.

Reactive Policing	Proactive Policing
<p>Police respond to citizen calls for assistance</p> <p>Patrol is routine and unstructured</p> <p>911 calls drive police activity</p> <p>Dispatch section dictates police activity</p> <p>Emphasis on solving crimes</p>	<p>Police seek crime solutions before the crimes occur</p> <p>Targeted patrol</p> <p>Crime patterns drive police activity</p> <p>Records Management/Research dictates police activity</p> <p>Emphasis on preventing crimes</p>



Mindset- Warrior vs. Guardian

Even within a shared understanding of policing responsibilities, there is considerable debate over the mindset that goes into the role. You have likely heard at least murmurings about a discussion: Warrior or Guardian mindset? Both mindsets seek to protect the communities they serve, but they go about it in different ways. Does it matter? Is it one or the other? How can you have an emotionally intelligent discussion about this topic?

The Warrior	
<p>What is the warrior mindset? It refers to the mental tenacity and attitude that officers, like soldiers, are taught to adopt in the face of a life-threatening struggle. In this context, the warrior mindset refers to a bone-deep commitment to survive a bad situation no matter the odds or difficulty, to not give up even when it is mentally and physically easier to do so.</p> <p style="text-align: right;"><i>Harvard Law Review</i></p>	
Supporters Say	Critics Say
<p>There is no such thing as a routine call. Any encounter can turn violent.</p> <p style="text-align: center;">Training should emphasize safety and tactics.</p> <p>Moving away from this mindset puts officers at risk.</p>	<p>The warrior mindset has morphed into mentality. Officers are demonstrating an attitude (that should be displayed in physically dangerous situations) in every aspect of the job.</p> <p>Encounters with the public don't often turn violent.</p> <p>Training focusing too heavily on the risk (that anyone can kill you) creates fear and affects the way officers interact with civilians and is a barrier to true community policing.</p> <p>An aggressive approach in individual interactions can exacerbate underlying social tensions.</p> <p>The assertive manner in which officers set the tone of encounter can also set the stage for a negative response or a violent interaction that was, from the start, avoidable. An officer who needlessly aggravates a situation doesn't just increase the risk he faces in that encounter. He also increases the risk that other officers face in other encounters.</p>



The Guardian	
<p>The guardian mindset takes both a broader view and a longer view of how to achieve the goal of protecting the community. The guardian mindset prioritizes service over crime-fighting, and it values the dynamics of short-term encounters as a way to create long-term relationships.</p> <p style="text-align: right;"><i>Harvard Law Review</i></p>	
Supporters Say	Critics Say
<p>Officers should be instructed that their interactions with community members must be more than legally justified; they must also be empowering, fair, respectful, and considerate.</p> <p>The guardian mindset emphasizes communication over commands, cooperation over compliance, and legitimacy over authority. In the use-of-force context, it emphasizes patience and restraint over control, stability over action.</p> <p>Defensive tactics are essential, but police should be trained in ways to defuse conflict without force.</p>	<p>Critics of "guardian" see the concept as a challenge to the fundamental role of the police. They often associate "guardians" with politics and agendas that detract from their ability to do their job.</p> <p>Critics see an officer's safety concern when minimizing the dangers of policing in training. They express officer safety concerns when a training emphasis is placed on implicit bias and cultural diversity, whereas the "anyone can have a plan to kill you" training creates the best chance for officer survival.</p>

What goes on in our head impacts our actions; our thoughts and feelings influence how we react. You may recall this from Emotional Intelligence. Understanding the many dynamics of your role and developing a solid understanding of yourself, including your default mindset, will help you navigate the challenges of this career. There is no expectation that you know this today, but throughout this Academy, you will strengthen your mindset towards the goal of being an effective officer.

You need to be able to think critically about your role and responsibilities. It is also your responsibility to become educated on current matters regarding your profession. DPSST promotes the use of research and data in policing, and throughout this Academy, you will be encouraged to look at the research and make informed decisions.



Part 2

The Role of the Community in Policing

Several times now, the role of the community has been brought up. Why? What role does the community play in public safety?

It is the job of the police to cope with problems, not just respond to incidents.

Community Policing | National Police Foundation.

<https://www.policefoundation.org/projects/community-policing/>

As previously covered, those problems include community livability issues and disorder as well as crime. Police must work cooperatively with the community to improve livability and reduce crime and disorder.

The support of the community is a critical factor in the ability of the police to do their job effectively. Whether there will be support or not is dependent on the relationship between the police and the communities they serve. These relations are strengthened or weakened by every police-community interaction.

The importance of police-community relations was first articulated with the "Nine Principles of Policing," made famous by Sir Robert Peel and the London Metropolitan Police Department in 1829. These principles are still widely accepted as the foundation for professional policing.

This philosophy is called community policing. It is not a program delegated to a special team and ignored by the rest. It is a philosophy embodied, valued, and encouraged by an organization. Community policing is what policing is; it is not an "extra" duty. As previously covered in part 1, you work for the people. You are part of the community. Every interaction by every member of an organization impacts the relationship between that organization and the community. Every member of that organization is responsible for community policing.

What does it look like? It varies from one community to the next. Community policing includes aspects of traditional law enforcement as well as prevention, problem-solving, community engagement, and partnerships. Whereas a large metropolitan agency may utilize foot patrols as a means of officers



interacting with its community, that isn't feasible for a rural agency. Some agencies may use crime analysts to help with problem-solving, but for others, it is up to the officers themselves. Community policing will take different forms depending on the context and the involvement of the community.

So who has time for this when calls are stacked up? Community policing balances reactive responses to calls for service with crime prevention and proactively addressing the root causes of crime and disorder (reactive vs. proactive policing). Make the time; you cannot be effective without community support. Community policing comprises three key components:

- **Community Partnerships:**
Collaborative partnerships between the law enforcement agency and the individuals and organizations they serve to develop solutions to problems and increase trust in the police
- **Organizational Transformation:**
The alignment of organizational management, structure, personnel, and information systems to support community partnerships and proactive problem solving
- **Problem Solving:**
The process of engaging in the proactive and systematic examination of identified problems to develop and evaluate effective responses



*Source: Community Policing Defined - Community Oriented Policing
<https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>*



Community Partnerships

Police rarely can solve public safety problems alone. Community Policing encourages interactive partnerships with relevant stakeholders. The range of potential partners is broad, and these partnerships can accomplish the two interrelated goals of developing solutions to problems through collaborative problem solving and improving public trust.

In community policing, citizens are viewed by the police as partners who share responsibility for identifying priorities and developing and implementing responses. Accurate surveying of customer needs and priorities is required under community policing to determine the problems that drive police services and give the public ownership of the problem-solving process.

The police are only one of the many local government agencies responsible for responding to community problems. Under community policing, other government agencies are called upon and recognized for their abilities to respond to and address crime and social disorder issues. Community-based organizations are also brought into crime prevention and problem-solving partnerships with the police. Vital to the success of these efforts is the support and leadership of elected officials and coordination of the police department at all levels.

Stakeholders:

- Other Government Agencies
- Community Members/Groups
- Nonprofits/Service Providers
- Private Businesses
- Media

Think about non-traditional partnerships as well.



Organizational Transformation	<p>The community policing philosophy focuses on the way that departments are organized and managed and how the infrastructure can be changed to support the philosophical shift behind community policing.</p> <p>Community policing emphasizes changes in organizational structures institutionalize its adoption and infuse it throughout the entire department.</p> <p>Including:</p> <ul style="list-style-type: none">● Culture● Leadership● Policies● Transparency● Geographic Assignment of Officers● De-specialization● Resources● Recruitment, Hiring, and Selection● Personnel Supervision/Evaluations● Training● Communication/Access to Data● Quality and Accuracy of Data
Problem Solving	<p>Community policing emphasizes proactive problem-solving systematically and routinely. Rather than responding to crime only after it occurs, community policing encourages agencies to proactively develop solutions to the immediate underlying conditions contributing to public safety problems.</p> <p>Infuse problem-solving into all police operations and guide decision-making efforts. Agencies are encouraged to think innovatively about their responses and view making arrests as only one of a wide array of potential responses.</p> <p>You will cover more about this in Problem-Oriented Policing, which will include a model for helping you think about problem-solving in a structured and disciplined way (the SARA: scanning, analysis, response, and assessment) model.</p>

Source: Problem Solving | COPS OFFICE. <https://cops.usdoj.gov/problemsolving>



Some people criticize community policing because several studies have found that its impact on crime prevention is limited and that it has little effect on reducing citizens' fear of crime. Community policing was initially intended to emphasize the non-crime-fighting roles of the police, such as build community trust and to increase citizen satisfaction with and confidence in the police. Studies have found that community policing is associated with significant increases in citizen ratings of satisfaction with the police and also has positive benefits for police legitimacy and citizen perceptions of disorder.

SOURCE: Evidence Assessment on 21st Century Policing Report

Engaging Diverse Communities

Community Policing in the United States appeared in the 1960s as a result of race riots and concerns that police had lost contact with minority groups. Unfortunately, police/minority relationships are still an issue of interest today. You will learn more about why this is, as well as explore strategies to try and help improve this later in your Community Competency Class.

IACP produced the following steps which can be found in the Communities of Color Toolkit- Bridging the Gap <http://www.theiacp.org/Communities-of-Color/steps-to-build-trust>

- Treat every member of the community with respect and treat non-enforcement engagements as an opportunity to build trust.
- Get out of your patrol vehicle. Build relationships through non-enforcement interactions.
 - Participate in community events, seek out mentorship opportunities with youth, serve as a community coach for youth sports. Look for opportunities, particularly in areas where police enforcement is ever-present.
- Use favorable discretion by issuing verbal warnings to low-level offenders
 - Traffic offenses or criminal activity.
- Articulate why actions are being taken to make the public aware and create trust.



- Engage the youth in high-crime areas.
- Use community festivals, sporting events, and holiday celebrations to engage in dialogue with diverse community members and increase cultural competencies.
- Encourage community stakeholders to participate in programs that increase community trust.

Community Policing Summary

- Community policing emphasizes having the police engage the community in the policing process.
- Community policing implies that responses to problems will involve some sort of collaborative or cooperative working relationship between the police and the community.
- Community policing strongly emphasizes organizing and mobilizing the community.



Check Your Understanding

**What are the main points?
Summarize the main points into your
own words.**

Give examples

**What do you still need to
know or spend more time
with?**



Sources

Fagan, J., and Tyler, T. (December 2004). Policing, Order Maintenance, and Legitimacy.
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Langworthy, R. & Travis, L. (1999). Policing in America: A Balance of Forces. Prentice-Hall: Up Saddle River, New Jersey.

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Scott, Michael (2000). Problem-Oriented Policing: Reflections on the First 20 Years. Washington, DC. U.S. Department of Justice, Office of Community Oriented Policing Services
<http://www.popcenter.org/Library/RecommendedReadings/Reflections.pdf>

Stoughton, S. Law Enforcement's "Warrior" Problem. Harvard Law Review Forum (April 10, 2015).
<https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>



Final Project Evaluation

Student Name: _____ Class: _____

		NEEDS IMPROVEMENT (0 EACH)	ACCEPTABLE (1 EACH)	EXCELLENT (2 EACH)
What did you learn about the community?	<p>Does not describe the physical layout and/or geography of the community in any form</p> <p style="text-align: right;">0 Points</p>	<p>Describes the physical layout and/or geography of the community using at least one of the following:</p> <ul style="list-style-type: none"> • Visual (map, graph, etc.) • Narrative <p style="text-align: right;">1 Point</p>	<p>Describes the physical layout and/or geography of the community using at least one of the following:</p> <ul style="list-style-type: none"> • Visual (map, graph, etc.) • Narrative <p style="text-align: center;">AND</p> <p>Provides some analysis of what the physical layout/geography means for policing that community (challenges, concerns, etc.)</p> <p style="text-align: right;">2 Points</p>	
	<p>Does not describe the demographics of the community using any form</p> <p style="text-align: right;">0 Points</p>	<p>Describes the demographics of the community using at least one of the following:</p> <ul style="list-style-type: none"> • Visual (map, graph, photos, etc.) • Census or other relevant data AND Narrative <p style="text-align: right;">1 Point</p>	<p>Describes the demographics of the community using both of the following:</p> <ul style="list-style-type: none"> • Visual (map, graph, photos, etc.) • Census or other relevant data AND Narrative <p style="text-align: center;">AND</p> <p>Provides some analysis of what the demographics means for policing that community (challenges, concerns, etc.)</p> <p style="text-align: right;">2 Points</p>	



STATE OF OREGON
 DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING
 Basic Police

	NEEDS IMPROVEMENT (0 EACH)	ACCEPTABLE (1 EACH)	EXCELLENT (2 EACH)
Community Engagement	Does not identify ways to engage with the community in general <i>0 Points</i>	Identifies ways for the officer or agency to engage with the community in general <i>1 Point</i>	Identifies ways for the officer or agency to engage with the community to solve a specific problem <i>2 Points</i>
Presentation Overall	Presentation demonstrates little effort made to complete task as intended <i>0 Points</i>	Presentation demonstrates effort made to complete task <i>1 Point</i>	Presentation demonstrates extra effort and pride in work <i>2 Points</i>

SUB-TOTAL	0	_____ / 7	_____ / 16
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TOTAL	$\frac{\text{Acceptable}}{\text{Acceptable}} + \frac{\text{Excellent}}{\text{Excellent}} = \frac{\text{Final Score}}{\text{Final Score}} / 7$ <p><i>*passing score is 6*</i> <i>*score may be higher than 7*</i></p>		
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Evaluator Feedback:

Evaluator: _____

STANDARDIZED FIELD SOBRIETY TESTING





Standardized Field Sobriety Testing- Legal

Instructional Goal:

This course is designed to introduce a new police officer to legal parameters regarding driving under the influence of intoxicants.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the elements of driving under the influence of intoxicants.
2. Demonstrate documentation of a driving under the influence of intoxicants case.
3. Explain the parameters of a driving under the influence of intoxicants investigation.

Content Outline:

- Elements of Driving Under the Influence of Intoxicants
- Types of Cases
- DUII Documentation
- Searches
- Field Sobriety Tests
- Miranda Warnings
- Horizontal Gaze Nystagmus



Elements of a DUII

A person commits the offense of DUII if the person drives a vehicle on a highway or premises open to the public while under the influence of intoxicants.

Drives/Operates ORS 801.370

Operation- Any operation, towing, pushing, movement, or otherwise propelling.

In interpreting statutes addressing driving under the influence, the Oregon Court of Appeals has held that "driving" is synonymous with "operation." Oregon law requires there to be some (even the slightest amount) to constitute driving. This includes a person in the passenger seat who takes hold of the steering wheel and presses the accelerator. If there is **NO** evidence of driving (circumstantial or otherwise), but a person is sitting in the driver's seat with the ignition on, you can consider citing for attempted DUII based on State v. Baty, 243 Or App 77 (2011). Implied consent does not apply to attempted DUII, but you can still get FST's and breath tests based on P.C. and exigency.

In the following cases, the court determined that an individual can be "driving" a vehicle even if he is not in the driver's seat:

Case Law:

State v. Cruz, 121 Or App 241 (1993) In this case, the defendant propelled the car by taking hold of the steering wheel and pressing accelerator as a passenger. The appeals court used the definition for "operates" from implied consent statute.

Moe v. MVD, 133 Or App 75 (1995) In *Moe*, a passenger turned on the ignition and reached for the window. Instead, the passenger hit the gear shift, lurched the car forward, and hit eight vehicles before stopping.

State v. Martinelli, 6 Or App 182, 187, 485 (1971). Driving usually understood to mean in motion.



Vehicle ORS 801.590

Vehicle- Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.

Premises Open to the Public ORS 801.400

Premises Open to the Public includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

Examples of privately owned premises open to the public include business parking lots, commercial parking garages, and private roads that serve several property owners.

Privately owned premises NOT open to the public include individual private driveways and ranch roads not intended for public use.

Under the Influence of Intoxicants ORS 813.010

- .08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood
- OR
- Is under the influence of intoxicating liquor, a controlled substance, or an inhalant, or a combination of any.

BAC .08- Intoxilyzer or Blood Draw

BAC is typically measured using an Intoxilyzer, or a blood draw from a hospital. BAC is measured in grams of alcohol per 100 ml of blood or 210 l of breath. A BAC of .08 or greater is called per se impairment. This means that a .08 BAC legally constitutes impairment. Even though a .08 BAC is supposed to be impairment per se, it is not always enough to convince a jury that the defendant is impaired. Other factors contributing to the officer's belief that a defendant is impaired should be observed and documented. Give the example of rising BAC defense, .08 is not enough to convince the trier of fact.



Under the Influence Versus Drunk

Juries may have the perception that "under the influence" and "drunk" can be used interchangeably. The law does not put the standard at "drunk." The danger in this is that if the defendant does not fit the jury's definition of "drunk," then the jury may choose not to convict an impaired driver.

Drunk	Under the Influence
<p>The types of behavior members of a jury might typically consider signs of being "drunk" include:</p> <ul style="list-style-type: none"> • Commode Hugging • Staggering • Falling Down • Urinate in pants • Belligerent 	<p>Under the influence of intoxicating liquor includes not only the well-known and easily recognized conditions and degrees of intoxication but also any abnormal mental or physical condition that results from consuming intoxicating liquor, and that deprives the person of that clearness of intellect or control that the person would otherwise possess.</p>

Under the influence means: The defendant's mental or physical faculties were adversely affected by the use of intoxicating liquor to a noticeable and perceptible degree. Only one of the person's mental or physical faculties must be noticeably impaired to be guilty of DUII.

Officers should be ready to testify about an impaired individual's ability to safely operate a vehicle, even if the defendant does not exhibit extreme signs of intoxication.

Felony DUII ORS 813.010(5)

DUII is a class C felony if the defendant has been convicted of DUII in violation of this section or its statutory counterpart in another jurisdiction at least three times in the ten years prior to the date of the current offense and the current offense was committed in a motor vehicle.



BUII/Aircraft DUII ORS 813.010

Convictions for BUII (boating) ORS 830.325 or Prohibited Operation of an Aircraft ORS 837.080(1)(a), shall be considered a prior conviction of DUII.

Non-Driving DUII

There are times when officers will be called upon to investigate a DUII where the driver is no longer at the wheel. Circumstances may include:

- Crash scene
- Citizen complaint
- Abandoned vehicle

In these circumstances, officers may be able to file criminal charges for DUII by carefully investigating the scene, interviewing witnesses, and documenting their findings. Some techniques include:

- Developing a timeline to determine if the suspected driver could have reasonably been driving the vehicle. This includes determining the timeline from the call to contact.
- Locating and interviewing named witnesses.
- Determining if the suspected driver has consumed any alcohol since getting out of the car.
- Determining the level of impairment observed by the officer with the defendant's story.
- Determining what the suspected driver drank, when the drinking occurred, and where she drank it.
- Looking for damage to the vehicle that might indicate a prior crash.
- Noting additional items of evidence, including alcohol containers, seat position, bar receipts, identification, injuries to the suspected driver, and anything else that might indicate that the driver was operating the vehicle while impaired.



DUII Documentation

Part of the officer's job in any DUII investigation is to properly document statements made by drivers to ensure the successful prosecution of the offender. To this end, officers should obtain a variety of information from the driver, including:

Alcohol DUIIs	Drug DUIIs
<ul style="list-style-type: none">• Who were they drinking with?• What were they drinking?• When did they start drinking? When did they stop drinking?• Where were they drinking?• Why were they drinking? Was there a special occasion or celebration?• How much did they drink? How many drinks? How big were the drinks?	<p>Pill Bottles:</p> <ul style="list-style-type: none">• Was the right drug in the container?• What dose was prescribed?• How many pills are in the bottle, and what is the date of the prescription? Do these two figures add up?• Are these pills prescribed to the driver?• Is this a new prescription for the driver?• What does the warning label state? Does it tell the driver not to drive or operate machinery?• Seize the bottle as evidence or photograph the bottle. <p>Statements of Use:</p> <ul style="list-style-type: none">• Time Taken• Amount Taken



Searches

The case of *State v. Nagel* (320 OR 24, 1994) decided the issue of whether or not the administration of field sobriety testing constituted a "search." The court determined that FST's are a search within the meaning of the Constitution and that a warrant would normally be required except that a search without a warrant can be justified with probable cause and the exigent circumstances exception to the search warrant requirement.

In *State v. Nagel*, 320 Or 24, 880 (1994), the specific indicators that were used to develop probable cause were:

- The odor of alcohol
- Glassy eyes
- Fumbling to get driver's license

A driver has no legal right to refuse FSTs, per ORS 813.135. This is the basis of the Implied Consent law in Oregon. By virtue of operating "...a vehicle upon premises open to the public or the highways..." a person "...shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer...".

An officer can administer field sobriety testing under either of the following circumstances:

The investigating officer has probable cause to believe the person is DUII **and** exigent circumstances are present.
(*State v. Rutherford*)

The officer has obtained the voluntary consent of the person.

In the event the officer is not able to develop probable cause and is unable to gain voluntary consent from the person, the field sobriety tests cannot be performed. However, before allowing a driver to leave, an officer should ask if he or she feels safe, allowing this person to continue driving.



