

**USE OF FORCE RULE:**

“IT IS NOT ENOUGH THAT YOU BE  
RIGHT  
IN WHAT YOU DO,  
BUT BEING ABLE TO EFFECTIVELY  
ARTICULATE THE CIRCUMSTANCES  
SURROUNDING THE INCIDENT  
AND THE FACTS  
THAT SUPPORT YOUR ACTIONS.”



## WEAPONS / FIREARMS

This section is entitled weapons, however one must really understand what exactly a weapon is. In this case the writer refers to weapons as firearms. A small arm handgun was designed to destroy something at close range. Remember this the next time you decide to deploy deadly force. For a moment lets talk about deadly force; force which, under specific circumstances, you are able to cause serious injury or death. Ask yourself this question – Am I able or am I capable of using deadly force against another?

Some people would say that deadly force is not necessary. Some would say if you had to shoot someone why not shoot them in the arm or leg? The problem with this situation lies around **intent**. What did you intend to do? Did you intentionally plan to maim or permanently disfigure this person by using deadly force? You see if you intended to shoot the gun out of the suspect's hand and in the process destroyed the use of that hand now you have just permanently disfigured that person and have opened yourself up to serious civil liability. Now this is not to say that if you were to shoot someone you wouldn't be facing criminal and civil liability but the main fact is **WHAT WAS YOUR INTENT**.

### Intention or Intent

You are the agent assigned to serving an arrest warrant. What is your intention? Your intention is to safely and effectively apprehend that fugitive. You will comply with all necessary Federal and State Laws while attempting to make the arrest. So let's go back, is our intent lawful? Yes, by law you are affecting a legal arrest for a person who has failed to appear. Are our actions legal? Yes, as long as you attempt to safely take that person into your custody.

Now, here's the difficult part - while attempting to make the arrest the suspect tries to stop you by use of deadly force. The suspect pulls out a gun and threatens to shoot you if you don't leave him alone. Now, what is your intent? Is your intention to maim or permanently disfigure this person or is your intention to keep him from maiming, disfiguring or even taking your own life? In short, is your intention to kill that person or to stop the threat of being killed yourself? **STOP THE THREAT**. California law allows the person who is making an arrest to use **necessary** force to overcome the resistance of the defendant/suspect and take that person safely into custody. Before you ever attempt to make an arrest or use deadly force you better make sure you understand your specific intent. When using a firearm the user needs to be able to articulate their specific intent.

Firearms are to be used as a last resort in any use of force incident. In the past people have used firearms as a means of gaining information, intimidation, and using them in an angry or threatening manner, which as you know is unlawful. California law specifically states exhibiting or displaying your firearm in any manner is unlawful except in a **self-defense** situation.

Remember when using a firearm as an agent/officer it is your responsibility to keep in mind the safety of your self and the public. For example take our incident with the above suspect. The suspect points a gun at you and threatens to shoot you, however, you are in a crowded shopping mall area and there are several innocent bystanders standing behind your suspect. Even though for that immediate moment you can use deadly force on your suspect, **THAT DOES NOT GIVE YOU THE RIGHT TO JEOPARDIZE THE SAFETY AND THE LIVES OF THOSE INNOCENT PEOPLE.** Remember, if you force a situation where deadly force is used you could be held liable and bring upon yourself a major issue of civil liability.

If there is one important rule that I can teach you, it's this – You as the agent/licensee/officer must adhere to all state and federal laws. (Rules) We must play by rules. The defendant/suspect does not. Rules for them do not exist. The thought of incarceration does not make them afraid nor keep them from breaking the law. However, we as the agents/licensees/officers must at all times act in a professional, legal and lawful manner. If you feel that that can not be done, then choose a new profession. Because if you break the law to enforce the law than you are no better than the person you intend to arrest.

## FIREARM SAFETY

- 1) Always assume a weapon is loaded.
- 2) Training and practice is mandatory in our profession. It is your duty to maintain proficiency in both knowledge and skill with your weapon. Remember to always be aware of your surroundings and the potential risk of others being injured.
- 3) Maintain knowledge of new and existing California and federal laws in regards to firearms.

