

**ORIGINAL**

RESOLUTION 2011 - 69

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING  
SUBSCRIPTION TO LEXIPOL**

**WHEREAS**, the City of Sunnyside Police Department requires a comprehensive policy and procedure manual;

**WHEREAS**, commissioned police officers within the City of Sunnyside Police Department are required to obtain annual training to retain their commission;

**WHEREAS**, Lexipol, LLC, provides services that match the policy, procedure, and training needs of the City of Sunnyside Police Department;

**WHEREAS**, the parties have negotiated an agreement for a subscription for such services; and

**WHEREAS**, the City Council of the City of Sunnyside finds and determines that the acceptance of such subscription for services is in the best interests of residents of the City of Sunnyside and will promote the general health, safety, and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

**SECTION 1.** That the "Subscription to Lexipol," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, by and between the City of Sunnyside Police Department and Lexipol, LLC, is hereby approved; and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all reasonable actions reasonable and necessary to administer performance of such agreement.

**SECTION 2.** This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 12<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

ATTEST:

  
\_\_\_\_\_  
DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MENKE JACKSON BEYER EHLIS & HARPER, LLP  
Attorneys for the City of Sunnyside



**Predictable Is Preventable®**

**PROPOSAL FOR**  
**SUNNYSIDE POLICE DEPARTMENT**  
**SUNNYSIDE, WASHINGTON**  
**LAW ENFORCEMENT**  
**POLICY MANUAL &**  
**DAILY TRAINING BULLETIN SERVICES**

**May 10, 2011**

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Aliso Viejo, California 92656  
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[www.lexipol.com](http://www.lexipol.com)

**Primary contact: Karen Keyser, Client Services Representative**  
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**Predictable is Preventable**

**Pricing – 2011**  
**Sunnyside Police Department – Washington**

**Law Enforcement Policy Manual & Daily Training Bulletins**  
Based on 29 (and up to 50) full-time sworn /commissioned

**Year 1**

- **1<sup>st</sup> Year Subscription Fee – \$6,950** (*This fee includes all development tools and Policy updates. Daily Training Bulletins are included at no charge during the first year when Agency finalizes their Policy Manual*)

**Year 2** (to be billed annually beginning Year 2)

- **Annual Update Fee - \$2,850** (*Billed Year 2 – includes all web-based tools, Forum, and Policy Manual updates*)
- **Daily Training Bulletin Fee - \$2,700** (*Billed Year 2 – includes all web-based tools, Forum, and Policy Manual updates*)



**Predictable is Preventable**

May 10, 2011

Deputy Chief Phil Schenck  
Sunnyside Police Department  
401 Homer Street  
Sunnyside, Washington 98944

Dear Deputy Chief Schenck,

Lexipol appreciates the opportunity to propose our Policy Manual and Daily Training Bulletin service to the Sunnyside Police Department. Our goal is to help our clients successfully face the evolving challenges in the world of public safety. Lexipol provides clear benefits in terms of managing, disseminating and archiving your agency's policies and training records. Agencies that adopt our policy subscription service have clear, effective policy manuals that reflect the true values and policing philosophy of their agency.

Lexipol offers the most comprehensive solution for managing policy and procedure in law enforcement agencies. We are often recognized for our proactive approach in decreasing liability exposure backed by Lexipol's technical and legal expertise. The Lexipol system has helped public safety agencies reduce risk and stay ahead of litigation trends, while communicating clear and concise policy guidance to their employees.

**Policy Manual Development:** Lexipol has created policy content that is specific to federal and to Washington state law. This "master" content can then be customized by the Sunnyside Police Department. Your agency is prompted through interactive online software to develop Policy Manuals standardized with regulatory requirements yet customized to the agency's unique mission, philosophy and resource availability. The proprietary software allows efficient and accurate generation of a draft version of the manual from an online questionnaire.

**Daily Training Bulletin Component:** The training component consists of Lexipol's Daily Training Bulletins (DTBs). These give the Sunnyside Police Department the ability to train and test employees on its policies and procedures. The DTBs consist of a brief scenario illustrating realistic circumstances officers typically encounter. Each scenario is linked to a policy, which puts the policy in an operational context and helps sworn personnel understand why the policy exists and how it applies to their daily tasks. The DTB system includes a brief test, which the officer must pass to be credited with the DTB training. The Sunnyside Police Department will receive DTB packages (via email) monthly, with each bulletin linked to a current policy. Your