Administration of Field Sobriety Tests

In the 2000 Ohio case of *State v. Homan*, the officer did not follow the NHTSA standardized procedures while administering field sobriety testing. The court held that for the results of a field sobriety test to serve as evidence of probable cause to arrest, the police must have administered the test in strict compliance with standardized testing procedures. The court went so far in the opinion as to call FST's that were conducted in a manner that departs from established methods and procedures "inherently unreliable." The test battery contained in the Standardized Field Sobriety Testing was validated in a standardized manner and should be administered in the same standardized manner.

That is not to say that alternative tests are never of value. Alternative tests should be given if unusual conditions apply. For example, if the driver is overweight, has a false limb, is over 65 years old, or suffers from an injury or illness that would preclude the person from completing the SFST's, then the officer should consider administering alternative tests.

To determine if the person has any of these conditions, officers should ask pre-test questions designed to elicit this information. For example, asking if there is a medical condition that would keep the person from completing the walk and turn test can provide the officer with the information necessary for her investigation.

Officers should be sure to follow-up on the statements made by the person. As an example, a person claiming to have a physical defect should be asked exactly what the defect is if a doctor has diagnosed the defect, and what treatment the person is undergoing.

Horizontal Gaze Nystagmus Test

The 1995 Oregon case of *State v. O'Key* (321 OR 285) held that the Horizontal Gaze Nystagmus test is admissible as long as:

- The officer is properly trained;
- The test is properly administered; and,
- The test is recorded (officer notes).



O'Key also held that HGN could not be used in court to establish a blood alcohol concentration. Therefore, officers may not refer to any percentages they may have learned regarding the HGN test, even if such percentages are based on a SFST validation study.

Miranda Warnings

Typically, a DUII investigation is not custody for purposes of Miranda. The typical DUII investigation does not generally rise to the level of a custodial interrogation. However, providing a Miranda warning before asking probative questions may be a prudent course of action.

The Miranda warning must be given prior to custodial interrogation. However, an officer who asks a driver to perform FST's is not interrogating that individual. Also, questions relating to Intoxilyzer and breath test requests do not constitute an interrogation. Remember, though, that any questions asked after FST's may require Miranda if they are related to the circumstances of the offense. By practice, officers should give Miranda warnings after FST's (if not already done so at first contact).

Officers should also be aware that an extended traffic stop (one which takes longer than normal due to time spent waiting for other officers or resources to arrive on the scene) may develop into what the courts might consider a situation involving a custodial arrest of the driver. If in doubt as to whether or not this has occurred, officers should err on the side of caution and read Miranda.

Again, department policy and the requirements of your local District Attorney may dictate when the Miranda warning should be issued.

Verbal Portion of Field Sobriety Tests

The Oregon case of *State v. Fish* (321 OR 48) determined that verbal statements made by a subject stopped by the police are testimonial, and if compelled, could violate suspect's rights.

If a driver refuses to perform the SFST's, an officer cannot use that refusal in court UNLESS, the officer has excluded the speaking parts from the test battery.



Field Sobriety Test Refusal

The Oregon case of *State v. Rohrs* (157 OR App 494) provided officers with a method for handling FST refusals. According to the court's opinion, an officer can compel a driver to perform physical, nontestimonial testing if the officer demonstrates and describes which tests he will have the person perform and omits the verbal portions of the field sobriety testing from the instructions.

Only after these conditions are met, and the driver continues to refuse to perform FST can that refusal be used against the person in court.

The following example is taken verbatim from the Oregon Department of Justice's recommended language. Recognize that your locally elected District Attorney may have a preferred version for your agency's use. Please consult your District Attorney or your department's policies for the correct version for your agency.

Rohrs Admonition

I am going to ask you to submit to purely physical field sobriety tests. None of the tests I will ask you to perform will require you to reveal your thoughts, beliefs, or state of mind. The tests will include the horizontal gaze nystagmus test, the walk and turn test, and the one-leg stand test (briefly explain and demonstrate tests, excluding counting out loud). Do you have any questions regarding these tests or what I am asking you to do? Your refusal or failure to submit to these purely physical tests MAY be used against you in any criminal or civil proceeding.

Make sure when you are indicating that a refusal to perform tests can be used against the person that you use the word "MAY," not "will," and document that fact in your report.

A driver has no right to attorney contact (telephone, text, or otherwise) at the roadside prior to FST's. Additionally, a driver has no right to have her attorney present prior to an officer administering FST's.



The Arrest Decision

The decision to arrest is based upon the officer's belief that under the totality of the circumstances, it is more likely than not that the suspect is under the influence. This means that there usually is not just one particular piece of evidence or action that is the determining factor when making an arrest. Instead, the "totality of the circumstances" (the combination of evidence, statements, and behavior observed by the officer) leads the officer to reasonably believe that the driver is impaired.

Considerations:

The time of night, driving behavior, all evidence and statements at the scene and then form a belief based on training and experience.

Officers MUST be able to articulate probable cause to arrest for DUII.

Implied Consent

ORS 813.100- Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the implied consent law, to a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants) or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants) or of a municipal ordinance. Before the test is administered, the person requested to take the test shall be informed of consequences and rights as described under ORS 813.130 (Rights of and consequences for the person asked to take the test).

No chemical test of the person's breath or blood shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants) or of a municipal ordinance, if the person refuses the request of a police officer to submit to the chemical test after the person has been informed of consequences and rights as described under ORS 813.130 (Rights of and consequences for the person asked to take the test).



If a person refuses to take a test under this section or if a breath test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300 (Use of blood alcohol percentage as evidence), the person's driving privileges are subject to suspension under ORS 813.410 (Suspension upon receipt of the police report on implied consent test). The police officer shall do all of the following:

(a) Immediately take custody of any driver's license or permit issued by this state to the person to grant driving privileges.

(b) Provide the person with written notice of intent to suspend, on forms prepared and provided by the Department of Transportation. The written notice shall inform the person of consequences and rights as described under ORS 813.130 (Rights of and consequences for the person asked to take the test).

(c) If the person qualifies under ORS 813.110 (Temporary permit upon confiscation of license), issue to the person, on behalf of the department, a temporary driving permit described under ORS 813.110 (Temporary permit upon confiscation of license).

(d) Within a period of time required by the department by rule, report action taken under this section to the department and prepare and cause to be delivered to the department a report as described in ORS 813.120 (Police report to department), along with the confiscated license or permit and a copy of the notice of intent to suspend.

If a blood test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300 (Use of blood alcohol percentage as evidence), the person's driving privileges are subject to suspension under ORS 813.410 (Suspension upon receipt of the police report on implied consent test). The police officer shall report to the department within 45 days of the date of arrest that the person failed the blood test.



Nothing in this section precludes a police officer from obtaining a chemical test of the person's breath or blood through any lawful means for use as evidence in a criminal or civil proceeding including, but not limited to, obtaining a search warrant. [1983 c.338 §591; 1985 c.16 §298; 1985 c.672 §19; 1993 c.305 §1; 1995 c.568 §1; 2013 c.642 §1]

Under the administrative side of Implied Consent, as it relates to DUII, the following applies:

- The person has a right to communicate with counsel or others;
- There is no right to privacy during this communication; and,
- The officer must give the defendant a "reasonable opportunity" to communicate.

However, this information should not be confused with rights the person has under the U.S. and Oregon Constitutions and the requirements of criminal law. According to these laws:

- The person has a right to counsel (does not include "others" but always let them talk to "others");
- The person has the right to speak privately with counsel prior to performing the breath test; and,
- The officer must give the person a "reasonable opportunity" to consult with counsel.

"Reasonable Opportunity" has been broadly defined as the officer providing the person with a working telephone and a phone book and the opportunity to consult with counsel. This opportunity to consult with counsel should not interfere with the effective administration of the breath test, meaning that officers are not expected to wait indefinitely while the person attempts to contact his attorney while evidence dissipates. The courts have indicated that officers are required to give the person 15-20 minutes to consult with his attorney.

If the officer ends the opportunity to communicate, whether it is under implied consent or whether it is communication with an attorney, the officer must articulate the reasons for ending the call in the report.

A person has a right to consult privately with counsel prior to making a decision to submit to a chemical test. For the purposes of this section, "privacy" means:

- The conversation with the attorney is not recorded by law enforcement; and,
- The conversation occurs out of earshot of law enforcement.



Privacy cannot be denied to the suspect based on general security concerns. For example, even though the officer believes that the defendant might damage the telephone, he is still required to provide privacy to consult with an attorney. The idea of "privacy" does not mean, however, that an officer cannot maintain visual contact with the defendant, and the defendant can remain handcuffed if the officer believes it is necessary.

The case of *State v. Matviyenko*, 212 Or App 125 (2007), held that the defendant is not required to request privacy when consulting with a lawyer – officers must recognize this right and provide privacy during any such consultation. Additionally, officers must tell the defendant beforehand that privacy will be given during the consultation.

If the person asks to call for a ride, the officer may simply tell the person they can call the person after the breath test is complete. Any other substantive request for a phone call should result in an opportunity to make a call.

If the person refuses SFSTs but does not ask to talk to an attorney, it is still good practice to give the person privacy and an opportunity to make a phone call. If the suspect asks to make a phone call to anyone, including an attorney, at any time before taking the breath test, read implied consent and the following before providing the person a telephone:

"I am providing you with a phone and privacy to make a phone call. This is your opportunity to attempt to communicate or consult with anyone you want, including an attorney. A phone book will be provided to you. You will have a reasonable amount of time-based on the circumstances to use the phone, up to 15 to 20 minutes".



Breath Test Refusal

Anything short of taking a completed test is a refusal, regardless of why the test is not completed. This includes any action or inaction. A suspect does not have the right to have an attorney present while the breath test is being conducted. The suspect also does not have the right to take a test other than the one requested. In other words, if an officer offers a breath test, the suspect does not have the right to refuse the breath test and instead submit to a blood test.

Examples:

- "Not until I talk to my attorney" is a refusal.
- Puffing, putting a tongue over the mouthpiece to block the flow of breath, and sucking rather than blowing are all refusals.
- In cases of real medical reasons for not completing the test, IT IS STILL A REFUSAL, and it is up to the suspect to prove medical problems at the hearing.

Department of Justice Recommendation for a Standard DUII

- Read Implied Consent then ask the person if they will take the breath test (document answer in quotes). If they agree, administer the test.
- If the person refuses a breath test, apply for a warrant.
- In crash cases where someone other than the defendant is injured, do an exigency draw and be sure to follow it up with a warrant. Make sure you articulate all the factors involved in the case that would give rise to exigency, including judge availability and the other officers' availability.
- If the defendant is injured, an added factor to support exigency is that the hospital will give fluids and/or drugs as part of treatment. There is a need to preserve the blood evidence to prevent dilution interference by other substances.



Department of Justice Recommendation for a Drug DUII

The Machuca case did not find that the presence of drugs indicates exigency by itself. More recent case law suggests that the presence of drugs creates exigency since drugs affect the body differently and leave the body at different rates. The officer must testify to the fact that there is no way to know what drug was taken when and in combination with any other drug.

Because of this, the Oregon DOJ recommends that for cases where impairment is suspected due to a controlled substance or an inhalant, the following procedure be followed:

- Follow the procedures already outlined for alcohol DUII cases.
- If the breathalyzer BAC does not match the level of impairment observed and you have a reasonable suspicion that impairment is caused by a controlled substance or inhalant, then call your DRE.
- If no DRE is available, read Section II of the suspension form prior to requesting urine
- If the defendant refuses urine, consider seeking a warrant.

Resources

Your best resource for prosecuting DUII cases in your jurisdiction is your local District Attorney's Office.

An excellent general resource for questions regarding the prosecution of DUII in Oregon the Oregon Department of Justice:

Deena Ryerson

deena.a.ryerson@doj.state.or.us

(503) 934-2030 or (503) 348-5942.

Amy Seely

Amy.seely@doj.state.or.us

(503) 378-6347



Check Your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time on?

STRESS FIRST AID





Stress First Aid

Instructional Goal:

This course is designed to develop a new police officer's ability to recognize and cope with the effects of acute and/or chronic stress.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Recognize the physical and psychological effects of stress.
2. Identify appropriate techniques for coping with stress.

Content Outline:

- Introduction to Stress First Aid
- Stress Continuum Model
- Stress Injuries
- Stress First Aid Actions



BRIEF STRESS FIRST-AID BACKGROUND

Stress First-Aid (SFA) was adapted from the Navy/Marine Corps Combat Operational Stress First-Aid (COSFA) model. The Core Actions are derived from an exhaustive literature review conducted in 2007 by Steven Hobfall, Ph. D. & his colleagues regarding five essential elements of immediate and mid-term intervention that are related to better recovery from stress. You may notice some military-type elements in the model. Still, as a whole, this is research-based and designed to be a tool for leaders to be able to leverage strengths and vulnerabilities to build resilience and conserve all members of their unit.

Stress First-Aid (SFA) is a flexible multi-step process for the timely assessment and preclinical care of stress reactions or injuries in individuals or units with the goals to preserve life, prevent further harm and promote recovery.

Stress First-Aid (SFA) is a flexible multi-step process for the timely assessment and preclinical care of stress reactions or injuries (psychological injuries) in individuals or units with the goals to **preserve life, prevent further harm and promote recovery.**

NEEDED: when there is functional impairment or distress due to a recent stressor or event or both. *Realized that certain parts of life (like work) might seem or appear fine, while others are in distress (home).*

Functions of Stress First Aid (SFA): *SFA is designed to...*

- Reduce risk for adverse stress reactions
- Continuously monitor stress levels
- Recognize those reacting to stressors
- Offer interventions
- Monitor progress
- Bridge to higher levels of support, when needed

3 Essential SFA Skills:

- 1) Recognize (stress injury);
- 2) Act (see something; say something);
- 3) Know (at least) 2 trust resources to offer



SFA Core Principles:

- Recovery is promoted by augmenting, restoring, and leveraging leader actions, peer support, and unit cohesion
- SFA occurs whenever and wherever it is needed
- SFA is individualized; not one-size-fits-all
- SFA is an ongoing process
- SFA requires a collaborative team effort

SFA is NOT:

- An event-only intervention
- A one-time-only intervention
- A replacement for medical or behavioral health interventions
- A replacement for prevention efforts

Something to Think about...

*How do we not only prevent injury, but what do we need to do **WHEN**, not if someone becomes injured?*



Stress Continuum Model:

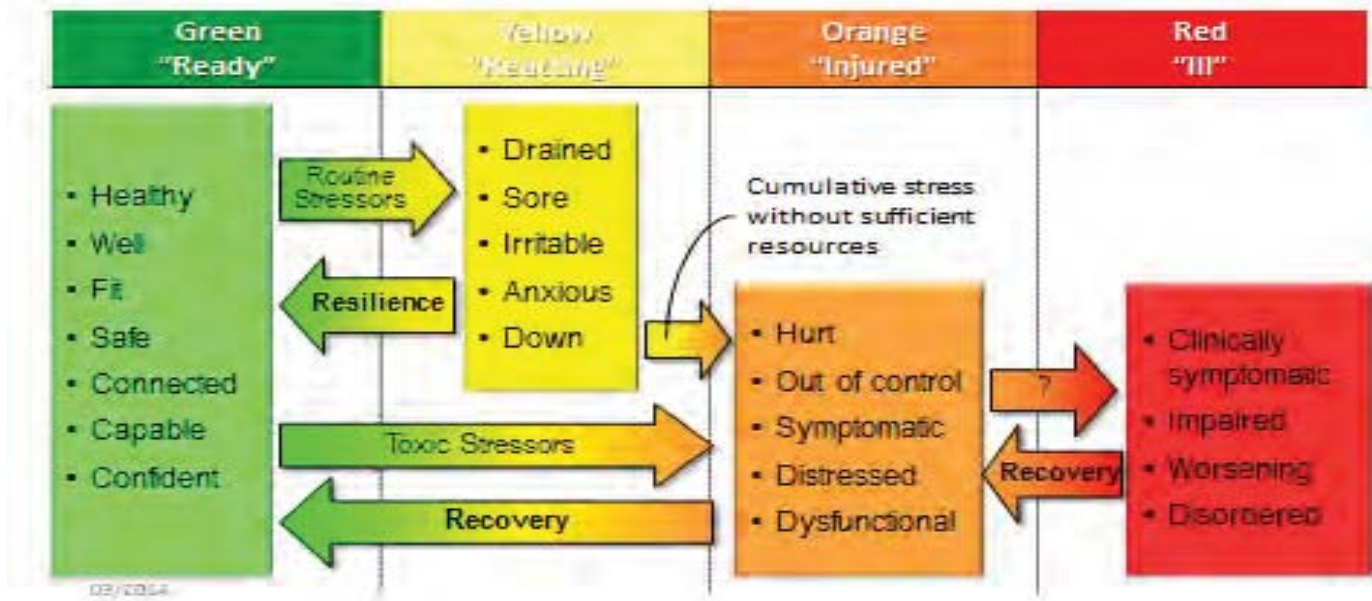
READY (Green)	REACTING (Yellow)	INJURED (Orange)	ILL (Red)
<p>DEFINITION</p> <ul style="list-style-type: none"> ✦ Optimal functioning ✦ Adaptive growth ✦ Wellness <p>FEATURES</p> <ul style="list-style-type: none"> ✦ At one's best ✦ Well-trained and prepared ✦ In control ✦ Physically, mentally and spiritually fit ✦ Mission-focused ✦ Motivated ✦ Calm and steady ✦ Having fun ✦ Behaving ethically 	<p>DEFINITION</p> <ul style="list-style-type: none"> ✦ Mild and transient distress or impairment ✦ Always goes away ✦ Low risk <p>FEATURES</p> <ul style="list-style-type: none"> ✦ Feeling irritable, anxious or down ✦ Loss of motivation ✦ Loss of focus ✦ Difficulty sleeping ✦ Muscle tension or other physical changes ✦ Not having fun <p>CAUSES</p> <ul style="list-style-type: none"> ✦ Any stressor 	<p>DEFINITION</p> <ul style="list-style-type: none"> ✦ More severe/persistent distress or impairment ✦ Leaves a scar ✦ Higher risk <p>FEATURES</p> <ul style="list-style-type: none"> ✦ Loss of control ✦ Panic, rage or depression ✦ No longer feeling like normal self ✦ Excessive guilt, shame or blame <p>CAUSES</p> <ul style="list-style-type: none"> ✦ Life threat ✦ Loss ✦ Moral injury ✦ Wear and tear 	<p>DEFINITION</p> <ul style="list-style-type: none"> ✦ Clinical mental disorder ✦ Unhealed stress injury causing life impairment <p>FEATURES</p> <ul style="list-style-type: none"> ✦ Symptoms persist and worsen over time ✦ Severe distress or social or occupational impairment <p>TYPES</p> <ul style="list-style-type: none"> ✦ PTSD ✦ Depression ✦ Anxiety ✦ Substance abuse

-STRESS FIRST-AID fits here-

To fill the gap between training, stress management & prevention at the left end of the Continuum and clinical treatments available from healthcare providers at the right of the Continuum.



Recognizing Stress Zone Transitions:



Stress First-Aid: Filling the Gap





Reaction vs. Injury Analogy: Tree Bending in Wind (Reaction) versus Broken Limb (Injury)

- Tree Bending-behavior affected by circumstance→maintain role function → minimal, short effect
- Broken Limb-behavior affected by circumstance→role function damaged →lasting effect

Stress Injury Risk:

Most people can handle one or two potential stress injury experiences by increasing their use of positive coping resources. However, as the sources of stress injury overlap or exhaust coping resources the risk for stress injury and role compromise increases.



STRESS FIRST AID MODEL



Seven Cs of Stress First Aid:

- 1. CHECK**
Assess, observe and listen
- 2. COORDINATE**
Get help, refer as needed
- 3. COVER**
Get to safety ASAP
- 4. CALM**
Relax, slow down, refocus
- 5. CONNECT**
Get support from others
- 6. COMPETENCE**
Restore effectiveness
- 7. CONFIDENCE**
Restore self-esteem and hope



CHECK

CHECK Aims:

1. Identify the current level of stress
2. Look for indicators of ability to function in role
3. Determine Needs for SFA actions, other support (physical, emotional, spiritual, social), others who need to know, others who can help

CHECK Actions:

Observe: _____

Keep Track: _____

Examine: _____

Decide: _____

Orange Zone Indicators:

1. Recent Stressor Events
2. Distress (significant and/or persistent feelings)
3. Changes in Functioning (physical, mental, social or spiritual)



COORDINATE

COORDINATE Aims:

1. Identify other needed sources of help
2. Inform those who need to know

COORDINATE Actions:

Collaborate: _____

Inform: _____

Refer: _____

Group Discussion Questions:

What are some of the barriers or challenges to connecting with stress resources in your department?

What are some ways to overcome these potential barriers or challenges?

What are some of the characteristics of a trusted resource in your organization?



COVER

COVER Aims:

1. Ensure the immediate physical safety of the stress-injured person and others
2. Foster a sense of psychological safety and comfort
3. Protect from additional stress

COVER Actions:

Stand By: _____

Make Safe: _____

Make Others Safe: _____

Encourage Perception of Safety: _____

CALM

CALM Aims:

1. Restore optimal mental functioning by reducing mental and emotional effort.
2. Reduce or stop potential damage caused by excessive stress by:
 - Reducing the levels of stress chemicals in the brain and bloodstreams.
 - Slowing the rate of firing of neurons in the nervous system.
3. Stabilize thoughts and behaviors by increasing self-control and restoring mental clarity



CALM Actions:

Quiet: _____

Compose: _____

Foster Rest: _____

Soothe: _____

GROUP WORK:

List examples for each of the four types of calming strategies for *angry individuals*:

Distract	Defuse	Distance	Deter



CONNECT

CONNECT Aims:

1. Reduce isolation and alienation.
2. Increase a sense that others care.
3. Promote actions that increase the stressed individual's connection with others.