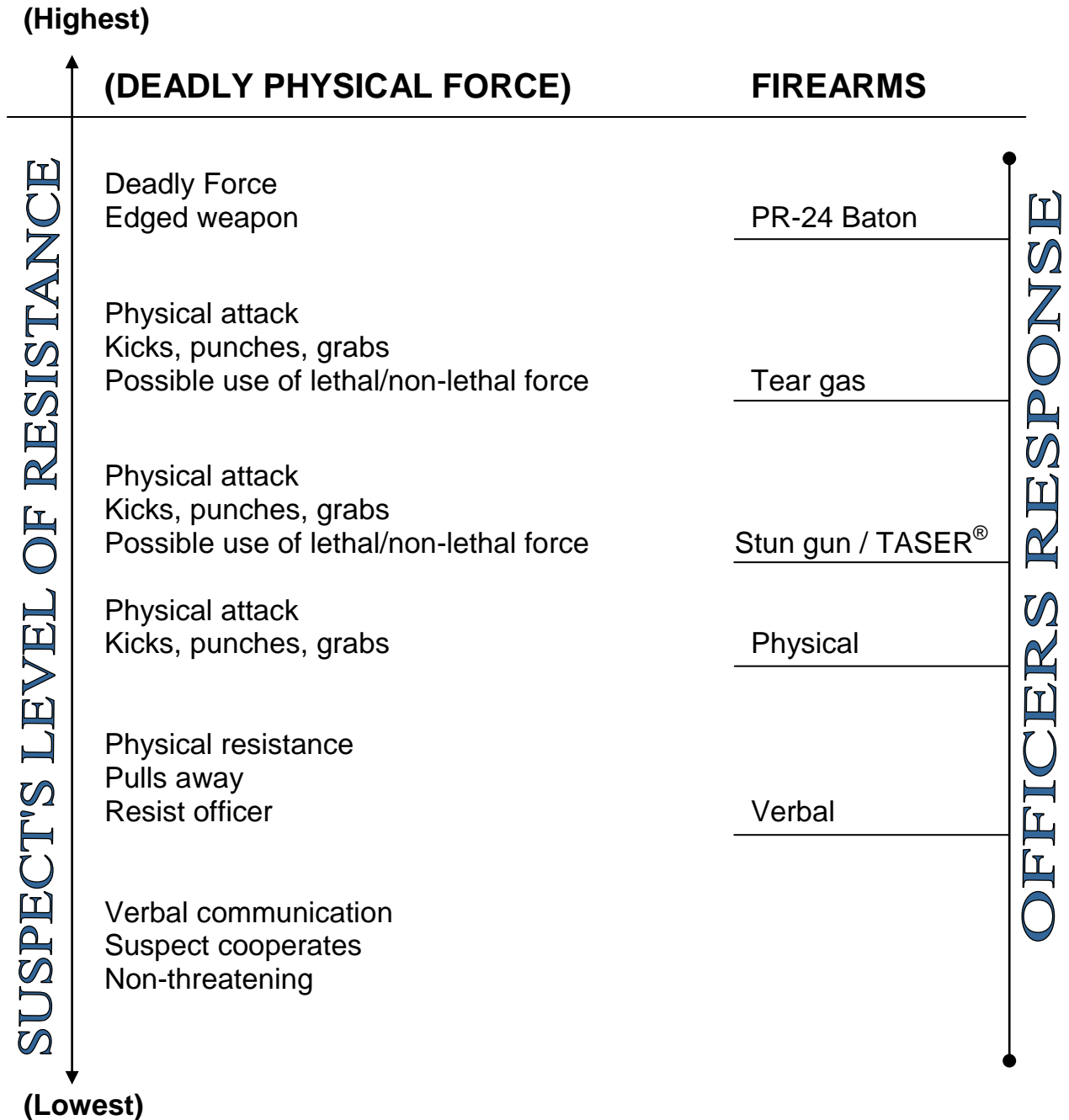
## FIREARM SAFETY POSITION

When we talk about firearm safety position I am referring to the basic handling of the weapon in a field condition. Always keep your finger until you are ready to fire your weapon. This position and tactic will save you alone from unwanted discharging of the weapon.