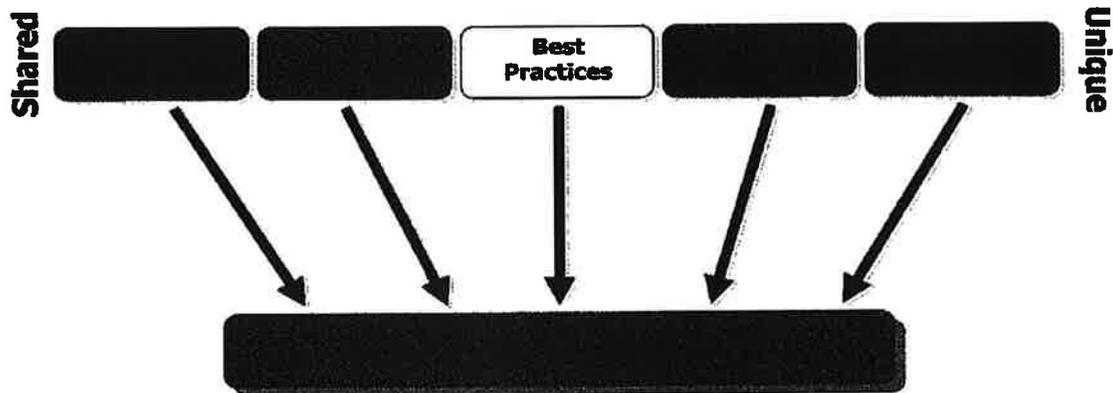
Department staff will also have the ability to create their own customized DTBs in the Lexipol system as they identify areas that require additional training.

Lexipol's DTB training component allows the Sunnyside Police Department to track its training by officer, topic or policy. This information is archived electronically and can be produced immediately for current reports, or retrieved years later, thereby providing significant litigation and administrative support.

**Unique Qualifications:** Lexipol has established a unique set of risk management tools for law enforcement agencies by integrating agency-specific, customized policy manuals with the Daily Training Bulletin service. The Lexipol policy and training system has helped public safety agencies throughout Washington, and the country, reduce risk and stay ahead of litigation trends, while at the same time communicating clear and concise policy guidance to their employees.

**Proprietary System and Tools:** More than 140 core policies based on federal standards and Washington statutes and case law, regulatory actions, and law enforcement best practices are available with our intuitive tool set. Your agency has full editing capability to customize the manual to reflect your agency's mission and philosophy. Our color-coded key reflects the origin of the content and its relative importance. The final product, which is not color-coded, is a professional, well organized, easy-to-read manual online in Lexipol's Knowledge Management System and in hard copy. **There is no other system in the nation that incorporates all of these features at affordable annual subscription rates.**

### Color Coded Draft



**Updates:** Lexipol provides regular updates in response to legislative mandates, case law and evolution in best practices. We also provide client alerts in response to precedent-setting court decisions or events that call for immediate changes to policy. **These updates would be customized for the Sunnyside Police Department and your mission.**

**Adaptability:** Our clients range from one to 2,500 sworn personnel and include municipal police departments, county sheriff offices, county district attorney offices, port police, probation departments, school district and university police, tribal police, state regulatory and law enforcement agencies, federal agencies and military agencies.

**Scale:** Over 1,000 public safety agencies serving more than 62,000 officers in 12 states use the Lexipol system. Our subscriber base is one of the largest private networks of law enforcement policy collaborators in the nation.

**Archiving:** Each version of your manual is archived on the Lexipol system. This is an invaluable resource in defense litigation or personnel matters that call for authenticated copies of policy or training records years after an incident.

**Cost Effective Development:** A fully burdened officer can cost an agency upward of \$100K in salary and benefits. Most small to mid-sized agencies assign one officer to update and maintain their policy manual, which can consume 50% to 80% of the officer's time.

A typical officer does not have the experience or resources to translate statutes, case law and emerging trends into usable, defensible policy in patrol, investigations, traffic, property, custody or personnel. At Lexipol we proactively do this work for you, typically at less than 5% of the cost of an officer.

**Ready Access:** Many agencies describe their pre-Lexipol policy system as convoluted, reactive and not serving the agency well. Their employees have trouble accessing the policy system because the documents are contained in disparate silos of information.

**Policy Training:** The integrated Daily Training Bulletin component is a customized, scenario-based daily training program that links directly to the policy manuals. The Daily Training Bulletin program is standardized, verifiable, realistic, ongoing training that links directly to your policy manual. Archiving of training records provides verifiable evidence of achieving specific learning objects.

Lexipol is uniquely qualified to provide our Policy Manual and Daily Training Bulletin service to the Sunnyside Police Department. For the past 10 years, we have created proven, court-tested law enforcement policy. Actuarial data shows Lexipol's unique, cost-effective policy and training system reduces the numbers of claims and claims paid – typically by 69% over previous years. We have a 100% defense record of our policies in courtrooms across America.

In addition, Lexipol provides a highly cost-effective model and powerful, easy-to-use web-based tools that support your agencies and provide:

- Policies and procedures that reflect up-to-date, applicable industry standards and best practices;
- Customized content for the Sunnyside Police Department;
- Daily scenario-based training that reinforces your approved policies and procedures;
- Regular updates to your policies and procedures as statutes, case law, and regulations change;

Lexipol is America's leading source of risk management resources for public safety organizations, delivering its services through a unique, web-based development system and an integrated training component.

**Accreditation Feature:** The Lexipol system is an excellent complement to those agencies seeking to obtain or maintain CALEA or state-specific accreditation. The Lexipol system addresses the vast majority of accreditation requirements, but maintains flexibility with its customization features in order to stay current with court decisions and agency-specific changes.