CONNECT Actions:

Be With: _____

Promote Connection: _____

Reduce Isolation: _____

COMPETENCE

COMPETENCE Aims:

1. Foster restorative support to help an individual put their life back together and feel positive about their abilities & skills.
2. Improve overall functioning by:
 - Improving work-related skills
 - Improving the ability to cope with stress reactions



COMPETENCE Actions: (Improve / Foster...)

Social Skills: _____

Occupational Skills: _____

Well-Being: _____

TECHNIQUES:

Stop	<ul style="list-style-type: none"> ✧ Rest, take time to recover ✧ Identify challenges to functional capabilities ✧ Don't keep doing what isn't working
Back-Up	<ul style="list-style-type: none"> ✧ Retrain and refresh skills ✧ Mentor/problem solve ✧ Learn new skills ✧ Enhance wellness
Move Forward Again	<ul style="list-style-type: none"> ✧ Practice new and refreshed skills ✧ Gradually increase responsibilities ✧ Set achievable goals ✧ Explore and trouble-shoot obstacles ✧ Reinforce successes and motivation



CONFIDENCE

CONFIDENCE Aims:

1. Promote realistic hope.
2. Rebuild self-esteem that may have been negatively affected by the results of stress.
3. Promote confidence in core values and beliefs.
4. Bolster pride and commitment.
5. Foster the trust of co-workers and family friends in the individual.

CONFIDENCE Actions: (Rebuild...)

Trust: _____

Hope: _____

Self-Worth: _____

Meaning: _____

Take-Home Messages:

To best use SFA, you should...

- Utilize a flexible, practical approach, specific to the need, the situation, and the phase of recovery for the stressed individual.
- Refer to the SFA Student Resource Handout for more detailed information about each of the SFA actions.
- Use SFA to take care of yourself and your colleagues.
- Document progress to move the field forward
- Try using SFA flexibly on a case-by-case basis. As you start working with this model, you will become more and more confident in your abilities.



Scenarios

A.

A seasoned officer is faced with a particularly gruesome, fatal car accident, after which his new boss (with a very critical attitude) makes statements like "boy, it sounds like you guys screwed up that scene." Back at the office, the new boss comments to him among his peers "how tough it has to be since your wife lost her job due to the economic downturn," but disregards the fact that the seasoned officer did not get promoted despite having the training, experience, and skills supposedly sought after.

The seasoned officer had been closely mentoring a younger officer who reminded him of his son, who was deployed in Afghanistan. The younger officer was killed after losing control of his vehicle during a pursuit when the seasoned officer was off duty. The seasoned officer "shrugs it off" and says, "older troopers know when to punch it – if I had been there, I would have known when to call it off."

His partner notices that the seasoned officer is more isolated keeps to himself more, and is not mentoring the younger guys as freely as he used to. He isn't as involved in the activities and doesn't want to participate in any "off line" conversations. Plus, he is not even taking advantage of training or refresher opportunities, like he used to.

Things to think about:

What do you do?

What are the concerns?

Where are the risks?

What are the immediate versus the potential dangers?

Questions:

- What sources of stress injury may be in play?
- What other information would you want to know?
- What risks or obstacles might you be faced with in trying to intervene/help?



B.

A young officer with a good track record feels the new department chief is constantly questioning the officers. When he talks with him, the chief says, "professionalism, performance, and integrity is all you own on the job." The young officer is frustrated, feeling like "they picked us, so why do we never get to make our own decisions? Our sheriff didn't even have to have law enforcement experience to be elected." From their new supervisor, all he hears is: "no, I tell you what to do. I look out for the needs of the department."

The young officer soon becomes angry and withdrawn because his best buddy resigned, and his file is closed. He feels that the department and supervisor are NOT "looking out for the needs of the department," and is angry because rumors are running rampant about why his buddy resigned. He feels everyone is in everyone else's business, and when he talks to whoever will listen, he says: "In this department, if an officer does anything wrong, we nail him to the wall harder than anyone. Anything less would be favoritism. We eat our own. Then a bulletin goes out that tells everyone in the whole state that an officer lost the ability to be a cop – it's disseminated to everyone. No one gets to make any mistakes anymore without everyone finding out about it. Where's the professionalism and integrity in that?"

Things to think about:

What do you do?

What are the concerns?

Where are the risks?

What are the immediate versus the potential dangers?

Questions:

- What sources of stress injury may be in play?
- What other information would you want to know?
- What risks or obstacles might you be faced with in trying to intervene/help?



C.

An officer working on a child abuse case where there is a child fatality works hard on the case and feels that he "did everything right," but the jury said there was no crime. He becomes intensely angry and hostile at "the system" after the child's family starts calling asking for help to put him in prison because they feel unsafe.

The same officer has several difficult calls over the next three months and becomes increasingly irritable, and even becomes more and more hostile when he talks about the public. When you speak with him, he says, "I know what I signed up for, but I was raised in a small town where there was respect given to law enforcement professionals. I came from the East coast, where the public looks out for us like our meals are covered at local restaurants when we're in uniform. Here, we have to put in 25 years before we retire, can't accept a meal, and have less respect. The West coast is completely different than the East Coast. We pride selves on not taking gratuities. But I see people in the department doing other things – taking risks, while thinking they will not get caught. Like me, they're sick of being seen as the bad guys in town. Even today, I stopped someone for not wearing a safety belt. He looked at me and said, 'don't you have anything better to do?' Everyone loves a fireman, but no one loves a cop. They only want us there to restore order or make them *FEEL* safe, and then they want us to get out of there."

Things to think about:

What do you do?

What are the concerns?

Where are the risks?

What are the immediate versus the potential dangers?

Questions:

- What sources of stress injury may be in play?
- What other information would you want to know?
- What risks or obstacles might you be faced with in trying to intervene/help?



D.

An officer has been sullen, withdrawn, and unenthusiastic about taking on any responsibilities, and it's been getting worse over the last year. When you talk with him, he says, "You know, when I went through the academy, the message we kept being given was to keep our professionalism, but also keep families and friends intact, try to stay grounded, and have a real life. But here, when we're denied every vacation for the first five years, get no seniority, and keep being given the graveyard shift with Tuesday / Wednesday off, it's pretty hard to stay grounded. How is that consistent with the message we were sold in the academy?"

The next month the officer, who has served for 15 years, and a junior officer with four years' experience shoot and kill a driver in a vehicular pursuit. The young trooper, who has had training for handling stress and traumatic incidents, seems to be fine, but the older trooper, who has a history of other losses, starts signing up for overtime, becomes more irritable and short-tempered and avoids contact with others.

His wife has confessed to his partner that when he goes home, he sits in his recliner, channel surfs, and when his family gets in front of him, he doesn't want to relax with them or make any decisions. He seems withdrawn, uninterested, and doesn't seem to spend any time with his friends anymore. It's starting to strain the marriage, as well as his potential for any type of "life" outside of work.

Things to think about:

What do you do?

What are the concerns?

Where are the risks?

What are the immediate versus the potential dangers?

Questions:

- What sources of stress injury may be in play?
- What other information would you want to know?
- What risks or obstacles might you be faced with in trying to intervene/help?



E.

A well-respected sergeant was asked to the scene of a robbery because he had training in liability, and the officers on the scene didn't know if they could forcibly search a kid. The sergeant, rather than using the tactics he had been trained in, tried to coax the youth because he was young, and the sergeant ended up shot in the face, murdered. Many of his team on the scene attempted to resuscitate him. The other officers on the scene regret that they didn't shoot the murderer, while the one who took a shot is placed on forced admin leave for a month. During the admin leave time, he begins to second-guess his actions after watching media programs, having conversations with lawyers, union representatives, and co-workers. The officer whose buddy was placed on leave starts saying, "I used to have more self-control, but now I feel like my attitude is: do unto others before they start to do unto you."

A stone memorial installed to commemorate the fallen officer serves as a frequent reminder of the event for the other officers on the scene, and a few years later, all the officers involved were divorced. When you talk to one of the officers involved, he reports that his guilt over how he handled that incident (not taking a shot), along with being on the scene of several fatal automobile accidents and child abuse cases, contributed to increased drinking and his marriage failing. He reports that he "feels like we're always taking out the trash, and there's always more trash, and sometimes it's the same trash."

Things to think about:

What do you do?

What are the concerns?

Where are the risks?

What are the immediate versus the potential dangers?

Questions:

- What sources of stress injury may be in play?
- What other information would you want to know?
- What risks or obstacles might you be faced with in trying to intervene/help?



Check Your Understanding

**What are the main points?
Summarize the main points into your
own words.**

Give examples

**What do you still need to
know or spend more time
on?**

SUPPORTING VICTIMS OF CRIME





Supporting Victims of Crime

Instructional Goal:

This course is designed to develop a new officer's awareness surrounding victim's rights laws and practices.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Explain notification responsibilities for law enforcement related to victims
2. Given a circumstance, determine the need to provide victim's rights information to a victim

Content Outline:

Victim's Rights

- What are Victim's Rights?
- Law Enforcement Role
- Oregon Victim's Rights Laws
- Oregon Crime Victim's Bill of Rights
- Statutory Application
- Best Practice

Supporting Victims of Crime

- Major Needs of Victims
- Resources



Victim's Rights

The criminal justice system is our society's method of addressing crime and promoting public safety. It is designed to prevent and respond to crime; identify, apprehend, and prosecute persons charged with a crime; and incarcerate and supervise convicted offenders with efforts to rehabilitate them and hold them accountable for their criminal actions. The criminal justice system is a sequential process that includes numerous phases:

Law enforcement	Institutional corrections
Prosecution	Parole
Judiciary and courts	Appellate courts
Probation	

While the agencies in each phase have specific roles and responsibilities in promoting public and victim safety, often, their roles are shared and require on-going cooperation among agencies to ensure effective operations and collaborative responses to victims' rights and needs. They are responsible for protecting individual rights under state and federal constitutions and laws, and for implementing procedures that are fair and equitable to all parties involved. Throughout the phases of the criminal justice system, all justice agencies have a role and responsibility to:

<p>Provide information about and referrals to available crime victim services.</p>	<p>Provide information about the Crime Victim Compensation Program and professionals who can help victims of crime complete an application to cover out-of-pocket financial losses directly resulting from the crime.</p>
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What are victim's rights? Victims' rights are rights personally held by the victim that can be legally asserted during the criminal case. Victims have rights throughout the criminal process: pre-trial through post-trial, and there are a variety of services in place to assist them.



Oregon Victims' Rights Laws

Crime victims' legal rights are guaranteed by the Oregon Constitution and Oregon Revised Statutes.

Victims' right to justice includes the right to:

- Play a meaningful role in the criminal or juvenile justice process.
- Be treated with dignity and respect.
- Receive fair and impartial treatment.
- Receive reasonable protection from the offender.

Crime Victims' Rights apply to the adult criminal justice system and the juvenile justice system. Many of these rights go into effect automatically, while others must be requested through the local District Attorney's office or Juvenile Department.

Chapter 147 of the Oregon Revised Statutes is dedicated to Victims of Crime, including rights to compensation and the Oregon statutes on Victim's Rights.

Victim compensation is money paid from the government to a victim, usually to cover certain out of pocket costs incurred as a result of the crime.

There are numerous statutes pertaining to the various compensations, and it is NOT expected that police will know all of these. Most jurisdictions will have Victim's Rights Specialists (learn where yours are located) who are prepared to assist crime victims with these statutes. However, it IS required that police provide notification to victims of these rights.

ORS 147.365- Law Enforcement agencies to inform crime victims of the compensation procedure

- (1) All law enforcement agencies in this state shall deliver cards to victims of crime, stating the procedure to be followed in applying for compensation under ORS 135.905 and 147.005 to 147.367.
- (2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section.



Oregon Crime Victim's Bill of Rights

ORS 147.410 Purpose

We, the people of the State of Oregon, declare that victims of crime are entitled to fair and impartial treatment in our criminal justice system. The purpose of chapter 2, Oregon Laws 1987, is to declare to our legislature and our courts that victims' rights shall be protected at each stage of the criminal justice system. We reject the notion that a criminal defendant's rights must be superior to all others. By chapter 2, Oregon Laws 1987, we seek to secure balanced justice by eliminating unbalanced rules.

ORS 147.417 Victims to be notified of constitutional rights

- (1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be oral or written. If exercise of any of the rights depends upon the victim making a request, the law enforcement agency shall include in the notice the time period in which the victim is required to make the request. A law enforcement agency satisfies the requirements of this section if the law enforcement agency:
 - (a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or, in a homicide case, the victim's next of kin; and
 - (b) Presents, if written notice is given, the notice directly to the victim or sends the notice to the last address given to the law enforcement agency by the victim.
- (2) Failure by a law enforcement agency to properly notify the victim as required by this section:
 - (a) It is not grounds for setting aside a conviction.



(b) It does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the Oregon Constitution.

(3) Nothing in subsection (2) of this section justifies a failure to notify the victim properly.

(4) (a) As used in this section, "law enforcement agency" means the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.

(b) The district attorney shall determine if the notice required by this section has been given and, if not, shall provide the notice.

Statutory Application

ORS 147.365 and ORS 147.417 have in common, a legislative mandate to provide notice of certain victims' rights to crime victims. The duty to provide notice outlined in ORS 147.417 is a shared duty among the "law enforcement agencies" defined by that statute, with the DA serving as the final check on that responsibility.

The Oregon Department of Justice provides victims' rights notification cards, which set forth both the information victims need to inquire about possible compensation, as required by ORS 147.365, as well as the victim rights ensured by the Oregon Constitution, as required by ORS 147.417. The provision of this card to a crime victim would satisfy the obligations created by both statutes.



Victims' Rights

This brochure lists rights given to victims of crime in Oregon. **Please contact your local District Attorney or Juvenile Department** for more information about your rights or about upcoming hearings. See the Victim Services Contact Information in this brochure for other options.

Some victims' rights only become rights if you request them. Contact your local District Attorney's Office Victim Assistance Program or Juvenile Department if you want to request these rights.

For more information about your rights, including what to do if your rights have not been honored, contact your local District Attorney's office or visit:
www.doj.state.or.us/victims

This brochure is available in the following languages:

<p>Hardcopy and On-line</p> <ul style="list-style-type: none"> • English • Spanish <p>On-line Only</p> <ul style="list-style-type: none"> • Korean • Russian • Vietnamese • Chinese

To receive additional copies of this brochure, please call:

503-378-5348
(Salem and surrounding areas)
800-503-7983
(statewide toll free)

Victim Services Contact Information

Oregon Department of Justice
Crime Victims' Services Division
1162 Court Street NE, Salem, OR 97301

503-378-5348
(Salem and surrounding areas)
800-503-7983
(statewide toll free)

www.doj.state.or.us/victims
Crime Victims' Compensation Program
800-503-7983

Statewide Legal Aid Information
www.oregonlawhelp.org

Oregon Crime Victim Law Center
503-208-8160

Oregon State Bar
800-452-7636
www.osbar.org/public

Oregon Board of Parole & Post-Prison Supervision
503-945-0907

Oregon Psychiatric Security Review Board
503-229-5596

Oregon State Police - Sex Offender Registry
503-934-1258

Oregon Youth Authority
503-373-7205

Call to Safety
Statewide Referral to Local Crisis Programs
888-235-5333

Catholic Charities Immigration Legal Services
503-542-2855

VINE: Victim Information Notification Everyday
877-674-8463
www.VINELINK.com



Department of Justice
State of Oregon

Crime Victims' Services Division
1162 Court St. NE
Salem, OR 97301
(503) 378-5348
(800) 503-7983

www.doj.state.or.us/victims

**Every victim, every crime,
every right, every time.**

REV. 4/2014



In order to protect your rights, you must keep the District Attorney's office, or Juvenile Department updated with your contact information.

General Rights

- Your right to justice includes the right to a meaningful role in the criminal or juvenile justice process, to be treated with dignity and respect, to fair and impartial treatment, and to reasonable protection from the offender.
- Many victims' rights are automatic although you may need to "tell" someone you want to receive them.
- Other rights you must specifically **request** to receive the right. One way to do this is to contact your District Attorney to **request** these rights.
- You, your attorney, or, upon your **request**, the District Attorney, may assert your rights in court.
- You have the right to have a support person with you.
- If your case involved physical harm or death, you may be able to get financial help for counseling, medical or death related costs:

Crime Victims' Compensation Program
800-503-7983

- You can attend open court proceedings.
- You can **get** a copy of a transcript or recording of open court proceedings if one is already made. You may be charged for the transcript or recording.
- Most "**personal identifiers**" can usually be protected from an alleged offender. These include your phone number, address, social security number, date of birth, and bank account and credit card account numbers.
- You can **get** confidential HIV testing, referrals for health care and counseling if the convicted person in your case tests positive for HIV.
- You or the district attorney can **ask** the court to limit distribution of information and recordings in cases involving sexual or invasion of personal privacy offenses.

Rights that must be requested:

- To be notified of certain open court proceedings
- To get criminal history information about the defendant, convicted criminal, alleged youth offender or youth offender.
- That the person charged or convicted in your case get testing for HIV or other communicable diseases if the crime involved the transmission of bodily fluids.

Following An Arrest

- Automatic Rights:**
- The judge will consider your safety at a pre-trial release hearing
 - You can refuse to speak to an attorney or private investigator for the defendant or alleged youth offender.
 - You will be notified about early disposition programs that may apply to your case.
 - The prosecutor will consider any of your recommendations about defendant diversion.
- Rights that must be requested:**
- To be notified in advance about the release hearing.
 - To be consulted about the plea negotiations or final plea offer in a violent felony case.

If Your Case Goes to Trial and Sentencing

- Automatic Rights:**
- If a pre-sentence investigation report is ordered in your case, you can include a statement in it.
 - The right to express your views at sentencing, in person or in writing.
 - Rape shield laws may apply in your case.
- Rights that must be requested:**
- For the court to exclude media television, photography, or recording equipment during sex offense proceedings. The court may deny this request.

After Sentencing

- Automatic Rights:**
- Prompt restitution for your crime-related costs.
 - To be heard at a hearing on a motion to set aside a conviction.
- Rights that must be requested:**
- To be notified of the release of a juvenile offender from an OYA Youth Correctional Facility. You must first provide your contact information to OYA.
 - To receive 30 day notice about parole hearings in adult cases. First you must register with the parole board.
 - To be notified when the convicted person is released from prison.
 - To be notified of hearings where probation may be revoked.

- To receive information about the offender from the Psychiatric Security Review Board (PSRB) if under their jurisdiction. First you must register with the PSRB.

If your case is **appealed** you may have other rights.
For more information contact:
Oregon Department of Justice
Crime Victims' Services Division
800-503-7983

You have a right to not be contacted by the sex offender convicted in your case. For information about registered sex offenders call:

Oregon State Police - Sex Offender Information
503-934-1258

Other Legal Information

- You can ask for a restraining order if you are a victim of family, elder, or disabled person abuse or are threatened with such abuse, or if you are a victim of sexual abuse.
- You can go to the police or to court and ask for a stalking protective order if you have been a victim of stalking.
- If you are a victim of sexual assault, a hospital must give you accurate information and access to emergency contraception.
- If you are a victim of domestic violence, you may be able to get financial help from the Department of Human Services through their Oregon Temporary Assistance to Domestic Violence Survivors (TADVS) fund.
- If you are a victim of domestic violence, sexual assault, or stalking, you may be able to:
 - Take leave from work to attend court proceedings
 - Take leave from work for medical or counseling appointments
 - Get unemployment benefits
 - End a rental agreement early
 - Have your locks changed
 - Get special arrangements for public housing
 - Set up a payment plan with the phone company
 - Your immigration status should not affect your rights as a crime victim.
- Immigrant victims may have additional legal options.
- If your constitutional rights are not honored, you can assert a claim of violation of crime victims' rights. There are time limits for this right. For more information visit www.doj.state.or.us/victims



Supporting Victims of Crime

Everyone is affected by crime, either as a direct victim or a friend or family member of a victim. Even individuals who are not direct victims of crime can be negatively affected in a variety of ways, such as developing an increased fear of crime or experiencing the financial impact of crime (e.g., higher insurance rates, lost workdays). While primary victims of crime might be identified easily, secondary victims such as family and clan members may not be so readily identifiable and may not receive needed services. Identifying services offered for neighborhoods and communities can be even more difficult.

Another group affected by crime is first responders. These people typically are first on the scene or first to respond to crime, including police officers, firefighters, and emergency medical technicians. A vivid example of the impact of crime on first responders involves those who responded to the September 11, 2001, terrorist attacks. Descriptions of stepping through or on body parts while trying to find survivors illustrate the experiences that can cause long-term trauma to first responders. An officer interviewing a child sexual abuse victim may be reminded of her or his own child of the same gender and age. You will cover more about this topic in your Resiliency and Self-Care series.

Major Needs of Victims

Crime has significant, yet varying consequences, on individual crime victims, their families and friends, and communities. The impact of crime on victims results in emotional and psychological, physical, financial, social, and spiritual consequences.

The way people cope as victims of crime depends largely on their experiences and on how others treat them immediately after the crime. As a law enforcement officer, you are usually the first official to interact with victims. For this reason, you are in a unique position to help victims cope with the immediate trauma of the crime as well as to help them regain a sense of security and control over their lives.