**LOW SET POSITION:** The low set position is a passive way of holding your firearm in a nonaggressive or threatening manner and the officer or agent is sensing a potential hostile situation. The weapon is out of the holster and along side the user's leg or thigh. Remember each situation is different and this particular tactic can border on being a violation of California Penal Code 417. It is up to the agent/officer to be able to effectively articulate the circumstances for using this particular tactic. I the writer am not telling you that this tactic can be used under any or all circumstances.

**READY SET POSITION:** The ready set position is basically the officer/agent deploying their weapon in a legal and lawful manner and ready to deliver legal deadly force based on the suspect's action and aggression.

# ESCALATION OF FORCE





# America's Bill of Rights

## Amendments added as a Public Trust that added to our role as Peace Officers... to protect the rights of others...

During the decades immediately following the ratification of the Bill of Rights, the Supreme Court had little occasion to apply the promises of Due Process. Slavery, for example, was viewed as a matter of property rights, not human rights; and the constitution guarantees of civil liberties and due process placed restrictions on government only at the federal level.

In 1833, the Supreme Court made a quite clear that the Bill of Rights provided no protection against state or local action, but only against federal authority... (Barron vs. Baltimore). However, with the ratification of the 14<sup>th</sup> Amendment to the Constitution in 1868, it became possible to argue that the Bill of Rights should be understood to restrict the powers of the state and local governments as well as the federal government. I.e. "No state shall make or enforce any law..."

The significance of the Bill of rights is that it restricts government rather than individual and private groups. It was added to the constitution at the insistence of those who feared a strong central government. United States Supreme Court Justice Earl Warren commented on this a century and a half later: "The men of our First Congress.... knew...that whatever form it may assume, government is potentially a dangerous a thing as it is a necessary one. They knew that power must be lodged somewhere to prevent anarchy within and conquest from without, but that this power could be abused to the detriment of their liberties."

*Henry M. Christman, ed The Public Papers of Chief Justice Earl Warren  
(New York: Simon and Shuster, 1959 p. 70)*

# 1st Amendment



**The Right to Freedom of  
Religion, Speech, Press,  
Assembly, Petition**

*Congress shall make no Law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress or grievances.*

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## **RESTRICTIONS OF POWERS OF CONGRESS**

The meaning of this article is quite clear. It means that we can worship as we see fit, or not worship at all if we so inclined; and that we all have the same rights. This article does however, present problems for law enforcement in that not all citizens interpret it in the same manner and therefore their belief of what it means is in conflict with certain laws. I.e. Freedom of “expression” versus obscenity or offensive language.

“The United States is a land of Free Speech. Nowhere is speech freer, not even here where we sedulously cultivate it even in its most repulsive form.” – *Winston Spencer Churchill / House of Commons 1944*

Effective: December 15, 1791



# 2nd Amendment

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.*

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# 3rd Amendment

*No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.*

# 4th Amendment

***Probable cause is most important standard from legal point of view.***

## 3 STANDARDS

- PROBABLE CAUSE
- UNREASONABLENESS
- PARTICULARITY

The right of 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 persons or things to be seized.

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## **SEARCHES AND SEIZURES**

Article IV is explicit; however, there are exceptions. While a man's home may be his castle, it cannot be used as a place of refuge for criminals.

In fresh and immediate pursuit, an officer may follow a criminal who has taken refuge in a house or building, and after announcing his intent and authority, may force his way in to make an arrest.

The courts have held that when a person is legally arrested, his person and effects may be thoroughly searched by an officer and any weapon or contraband may be seized and properly used as evidence.

# 5th Amendment

*No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for use without just compensation.*

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## **CRIMINAL PROCEEDING AND THE CONDEMNATION OF PROPERTY**

“No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or navel forces, or in the actual service in time of war or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Proposed September 25, 1789; ratified December 15, 1791.