Lexipol has a unique *accreditation feature* – a specialized system which allows mapping specific accreditation requirements within Lexipol policy sections and subsections. Agencies seeking to meet CALEA or state-specific accreditation requirements simply activate this feature, and are able to add any accreditation standard that applies to that section. When used in conjunction with Lexipol's easy-to-use editing tools, agencies can update policies to meet accreditation standards at their discretion.

Lexipol's accreditation feature also aids in making the accreditation process easier with its reporting abilities. Reports can be quickly and accurately created to reflect current policy compliance with specified accreditation standards.

**Training Support:** The Sunnyside Police Department policy administrators may attend any and all online training sessions (which can be repeated as many times as necessary): 1) Knowledge Management System (KMS) Training – which is your portal for policy editing and development and 2) Project Management session – which will introduce your Policy Manager to the Lexipol Electronic Client Toolkit (ECT) and the Project Management Guide (PMG).

Our Project Management Guide and Electronic Toolkit are included in the Lexipol subscription fee, and will aid your agency in completing your manual in a timely fashion. Our Project Management Guide provides tips and guidelines on how to achieve this goal. The Electronic Toolkit contains a couple of "best practices" examples that may give your agency some ideas as to how others have implemented the manual.

Our Program Development and Customer Service teams are also available throughout the development process to provide guidance and answer questions.

### **Lexipol History**

Lexipol was founded in 2003 by merging Bruce Praet's acclaimed policy manual work with Gordon Graham's innovative "Five Pillars of Success" approach to risk management, and Lexipol's CEO Dan Merkle brought impressive business acumen to the team.

Today, Lexipol is comprised of an all-star team of public safety veterans. Former executives of law enforcement and fire services lead the major divisions of the company. In fact, the majority of all Lexipol employees are former or active duty public safety members.

This confluence of real world experiences in the areas of law, public service, and business gave rise to Lexipol's unique system of risk management tools. Lexipol has become America's leading source of risk management resources for public safety organizations. We currently serve over 1,000 law enforcement agencies in Washington and 11 other states. We train more than 60,000 law enforcement officers every day.



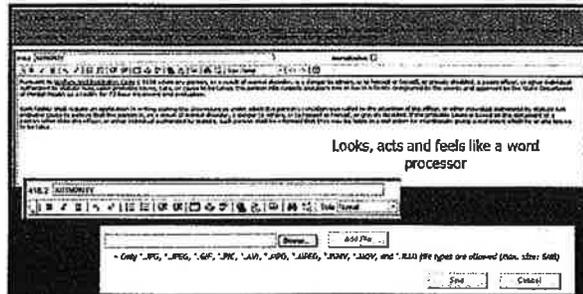
## The Lexipol Advantage

Public safety agencies must keep current and clear policies in place and train their employees to such policies. In addition, policy and training are perishable assets with potentially severe consequences if allowed to become stale. Lexipol is America's leading source of risk management resources for public safety organizations, delivering its services through web-based policy manuals, training, and supplemental publications. The company has established a unique set of risk management tools for law enforcement agencies by integrating agency-specific, customized policy manuals with the Daily Training Bulletin (DTB) service. The Lexipol policy and training system has helped public safety agencies throughout the country reduce risk and stay ahead of litigation trends, while at the same time communicate clear and concise policy guidance to their employees.

**The Lexipol system is truly unique and provides advantages in several ways:**

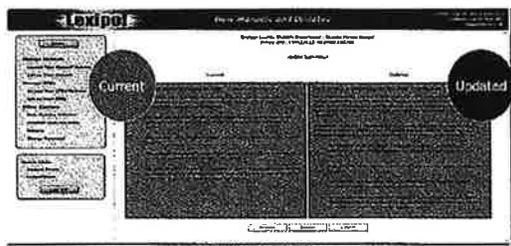
**Customized Content:** Each agency goes through a development process that combines the Lexipol database of area-specific regulatory policy requirements, best practices - as recognized through accreditation standards and national subject matter experts- and unique agency policies to reflect the agency's mission and philosophy. No other program in the country offers this approach and level of customization.

**Proprietary System and Tools:** The development process is structured but interactive to quickly produce results and be responsive to agency input. Software tools put complete editing capability in the hands of the agency. Once initial policy development is completed and published, a twice-yearly and urgent update system allows the agency to refresh policy with minimal effort. The updated policy manual is then easily distributed electronically to, and acknowledged by, all members of the organization. The Lexipol system not only archives each version of the agency's manual and DTBs, but the policy acknowledgement and test results for its employees, which can be produced years later for court or administrative hearings.



The agency's draft policy manual is delivered online for editing with a color-coded key to reflect the origin of the content and its relative importance. Red for federal statute and case law, Orange for state statute and case law, Yellow for best practices and Green for discretionary policies. In addition, there is Blue for agency-created content. The final product is a professional, well organized and easy to read manual online or in hard copy. The resulting PDF file can be placed on an agency server or distributed electronically to all employees, as well as viewed online in Lexipol's Knowledge Management System (please see last page for content examples). There is no other system in the nation that incorporates all of these features at affordable subscription rates.