The circumstances of a crime frequently dictate when and how responding officers first address victims and their needs. You may have to delay fully attending to victims as you juggle many tasks. Tasks may include: determining what other emergency services are needed and calling for them, evacuating people from the site, securing the crime scene, or advising other public safety personnel upon their arrival. As soon as the responding officer's most urgent tasks have been completed; however, attention can be focused on victims and their needs. At that point, how you approach and relate to victims, explain your various law enforcement responsibilities, and work with victims is crucial to their recovery.

Moreover, the responding officer's awareness of the needs of victims, the many dimensions and consequences of crime for victims, common responses to victimization, and the particular needs of distinct victim populations can help the officer avoid a re-victimization of victims.

For example:

- Inadvertently making comments or asking questions that are hurtful to victims by seemingly implying that victims are partially responsible for their own victimization.
- Forgetting to return property taken from victims as evidence.
- Or, in any other way, unknowingly being insensitive to victims.

By approaching victims in a respectful and supportive manner, officers can gain their trust and cooperation. Victims may then be more willing to provide detailed information about the crime to officers and later to investigators and prosecutors, which, in turn, will lead to the conviction of more criminals. But always remember that you are there for the victim; crime victims are not just witnesses who are there to assist you with your duties.

You can better respond to individual types of crime victims and specific types of criminal victimizations by first understanding the three primary needs most victims have after a crime has been committed:

- The need to feel safe
- The need to express their emotions, and
- The need to know "what comes next."



Victims' Need to Feel Safe	Victims' Need to Express Their Emotions	Victims' Need to Know "What Comes Next"
<p>People often feel helpless, vulnerable, and frightened by the trauma of their victimization.</p>	<p>Victims need to air their emotions and tell their story after the trauma of the crime. They need to have their feelings accepted, and their story heard by a nonjudgmental listener. In addition to fear, victims may have feelings of self-blame, anger, shame, sadness, or denial. Emotional distress may surface in seemingly peculiar ways, such as laughter or an expressionless face. Sometimes victims feel rage at the sudden, unexpected, and uncontrollable threat to their safety and lives. This rage can even be directed at the people who are trying to help them—including law enforcement officers.</p>	<p>Victims often have concerns about their role in the investigation of the crime and the legal proceedings. They may also be concerned about issues such as media attention on themselves and their ability to pay for medical care or property damage. Some of their anxiety may be alleviated if victims know what to expect in the aftermath of the crime. This information will also help victims prepare themselves for upcoming stressful events and disruptions in their lives related to the crime.</p>

Although it is important that the officer not give legal advice to victims, the officer should explain the investigation and arrest procedures. Additionally, explain the victim's responsibility as a witness to assist the grand jury and trial process. The victim will need to provide information and documentation of expenses, items damaged or stolen, etc. to further the investigation and seek restitution.



Be conscientious of the varying needs of victims, consider elderly versus children, or victims with disabilities or mental health issues. What happens when a victim is deaf or hard of hearing? How do you think a victim who is an immigrant might react? How does the type of crime relate? The victim of a sexual assault will be different than a victim of domestic violence, will be different than a victim of a drunk driving crash. What about a victim of a bias crime, what might they need?

Oregon Department of Justice Bias Crimes
Non-Emergency Hotline
1-844-924-BIAS
Hearing Impaired- Dial 711 for Oregon Relay
Monday through Friday 9 a.m. to 5 p.m.

Part of your on-going professional development should include attending additional training and educating yourself. Also, know your agency's policies and your jurisdiction's resources.

Resources

National Crime Victim Law Institute- Lewis and Clark

https://law.lclark.edu/centers/national_crime_victim_law_institute/

National Center for Victims of Crime

<http://www.victimsofcrime.org/>

Oregon Department of Justice- Crime Victims' Services

<https://www.doj.state.or.us/crime-victims/>

U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

<https://ojp.gov/ovc/welcome.html>

U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

First Response to Victims of Crime: A Guidebook for Law Enforcement Officers

<https://ojp.gov/ovc/publications/infores/pdftxt/FirstResponseGuidebook.pdf>

DPSST gratefully acknowledges the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, for allowing us to reproduce, in part or in whole, the First Response to Victims of Crime: A Guidebook for Law Enforcement Officers (NCJ 217272, released in 2008).



Check Your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	With what do you still need to know or spend more time?

USE OF FORCE





Use of Force Law

Instructional Goal:

This course is designed to develop a new police officer's understanding of the legal authority guiding use of force decisions and the ability to apply that authority appropriately.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate authority guiding an officer's use of force

Content Outline:

- Oregon Criminal Code- The Peace Officer Justification Statutes
 - Use of Physical Force in Making an Arrest or in Preventing Escape
 - Use of Deadly Physical Force in Making an Arrest or in Preventing Escape
 - Reasonable Belief
- Oregon Criminal Code- The Civilian Justification Statutes
 - Use of Physical Force in Defense of a Person
 - Limitations on Use of Physical Force in Defense of a Person
 - Limitations on Use of Deadly Physical Force in Defense of a Person
 - Use of Physical Force in Defense of a Premises
 - Use of Physical Force in Defense of Property
 - Use of Physical Force by Private Person Assisting an Arrest
 - Use of Physical Force by Private Person Making Citizen's Arrest
 - Use of Physical Force in Resisting Arrest Prohibited
- Federal Constitutional Analysis of Police Use of Force
 - Tennessee v Garner
 - Graham v Connor



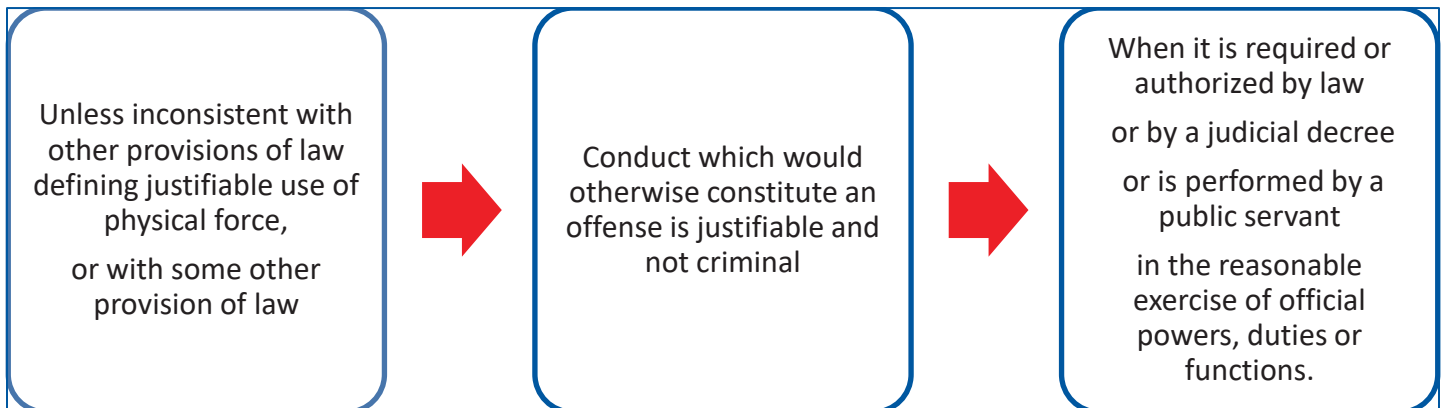
Oregon Criminal Code: The “Justification” Statutes

The Oregon Criminal Code uses the concept of “justification” to explain when a person who uses force that results in injury or death would be “justified” and not criminally responsible for that outcome. “Justification” is a recognized *criminal* defense under Oregon law, and its definition is found in ORS 161.195.

This justification discussion differs from the two considerations that bind peace officers when making use of force decisions:

1. Constitutional law- We will discuss following the justification discussion, and which is relevant to *civil* lawsuits, (and less frequently federal criminal prosecutions), and
2. Policy- Because of its uniqueness to each agency, we will not discuss it.

161.195 “Justification” described.



Following this definition of “justification,” there are several statutes that follow. One interesting fact about these statutes is that they all remain virtually unchanged since their enactment in 1971.

Most of these statutes pertain to all potential users of force in the State of Oregon. For convenience, we will call these the “civilian” justification statutes. However, a handful of these statutes apply only when the user of force is a state or local corrections officer, or a “peace officer” as defined by law. First, we will examine the peace officer justification statutes. We will then discuss the “civilian” justification statutes.



Watch for how each statute we encounter will make apparent which lawful purposes for force give rise to potential justification.

The Peace Officer Justification Statutes

Use of Physical Force in Making an Arrest or in Preventing an Escape ORS 161.235

Watch for the first time when the Oregon Legislature tells us that we lose our justification for force if we knowingly make an unlawful arrest and use force to do so.

Only when and to the extent that the peace officer reasonably believes it necessary:

1. To make an arrest or prevent the escape from custody of an arrested person unless the peace officer knows the arrest is unlawful; OR
2. For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

Use of Deadly Physical Force in Making an Arrest or In Preventing an Escape ORS 161.239

The age of this statute (1971) will be significant when we discuss the constitutional implications of the use of deadly force by peace officers. Keep in mind that "preventing escape" was just described as a justifiable use of force in the preceding statute.

1. Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly physical force only when the peace officer reasonably believes:
 - a. The crime committed by a person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person; OR
 - b. The crime committed was a felony or an attempted felony, and under the totality of the circumstances existing at that time and place, the use of force was necessary; OR
 - c. The peace officer's life or personal safety is endangered.



2. It does not justify reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

Reasonable Belief ORS 161.245

This statute does not so much spell out lawful purposes for force as it reminds us that knowing the law on which we rely is essential to use of force decision making. Notice how the Oregon Legislature reminds us that we lose our justification if we knowingly make an unlawful arrest and do so with force.

1. For the purposes of ORS 161.235 and 161.239, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody.
2. A peace officer making an arrest is justified in using physical force in ORS 161.235 and 161.239 unless the arrest is unlawful, and the peace officer knows it is unlawful.



Summarize the Peace Officer Justification statutes in your own words.



The "Civilian" Justification Statutes

Use of Physical Force - Generally ORS 161.205 (We will be skipping ORS 161.205 (2), which pertains to the use of force by corrections officers).

The use of physical force upon another that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. Parent, guardian, supervising person may use reasonable force when and to the extent reasonably believes necessary to maintain discipline or promote the welfare of the minor or incompetent person. "Personnel of a public education program," may use reasonable physical force upon a student when and to the extent, the application of force is consistent with ORS 339.291(concerning the use of "physical restraint or seclusion.")
2. A person responsible for the maintenance of order in a common carrier of passengers (or person acting under the direction of the person) may use physical force when reasonably believes necessary to maintain order. Deadly force only when the person reasonably believes it is necessary to prevent death or serious physical injury
3. A person acting under reasonable belief another is about to commit suicide or inflict serious physical self-injury may use physical force to the extent reasonably believed necessary to thwart the result
4. In self-defense or in defending a third person, defending property, in making an arrest or in preventing an escape



Use of Physical Force in Defense of a Person ORS 161.209

Except as provided in ORS 161.215 and ORS 161.219 a person is justified in using physical force upon another for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes necessary for the purpose.

Limitations on Use of Physical Force in Defense of a Person ORS 161.215

Notwithstanding ORS 161.209, a person is not justified in using physical force if:

1. With intent to cause physical injury or death to another, the person provokes the use of unlawful physical force by that person, OR
2. The person is the initial aggressor unless they withdraw from the encounter and effectively communicates to the other person their intent to do so, and the other person continues or threatens to continue the unlawful use of force
3. The physical force involved is the product of a combat by agreement not specifically authorized by law. (We often refer to this as "mutual combat.")

Limitations on Use of Deadly Physical Force in Defense of a Person ORS 161.219

Notwithstanding ORS 161.209 a person is not justified in using deadly physical force unless the person reasonably believes the other person is:

1. Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; OR
2. Committing or attempting to commit a burglary in a dwelling (See State v. Haro below); OR
3. Using or about to use unlawful deadly physical force against a person.



The Oregon Court of Appeals in State v. Haro, 117 Or. App 147 (1992), analyzed justification to “shoot a burglar” in self-defense. The facts and ruling in Haro are as follows:

Short learned that his former girlfriend, Keller, was with the defendant at the defendant’s (Haro’s) apartment. It was late at night. Defendant and Keller were inside the apartment naked. Defendant heard a knock at the door. He responded that the party was over and said, “Go away.” The knocking persisted. Keller ran to the bathroom, and the defendant went to the front door and opened it.

Short testified that the defendant let him in the apartment and that he (Short) immediately went into the bathroom to see Keller. While in the bathroom, Short said he should “kick [defendant’s] ass.” Short left the bathroom, walked into the living room, and looked at the defendant. The defendant shot him.

The defendant testified that Short told him that he wanted to talk to Keller and that, if the defendant did not open the front door, he would break it down. The defendant said, “[W]hat if I don’t open it?” Short responded that he would “kick [defendant’s] ass.” The defendant turned away from the door to put his pants on. Short entered without permission and went into the bathroom.

While in the bathroom, Short was screaming and yelling, and the defendant heard him say, “I am going to kick his ass.” When Short came out of the bathroom, he looked upset. Defendant grabbed a gun and cocked it. Short approached the defendant quickly, continuing to yell that he was going to “kick [the defendant’s] ass.” Short had his fists clenched and his arm drawn back. Although the defendant raised the gun, Short kept coming at him. When Short continued to approach, the defendant shot him.

The defendant contended that he shot in self-defense. The court instructed the jury: “In this case, the defense of self-defense has been raised. A person is justified in using physical force upon another person to defend himself from what he reasonably believes to be the use or imminent use of unlawful physical force. In so defending, a person may only use that degree of force which he reasonably believes to be necessary.”

“The burden of proof is on the State to prove beyond a reasonable doubt that the Defendant **did not act in self-defense.**”



"With regard to the self-defense of a person, I have certain limitations on the use of deadly physical force. The defendant is not justified in using deadly physical force on another person unless the defendant reasonably believed that the other person was, one, committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or, second, committing or attempting to commit a burglary in a dwelling."

The defendant contends that the instruction was erroneous because Short was committing a burglary in his dwelling and, under ORS 161.219, he had an *unlimited* right to use deadly force. Defendant misconstrues the self-defense statutes.

ORS 161.209 and ORS 161.219 refer to each other and must be read together. ORS 161.209 defines the circumstances under which physical force may be used and limits the amount of force that may be used, under any circumstances, to that "degree of force which the person reasonably believes to be necessary for the purpose." In other words, ORS 161.209 defines the so-called "necessity" requirement of Oregon's self-defense law. That requirement applies to all uses of physical force.

ORS 161.219 begins with the phrase, "Notwithstanding the provisions of ORS 161.209, a person is not justified in using deadly physical force upon another person unless***." That phrase explains that, although ORS 161.209 authorizes the use of physical force in certain circumstances, deadly force is never reasonable, in the absence of any of the additional threatening circumstances described in ORS 161.219. **Nothing in the language of ORS 161.219 eliminates the general "necessity" requirement defined in ORS 161.209.** Therefore, even when one or more of the threatening circumstances described in ORS 161.219 is present, the use of deadly force is justified *only* if it does not exceed the "degree of force which the person reasonably believes to be necessary" in the circumstances. See State v. Wright, Or. 430, 435, 799 P.2d 642 (1990).

The legislature has not created an unlimited right to use deadly force against a burglar. The court properly instructed the jury on self-defense.



Use of Physical Force in Defense of Premises ORS 161.225

1. A person in lawful possession or control of premises is justified in using physical force when and to the extent reasonably believed necessary to prevent or terminate what the person reasonably believes to be commission or attempted commission of criminal trespass in or upon the premises
2. May use deadly physical force only:
 - a. In defense of a person as provided in ORS 161.219; OR
 - b. When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by a trespasser.

Use of Physical Force in Defense of Property ORS 161.229

Is justified in using physical force, other than deadly physical force upon another person when and to the extent reasonably believes necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.

**NOTE: WE GO OUT OF NUMERICAL ORDER HERE BECAUSE WE DISCUSS THE PEACE
OFFICER STATUTES FIRST**



Use of Physical Force by Private Person Assisting an Arrest ORS 161.249

1. A person who has been directed by a peace officer to assist the peace officer in making an arrest or in preventing an escape from custody is justified in using force when and to extent person reasonably believes force necessary to carry out peace officer's direction
2. When directed by a peace officer to assist, a person may use deadly physical force only when:
 - a. The person reasonably believes that force necessary for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of deadly physical force; OR
 - b. The person is directed or authorized by a peace officer to use deadly physical force unless the person knows that the peace officer is not authorized to use deadly force under the circumstances.

Use of Physical Force by Private Person Making Citizen's Arrest ORS 161.255

1. A private person acting on their own account is justified in using physical force when and to the extent they reasonably believe it is necessary to make an arrest or to prevent the escape from custody of an arrested person whom the person has arrested under ORS 133.225.
2. Justified in using deadly physical force only when the person reasonably believes it necessary for self-defense or to defend a third person from the use or imminent use of deadly physical force.

Use of Physical Force in Resisting Arrest Prohibited ORS 161.260

A person may not use physical force to resist an arrest by a peace officer who is known, or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.



State v. Oliphant, 347 Or 175 (2009)

"This case, then, presents an apparent conundrum: A person may not use force to resist arrest, even if the arrest is unlawful, but any person is entitled to use such force as is necessary to overcome what the person reasonably believes to be the unlawful use of physical force by anyone, including a police officer. (Citing ORS 161.209). How can a person obey the statutes prohibiting the use of force to resist arrest and still exercise his right under ORS 161.209 to use force in self-defense? To answer that question, as this court stated in Wright,

"It is crucial to distinguish between (1) the use of physical force in resisting arrest and (2) the use of physical force in defending oneself, i.e., self-defense, against excessive use of force by the arresting officer. The former is unlawful. Depending on the circumstances, the latter may be justifiable and not criminal."

"If (defendant) believed, and a reasonable person in his position would have believed that the use or imminent use of force against him exceeded the force reasonably necessary in effecting the arrest, then he was entitled to defend himself from that use of force."



Summarize in your own words, the limitations of the use of force by a civilian.



Federal Constitutional Analysis of Police Use of Force

The Foundational Cases: Tennessee v. Garner and Graham v. Connor

The 1980s were a time of great significance in the United States Supreme Court, concerning public safety use of force. Tennessee v. Garner in 1985 was the first of three landmark cases. It is most widely known as the case that abandoned the “fleeing felon rule,” which at the time was still good law in more than 30 states. Next, but not covered in this class, was the 1986 ruling in Whitley v. Albers, a case arising out of the Oregon State Penitentiary, and which concerned force against convicted prisoners. And last but not least was Graham v. Connor. This 1989 case remains the most-often cited case when courts are analyzing peace officer use of force and its constitutionality. As we review Garner and Graham, it is essential to remember that this discussion is unique to public safety officers or “color of law” actors, whose force conduct has a constitutional dimension as well as potentially criminal. Private persons interacting with one another by force may have criminal implications to their force conduct or civil lawsuit remedies. However, they are not bound by these constitutional principles.

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

The issue before the United States Supreme Court was summarized as follows:

This case required the United States Supreme Court to determine the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. The court ultimately concluded a police officer may use deadly force only when it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a threat of serious harm, either to the officers or others.



In Garner, the court held:

1. Apprehension by use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. To determine the reasonableness of the seizure, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interests. This language is often referred to as the "balancing test." As we will see in *Graham* and later cases, this balancing test is used when analyzing all uses of force, not only deadly force.
2. Notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him.
3. The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.
4. However, where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, if, where feasible, some warning has been given.

NOTE: Suspect Garner was shot fleeing a nighttime burglary. The officer testified he saw no sign of a weapon on Garner and was "reasonably sure" he was unarmed. The court found the officer never attempted to justify his actions on any basis other than the need to prevent an escape. The following language is instructive, in light of ORS 161.239 (1) (b):



"The fact that Garner was a suspected burglar could not, without regard to the other circumstances, automatically justify the use of deadly force. (The officer) did not have probable cause to believe that Garner, whom he correctly believed to be unarmed, posed any physical danger to himself or others...While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force."

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

The issue before the United States Supreme Court was summarized as follows:

This case required the United States Supreme Court to decide what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person.

In Graham, the court held:

1. All claims of "excessive force," deadly or not, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.
2. Fourth Amendment case law has long recognized that the right to make an arrest or stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.
3. The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Therefore, the proper application requires careful attention to the facts and circumstances of each particular case.



4. These “facts and circumstances” include the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. (This list of considerations is now widely referred to as the “Graham factors.” Notice that the court said these “facts and circumstances” *include*... This implies that other considerations *may* inform the reasonableness analysis, while these considerations *always* will. Case law post-Graham will “add factors” to the list). Quoting Garner, the question is “whether the totality of the circumstances justifies a particular sort of ...seizure.”
5. Reasonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The standard of “reasonableness at the moment” applies.
6. 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. Determination of reasonableness must allow for this fact.
7. The “reasonableness” inquiry is an objective one. In essence, the question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

This list of considerations is now widely referred to as the “Graham factors”

Post-Graham Case Law Developments

As we observed above in Graham, the federal circuit courts of appeal were free post-Graham to continue to analyze and modify what it means for the force to be “objectively reasonable under the totality of the circumstances.” The Ninth Circuit Court of Appeals, in particular, has delivered a considerable number of rulings post-Graham, the practical effect of which is an “addition” to the “Graham factors.” As an Oregon peace officer, you will be practicing the profession of law enforcement in the Ninth Circuit. You are, therefore, bound by these additional considerations.