# 6th Amendment

*In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of state and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

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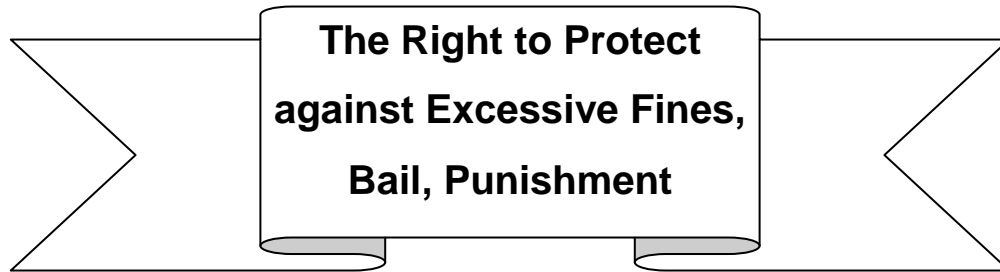
## **MODE OF TRIAL IN CRIMINAL PROCEEDINGS**

Proposed Sept. 25, 1789, ratified Dec. 15, 1791

# 7th Amendment

*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.*

# 8th Amendment



*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual inflicted.*

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## **BAILS – FINES – PUNISHMENTS**

Although most officers would not normally be involved, (except in a custody assignment) with bail or punishments, an officer should note this right and avoid situations of unnecessary HOLDS and additional charges in order to elevate bail or keep a defendant in custody longer than is reasonable under the facts of the case. If a higher bail is appropriate, the court should be notified and with the proper justification, the court can take steps to raise bail.

Proposed Sept. 25, 1789, ratified Dec. 15, 1791

# 9th Amendment

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

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# 10th Amendment

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

# 14th Amendment

*No state shall make or enforce any law which shall abridge the privileges or immunities of the citizen of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*

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## **CITIZENSHIP, REPRESENTATION AND EQUAL PROTECTION OF THE LAWS**

Legal historians disagree on the question of whether the Congress intended these words to make all of the provisions of the Bill of Rights binding on the states. In its first decisions after the ratification of the Fourteen Amendment (1868), the Supreme Court rejected the notion that the due process clause of the Fourteenth Amendment had “incorporated” the Bill of Rights, thus making each of the provisions for the Bill of Rights applicable to state and local governments.

However, later in *Gitlow v. New York*, the Supreme Court did rule that the First Amendment prohibition against government abridgement of the freedom of speech applies to state and local governments as well as to the Federal Government. At present all fundamental personal rights and “liberties” are protected by the due process clause of the Fourteenth Amendment from the States impairment.



## CIVIL RIGHTS ACT OF 1871

In the years after the civil war, newly freed slaves were attacked by white mobs and state officials in the South did little to protect them. In response, Congress enacted the Civil Rights Act of 1871, also known as the Ku Klux Klan Act. It gave federal judges the power to intervene when “two or more persons conspire... for the purpose or depriving any person or class of persons of ... equal privileges or immunities under the laws.”

### UNITED STATES CODE TITLE 18, CHAPTER 13 CIVIL RIGHTS SECTION 241

Conspiracy against rights of inhabitants.. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to n\him by the Constitution or laws of the United States, or because of his having so exercised the same; or they shall be fined not more than \$5,000 or imprisoned not more than ten years or both.

### UNITED STATES CODE – TITLE 18, CHAPTER 13 (CIVIL RIGHTS) SECTION 242

Deprivation of rights under color of law. Whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United Sates, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (June 25, 1948, c. 645, 1, 62 Stat. 696)

In recent decades, the court has felt compelled to limit the scope of the law. If read literally, for example, it could allow lawsuits against union organizers who boycotted an antiunion company. More recently, and of great significance, it was used to break up blockades by the anti-abortion groups. On January 12, 1993, the Supreme Court ruled in Griffin vs. Breckenridge, in a 6-3 decision, the Justices said that the “Act” can be used to stop attacks based on “racial animus”, but not those motivated by an “opposition to abortion.”

Section 1983 of the Civil Rights Act of 1871, authorizes lawsuits for damages for violations of one’s constitutional rights. By invoking Sec. 1983, an individual can hold a law enforcement agency or municipality for an incident of police misconduct.