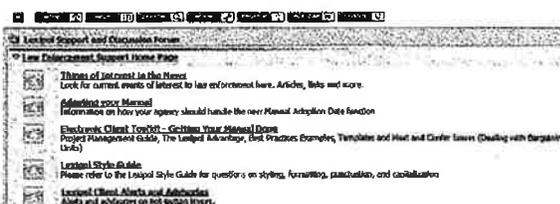
**Updates:** Lexipol provides urgent updates as needed in response to precedent-setting court decisions, incidents in the field or other events requiring immediate changes to policy or practices. Lexipol also provides regular maintenance updates twice a year to refresh content in response to legislative mandates, case law and evolution in best practices. These updates are customized to the individual agency and their mission.



**Adaptability:** Agency clients range from 1 to 2,500 sworn officers or deputies and include: municipal police departments, county sheriff offices, county district attorney offices, port police, probation departments, school district and university police, tribal police, state regulatory and law enforcement agencies, federal agencies, military agencies, and others. Soon, Lexipol will offer a fire service policy manual.

**Scale:** Several states have the majority of their agencies using the Lexipol system. More than 1,000 agencies currently use the Lexipol system, including 62,000 officers in 12 states who are active participants with Lexipol policy manuals. In California, over 95% of law enforcement agencies use Lexipol. This subscriber base is the largest private network of law enforcement policy collaborators in the nation. The generous contribution of this group to the benefit of the entire network is unmatched and continues to enhance the overall knowledge base. We have also established a national network of legal experts who collaborate via secure connections on issues important to law enforcement.

#### Lexipol Support and Discussion Forum



**Integration:** The Daily Training Bulletin (DTB) program allows customized, scenario-based daily training for an agency's officers on their state-specific policy manual. Automated tools ensure consistency between policy and training materials on a real-time basis. Archiving of training records provides verifiable evidence of successful, specific learning objective achievement. In addition, Lexipol offers the National Daily Training Bulletin service to those agencies that do not use the Lexipol policy manuals.

Select the Year followed by Month to view the list of available Daily Training Bulletins

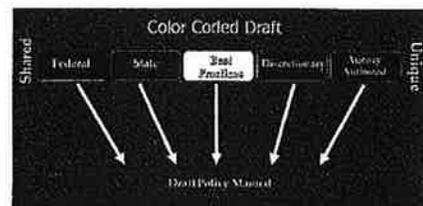
Year	Month	Available	Report
2011	Jan		
2011	Feb		
2011	Mar		
2011	Apr		
2011	May		
2011	Jun		
2011	Jul		
2011	Aug		
2011	Sep		
2011	Oct		
2011	Nov		
2011	Dec		

Item No.	Title	Policy Manual
4220211	VEHICLE LICENSES - New Federal Law	Policy Manual
4220211	OFFICER SAFETY AND TACTICS - New Army Fire Range	Policy Manual
4220211	VEHICLE EQUIPMENT Technology Policy	Policy Manual
4220211	INVESTIGATION AND ENFORCEMENT Decision Investigations	Policy Manual
4220211	VEHICLE OPERATIONS Driving Under the Influence of Drugs	Policy Manual
4220211	PROSECUTION Over-Time Payment, Denial and Getting Justice	Policy Manual
4220211	USE OF FORCE - Chief Supervisor of Force Reporting	Policy Manual
4220211	CUSTOM AND DISCRETIONARY Policy	Policy Manual
4220211	PERSONNEL Discretionary Work Performance	Policy Manual
4220211	USE OF FORCE - Verbal Techniques	Policy Manual
4220211	INVESTIGATIONS AND ENFORCEMENT Access	Policy Manual

**Reporting Tools:** Reporting tools allow an agency to quickly find out which of their employees completed, or did not complete, the required DTB training. The same applies to acknowledgement of the first policy manual or any updates. All reports can be exported to Excel with the push of a single button.

**Monitoring:** Insurance pools and other economic sponsors have access to their members' policy and training status on a 24/7 basis. They can also see the members' policy manuals and a summary report of all content changes from suggested language annotated with origin of the content be it federal, state, best practices or discretionary policy. In fact, a number of insurance risk-sharing pools provide funding assistance for the initial cost of the program, the ongoing subscription and Daily Training Bulletins. Check with your Risk Management Authority for details.



**Archiving:** Each version of the agency's manual, as well as all DTB training records, is archived by Lexipol for later reference. This is an invaluable resource in defense litigation or personnel matters that often call for authenticated copies of policy or training records years after an incident.

**Track Record:** Risk management programs often attempt to quantify the value of avoided claims. Although it is alluring to try and calculate return on investment for a program, it is difficult at best to measure the cost of a claim not experienced. While Lexipol has shown, through Risk Management Association (RMA) claim analysis, a significant drop in liability for agencies that use Lexipol, anecdotal experience is sometimes more enlightening. In addition, the Lexipol system provides significant value in terms of management, dissemination and tracking of a public safety agency's policies.