In a case originating in Washington County, Oregon, which went to trial after the Ninth Circuit ruled on pretrial legal issues, the federal trial judge gave the following jury instructions to the jury empaneled for that trial. Notice how we see reference to the Graham factors, and then, much more. (NOTE: You will discuss many of these cases again in your Use of Force Application classes and your Mental Health – Legal Considerations class)

- Is the suspect presenting an immediate threat?
- What is the severity of the crime or circumstances to which the officer is responding?
- Is the suspect actively resisting arrest or attempting to escape?
- How much time did the officer have to make a decision, and were there any environmental factors or changing circumstances that impacted the decision to use force?
- What was the type and amount of force used?
- Is it feasible to warn the suspect before using force? (If not, we must articulate why)
- Is the suspect emotionally disturbed or mentally distraught – including under the influence of drugs/alcohol?
- Did the officer consider/implement alternatives to using force or de-escalation of the situation?
- Was the suspect in close proximity?
- Did the suspect have access to weapons?



Additional Discussion: Objective Reasonableness Post Graham

1. *The threat posed by the subject*

- a. This is the threat not only to you but also to your fellow officers, the subject himself, or the public. This has been described as the most critical factor in force evaluation. It is important to be as specific as possible about who is being threatened and what the level of threat is. The more severe and more immediate the threat, the higher the level of force that may be reasonable.
- b. The threat of Self Harm - The Courts have affirmatively granted us the ability to use reasonable force to prevent suicide, but have also decided recent cases disapproving of using a significant amount of force that is capable of causing serious physical injury or death to prevent suicide.

2. *Mental state (including behavioral health crisis)*

- a. The subject's mental state may be a factor in your consideration to use force. Many of the people you will come across in your day-to-day responsibilities are at some level of a behavioral health crisis. The crisis may be due to a chronic mental illness, medical condition, or induced by drugs or alcohol. The fact that a person is in a behavioral health crisis does not mean that they are not a threat to you or others or that a lesser level of force is appropriate. However, if you realize that you are dealing with a person experiencing a behavioral health crisis, you will consider that as you determine what tactics or force may be appropriate and effective.
- b. This concept will be particularly important in the event you encounter such a person who has either committed no crime or very low-level crimes. In other words, you should be extremely judicious in your force applications when the primary interest is in providing care to the person encountered. Mental state as a force consideration will be discussed in more detail in your Mental Health 4 Legal Considerations training.



3. *Whether warnings were given*

- a. The use of warnings, when feasible, is required in deadly force applications and highly encouraged in all force events. It makes sense that some subjects would modify their behavior in response to a warning that continuing in the behavior could lead to force being used against them. This is one factor the Ninth Circuit Court of Appeals has specifically referred to and seems to be relying on more often in determining reasonableness.
- b. Keep in mind; this is not the mindless task of throwing out some verbal warning. It is a reasonable attempt to warn the suspect about the force you will use as a consequence of their action or inaction and giving reasonable time to comprehend and decide to comply.
 - i. Our conclusion is strongly supported by Rutherford's failure to give Deorle any warning that he would be shot if he approached any closer or any order to drop the can or bottle or stop where he was. Deorle certainly could not have been expected to comply with instructions that were never given to him.¹
 - ii. Two additional considerations militate against finding Officer MacPherson's use of force reasonable. First, it is undisputed that Officer MacPherson failed to warn Bryan that he would be shot with the X26 if he did not comply with the order to remain in his car. We recognized in *Deorle* that police officers normally provide such warnings where feasible, even when the force is less than deadly, and that the failure to give such a warning is a factor to consider."²

¹ *Deorle* at 1282.

² *Bryan* at 627.



4. *Time, tactics and resources*

- a. This factor encompasses the universe of things available to you at the time you decided to use force. Although most force events occur when there is little time to think or act, some situations allow for considerable time before the use of force occurs, which in turn allows for significant resources to be brought to bear on the situation. In every situation, using time, tactics, and resources will allow you to work intelligently and purposely towards a positive outcome.
- b. For example, consider an armed, barricaded suspect who retreats into a vacant room and who is not actively engaging, versus a victim on the ground being straddled by a suspect who is repeatedly slamming the victim's head into a tile floor. Certainly, both of these situations would require your response, but the pace at which you attempt to engage the first suspect would likely be much slower and more resource-intensive than in the second situation.
 - i. Officer MacPherson knew additional officers were en route to the scene. He was, or should have been, aware that the arrival of those officers would change the tactical calculus confronting him, likely opening up additional ways to resolve the situation without the need for an intermediate level of force.³

Therefore, there was simply "no immediate need to subdue [Bryan]" before Officer MacPherson's fellow officers arrived or less-invasive means were attempted... Officer MacPherson's desire to quickly and decisively end an unusual and tense situation is understandable. His chosen method for doing so violated Bryan's constitutional right to be free from excessive force.⁴

³ *Bryan* at 831.

⁴ *Id.* at 832.



**What are the main points?
Summarize the main points into your
own words.**

Give examples

**What do you still need to
know or spend more time
with?**



Use of Force Decision Making

Instructional Goal:

This course is designed to develop a new officer's understanding of the legal authority guiding use of force decisions and the ability to apply that authority appropriately.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate authority guiding an officer's use of force
2. Describe subject behaviors that could require officer intervention or response
3. Articulate governmental interest in a given situation
4. Differentiate between "type" of force and the "amount" of force that can be used by officers
5. Demonstrate effective communication
6. Complete a use of force report containing all pertinent details
7. Analyze a given situation and respond with the appropriate type and amount of force



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Introduction

This material is designed to be a reference guide to the terms and phrases you will be exposed to at DPSST when discussing use of force matters. It is in no way meant to replace quality classroom instruction, case law discussion, or use of force incident debriefs.

This is also not meant to replace a policy and procedure manual. It is intended that this manual will be written in plain language as often as possible to assist the understanding of complicated legal issues.

For more information or clarification regarding this subject matter, it is recommended that you thoroughly research the source material.

Disclaimer:

This manual represents a partial treatment of the subject matter presented. Its use without class participation and instruction is discouraged. This may result in the dissemination of misleading or incomplete information.

Most of the definitions listed in this manual are taken from legal rulings or the Oregon Revised Statutes. For additional clarification, some of the definitions listed are taken from the dictionary. The dictionary definitions are meant to clarify some legal jargon into plain language, but they are not legal definitions.



When can an Officer use Force? – Part 1

The following sections are meant to give a new officer an overview of use of force issues. These are partial treatments meant to supplement the discussions you will be having in the classroom. Some topics will have additional information that will be included in later sections of this manual.

Lawful Reasons to use Force

As Law Enforcement Officers, we have a legal right to use force while carrying out our duties. However, there are legal boundaries to our ability to use force. These boundaries come from several sources referenced throughout this material and your training at DPSST. The following is a list of reasons when officers may use force in the performance of their duties.

To detain a suspect of a possible crime: ORS 131.615 (5) stop – Criminal Code.

To arrest someone: Graham v Connor – 3rd factor. ORS 133.235 (4). ORS 161.235 (1).

To stop someone from hurting you (Law Enforcement) or another person:
Graham v Connor – 2nd factor. ORS 161.235 (2). ORS 161.239 (1).

To prevent someone from escaping from law enforcement custody:
Graham v Connor – 4th factor. ORS 161.235 (1). ORS 161.239 (1).

To maintain order and discipline in a jail or other corrections facility:
ORS 161.205 (2). ORS 161.267 – Department of Corrections only.

To physically stop someone from killing or harming themselves: ORS 161.205 (4).

To prevent the destruction of property: ORS 161.229.

To stop someone from interfering with an investigation: ORS 162.247.



The Objective Reasonableness Standard

The DPSST Use of Force and related programs place significant emphasis on the United States Supreme Court's rulings on the "Objective Reasonableness" standard describing the constitutional use of force under the Fourth Amendment of the United States Constitution. The specifics of this standard, its rules, and court rulings will be discussed during the courses you will attend while at the academy. Some definitions regarding these courses and topics are listed below.

Reasonable – being in accordance with reason, not extreme or excessive.

Merriam-Webster Dictionary

Reason – a sufficient ground of explanation or logical defense; something (such as a principle or law) that supports a conclusion or explains a fact.

Merriam-Webster Dictionary

"The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

"The calculus of reasonableness must embody allowance 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."

Graham v. Connor – U.S. Supreme Court

"Under Graham v. Connor, we evaluate the government's interest in the use of force by examining three core factors, 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, however, are not exclusive. Rather, we examine the totality of the circumstances and consider whatever specific factors may be appropriate in a particular case, whether or not listed in Graham."

Bryan v. MacPherson – 9th Circuit



The Graham Factors

In the United States Supreme Court Case *Graham v. Connor*, the courts established some specific questions that will be asked during a review of a use of force case at the federal level. In *Graham v. Connor*, the first four questions are stated in the following way.

"Because the 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."

Graham v Connor – U.S. Supreme Court

For ease of discussion and evaluation, we will cover these points individually during class. Our objective is for all officers to have a thorough understanding of the courts' questions and how they are relevant both during and after a use of force event. In addition, there are two additional factors that were also addressed in *Graham v. Connor*.

"The calculus of reasonableness must embody allowance 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."

Graham v Connor – U.S. Supreme Court

"As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them..."

Graham v Connor – U.S. Supreme Court

From this point forward, we will use the *Graham* analysis when evaluating videos, scenarios, and cases to help us determine the possible legality of a use of force event.



The Severity of the Crime

The first question of the Graham analysis is about the severity of the crime in question. This seems like a simple question, but in reality, it is three questions. First, do the officers have a legal right or the authority to be where they are? This is usually self-evident; however, if the situation developed from a “mere contact” or a similar reason, then this question will need to be explained in a report or debrief before moving on to the next questions.

The second question regarding “severity,” and the most important is, are we dealing with a violent or dangerous crime. This usually seems apparent, but we should look at some individual rulings to understand what the courts have traditionally thought about when deliberating whether a crime is considered “violent.”

“Although we are mindful of the seriousness and reprehensibility of domestic abuse, the circumstances are not such in this case as to warrant the conclusion that Smith was a particularly dangerous criminal or that his offense was especially egregious.”

Smith v. Hemet – 9th Circuit

“Mr. Beaver was suspected of having committed residential burglary. Although burglary is a felony offense, it is not necessarily a violent crime. Indeed, it often relies more on stealth than on force.”

Beaver v. Federal Way – 9th Circuit



Finally, the courts look at the “egregiousness” of the crime. The dictionary definition of egregious is; something that is extremely and conspicuously bad. To simplify, is this a “C” misdemeanor or an “A” felony?

“Trespassing and obstructing a police officer, as those offenses were committed by Davis, are by no means such serious offenses as to provide an officer with a reasonable basis for subduing a person by the means employed by Officer Miller.”
Davis v. City of Las Vegas – 9th Circuit

It should be mentioned that regardless of the seriousness of the original crime, you are always allowed to use *some* amount of force to place a subject under arrest, as long as it is reasonable force. The suspect’s response to your reasonable attempts to arrest and detain them can escalate what started as a low-level crime into severe and violent crimes.

There will be more discussion about this in the section the Use of Force in Low Governmental Interest incidents. As will be mentioned in that section, do not let your desire for “compliance” or the need to be right, outrun your legal authority.

“We appreciate the danger associated with speeding, and we do not minimize the particular importance of observing school zone speed limits. We also recognize the importance of having people sign their traffic citations when required to do so by state law. However, we have no difficulty deciding that failing to sign a traffic citation and driving 32 mph in a 20-mph zone are not serious offenses. Indeed, our case law demonstrates that far more serious offenses than Brooks’ do not constitute severe crimes in a Graham analysis.”
Brooks v. City of Seattle – 9th Circuit



Immediate Threat

Whether a person is an *Immediate Threat* is another one of the factors considered by the Supreme and Ninth Circuit Courts when they are looking at a use of force case. This is often the main question the courts consider in determining the reasonableness of an officer's use of force.

"Next, it is necessary to apply the Graham criteria, beginning with the "most important single element of the three specified factors: whether the suspect poses an immediate threat to the safety of the officers or others."

Smith v. Hemet – 9th Circuit

So, what is an *Immediate Threat*? Simply put, it is someone that appears to want to hurt or kill you or someone else. A formula DPSST uses as a way of explaining this is to say that *any person demonstrating the Intent, having the Ability (Means) and the Opportunity, to inflict injury, serious physical injury, or death*. For training purposes, we further explain the three elements to help officers better explain what they perceived.

The following are DPSST's Working Definitions of these three elements:

Intent – The person must demonstrate their intent to cause physical injury, serious physical injury, or death through either; body language, verbalization, or both.

Ability (or Means) – The person must have either the physical ability or possess a weapon to carry out the demonstrated intent.

Opportunity – The person must have access to the officer, a weapon, or both to carry out the perceived attack.



An immediate threat should be dealt with quickly and decisively, but still reasonably. Unreasonable force is often the result of an officer who either misjudges a person to be an immediate threat when they are not, or they do not draw the correct distinction between an immediate physical threat and an immediate deadly threat.

The following are DPSST's Working Definitions of these two types of immediate threats.

Deadly Immediate Threat – A person demonstrating the Intent, having the Ability (Means), and the Opportunity (*to attack the officer*) and, under the circumstances, is readily capable of causing serious physical injury or death.

Physical Immediate Threat – A person demonstrating the Intent, having the Ability (Means), and the Opportunity (*to attack the officer*) and, under the circumstances, is readily capable of inflicting physical injury.

Trying to decide if someone is an immediate threat can be difficult. However, once you learn the contextual clues to look for through training and experience, you should be able to make this decision intuitively.

"The chase, in this case, exceeded 100 miles per hour and lasted over five minutes. During that chase, Rickard passed more than two dozen other vehicles, several of which were forced to alter course. Rickard's outrageously reckless driving posed a grave public safety risk."

Plumhoff v. Rickard – US Supreme Court



Officer Safety Clues

Officer safety clues, sometimes called *pre-assault clues*, are the obvious and subtle behaviors demonstrated by a person that indicate their intentions to either attack, resist or flee from an officer. These clues can be either verbal or physical and must be taken in with the totality of the situation. A person putting their hands in their pockets may be indicating that they have a weapon; or, they may just be cold.

We have broken these clues into two categories: verbal clues and physical clues. These clues can be obvious, for example, when a suspect yells, "I'm not going back to jail!" or they can be subtle, "Warrant? What do you mean, I have a warrant?"

The following are some of the more common examples of clues you may see:

Verbal Clues – Obvious	Verbal Clues – Subtle
<ul style="list-style-type: none"> ▪ "I'm not going back to jail!" ▪ "No!" ▪ Yelling curses. ▪ Direct threats. 	<ul style="list-style-type: none"> ▪ Tone of voice. ▪ Repeating questions. ▪ Not answering questions directly. ▪ Words do not match physical actions. ▪ Asking specific questions. ▪ Attempts to begin distracting conversation.
Physical Clues – Obvious	Physical Clues – Subtle
<ul style="list-style-type: none"> ▪ Red face. ▪ Clenched jaw. ▪ Clenched fists. ▪ Rolling up sleeves. ▪ Removing clothing or jewelry. ▪ Putting hands into pockets. ▪ Moving towards the Officer. 	<ul style="list-style-type: none"> ▪ Widening their stance. ▪ Target glancing. ▪ Touching the face or nose. ▪ Touching the waistband or pockets. ▪ Moving to a better position. ▪ Assuming a handcuffing position. ▪ Practicing assault movements.



Try to consciously look for the presence of officer safety clues during your contacts with unknown people, suspects of crimes, and possibly some witnesses or bystanders. At the beginning of your career, this will need to be done deliberately and should be a priority during unknown contacts.

As you gain experience, this will become intuitive and can be done at the same time as an investigative interview. Remember to pay attention to your subconscious if or when it does pick up these clues.

Finally, all officer safety clues must be taken in context. Who is the suspect? How is the suspect dressed? Where is this situation located? Are there other indicators that, when *combined* with the physical and verbal clues, lead the officer to objectively and reasonably believe that there is a significant officer safety issue that should be controlled?



Types of Resistance

The following definitions and explanations are meant to help you identify what type of resistance you are dealing with. When you document your use of force, you should thoroughly explain what behaviors and actions you perceived.

ORS 162.315 (c) - Resists means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes, but is not limited to, behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer.

The behavior does not have to result in actual physical injury to an officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.

ORS 161.260 Use of physical force in resisting arrest prohibited. A person may not use physical force to resist an arrest by a peace officer who is known, or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.

Resist – to exert oneself to counteract or defeat. *Merriam-Webster Dictionary*

When you are attempting to arrest or detain a person, the mere act of “non-compliance” with your orders for the person to “turn around and put your hands together behind your back” is not an act of resisting arrest. However, it is a contextual clue that they are not going to cooperate. Do not confuse your belief that they will not cooperate with the actual, legally defined act of resisting arrest.

Ultimately, the final result is the same. You will most likely still need to use force to physically arrest and handcuff them, regardless of whether they *are* resisting or you think they are *about to* resist you.



Active resistance – producing or involving action or movement & an opposing or retarding force.

Merriam-Webster Dictionary

DPSST Working Definition: **Active** – A person physically resists by pulling, pushing, or moving their body, hindering the officer's ability to control or detain the person physically.

"First, defendants maintain that because Mr. Beaver had not complied with Officer Laird's commands, he was actively resisting arrest, and further Tasing was warranted. As previously discussed, the defendants confuse involuntary non-compliance with active resistance."

Beaver v. Federal Way – 9th Circuit

"Even if Bryan failed to comply with the command to remain in his vehicle, such non-compliance does not constitute "active resistance," supporting a substantial use of force. Following the Supreme Court's instruction in Graham, we have distinguished passive and active resistance."

Bryan v. MacPherson – 9th Circuit

Resistance, however, should not be understood as a binary state, with resistance being either completely passive or active. Rather, it runs the gamut from the purely passive protestor who simply refuses to stand, to the individual who is physically assaulting the officer. We must eschew, ultimately unhelpful blanket labels and evaluate the nature of any resistance in light of the actual facts of the case."

Bryan v. MacPherson – 9th Circuit



Passive resistance – existing or occurring without being active, open, or direct & an opposing or retarding force. *Merriam-Webster Dictionary*

Passive resistance refers to noncooperation with a peace officer's lawful order that does not involve violence or active conduct, whatever the motivation for the noncooperation. Passive resistance includes being "engaged in inactive, nonviolent noncooperation" *Oregon v. McNally – Oregon Supreme Court 2017*

DPSST Working Definition: **Passive** – A person refuses to comply with verbal directions, becomes dead weight, or grasps an object. (This is sometimes referred to as static)

Defendants asserted at trial that the protestors' use of black bears constituted "active resistance to arrest," meriting the use of force. Characterizing the protestors' activities as "active resistance" is contrary to the facts of the case...the protestors were sitting peacefully, were easily moved by the police, and did not threaten or harm the officers.

Headwaters v. Humboldt County – 9th Circuit

An officer needs to identify a resistant person based on their words, actions, and other objective factors. When trying to explain your perceptions to others in a report, it can help if we all use the same definitions. Still, these types of situations will not fall neatly into an individual category. Knowledge of the basic types of resistance can also help you decide what force is reasonable to use in the situation. After the use of force encounter, these basic categories should also help you decide if additional crimes need to be charged, for example resisting arrest.



Determining what type of resistance a person is exhibiting is only a starting point in your use of force decision-making process. Other contextual factors will ultimately determine the reasonableness of your use of force decisions.

Finally, it should be noted that for a person to be resisting arrest or detention, a few elements must be present. You have identified yourself, or it is reasonably known that you are a law enforcement officer. You have told the subject that they are under arrest or that they are being detained. Finally, the officer must be or have just been in physical contact with the subject.

The courts have not explicitly stated this, but, as you can see in so many rulings that, non-compliance with commands alone does not equal "active" resistance. The words and actions of the person *can* lead you to reasonably believe that they are going to resist arrest. That belief can also justify an officer to use force; just remember that it is not *technically* resisting arrest without physical contact.

"She posed no threat to the officers. She minimally resisted Troy's arrest while attempting to protect her own body and to comply with Agarano's request that she speak to him outside, and she begged everyone not to wake her sleeping children. She bears minimal culpability for the escalation of the situation."

Mattos v. Agarano – 9th Circuit



Types of Evading Arrest by Flight

A person can also attempt to avoid arrest by flight. This *can* occur after a person physically resists arrest but, unlike resisting arrest, physical contact with the person is not required. Essentially, a person evades arrest or lawful detention when an officer indicates that the person should stop, and the person then tries to get away on foot or in a vehicle.

The officer can indicate their desire for the person to stop explicitly by saying, "Stop! You are under arrest". An officer can also indicate for a person to stop implicitly, for example, turning on the overhead lights on their police vehicle. By law, you are allowed to use force to stop someone from fleeing your lawful detention, but, as always, it must be objectively reasonable.

ORS 162.135

(5) – Escape means the unlawful departure of a person from custody or a correctional facility.

(4) – Custody means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order...

DPSST Working Definition: Evade Arrest – The person attempts to flee on foot or by vehicle, from the custody of a peace officer, in carrying out an arrest or legal detention.

When using force to stop an escape, the courts have distinguished stopping a fleeing person that is running and stopping a car during a pursuit. A person fleeing on foot, without other factors, is not considered a threat to anyone based solely on their flight. A person fleeing in a car can *also* be considered an immediate threat based on the specific circumstances of how they are operating the vehicle. If they are operating the car in a manner that appears to be an immediate threat to the officers or others, we revert to how the courts define an immediate threat.



"The third Graham factor is whether Mr. Beaver was actively resisting arrest or attempting to evade arrest by flight. Initially, Mr. Beaver was attempting to flee, and the court has no trouble concluding that the first tasing was justified to stop him."

Beaver v. Federal Way – 9th Circuit

"Under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he were allowed to do so, he would once again pose a deadly threat for others on the road."

Plumhoff v. Rickard – US Supreme Court

You will likely have a considerable amount of guidance from your agency's policy and procedures about when you can and cannot pursue a vehicle or person. Remember that your agency may limit your ability to pursue to protect its officers and the public. The decision to pursue a vehicle at a high rate of speed must, like all uses of force, weigh the governments' interest against the risk to all parties involved.



Tense, Uncertain, and Rapidly Evolving Circumstances

This often-quoted statement also comes from the United States Supreme Court ruling *Graham v. Connor*. For discussion and for the duration of your time at DPSST, we will consider this the Fifth Graham Factor.

"the court finds that Officer Laird was faced with unenviable choices and had to make split-second decisions, and this court will not second-guess his decision to apply the use of the Taser. The officer was alone with a fleeing felony suspect, who was apparently under the influence of controlled substances, who ignored his commands to stop, and who was attempting to rise and perhaps to flee."

Beaver v. Federal Way

One of the most important things to understand about this part of the *Graham* ruling is that it goes both ways. It has been demonstrated consistently that the courts understand that when an officer is faced with a "tense, uncertain, and rapidly evolving" event, the officers are often given some amount of latitude in how they used force for that specific event. But, when the situation *is not* tense, uncertain, or rapidly evolving, the courts have made it clear that rash decision making will be looked at much more critically.

In addition, the Ninth Circuit Court of Appeals has a standard jury instruction that further illustrates the court's interest in whether or not an officer had time to make a reasonable decision.

What was the amount of time and any changing circumstances during which the officers had to determine the type and amount of force that appeared to be necessary?

9th Circuit Jury Instructions



Totality of the Circumstances

In plain language, this means *context*. The context of the situation, from the words coming out of the person's mouth, to the way the person is standing, or size and layout of the room you are in, are all contextual. The *perceived context* by the officer, when they make a decision to use force, is a large factor the courts will look at when deciding the reasonableness of force.

Your ability to assess the situation will help you make better decisions. If you ignore or miss contextual clues, you increase the risk of injury to yourself. You also increase the chance of causing someone else significant injury because you took action without taking into account the relevant information.

The following is a list of factors that could be considered as part of the totality of the circumstances.

This list is not exclusive:

- Availability of Back-Up Officers
- Confinement (small spaces or tight locations)
- Ground Level
- Officer Disability (previously existing conditions)
- Officer Exhaustion (due to length of shift or physical exertion)
- Officer Injury (caused by this or a recent incident)
- Officer Training and Experience (e.g., you are an expert conducting DUII stops)
- Number of Officers
- Number of Persons, Suspects or Threats
- Special Knowledge (background on the person, floor plans, informant tips, etc.)
- Person's Age compared to the officer's
- Person's Apparent Mental State
- Person's Physical Size compared to the Officer's Size
- Person's Sex compared to the officer's
- Person's Skill Level compared to the Officer's Skill Level
- Person's Strength and Fitness level compared to the officer's
- Terrain (wet, dry, sandy, muddy, snow, ice, carpet, concrete, etc.)



The totality of the circumstances is where we adjust our decisions about the use of force for a given situation. It is also difficult is drawing these facts out of our memories to put them down in a report. A good assessment and reasonable decisions can become irrelevant if you cannot document the information well enough to explain yourself clearly.

The totality of the circumstances is important during all stages of a use of force encounter. Quick and intuitive recognition of the specific circumstances at the beginning of a contact can be difficult for new officers. It can become a subconscious act as you gain more experience with the different types of circumstances that you encounter most often. Even for a veteran officer, an effective assessment is difficult when faced with circumstances that they have never encountered before.

"We appreciate the danger associated with speeding, and we do not minimize the particular importance of observing school zone speed limits. We also recognize the importance of having people sign their traffic citations when required to do so by state law. However, we have no difficulty deciding that failing to sign a traffic citation and driving 32 mph in a 20-mph zone are not serious offenses. Indeed, our case law demonstrates that far more serious offenses than Brooks' do not constitute severe crimes in a Graham analysis."

Brooks v. City of Seattle – 9th Circuit

"Considering the severity and extent of the force used, the three basic Graham factors, and the availability of other means of accomplishing the arrest, it is evident that the question whether the force used here was reasonable is a matter that cannot be resolved in favor of the defendants on summary judgment."

Smith v. Hemet – 9th Circuit



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Use of Force Principles and Definitions – Part 2

The following sections are meant to give a new officer an overview of additional use of force terms and factors. These are partial treatments meant to supplement the discussions you will be having in the classroom. Some topics will have additional information that will be included in later sections of this manual.

What is “Governmental Interest”?

The term “governmental interest” is frequently used when evaluating a Fourth Amendment issue such as a law enforcement officers use of force. This term is also often misunderstood to mean “what was the severity of the crime?” Even though, as discussed earlier, the severity of the crime is an important question and a Graham Factor, this is not what the courts refer to when they discuss “governmental interest.” Governmental interest is *all* the Graham Factors that you have previously learned about. Only by evaluating all the factors does the government evaluate its interest in a specific arrest or circumstance.

“We measure the governmental interests at stake by evaluating a range of factors: they include (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others. (3) whether he was actively resisting arrest or attempting to evade arrest by flight, and any other exigent circumstances that existed at the time of the arrest.”

Deorle v. Rutherford – 9th Circuit

“Under Graham v. Connor, we evaluate the government’s interest in the use of force by examining three core factors, 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, however, are not exclusive. Rather, we examine the totality of the circumstances and consider whatever specific factors may be appropriate in a particular case, whether or not listed in Graham.”

Bryan v. MacPherson – 9th Circuit



Type of Force vs. Amount of Force

These two terms are often thought to be interchangeable; however, they are not. A type of force, or force option, relates to a specific technique or tool, for example, a firearm or a focused blow (physical strike with a body part). The amount of force is harder to define. This is because it encompasses not only how much effort you put into that force, but other factors such as the response from the target, the area of intended contact and/or the officer's innate physical abilities.

It is understood at a basic level that shooting someone with a firearm is *a higher amount of force* than throwing someone to the ground. It is also understood that a large, strong, and highly trained person can punch harder and more effectively than a smaller, weaker, and less trained person. These are the factors that change the *amount* of force being used on a person, and they will be discussed throughout your use of force training.

"Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake."
Graham v Connor – U.S. Supreme Court



DPSST working definitions of Types of Force

The DPSST working definitions that are used when discussing use of force issues are a combination of the Oregon legal definitions from the Oregon Revised Statutes, definitions taken from the most clarifying federal and Ninth Circuit case law explanations, and from an English language dictionary. In all instances, we strive to provide the ORS or case law definitions first and insert common dictionary terminology when no other clear legal definitions exist or if there is a need for common language clarity. As always, feel free to research on your own if you have additional questions.

Types of Force:

DPSST Working Definition: Officer Presence – Creating a visible impression in bearing, appearance, and personal conduct.

DPSST Working Definition: Verbal Control – Using words to give directions, commands, or warnings.

Officer Presence and Verbal Control are considered the lowest levels of force that an officer uses. In reality, officer presence and verbal control will be present when using all types of force. For example, they are present when giving driving directions to someone in front of a coffee shop, or when yelling at someone to drop a knife

This will be covered more thoroughly later in the handout.

...there was ample time to give a warning, but no warning was given. Rutherford does not remember giving a warning, nor do any of the other eleven witnesses mention his doing so when describing the events they saw or heard. At most, Rutherford may have shouted "less lethal." That cryptic statement was insufficient to alert a target to the force about to be deployed and does not satisfy the pre-use of force warning requirement.

Deorle v. Rutherford – 9th Circuit



Physical Force

ORS 161.015 (6) - physical force includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

Physical Force is "force capable of causing physical pain or injury to another person." *Flores v Ashcroft* 7th Cir. 2003 (adopted by 9th)

Physical Force – violence, compulsion, or constraint exerted upon or against a person & of or relating to the body. *Merriam-Webster Dictionary*

DPSST Working Definition: Physical Force means force that under the circumstances in which it is used is readily capable of causing physical pain or injury.

Some techniques require more force from the officer and will cause more pain than an escort hold or physical contact. Any technique that is used to physically control people is considered physical force. Generally, handcuffing alone does not require a use of force report, but it is still legally considered a use of force. The use of physical force can result in injuries and must be reasonable under the totality of the circumstances in which it is used.

Physical Force includes using *directional contact* or *escort holds* on a person.

Techniques that are considered physical force are:

- handcuffing
- digital finger control
- pressure points
- wrist locks
- joint locks
- takedowns
- *some* focused blows
- *some* baton strikes or other baton uses



Administrative Force

DPSST Working Definition: Administrative Force means force physical force that *did not* cause pain or injury.

Administrative Force includes many of the same techniques as physical force. It is a way to identify the fact that *some* force was used but did not cause injuries or pain. This acknowledges that these techniques do meet the legal definition of a seizure, which could be considered force, but the post use of force procedure will be handled differently.

Administrative force is physical force that is meant to move or control a person. This includes using directional contact or an escort-hold on a person. If done correctly, you should not injure or cause pain to a person when using only *directional contact* techniques.

Even though directional contact, escort holds or handcuffing alone do not usually require a use of force report, they are still considered a type of force and still require thorough documentation in your arrest report.



Intermediate Force

Intermediate Force is force that creates “physiological effects, high levels of pain, and foreseeable risk of physical injury.” *Bryan v McPherson* 9th Cir. 2010

Intermediate Force – violence, compulsion, or constraint exerted upon or against a person & being or occurring at the middle place, stage, or degree or between extremes. *Merriam-Webster Dictionary*

DPSST Working Definition: Intermediate Force means force that under the circumstances in which it is used is readily capable of causing high levels of pain and foreseeable risk of physical injury.

The use of intermediate force will almost always result in some type of injury to the suspect. This amount of force, as with all force, must be reasonable under the totality of the circumstances and requires post care of the person.

Weapons and techniques that are typically categorized as intermediate force include but are not limited to:

- some focused blows
- some expandable baton strikes
- pepper spray (O.C.)
- extended range impact weapons (or weapon launched direct impact munitions)
- electronic control devices (Tasers)
- police canines (K-9 bite dogs)

“We, therefore, conclude that Tasers like the X26 constitute an “intermediate or medium, though not insignificant, quantum of force,”

Bryan v. MacPherson – 9th Circuit



Deadly Physical Force

ORS 161.015 (3) - Deadly physical force means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

Deadly Physical Force is force that “creates a substantial risk of death or serious bodily injury.” *Smith v Hemet 9th Cir. 2005*

Deadly Force – violence, compulsion, or constraint exerted upon or against a person & likely to cause or capable of producing death. *Merriam-Webster Dictionary*

DPSST Working Definition: Deadly Physical Force means force that under the circumstances in which it is used is readily capable of causing death or serious physical injury

Deadly physical force is the highest amount of force you can use. This amount of force is likely to cause significant injuries, pain, and possibly death. Deadly physical force may only be used under a specific set of legal reasons.

Weapons and techniques that are considered deadly physical force are:

- edged weapons
- firearms
- vehicles
- OR, any other force used in a manner readily capable of causing death or serious physical injury

“A simple statement by an officer that he fears for his safety or the safety others is not enough; there must be objective factors to justify such a concern.”

Deorle v. Rutherford – 9th Circuit



Use of Force in Low Governmental Interest Incidents

The following sections are meant to help new officers identify situations of low governmental interest. This information is meant to will guide the new officer in making reasonable decisions based on the totality of the circumstances and the actions of the suspects in these cases. These are partial treatments meant to supplement the discussions you will be having in the classroom.

"We appreciate the danger associated with speeding, and we do not minimize the particular importance of observing school zone speed limits. We also recognize the importance of having people sign their traffic citations when required to do so by state law. However, we have no difficulty deciding that failing to sign a traffic citation and driving 32 mph in a 20-mph zone are not serious offenses. Indeed, our case law demonstrates that far more serious offenses than Brooks' do not constitute severe crimes in a Graham analysis."

Brooks v. City of Seattle – 9th Circuit

One of the most problematic areas in law enforcement use of force comes from calls or contacts that started as a low-level event (e.g., seat belt violation) and then escalate to a high-level use of force event (e.g., officer shoots the driver). If we go back to earlier lessons of proper communication, assessing subjects for threatening behavior, and evaluating the totality of the circumstances, officers must figure out if the suspect is escalating the situation unreasonably or if the officer is. Remember, do not let your desire for "compliance" outrun your legal authority.

"To summarize, Aikala used the intermediate force of a Taser in dart-mode on Jayzel after he and the other officers arrived to ensure her safety. Her offense was minimal at most. She posed no threat to the officers. She minimally resisted Troy's arrest while attempting to protect her own body and to comply with Agarano's request that she speak to him outside, and she begged everyone not to wake her sleeping children. She bears minimal culpability for the escalation of the situation."

Mattos v. Agarano – 9th Circuit



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Police Legitimacy and the Use of Force – Part 3

Use of force events are frequently in the public eye, and they are the most scrutinized situations that a law enforcement officer can be involved in. In the police legitimacy classes, you have taken so far, you have seen that two of the elements of legitimacy are; whether the officer is acting legally, and whether the public view the officer's actions as legitimate.

For an officer striving for legitimacy, the action you can take to aid in legitimacy is for you to communicate appropriately for the given situation. You have seen videos where the officer is, (1) legally allowed to be there and do what they are doing, and (2) they are conscientious of their own safety, but they are also (3) using poor interpersonal skills. Interpersonal treatment means how we communicate or talk to the people we are interacting with.

This means that your communication style needs to be *appropriate for the situation*. If you are dealing with a person trying to stab you with a knife, your communication style should be loud, assertive, and direct. For example, "don't move towards me or you will be shot!" not "sir, calm down and stop chasing me so we can talk about this."

This will be discussed and evaluated during the rest of your training.

Communication and the Use of Force

Your ability to use the appropriate communication style based on the type of situation you are involved in has a direct impact on the outcome of the situation, both legally and tactically. At a basic level, you need to understand that your communication style with the individual you are dealing with must match the situation. Also, following a basic set of procedures should help you establish a system you can use to set the tempo of a contact or evaluate a subject for risk and deception. Examples of communication that is and is not appropriate for the situation will be discussed in class.



Verbal Communication Principles

You Should (when feasible)	You Should Not
<ul style="list-style-type: none">▪ Identify yourself as a LEO▪ Explain why you are there▪ Ask questions one at a time▪ Give simple instructions/directions▪ Give proper verbal commands or warnings before or during the use of force but only if feasible	<ul style="list-style-type: none">▪ Use profanity while using force▪ Use sarcasm before or during the use of force▪ Bluff about the use of force▪ Threaten to use force when not justified to use force▪ Engage in “ritual commands”▪ Repeat yourself excessively

Officer Safety Questions

During contacts with people, an officer may want to ask “officer safety” questions about the subject they are speaking with. This is allowed by Oregon case law under certain circumstances. These circumstances will be specific to each situation, but they must be objectively reasonable. Most importantly, you must thoroughly document these objective factors in your report.

“For a weapons inquiry conducted in the course of a traffic investigation to be reasonably related to that investigation and reasonably necessary to effectuate it, an officer must have reasonable, circumstance-specific concerns for the officer’s safety or the safety of other persons who are present.

To justify an officer’s weapons inquiry, the officer’s safety concerns need not arise from facts particular to the detained individual; they can arise from the totality of the circumstances that the officer faces.”

State v. Jimenez – Oregon Supreme Court



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Use of Force Report Writing – Part 4

When writing a use of force report, you need to be as descriptive and thorough about your use of force as you would be if you were documenting a felony crime. Many variables should be included in a use of force report, but it is a good idea to include any *relevant* Graham factors and any other *relevant* 9th Circuit factors.

When you get to the “use of force” section of your use of force report, it is easiest, to begin with the simplest explanation of why you did what you did. For example, “*I then threw J. Doe on the ground because I thought he was about to punch me in the face.*” This is, of course, a conclusion. Including a conclusion, based on your perception as a reasonable officer, is encouraged as long as you describe the specific actions and behaviors of the suspect to support your conclusion.

Another difficult area to describe in a report is when the situation unfolds in a manner that is chaotic, unpredictable, and in a short amount of time. Also, there could be multiple parties involved, all acting simultaneously and independently. How does an officer accurately reflect in a written report or interview how this event unfolded? You start by prefacing your statement with an acknowledgment that it was chaotic with multiple parties and that the information you are about to give is as truthful as possible.

Finally, remember that your report needs to make sense to everybody reading it. This includes your supervisor, the district attorney, the defense attorney, the public, a judge, or members of a jury. The best way to ensure this happens is to break down events into easily understandable chunks of information and use descriptions that anyone can understand.

We must eschew, ultimately unhelpful blanket labels and evaluate the nature of any resistance in light of the actual facts of the case.”

Bryan v. MacPherson – 9th Circuit



Template for Use of Force Report Writing

You should

- Explain your perceptions of the suspect's actions.
- Note relevant external conditions.
- Show the progression of the situation.
- Quote yourself and the suspect.
- Explain how you performed the use of force technique you used.
- Explain how "hard" or "easy" you used the force or technique.
- Explain why you used the use of force technique that you did.

You Should Not

- "Cushion" the description of force.
- Describe the events in law enforcement jargon.
- Include information in the use of force section of the report that you were unaware of at the moment you used force.
- Use vague or general terminology such as: Aggressive, Threatened, Non-Compliant, or Resistive.

Section 1 – Initiation of the Contact/Call:

The beginning of your report should lay out the overall situation of the event, why you went to this call or made this contact, what you knew before you arrived and who all the involved people are. In this section, you are setting the stage for the rest of the report.

- Document the day of the week, the date, and the time.
- Establish the location, the address, or the area of the city (or town or county).
- Include your knowledge of the history of the area, specifically, criminal activity in the area or your knowledge of this suspect.
- Explain why did you initiate contact. (e.g., self-initiated, dispatched, warrant service)
- List who were the other officers involved, if any?
- Identify and list other witnesses, suspects, or victims involved?



Section 2 – Contact and Assessment:

In this section of the report, you will continue to lay out the situation that led to or influenced the incident, specifically, what you saw and heard once you were on the scene. Remember to use common language and examples when describing your perceptions of the situation.

- Your initial observations made on arrival at the scene.
- Your continuing observations made during the contact with the suspect.
- The suspect's description.
- The environment or climate at the scene.
- Your observations of the suspect's demeanor and body language.
- Any evidence of intoxication or drug use by the suspect.
- A specific description of the immediate area (e.g., the front yard was covered in dry grass, and the ground was hard. The yard was sloped towards the street and approximately a 10 x 20-foot rectangle. There were multiple shrubs and bushes surrounding the yard)
- Any knowledge of known weapons or reasonably suspected weapons on the suspect.

Section 3 – Action and Dialogue:

This section of the report is where you explain what happened during the contact. You should try to describe any or all of the following as clearly as possible. However, if you cannot be clear about the specifics of how the event unfolded, you should state that information in the report and why you cannot explain more the events more clearly.

- Describe the physical and verbal behavior of the suspect.
- Describe your physical and verbal behavior.
- Describe your verbal interaction with the suspect and any commands or warnings given, both before (if you tried to prevent the need for force) and during the event (e.g., I yelled at J. Doe to "Stop resisting!" and "Get on the ground!" while I...).
- Any of the suspect's threats or confrontational statements.
- Any commands you gave to the suspect that they disobeyed.
- If the suspect refused to speak.
- Explain how the suspect resisted and the amount of force used to resist (only if they resisted arrest).
- Explain the type of and amount of force you used to arrest the suspect.



Section 4 – Final Stage:

In this section of the report, you conclude the report and answer any final questions about what happened after the event.

- Explain the outcome of the encounter.
- Describe any decontamination procedures (if necessary).
- Describe any medical care for the subject.
- Explain any medical care for yourself.
- Describe medical care for victims or others.
- Give descriptions of any photographs taken.
- List and describe any evidence you collected.
- Describe any damage to any police equipment.

"A simple statement by an officer that he fears for his safety or the safety others is not enough; there must be objective factors to justify such a concern."

Deorle v. Rutherford – 9th Circuit

It is important to remember when writing your report to describe the amount of time and any changing circumstances during which you had to determine the type and amount of force that appeared to be reasonable to deal with the situation. This can often be lost in your report, especially when it is written hours later in the calm environment of a report room.



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Use of Force Issues Dealing with Emotionally Disturbed or Mentally Distraught Individuals – Part 5

The following sections are meant to help new officer identify individuals that may be emotionally disturbed or mentally distraught. Additionally, this information will aid the new officer in making decisions prior to a use of force incident. These are partial treatments meant to supplement the discussions you will be having in the classroom. This material does not replace your mental health training classes or and de-escalation training you have received.

"The problems posed by, and thus the tactics to be employed against, an emotionally distraught individual who is creating a disturbance or resisting arrest are, and must be, differentiated from those involved in efforts to subdue an armed and dangerous criminal who has recently committed a serious offense...