**The Lexipol Advantage includes clear and sustainable benefits in two areas: Liability and Operations. Our subscribers' experiences can be summarized as follows:**

**REDUCTION OF LIABILITY**

- A Sheriff's Office (SO) was sued by the ACLU arising out of the arrest of some Hmong juveniles which resulted in citizen complaints. The ACLU was essentially upset that the SO lacked a policy on issues of citizen complaint procedures, search warrants and dealing with juveniles. The Executive Director of the ACLU in that area told the Sheriff that he would dismiss the pending lawsuit with a full waiver of costs and fees if she would subscribe to the Lexipol policy manual system. The Sheriff's Office is now a subscriber and the lawsuit was dismissed as promised. Savings: Probably in excess of \$100,000 in ACLU fees, not to mention the immediate end to litigation which could have resulted in damages and would certainly have resulted in additional defense costs, stress and bad publicity.
- A large Sheriff's Office settled a claim after a court ruled against it on a strip search policy, which was declared unconstitutional. The cost, \$15 million, was perhaps one of the largest settlements in the country involving a law enforcement agency. Lexipol had a defensible policy in place and available at the time of the incidents. The sheriffs' office was not then a Lexipol subscriber.
- An agency had a pursuit in 2002 in which an unmarked sheriff's unit pulled in front of the suspect vehicle and the deputy (and hostage in the suspect vehicle) were killed. That Vehicle Code in that state provides immunity for any death, injury or property damage caused by a suspect vehicle IF the agency has a policy which conforms to the Vehicle Code requirements. The Lexipol model policy is in compliance. The Police Department had their policy manual in place as of April 10, 2002. The fatal pursuit occurred on April 22, 2002. The result: The PD was fortunately provided with immunity in an otherwise VERY expensive lawsuit. Their old manual would not have provided immunity.
- A Police Department arrested an adult female, who spoke English, after she attacked neighboring children with a butcher knife. She later claimed she was unable to effectively communicate without a translator and filed a complaint with the Federal Department of Justice. The resulting federal investigation cost the agency significant unbudgeted dollars and had gone unresolved for over a year. The federal Executive Order requires all agencies in all states to have a written "Limited English Proficiency" policy. The lack of such a policy could result in a complete loss or probationary status for all federal funding and grants. All Lexipol subscribers have such a policy and are in compliance with this little known federal requirement.

- An ongoing contribution to our knowledge base comes from our subscribers' experience in the field. A small police department had an officer mistakenly use her duty weapon when she thought she was grabbing her Taser®. The tragic fatal shooting resulted in an immediate policy change for all Lexipol agencies so that the Taser is now carried on the weak side as opposed to previous practices of carrying it on the strong side. No one will ever know what future tragedies have been averted.
- A municipality was challenged in court by a right-to-bear-arms organization regarding their Lexipol Carry Concealed Weapon (CCW) policy for that particular state. The policy not only survived the court challenge, but Lexipol was successful in establishing it as a model state policy in compliance with state law and in use by most agencies in the state.
- An agency was challenged by a very conservative national organization with respect to their immigration policy. Unbeknown to the agency and many others, federal law explicitly prohibits an agency from limiting its employees' contacts with Immigration and Customs Enforcement (ICE). Language in the agency's pre-Lexipol policy could have been interpreted as limiting these contacts. Lexipol's policy and support professionals were able to provide helpful content and language to diffuse the issue.
- A law enforcement agency suffered an adverse verdict of over \$600,000 in a case in which the agency had insufficient policies addressing services to the hearing impaired. Additionally, the agency was ordered by the federal court to immediately adopt a policy complying with related federal standards. When the agency came to Lexipol with this request, we promptly developed a comprehensive policy which was approved by the federal court. Not only did the involved agency promptly become a Lexipol subscriber, but virtually every subscribing agency immediately benefited from these efforts without exposure to similar costly litigation.
- Until just a few years ago, the primary risk of violating an officer's procedural rights under California's Peace Officers Bill of Rights (POBR) was the potential for a court issuing injunctive relief to prevent an agency from moving forward in violation of POBR. However, with the relatively recent amendment to Government Code § 3309.5, agencies now face a fine of \$25,000 per violation plus an award of attorney's fees to the prevailing officer. While a single \$25,000 fine far exceeds the cost of continuously maintaining an updated manual, the exposure to attorneys' fees, back pay and related civil litigation could reach well into the six figures. This area of law is constantly changing, and it is difficult for even the largest agencies to keep their policies and training up to standards, much less replicate the extraordinary resources of Lexipol.

- A large police agency was assessed a \$31,000 penalty by a state's Division of Occupational Safety and Health (DOSH) for "failing to develop and implement" an Aerosol Transmissible Diseases (ATD) program. One of the officers involved was exposed to bacterial meningitis and spent several days in intensive care unit of a hospital, as did an employee of the hospital. Had the agency been a Lexipol subscriber, it would have had tested, contemporary Communicable Diseases policy that could have saved them thousands of dollars in fines and, arguably, even more in medical and workers' compensation costs.