...Even when an emotionally disturbed individual is "acting out" and inviting officers to use deadly force to subdue him, the governmental interest in using such force is diminished by the fact that the officers are confronted, not with a criminal, but with a mentally ill person."

Deorle v. Rutherford – 9th Circuit

"A mentally ill individual is in need of a doctor, not a jail cell, and in the usual case—where such an individual is neither a threat to himself nor to anyone else—the government's interest in deploying force to detain him is not as substantial as its interest in deploying that force to apprehend a dangerous criminal. Moreover, the purpose of detaining a mentally ill individual is not to punish him, but to help him. The government has an important interest in providing assistance to a person in need of psychiatric care; thus, the use of force that may be justified by that interest necessarily differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community."

Bryan v. McPherson – 9th Circuit



Risk Assessment

When confronting an individual that you have been told or you suspect is emotionally disturbed or mentally distraught, you need to assess who is at risk? If only the subject is at risk of physical harm, then we as law enforcement need to slow down and activate our Crisis Intervention Team protocols. If you or others are at risk of physical harm, then you are legally allowed to use force under the Fourth Amendment of the U.S. Constitution. Once the subject has stopped being a threat to others, then you should ensure that they are treated appropriately for their mental or emotional issue.

*"Given Reynolds's erratic behavior and the fact that he had a weapon, it was reasonable for Jackson to attempt to restrain him...
...The gas station attendant also perceived Reynolds as a threat-twice calling the Sheriff's Department to report Reynolds's behavior. It was thus reasonable for Jackson to consider Reynolds a threat to the people in the area...
...Reynolds was not in a confined area, and there were other people in the vicinity."
Reynolds v. County of San Diego – 9th Circuit*



Suicide by Cop

Suicide by cop is a situation that is both dangerous and unfortunate for all of the people involved. However, as mentioned in the risk assessment section above, our duty is to protect ourselves and innocent people first. If you have the opportunity, then this is the time to properly evaluate the situation and look at the totality of the circumstances; is the subject armed, and if so, with what? Is the subject confined, or are they in the open? Do I have distance and cover? Are less-lethal tools available, and would they be effective? Etc.

For the purposes of our discussions regarding the use of force on suicidal people, it should be reiterated; in Oregon, you are only allowed to use physical force to prevent someone from harming or killing themselves. Remember that even if the person is known to be suicidal, if they become an immediate deadly threat to you or others, you are allowed to use deadly force to stop that person from harming people other than themselves.

Additionally, if the subject is trying to force officers to shoot, the type of weapon they are in possession of is very important. Officers must remember that a suicide by cop suspect that is armed with a gun can become a deadly threat to others much faster and from a longer range than a suicidal subject with a knife. However, regardless of what weapon they are armed with, they must still demonstrate an intent to use it on the officer or others. No situation is an “automatic” use of deadly force.

“The circumstances of this case can be viewed in multiple ways: as “suicide by cop,” as officers suddenly threatened with a deadly weapon, or as a depressed man simply holding a knife when confronted by law enforcement. As with most excessive force claims, the correct determination of the circumstances here will require a careful balancing of the evidence, and the inferences that can be made therefrom.”

Hayes v. County of San Diego – 9th Circuit



Agitated Chaotic Events

It should be first noted that an “agitated chaotic event” is not a medical diagnosis but a state or set of behaviors with many underlying diagnoses. Why this person is suffering from what appears to be an “agitated chaotic event” is not relevant to your job as a law enforcement officer. Identifying the issue and taking the correct steps to assist the individual is your objective.

The following sections describe the Fact Patterns that suggest a subject suffering from an agitated chaotic event. Not every call or contact will demonstrate all or even most of the behaviors listed. Take the totality of the situation into account to make your determination if this is an agitated chaotic event case.

Information you may receive from Dispatch:

- The subject is known or is suspected of having a psychiatric illness.
- The subject is known or is suspected of some type of drug intoxication.
- Dispatch has received multiple or previous calls to this location for the same individual and/or behavior.
- The callers describe agitated behavior by the suspect.
- The callers describe bizarre behavior by the suspect.
- The callers describe destructive behavior by the suspect.

Behaviors and traits that are visible on arrival:

- The subject appears agitated.
- The subject is exhibiting bizarre behavior.
- The subject is engaged in destructive behavior.
- The subject is constantly yelling or screaming.
- The subject is incoherent when speaking.
- The subject seems aggressive towards inanimate objects.
- The subject is inappropriately dressed – naked, shirtless, etc.



Observations during the contact with subject:

- The subject does not respond “normally” to law enforcement presence.
- The subject has an insensitivity to pain.
- The subject is hot to the touch.
- The subject is sweating profusely.
- The subject is very dry to the touch.
- The subject has seemingly super-human strength.

Response Measures for a subject suffering from Agitated chaotic event:

If this appears to be an Agitated Chaotic Event prior to arrival, if possible, approach the scene without lights and sirens. Notify other officers of this as well. This can help keep the subject from becoming more agitated.

- **Identify:** Observe and note the signs and behaviors related to an agitated chaotic event for early medical intervention. Handle this call as a medical condition and get emergency services to respond as soon as practical.
- **Control:** Control and/or restrain the subject as soon as practical and safe to decrease problems related to a prolonged struggle with law enforcement or with others. This should be done with multiple officers, planning, and acting together to contain the subject while being conscious of the amount of force used.
- **Sedate:** Have sedation applied in the field as soon as practical and safe to help stop or reverse the process of the agitated chaotic event.
- **Transport:** Get the subject to the hospital as soon as practical for medical treatment.

Remember, these individuals usually do not need to go to jail, they need to go to the hospital, but that does not mean you will not need to use force. There can be no treatment without restraint.



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Post Use of Force Procedures – Part 6

How we deal with the aftermath of a use of force incident is as important as how we handled the encounter. This will be dealt with in detail during classroom and scenario sessions during your training at DPSST. The following are some of the topics that will be covered.

- Medical care (CPR, First Aid, tourniquets, etc.)
- Interviewing
- Crime scene security
- Crime scene photography
- Evidence collection
- Report writing

What you need to do and the order in which you do it is dependent upon the type of use of force encounter you were involved in. The specific types of force were covered in an earlier section of this handout.

Administrative (Physical) Force

After a low-level use of force event that resulted in no injuries.

(This could include the following events or force)

- escorts
- cooperative handcuffing
- digital finger control
- pressure points
- wrist locks
- joint locks
- "dispatch" an injured animal
- etc.

This type of use of force incident should be documented thoroughly in a well-written report.



Physical or Intermediate Force

After this type of use of force event, there will often be some type of physical injuries to either the suspect or the officer or both. Even if the individuals involved in this type of incident tell you that they are not injured, you should still get medical attention for all involved.

(This could include the following events or force)

- takedowns
- focused blows
- baton strikes
- O.C./pepper spray
- extended range impact munitions
- electronic control devices
- police canine (K-9)
- OR any event that results in physical injuries

This type of incident should include all of the following steps, post-event:

1. immediate medical attention for all injured or possibly injured people
2. thorough victim, witness and suspect interviews
3. photograph all persons involved plus photographs of the scene
4. collect evidence
5. document thoroughly in a well-written report



Deadly Physical Force

This type of use of force event is, by its nature, likely to cause serious physical injuries to suspects, officers, or bystanders. Also, this type of event will likely cause high levels of stress in the officers involved. You must be familiar with the steps that you need to take in the immediate aftermath of a deadly physical force event. All officers are encouraged to practice following through with as many of these steps as possible in scenario training if the situation calls for it.

(This could include the following events or force)

- firearms
- edged weapons
- use of a vehicle as force
- any force used capable of causing death or serious physical injury
- OR, an in-custody death

This type of incident should include all of the following steps, post-event:

1. provide immediate medical attention for all injured or possibly injured people if safe
 - a. if you are injured, you should provide medical care to yourself first
2. secure the scene if this can be safely done
3. identify witnesses for investigators or arriving officers
 - a. if directly involved in the deadly force event, you should not be interviewing witnesses beyond ensuring their physical condition and identification
4. identify evidence for investigators or arriving officers
5. provide public safety statement*

The proper handling of a use of force incident is critically important. Proper post-care of a suspect after force has been used against them is not only legally required but is also the right thing to do. Correctly identifying and interviewing witnesses can not only aid in legal matters, such as criminal prosecution or aiding your civil defense but can also aid in community relationship issues when the post use of force issues are followed correctly.



Oregon State Revised Statutes 181A.790 (also known as Senate Bill 111)

Finally, ORS 181A.790 provides guidance to law enforcement agencies. These guide agencies in how they should handle deadly force investigations and how they should handle officers that were involved in a deadly force incident.

After the incident, your agency must give you at least 72 hours prior to returning you to *regular* duty. This is to avoid putting you immediately into another situation that could require you to use deadly force again. Your agency can have you come back to work in other capacities that are not regular duty, though. In addition, your agency cannot reduce your pay as a result of you not returning to regular duty.

During the six (6) months after the incident, your agency must pay for you to attend at least two (2) sessions with a mental health professional. These are designed to help you with any behavioral health concerns you may have after an incident that could cause you stress or trauma. You have to attend at least one (1) of these sessions. These sessions *are not* allowed to be used as a "fitness for duty" exam. This allows you to be free of judgment during your sessions.

During the investigation of the deadly force incident, at least one officer from a different agency is required to be part of the investigation team. If an agency fails to include an investigator from a separate agency, evidence collected by the investigation team can be suppressed.

The original Senate bill was designed to create a structure so an individual agency could develop a plan of how to handle deadly force incidents. This means more consistency from agency to agency on some of the fundamental needs of officers, agencies, and the public in the aftermath of a deadly force incident.

For more information, you can research ORS 181A.790 or watch this YouTube video at -

https://www.youtube.com/watch?time_continue=793&v=c3h9hUtlW_M



Check Your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time on?

Oregon Revised Statutes relevant to use of force issues:



Chapter 131

- 131.005 (11) - definition of "probable cause"
- 131.605 (6) - definition of "reasonably suspects"
- 131.605 (7) - definition of "stop"
- 131.615 (5) - force used in making a stop (non-traffic)
- 131.625 - frisk of stopped persons

Chapter 133

- 133.005 (1) - definition of "arrest"
- 133.033 - "community caretaking"
- 133.235 (4) - force used in making an arrest
- 133.605 - force used in executing a search warrant

Chapter 161

- 161.015 (3) - definition of "deadly force"
- 161.015 (6) - definition of "physical force"
- 161.015 (7) - definition of "physical injury"
- 161.015 (8) - definition of "serious physical injury"
- 161.190 - defense of justification
- 161.195 - "justification" described
- 161.235 - use of force in making an arrest or preventing an escape
- 161.239 - use of deadly force in making an arrest or preventing an escape
- 161.245 - liability for mistakes of law and knowingly using force for unlawful arrest

Chapter 810

- 810.410 (3)(f)- force used in making a traffic stop



Sources/Resources

Merriam-Webster – for definitions <https://www.merriam-webster.com/>

Oregon Legislative Counsel Committee. *Criminal Code of Oregon*. Chapter 161, 162
https://www.oregonlaws.org/oregon_revised_statutes

United States Court of Appeals, Ninth Circuit. Selected opinions can be found at
<http://www.ca9.uscourts.gov>

United States Supreme Court. Selected opinions can be found at
<http://www.supremecourt.gov>

Daigle Law Group. Case summaries and legal articles can be found at
<https://daiglelawgroup.com/publications/>

Americans for Effective Law Enforcement (AELE) and the Law Enforcement Legal Center. Case summaries and legal articles can be found at
<http://www.aele.org/law/index.html>

Force Science Institute Ltd. Peer-Reviewed Research publications can be found at
<http://www.forcescience.org/force-science-research.html>

VEHICLE STOPS





Vehicle Stops

Instructional Goals:

This course is designed to introduce a new officer to unknown and high-risk vehicle stops, including various approaches to vehicle stops, safe tactics, and issuing citations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate the reasons behind different vehicle stop approaches.
2. Demonstrate safe decision making and tactics when conducting an unknown risk vehicle stop.

Content Outline:

- Introduction to Unknown Risk and High-Risk Vehicle Stops
- Pre-Stop Preparations
- Approaching the Violator Vehicle
- Making Contact at the Violator's Vehicle
- Issuing the Citation to the Violator
- Contact and Cover
- High-Risk Vehicle Stops
 - High-Risk Stops: Fanning Positions
 - Clearing the Suspect Vehicle
 - High-Risk Stops: Stacking Positions
 - High-Risk Stops: Post-PIT Positions
- Safety Rules for Training



Introduction to Unknown Risk and High-Risk Vehicle Stops

To prepare you for Unknown Risk and High-Risk Vehicle Stops training, you are encouraged to read this manual thoroughly. You will be expected to know and be conversant with the contents of this manual before you arrive for class.

This first session will cover unknown risk vehicle stops and will involve writing several traffic citations. The final citation you will be prosecuting the “violation” in Mock Trials Traffic Court. The following sessions cover primarily High-Risk vehicle stops to include scenarios. Since the sessions are separated by a few weeks, you will want to review this manual again before arriving for Session 2 & 3.

The main objectives of DPSST vehicle stops training is to develop your understanding, knowledge, and skills relating to unknown risk and high-risk vehicle stops. We want you to develop the ability to assess a variety of conditions and situations, then respond appropriately to maintain personal and public safety. Additionally, we want to give you the tools to minimize potential liability and public concern by using accepted vehicle stops tactics.

Police officers’ conduct vehicle stops for a variety of reasons: to correct poor or dangerous driving behaviors, to educate citizens on safe traffic movement, to present a positive public image and to interdict wanted persons, stolen property, drugs, etc.

DPSST uses the terms “unknown risk” and “high risk” to describe vehicle stops. An unknown risk stop is a traffic stop where the risk is not readily evident. The media uses the term “routine” for this type of stop. However, traffic stops can be anything but routine. An unknown risk stop can turn into a high-risk stop or violent encounter in seconds. This means you cannot become complacent when making a traffic stop.



The second term – “high risk” vehicle stop, is often referred to as a “felony stop.” This is not a term used at DPSST for several reasons. The term “felony stop” indicates there is a felony involved. However, you may encounter situations where a high-risk stop is conducted for a lesser crime than a felony. An example: a shoplifting theft of ammunition is probably a misdemeanor, but it implies there may be a firearm present in the vehicle. Officer safety concerns would dictate a higher level of police response to this potential threat.

The tactics you will learn are just a few of the “right ways” to conduct a vehicle stop. You will learn several methods and be introduced to several philosophies used to conduct a vehicle stop. The tactics and techniques at your department may be different; DPSST is showing some techniques that have proven to be successful. Additionally, your department may have specific policies and procedures that dictate your actions while conducting a vehicle stop. Most of the techniques discussed in this document, and performed during hands-on training, is universal and can be used in a variety of situations.

Pre-Stop Preparations

Conducting an unknown risk vehicle stop requires some pre-stop preparations. The following list of steps will help you before you initiate a traffic stop.

- Radio the anticipated location of the stop to Dispatch.
 - The first street is the one you are on
 - The cross or intersecting street should be the second street given
- Give license plate number and state
- Give color and description of the vehicle, i.e., White GMC pickup (Agency-specific)
- Unlock the passenger door
- Activate the overhead lights
- Utilize spotlights and take downlights, even during the day time
- Release your seatbelt
- Check traffic before exiting the patrol vehicle and exit quickly



Attempt to conduct the unknown risk vehicle stop as close to the area of the violation as is tactically possible. This makes it easier to explain where the violation occurred. If you make two or three turns before the stop, the violator may not understand because they can no longer see the location.

The first step of notifying your dispatch center will begin with a radio transmission indicating you are making a traffic stop. The dispatchers will need information in a specific order so it can be entered into the dispatch computer quickly. Most dispatch CAD systems have data entry screens laid out in a logical order. Generally speaking, the first entry the dispatcher needs is your location. The first street given is the one you are on. The second street will be an intersecting street or road, a milepost sign, or a known landmark. This is in case something goes bad very quickly, and you don't have time to give anything further. Responding cover officers can begin looking for you on the street you gave out.

Next is the license plate number, including the state and a brief description of the vehicle, including make, model, and color. Again, if something were to go wrong at this point, it is much easier for responding units to locate a "mid-90s Honda Accord, white in color" than "OR 123ABC" If you have not already done so, unlock the passenger door. This allows you to use that side of your patrol car without needing a key that is probably still inside your car. Once the tasks mentioned above are completed, you are now ready to activate your overhead lights.

Under most circumstances, the violator should yield to the right and drive to the side of the street and stop. Be cautious at this point of the stop. Drivers may do something you did not expect or anticipate. violators who slow down but don't stop immediately or violators who instantly pull over and stop should raise a red flag. Both may be normal behaviors, or they could indicate danger. Be sure to utilize the spotlights and take downlights.



You will need to release your seatbelt and get it completely away from your body and equipment. You do not want to become tangled in the belt while trying to exit your car. This may take practice, but you will need to become adept at doing this. When your patrol car stops be ready to exit immediately. Check your side mirror for traffic and get out quickly. Once out of the car, take a moment to re-assess the violator vehicle before approaching. The assessment may take place at your driver's side door, at the rear of your vehicle, or someplace that is safe and tactically sound.

A typical radio transmission might sound like this: "*Dispatch 512, traffic*" (or whatever your radio identifier is); "*Dispatch go ahead*"; "*512 I will be traffic at Main and First Streets with Oregon GAR590 it's a red Nissan 4 door*". You may also want to give the number of occupants. Usually, the dispatcher will not need to know why you are making a stop. However, you may want to include this information for dangerous driving you witnessed, DUII, speed racing, or other offenses that you may need additional officers to help you. By giving this information early, other officers will hear the transmission and can anticipate the possible need for more units.

Patrol car positioning on a traffic stop can vary depending on several factors, such as time of day, amount of traffic, type of street or roadway, number of occupants in the car, etc. Generally, you should position your vehicle about one car length behind the violator vehicle and offset to the left about half-width of your patrol car.



Approaching the Violator Vehicle

Now that you are out of your car and ready to approach the violator car, here are some additional considerations. As you approach the violator's car, scan the interior for previously unseen passengers, furtive movements, weapons, or other potential threats. If applicable, you should "slice the pie" as you approach the passenger compartment, just as you have during a building search.

Take the necessary time to allow you to assess the car and its occupants fully. Be tactical with your flashlight as you approach. A flashlight can enable the occupants to observe your approach. However, your patrol car lights – headlights, take downlights, and spotlight can all assist with your vision into the car. You may not need the flashlight on until you arrive at the violator's door. But, the lights behind you may be backlighting your movements so be aware of that fact

Making Contact at the Violator's Vehicle

DPSST strongly suggests that officers conduct vehicle stops from the passenger side of the violator vehicle. This has been scientifically proven and statistically driven to be a safer location to conduct an enforcement contact. With that said, there are four suggested locations for violator contact (we will call these positions 1-4):

- 1) Behind the driver's door
- 2) In front of the driver's door at the "A" pillar
- 3) Behind the passenger side door
- 4) In front of the passenger side door at the "A" pillar



All have advantages and disadvantages. A driver's door contact or position #1 is where most officers make their first contact with the driver. It is the position most people would agree is the "normal" location for this interaction. If you choose this position make sure you are behind the door and not partially blocking it. The driver could open it quickly and push you into traffic or cause injury. This position would also appear to place the driver at a disadvantage if they produce a weapon. This may not be true, however –more on that on the next page. Be aware that in this position, most violators are expecting you to be there. That is not always a good thing. Additionally, from this position, your back is to traffic and limits your escape route should you need to flee the area.

Once you have "cleared" the car visually, moving to position #2 in front of the driver's door can give you a better view of the driver and also allow you to inspect the VIN plate. However, you have lost the ability to see into the glove box if the driver needs to retrieve documents there. And, if the driver has a weapon, it will be easier to use on you.

Position #3 behind the front passenger door allows better visibility into the glove box if needed and is a position not expected by most drivers. However, to get there, you must either walk behind your patrol car or between the cars. Either is acceptable, but both have drawbacks. Walking behind may cause you to lose sight of the violator or other occupants temporarily. Walking between the cars can be a hazard if the violator suddenly backs up. If you choose to walk between the cars, do it quickly and right in front of your car. Do not walk at an angle between the cars; use the shortest route possible, checking for hazards both front and rear. Consider a tactical pause just before approach, either at the right front portion of your patrol vehicle, or right rear portion of the violator's vehicle. This allows you to assess the occupant(s) in the vehicle.

Position #4 can be used once you have visually cleared the car and want to be in a better location to communicate with the driver. But just as with position #2, you lose sight into the glove box.



Now, having presented these four options for contact, here are some recent facts. Dr. Bill Lewinski, the founder of the *Force Science™ Institute* in Mankato, MN, has spent his career studying human movements and reactions. His work has primarily been with police officers and use-of-force situations. In 2012 he and his team, in conjunction with the Hillsboro, Oregon police department, conducted an in-depth study using over 100 officers performing traffic stops in a controlled environment. The conclusion from the testing revealed that most officers, when faced with a firearm during the stop, were safer in the #3 position behind the passenger side door. This position offers more cover and retreat options.

You are free to use whatever position you prefer, but we will stress a passenger-side approach in your training here at DPSST. Essentially this makes what we have historically called position #3 the new position #1.

So now you are in whatever position you have chosen for the stop and are in contact with the violator. Introduce yourself and explain why you are here: *"Hello, I am officer/deputy/trooper Smith with the city police department/county sheriff's department/Oregon State Police. You have been stopped because you did not stop for the red light at Main and First Streets. Do you have a reason for that?"* You are telling the violator who you are and who you work for. You are also stating why you are in contact with them and asking for justification for the violation committed. Keep your verbal greeting as neutral as possible. Words or phrases such as "good morning" can be construed as condescending because right now, for the violator, he or she is not having a good morning.

Once you have "set the stage" for the contact, you need to request their driver's license, vehicle registration, and proof of insurance. Make sure you enunciate clearly, each document that you have requested. Many officers often get lazy with speech patterns and will mush this information and request into a jumble of incomprehensible nonsense. Mumbling is not a show of professionalism, speak clearly.



Check the license and match the photo to the driver. Ask for their current address; don't assume the driver's license address is correct. And, don't ask if the address on the license is correct. Have the driver verbally give the address to you and compare it to the license. Check the registration sheet to match it with the license. Is the driver the owner of the car? Check the proof of insurance. You are looking for a match with the driver of the car, the license, and the registration. You are also looking for the dates on the insurance card to confirm it is valid. There must be a beginning and ending date for the coverage period. Any discrepancies with the documents MIGHT be cause for further investigation. Those considerations will be further discussed in your Vehicle Code classes.

When you are satisfied with the validity of the documents, give back to the driver the ones you don't need. Anything you take from the driver needs to be returned - the fewer items that you have to control, the better. If the insurance card is good, you probably don't need to take it to the patrol car. Same with the registration; if you have confirmed it is valid, get the year, make and model from it and leave it with the driver. Chasing paper down the street is embarrassing. If you need the documents, take them, but if not, leave them with the driver.

When returning to your patrol car to complete a written warning or traffic citation, you have a couple of options, none of which include turning your back on the violator car or oncoming traffic. Walk to your vehicle using some sort of modified sidestep. Avoid walking backward.

Once back at the patrol car, you will want to confirm the driving status of the driver and possibly the registration and insurance status. For officer safety, it is not recommended to sit in the driver's seat to use the radio, MDT, or fill out forms. Procedures will vary by department for how you will check the driving and wants status of the violator but the radio is the most common. If you have the Driver's DMV issued driver license card, you can use the Oregon Driver's License (ODL) number. Most departments will also have you include the last name. This is to ensure the dispatcher entered the information correctly; if the name that returns is the same last name that you gave, the dispatcher knows there is a match. If the ODL check does not match the last name you provided, there could be an identity problem.



If you don't have the driver's license, you will need to give the dispatcher the driver's name and date of birth (you may also need to spell the name for Dispatch). When doing this, be sure to give the name in this order: LAST NAME, FIRST NAME, and MIDDLE NAME, and then the DOB. If you write it in this format in your notebook, it will be much easier later on when transferring the name to a citation or other documents. Many people have full names that are all FIRST names, i.e., Raymond Dale George. In your notebook or other documents, the name should be written as George, Raymond Dale. Names like this would be easy to mix up and run the wrong name.

If the name you check returns differently than you ran, don't immediately assume the violator is not being truthful. Re-check everything and, if necessary, re-contact the driver and reconfirm what the person told you. It might be possible you made a mistake. Confirm all information before taking enforcement action.

Here are several suggested positions for writing the citation or warning:

- 1) Standing outside the patrol vehicle passenger door.
- 2) Standing at the patrol vehicle's rear quarter panel. (Do not stand behind your car). The trunk lid should not be used as a desk for writing on. This would bring your field of vision down, away from potential hazards such as traffic or the violator. Keep in mind where the panels of your ballistic vest overlap and keep as much of the vest toward the violator as possible.
- 3) Standing on the sidewalk or shoulder off to the side of the patrol car. Utilize cover and/or concealment as available. Anywhere that is tactically sound and gives you an advantage over other locations.



If your department procedure requires you to use the in-car computer or electronic ticketing equipment, here are some considerations.

- Don't focus your full attention on the MDT to access information.
- If the MDT is installed only to allow access from the driver's side, do the computer work quickly, then move out of the driver's chair. Do not allow yourself to be forced into sitting behind the wheel any longer than necessary. If it is too dangerous, use Dispatch or call a cover officer.
- Using an MDT will divide your attention between the suspect vehicle, bystanders, traffic, and the computer. Be aware of this fact and make adjustments accordingly.

When you have completed the citation or warning, re-approach the car in the same manner as before. Or, you could choose to approach from a different side than the first contact. The driver may not expect to see you at the new location. This affords the officer a different view of the vehicle and potentially a tactical advantage.

Issuing the Citation to the Violator

Explain the violation, and verbally tell the violator what court they have been cited into, where the court appearance will be along with the date and time. You can also explain to the violator that there may be other non-court options which are printed on the back. You don't need to explain these options, but you do want the violator to know they exist. Your department may also have some type of "fix it" ticket program that allows certain violations to be remedied then dismissed by the court. Most departments using a system like this have a fee attached to it, but the fee is generally much lower than the fine.

At this point, give the license back to the driver along with any documents you may have taken. It is important to remember that once the driver is in possession of their license, the stop is over, and they are free to leave. If you give the license back before the citation, the driver can legally leave the stop location.



Your closing should again be neutral: "thank you for your cooperation," "you are free to leave," "please drive safely," "please drive a little safer," etc. Over time you will develop your own "standard" closing phrase, but be sure not to make it confrontational.

If the violator gets out of the car during the stop, attempt to persuade the violator to return to the vehicle for safety, if the violator refuses, don't overreact or become hostile. There may be no legal requirement for the driver to return to the vehicle. The violator is not committing any type of offense that would allow you to place them in custody for merely refusing to comply with your request. Attempt to escort or encourage the driver to move to the curb or side of the road and away from traffic. Avoid standing between the vehicles. If possible, place a physical barrier between you and the violator. Stay between the violator and your patrol car.

When you have completed the contact with the violator, there are a few ways to end the stop procedure. You can remain outside your driver's door until the violator leaves, you can enter your vehicle and wait for the violator to leave, or you can enter your car and leave before the violator. You can also enter your patrol car and back up and to the side to allow the violator a clear view of the road.

Contact and Cover

During a traffic stop and there are two officers, one of the officers should be the CONTACT officer. The other will be the COVER officer. The responsibility of the cover officer is to provide overwatch of the stop to keep the contact officer safe. The cover officer should take a position of tactical advantage to prevent possible crossfire and to observe passengers and other hazards that may be in the area such as pedestrians, environmental hazards, or traffic. The cover officer should keep the contact officer in sight and assist with any resistive or potentially dangerous subjects. The cover officer should be observing the "big picture" of the stop and its components. Resist the urge to get involved in the stop or conversations with passengers. If this occurs, each of the officers has now become contact officers, and neither is covering.



The contact officer should be the officer conducting the investigation. The contact officer will be interviewing the violator or other subjects/suspects. Checking the status of persons, gathering evidence if needed, controlling, and handcuffing suspects are all responsibilities of the contact officer. The contact officer is focused on the details of the stop. The contact and cover officers have different “jobs” during the stop, but what they both have in common is they should be communicating important information such as there is a gun in the car or the right rear passenger has a warrant.

High-Risk Vehicle Stops

High-risk vehicle stops are different from unknown risk stops due to the potential dangers known to the officers. Objectives of a high-risk stop are to maximize officer safety by using cover and concealment, utilize resources, and controlling the suspect’s movements by bringing them to you. **MAKE IT HARD FOR THE THREAT TO HURT YOU!**

Most of the pre-stop preparations are similar to an unknown risk stop, with a few additions. If the suspect vehicle is the subject of an *Attempt to Locate* request and the details given would dictate a high-risk stop, you may not need to broadcast that you will be doing a high-risk stop. But, if the reason for the stop is known only to you because you observed criminal activity that would justify a high-risk stop, you will need to make sure Dispatch and other units know the type of stop you intend to conduct.

Here is the suggested order that should be used.

- Advise Dispatch, “This is a high-risk stop.”
- Request and wait for back-up
- Give license number and state
- Give a description of the vehicle, i.e., white GMC pickup
- Follow at a safe distance
- Obtain an ETA of the responding units
- Roll down the driver’s window
- Unlock the shotgun/rifle (you probably won’t use it but other officers might)
- Assess potential stop locations



- When the stop location is known, or the suspect vehicle has stopped, broadcast the stop location with a cross street and give the direction you are facing. This should prevent other responding units from approaching from the wrong direction.

Other considerations:

- Do not initiate until at least two officers are present.
- A lone officer can't control and handcuff the suspects safely.
- Select a location that is dark, away from the public, and limit possible escape routes and third-party injuries if the stop becomes violent.
- Be prepared to stop suddenly if the suspect stops unexpectedly.
- Utilize ALL your resources, such as K9's, Long Guns, etc.,

High-Risk Stops: Fanning Positions

UNIT #1:

- Turn on all the lights you can: spot, takedown, and high beam headlights
- Position your vehicle three car lengths back of the violator vehicle and offset 1/2 car width to the right
- Officer #1 will probably give the verbal commands to the occupants and be "in charge" of the stop. However, this may change as the stop progresses.
- This officer should move back to behind the trunk. Lock at least the driver's door.

UNIT #2:

- Positions to the left of Unit #1, canted inward slightly. This allows the headlights and takedown lights to illuminate the suspect vehicle better
- Will use all white lights forward and emergency lights.
- Officer #2 takes cover behind Unit #2's trunk, lock at least the passenger door.



Unit #3:

If there is a third unit arriving, Unit #3 positions behind Unit #1 and Unit #2, stopping about ½ car length back, and should be positioned, so the front of Unit #3 is looking between Unit #1 and Unit #2. The only lights that should be on for Unit #3 are rear-facing lights. ALL forward lights are OFF. Officer of Unit #3 can take a position on the passenger side of Unit #1 or the driver's side of Unit #2. This is all depending on where the officer is needed. Officer of Unit #3 could utilize a long gun.

Their firearms will be up and directed at the suspect vehicle. Officers #1 and #2, at least initially, will probably not use long guns as they become problematic during handcuffing and control procedures. Handguns are much easier to employ in this type of stop.

Commands should be given in a logical sequence with a firm, steady, and controlled voice. Examples:

- "This is the _____ Police Dept./Sheriff's Office/Oregon State Police..."
- "You are under arrest."
- "Everyone in the car put your hands up."
- "Driver, turn off the ignition."
- "Driver and Passenger(s) roll down your window."
- "Driver and Passenger(s) do not move unless further ordered."
- "Driver, open your door. Bring the keys with you."
- "Driver, keeping your hands up, step away from the door, leaving it open."
- Have the Driver turn in a circle (*visually search for signs of weapons*)
- "Driver face away, now lean forward at the waist" (*visually search for signs of weapons*)
- "Driver, face forward. Now lean back at the waist hands, keeping your hands above your head" (*visually search for signs of a weapon in the waistband*)
- "Driver, walk to the sound of my voice" (*have the occupants walk toward you, facing forward*)
- "Keep walking, keep walking..."



If a weapon is detected during the visual "frisk," tell the suspect that you've seen it and that they will be shot if they reach for the weapon. By telling the suspect you have seen the weapon, it lets everyone who can hear you know about it and what will happen. This is not only for the suspect and officers but for any bystanders who may be using a video recording device. The bystanders could be witnesses if needed, and your announcement that you saw the weapon and the consequences of reaching for it will be remembered. *"Yeah, the cop said he saw the gun and would shoot if the guy reached for it."*

Walk the suspect toward the patrol cars. As the suspect moves to the patrol cars, the officers will also need to move back; away from their trunks but in a straight line keeping their cars and the threats aligned (this is to reduce the possibility of crossfire). Move the suspect behind either Unit #1 or #2 and order the suspect to either kneel or lay prone on the pavement.

Both officers will move together toward the kneeling suspect. The cover officer will need to keep the suspect and suspect vehicle aligned to reduce the amount of handgun angle change needed to cover both the suspect and the vehicle. The handcuffing officer can now apply the restraints, once applied, conduct a quick waist area search for unseen weapons and assist the suspect to a standing position.

As an alternative to the kneeling position, you may consider using a high-risk prone position. Which position you use will depend on:

- Degree of Threat (weapon seen, known skills of the suspect, etc.)
- Road Surface condition (asphalt, gravel, etc.)
- Weather Conditions (extreme cold, snow, standing water)
- The temperature of the Road Surface (90° outside temp can mean 140° road surface temp)



The officers can now move the suspect to the trunk of the car being used as cover. Here is where a full search should be conducted and attempt to gather information on weapons or other persons in the car from the suspect. Remember, time is on your side. Take the time necessary to make sure your search is thorough – you are looking for anything that could cause injury or assist with escape. When ready, the suspect can be moved to the caged back seat of the patrol car.

Continue this procedure until all suspects have been removed from the vehicle. Suspects do not have to be removed from the same door or side. Have the suspects exit the door that gives you the most tactical advantage.

If additional officers arrive to assist, they can position their cars behind the units already on the scene. Or you may choose to have at least one other unit position beside Unit #2 as a third “fanning” unit and go three-wide. The added officers can take positions at any unoccupied patrol car trunk, or some may opt to act as rear cover. The outside flanking positions or rear guard would be good places to use a patrol rifle or shotgun.

When the suspect vehicle has been cleared of all known occupants, one officer will need to verbally re-challenge the car. *“You in the car, put your hands up, we know you’re in there.”* Repeat this several times. If you do not get a response, it is time to approach and clear the vehicle.

Clearing the Suspect Vehicle

Option #1

Using Unit #2, which should be offset to the left of the suspect vehicle: Unit #2 can make a slow approach, moving up to the suspect vehicle’s driver side. Officer placement during this maneuver should be an officer in the drivers’ seat, no weapon out. Preferably two officers, **shoulder to shoulder (one with a long gun)** walking alongside the open driver’s door of Unit #2. Note: the officer next to the driver’s door of Unit #2 is not holding onto the door, just bracing against the door’s edge with the right forearm. The movement up to the suspect vehicle is at the pace of the two officers walking alongside Unit #2, so good communication is needed.



When Unit #2's front bumper passes the left rear tire of the suspect vehicle (or thereabout), Unit #2 should stop. By now, the two officers walking alongside Unit #2 should be able to see some of the insides of the suspect vehicle. That is why we have them leave the suspect vehicle doors open. Now the Driver of Unit #2 gets out and will be the long cover for the two officers as the two officers slowly move toward the suspect vehicle. Each officer should have an area of responsibility. One officer is clearing the front portion of the suspect vehicle while the second officer is clearing the rear portion of the suspect vehicle. This movement can be done with two officers if you don't have a third officer.

Option #2

We will call this the "L" movement. While at Unit #1 and Unit #2, develop a plan to determine which side of the suspect vehicle, you want to make your approach. i.e., we are clearing from the driver's side because the driver's door is open, and the backstop beyond the suspect vehicle is a brick building. Two officers move out away from Unit #2 about 10 to 15 feet. This moves you away from all the emergency lights and provides you concealment in the darkness if the High Risk is occurring at night; it also gives the officers reactionary distance. Once the officers are 10 to 15 feet straight out from Unit #2, then the officers' movement is walking in a straight line up toward the suspect vehicle. Both Officers are reasonably close, and again each should have an area of responsibility. One officer is slicing the front portion of the interior of the vehicle while the second officer is clearing the rear portion of the suspect vehicle. If the movement is done correctly, the officers should be 10 to 15 feet straight out from the suspect vehicle's driver side. Now the two officers can slowly walk toward the suspect vehicle, still visually clearing as they move closer to the suspect vehicle.

Now that the interior of the suspect has been cleared, the trunk needs to be cleared.



Most vehicles these days have an interior trunk release somewhere within the vehicle. It could be a lever pull, a push button, or a key fob. The officers who made the approach to the suspect vehicle are now in a position to clear the trunk. One officer will determine if the vehicle is equipped with a trunk release inside the suspect vehicle. The second officer will stand at the "C" pillar of the suspect's vehicle facing the rear of the car and looking at the top of the trunk. This position will put the officer near the rear tire. This can be done from either side of the suspect vehicle. The officer will lightly touch the suspect's vehicle. Stand there for a while; time is on your side. If someone is hiding in the trunk, you'll feel movement.

If a trunk release is located inside, the two officers need to communicate with each other when they are both ready to activate the trunk release. The second officer will remain near the rear tire when the other officer activates the trunk release. If someone is hiding in the trunk, where do you think they are expecting you to be? Most people would agree that anyone opening a trunk will lift the lid from the back of the car at the rear bumper. By standing at the rear tire facing the back of the car, you are in an unexpected location and, therefore, safer. Communication is the key.

If there is no trunk release located, and you have to use the vehicle keys, nothing changes. Determine where the key port is, put the key in the key port, wait a while, again touching the car for movement, standing near the driver or passenger side rear tire. If no movement, one officer unlocks and moves away while the second officer who is standing near the right or left side quarter panel opens and clears the trunk.

Here are some additional thoughts on searching the trunk. If you "throw" the trunk lid open, it can slam closed again. If the trunk lid raising arms are broken or damaged, the lid may not go up easily or stay open. If you opt to use the inside-the-car trunk release or key fob button, the lid may not open more than a few inches and will need to be raised by hand. The lock may be broken and require some other implement to open it.



If the search of the car reveals a previously unknown occupant, you have several options. The searching officer can maintain the position at the car as “ground” already taken and controlled and order the person out (there may be more risk with this since you probably don’t have cover). Or the searching officer can retreat to the patrol car and then begin the process of removing the person. Or the searching officer can retreat, and the officers back up the patrol car and remove the person from a distance. The threat level or the situation will dictate how you choose to do this.

When the trunk is cleared, re-check the passenger area of the vehicle. It is possible someone hiding in the trunk was able to move back to the passenger compartment undetected. You don’t want this type of surprise!

High-Risk Stops: Stacking Positions

If the location of the high-risk stop is not large enough to allow a fanning position, you will need to modify your tactics. One suggestion is to “stack” the patrol cars. When using a Stacking position, the lead car, Unit #1 stops 3 car lengths behind the suspect with no offset. The second police unit stops approximately 5 feet behind Unit #1 but offset to the left approximately ½ car width. This will create a “safety zone” behind Unit #1 using the patrol car as a barrier. Officer #2 will move to take a position behind the passenger door of Unit #1.

The removal commands and procedures are much the same. Walk the suspect facing forward to a point behind the trunk of Unit #1. Place the suspect in either a kneeling or prone position and apply restraints. Search the suspect as before either behind the trunk of Unit #1 or at the right front fender of Unit #2. Clearing the vehicle and trunk procedures are the same as for Fanning.



High-Risk Stops: Post-PIT Positions

The Pursuit Intervention Technique is a pursuit option where a fleeing suspect vehicle is forced to spin out using the patrol car. Once the suspect car comes to a stop, police units will either physically pin the car between two units at the front and rear, or take high-risk positions around the car. We will be discussing only the high-risk positioning, not the pinning tactic.

The suggested positions are to put patrol units with headlights aimed at the vehicle in the FRONT of the suspect and the front doors. Headlights on high beam, take downlights and spotlights should all be used as distractions since you are in the front of the suspect vehicle, not the back as we have previously discussed. The patrol units are much closer – 6-10 feet from the suspect vehicle. Positioning in front gives you some advantages: you can see into the vehicle, you can see the occupants, and you may be able to visually clear the driver/passenger area if the door(s) are left open.

Think back over the previous positions for high-risk stops. Those stops are predicated on the suspect voluntarily surrendering. The driver pulled over, stopped, and gave up, with a PIT that is not the case. You forced the stop by physically intervening causing the car to spin. Now you need to prevent escape of the car by blocking it in as much as possible. You are trying to convince the driver that getting away is not possible by showing as much force as possible – that is, trying to give a show of overwhelming police presence even when you don't have it. Verbal commands need to be given immediately to provide the suspect something else to think about.

Bring each occupant out the door that makes the most tactical sense. The driver does not necessarily need to come out first. If the passenger side has the most police units the passenger may be the logical suspect ordered out first using their door. Don't forget to have the passenger bring the car key so the driver can't leave. And, if that same door makes the most sense to bring the driver out, use it. Don't forget to have the passenger leave the door open so that at least one officer can see into the car. This will allow that officer to see if the driver comes up with a weapon.



Now you can have the suspect walk either backward or forward to the rear of one of the police units. Be sure to lock any doors the suspect may walk past. Place the suspect in custody. From this point, you will be using tactics discussed in both Fanning and Stacking high-risk positions. Leaving the doors open will allow officers to visually clear most of the car from a position of safety behind a patrol car. However, the trunk will still need to be cleared. Use the patrol unit that makes the most sense to move and get to a position similar to the other high-risk positions previously discussed.

Safety Rules for Training

1. Safety is our #1 priority
2. No student shall have or possess any: Live firearms, knives, ammunition, baton, Taser, or chemical irritants.
3. Students will report any safety hazards or injuries to instructors.
4. Vehicle speeds will not exceed 20 MPH forward or backward.
5. Seatbelts will be worn when vehicles are in motion.
6. Motor vehicle laws will be obeyed at all times
7. Students will follow the instructions of the instructors at all times
8. Students will not add nor delete anything in the role-play exercises.
9. Students will remain in their assigned training area unless permitted to leave by their instructor.
10. Students will secure their personal belongings at the EVO classroom or Training area.



Check your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time on?