[Anytown Police  
Department]

### **Communicable Diseases**

#### **1016.1 PURPOSE AND SCOPE (BEST PRACTICE)**

This policy is intended to provide guidelines for department personnel to assist in minimizing the risk of contracting and/or spreading communicable diseases and to minimize the incidence of illness and injury. The policy will offer direction in achieving the following goals:

## **OPERATIONAL EFFICIENCY AND EFFECTIVENESS**

- Many agencies describe their pre-Lexipol policy system as convoluted and not serving the agency well. Employees in some agencies have trouble accessing their policy system and guidance documents are often contained in disparate silos of information. Consequently, there is no easy way for employees to obtain policy guidance. When agencies become a Lexipol subscriber they are able to put in place a cohesive, clear and professional policy system that is not only legally defensible, but is easily accessible to all members of the organization in a variety of ways.
- Salary and benefits for a deputy or police officer is likely to cost an agency upwards of \$100K or often much more, depending upon the state. On average, small agencies assign one officer to keep up on policy issues 50% - 80% of their time plus accessing other legal resources and best practices, adding significant costs to the task of maintaining a current, well-written and effective policy manual. These costs typically do not include training on an agency's policies. Lexipol's Policy update costs typically replace a full time officer at less than 5% of the cost. Additionally, a typical officer does not have the experience or resources to effectively translate all statutes, case law and emerging trends into usable, defensible policy in all areas of patrol, investigations, traffic, property, custody, personnel, etc. In summary, the Lexipol subscription service is clearly cost effective and affordable for all agencies.
- Perhaps not surprisingly, it is during poor economic times when we tend to see increases in both violent encounters with officers and litigation by those seeking to supplement their income with a chance at winning the civil court lottery. Yet, these are also the times when it could not be truer that "penny wise would be pound foolish." Attempting to cut back or even eliminate the very reasonable, ongoing services provided by Lexipol (even temporarily) would clearly leave an agency with dramatically increased exposure to such risks. What we now know is that the plaintiffs' bar may look at suing smaller agencies due to the historical ease of winning through questioning their policy and training records. The benefits provided by Lexipol's services in terms of operational effectiveness and efficiencies are clearly part of an agency's risk management strategies.

- A newly-established law enforcement agency had to obtain building space, hire officers and develop a policy system. With assistance from Lexipol, the new agency was able to put in place a professional, legally defensible policy manual that was specific to its policing philosophy and community standards in a few months. This example has been repeated throughout the nation a number of times.
- Agencies that adopt the Lexipol policy subscription service tend to have clearer, to-the-point and effective policy manuals that reflect the true values and policing philosophy of the agency. Several independent Risk Management Associations have reported that the agencies that adopt and use the Lexipol manual tend to have lower liability costs and experience markedly lower internal and external claims of all kinds. For example, an Oregon Risk Management Association conducted a study over three years that showed a 69% reduction in liability costs for agencies that adopted and used the Lexipol system as compared to those that did not.

### SUMMARY

After 12 years and more than 1,000 agency subscribers in 12 states and growing, we are unaware of an instance in which any of our policies have resulted in liability or been deemed inadequate by a court. Conversely, as one can see above, we are aware of numerous cases in which our policies (e.g. Use of Force, CCW, K9 and others) have been instrumental in the agency's ability to prevail not only in court but also in administrative hearings.

In addition, Lexipol provides clear benefits in terms of managing, disseminating and archiving of agency policies and training records. Our program and customer service are continuously improved. We intend to stay responsive to the needs of our law enforcement subscribers and their evolving challenges by continually seeking feedback from clients and applying that information to create better and more efficient systems. Should you need additional information, a sample of our policies or a Table of Contents, please call 949-484-4444 or go to [www.lexipol.com](http://www.lexipol.com).



**Lexipol**

Predictable is Preventable



Predictable is Preventable®

## Lexipol Benchmarking Analysis

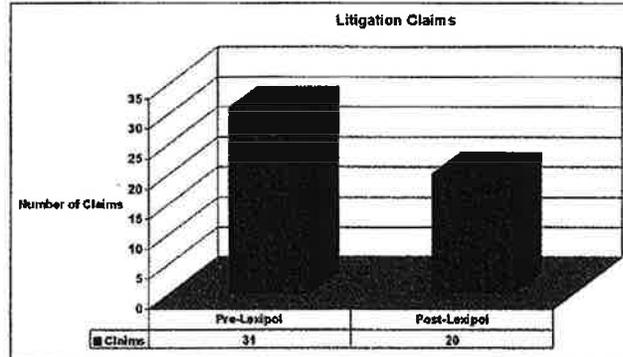
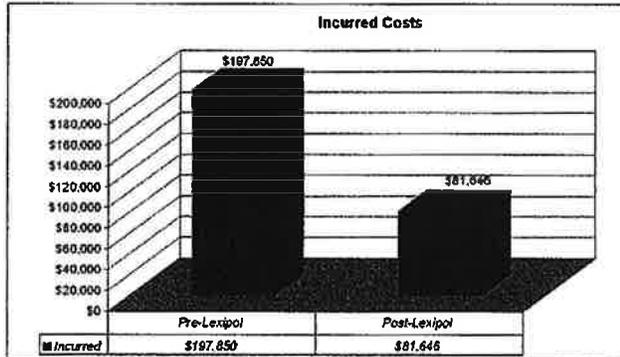
### Summary of Lexipol Key Findings

Lexipol is America's leading provider of risk management resources for public safety organizations. Our services include customizable, web-based policy and procedure manuals that contain solid, realistic, ongoing and verifiable training. Lexipol is often recognized for our proactive approach in **decreasing liability exposure** backed by Lexipol's technical and legal expertise.

Lexipol's cost-effective policy and training system reduces the number of claims and claims paid out. In fact, in a two-year study,\* Lexipol clients averaged 69% fewer litigation claims compared to pre-Lexipol implementation. The claims that were litigated paid out, on average, only \$7K compared to an average of \$20K prior to Lexipol implementation.

Equally impressive, Lexipol agencies in this study did not incur a single personnel or employment claim. The non-Lexipol clients in the study had four such claims totaling more than \$238K.

The trend below represents incurred costs and litigation claims for pre- and post-training/implementation:



\* Data courtesy of City County Insurance Services - Oregon  
Full analysis available upon request. Please contact Lexipol.

Lexipol helps public safety agencies operate more efficiently and effectively. We currently serve more than 1,000 law enforcement agencies and 62,000 officers in 12 states.

To learn more, visit us at [www.lexipol.com](http://www.lexipol.com) or call us (949) 484-4444.

**PREDICTABLE IS PREVENTABLE®**



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Tel: 949-484-4444  
Fax: 949-484-4443

**TERMS AND CONDITIONS FOR USE OF SUBSCRIPTION MATERIAL**

**I. ACCEPTANCE OF TERMS**

The services that Lexipol, LLC, a Delaware Limited Liability Company (hereinafter "Lexipol"), provides to Agency, Customer, User, Purchaser are subject to the following Terms and Conditions of Use. These Terms and Conditions are valid through the subscription period of one year. Lexipol reserves the right to update/change the Terms and Conditions of Use on the renewal date of the subscription agreement period whereas those updates/changes on the Terms and Conditions of Use will be valid for the new subscription period. This document represents the most current version of the Terms and Conditions of Use. Any changes or updates can be reviewed by clicking on the "Terms and Conditions of Use" hypertext link located on Lexipol's Forum page once Agency becomes a subscriber. AGENCY MUST AGREE WITH THESE TERMS AND CONDITIONS OF USE BEFORE AGENCY CAN USE THIS WEBSITE.

**II. DESCRIPTION OF SERVICES**

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**XIII. TERMINATION**

This Subscription Agreement may be terminated at the annual anniversary date of the subscription period by written notice to the other party at least 30 days preceding the subscription anniversary date.

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## Wa1 Police Department Policy Manual

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# Use of Force

### 300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

#### 300.1.2 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

### 300.2 POLICY

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. Reasonableness of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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**300.2.1 USE OF FORCE TO EFFECT AN ARREST**

Any peace officer may use all necessary means to effect an arrest if, after notice of the intention to arrest the defendant, he/she either flees or forcibly resists. (RCW 10.31.050).

The use, attempt or offer to use force upon or toward another person is not unlawful whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the Wa1 Police Department's direction. (RCW 9A.16.020(1)). Necessary means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended (RCW 9A.16.010(1)).

**300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized however, that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

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## Policy Manual

### *Use of Force*

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#### **300.2.3 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force. Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to leg restraints and control devices described in Policy Manual §§ 306, 308, and 309 respectively.

#### **300.2.4 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used.
- (b) The potential risk of serious injury to the individual being controlled.
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance.
- (d) The nature of the offense involved.
- (e) The level of resistance of the individual(s) involved.
- (f) The need for prompt resolution of the situation.
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

#### **300.2.5 CAROTID RESTRAINT**

The proper application of the carotid restraint hold by a trained officer may be effective in restraining a violent individual. Only officers who have successfully completed department-approved training on the use of the carotid restraint hold and the department Use of Force Policy are authorized to use the technique. After initial training, officers shall complete training annually on the use of the carotid restraint hold.

The carotid restraint hold may only be used when the officer reasonably believes that the application of the hold appears necessary to prevent serious injury or death to an officer or other person(s).

After any application of any carotid restraint hold, the officer shall ensure the following steps occur:

- (a) Any individual who has had the carotid restraint hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel.
- (b) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid restraint hold and whether the subject lost consciousness as a result.
- (c) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.

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- (d) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in the related incident report.

**300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or serious bodily injury. Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to others if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

**300.4 REPORTING THE USE OF FORCE**

Any use of physical force by a member of this department shall be documented promptly, completely and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons such as chemical agents may require the completion of additional report forms as specified in departmental policy and/or law.

**300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the following circumstances:

- (a) The application of force appears to have caused physical injury.
- (b) The individual has expressed a complaint of pain.
- (c) Any application of a control device.
- (d) The individual has been rendered unconscious.

**300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Prior to booking or release, medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of an injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practical, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond physical characteristics, unusually high tolerance to pain, or who require a protracted physical encounter with multiple officers to bring under control may be at an increased risk of sudden death and should be examined by qualified

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medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

**300.5 SUPERVISOR RESPONSIBILITY**

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor shall be responsible for the following:

- (a) Obtain the basic facts from the involved officer(s).
- (b) Ensure that any injured parties are examined and treated.
- (c) Separately interview the subject(s) upon whom force was applied.
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.

In the event that the supervisor believes that the incident may give rise to potential civil litigation, a separate potential claim form should be completed and routed to appropriate channels.

Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

**Lexipol LLC  
Policy Guide**

**Section 300 Series – General Operations**

**Policy 300 – Use of Force**

**Reference Authorities:** Various Federal and State Statutory Law; Best Practices

**Applicable WASPC Accreditation Standards:** 3.1.1; 3.1.2; 3.1.5; 3.1.6; 4.1.3; 11.1.8;

**GENERAL DESCRIPTION**

This comprehensive mandatory use of force policy describes the philosophy of the use of force by sworn officers along with the guidelines provide on the reasonable use of force. This policy also describes the policy on the use of force in effecting an arrest and other topics such as pain compliance techniques, deadly and non-deadly force and reporting the use of force.

**RECOMMENDED GUIDELINES**

As most of you know, we have strongly advocated against the inclusion of any sort of "continuum of force" or "escalation scale" for many years based upon very favorable language from the courts. Without going into great detail, the Supreme Court has determined that the single question to be asked is whether or not a particular application of force was "reasonable" under the circumstances presented to the officer at the time the decision was made and not whether some sort of alternative level of force could have been used. [See e.g., *Scott v. Harris*, 127 S.Ct. 1769 (2007)]. Because we strive to provide you with policies which are based upon the most current law, it is our firm belief that your policy should mirror the latest standards provided by the courts. As such, you will see that our use of force policy is expressly void of any sort of escalation scale or continuum and we urge you to follow our lead.

You will also notice that we have provided you with some specific types of applications of force (e.g. carotid restraint, pain compliance, etc.) in this policy. If, for any reason, your agency would prefer to not permit the use of the carotid restraint for example, we can easily restrict or delete this from your policy in § 300.2.5. Please recognize, however, that any such absolute omission may prove to be detrimental at some later point if your officer(s) nonetheless apply such force in a situation which would have otherwise justified its use.

You will also note that we have intentionally placed other specific forms of force (e.g. impact weapons, OC spray, etc.) within their own separate policies since these each carry their own unique issues and considerations. If you are wondering why we do not include canines in the Use of Force policy, you will see that we have dedicated an entire, very comprehensive policy to the use of the dogs and the application of the dog in an apprehension is covered in detail in § 318.

As with any policy, you are encouraged to review this very important policy to make sure that it fits the needs and philosophy of your agency. While we remain open to modifications of this policy, we feel that it is important that you have a brief understanding of the format we have provided.

## Wa1 Police Department

### USE OF FORCE

#### REASONABLENESS-FATIGUE FACTOR

**SCENARIO:** You and Officer Jeff Romo are working midnights. You both had court earlier in the day and did not get much sleep before going to work. Around 2:00 a.m., the two of you respond to a fight in progress at a bar. As you arrive, you encounter two people in the parking lot exchanging blows. You shout at them to stop fighting and one of the combatants, Richard Jenkins, throws a beer bottle at Officer Romo, striking him in the head. You grab Mr. Jenkins by the wrist and attempt a rear wrist lock. Mr. Jenkins falls to the ground and puts both arms underneath him. You and Officer Romo attempt to pull his arms out and place them behind his back but he continues to resist.

To no avail, you repeatedly order Mr. Jenkins to stop resisting. Five minutes pass, and you and Officer Romo are still struggling with Mr. Jenkins and beginning to tire. Suddenly, Mr. Jenkins begins to rise up onto his knees in an effort to escape. Officer Romo takes out his baton and hits Mr. Jenkins on his right shoulder blade. This causes Mr. Jenkins to momentarily release his arms and you are able to get him into handcuffs.

**ISSUE:** WAS OFFICER ROMO'S USE OF FORCE JUSTIFIED?

---

**RULE:** When determining whether to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, including fatigue caused by the use of force.

**REFER:** 300.2.2 - FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

**REFER:** 308.2 - BATON GUIDELINES

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**ANALYSIS:** Recently, Jeffry L. Johnson wrote an article for the Americans for Effective Law Enforcement (AELE) Monthly Law Journal titled, "Force and the Fatigue Threshold: The Point of No Return." His article describes the fatigue threshold, a physiological concept that can come into play with use of force encounters.

*"An officer only has a short time in an all out fight - in extreme cases less than a minute - to gain control of a suspect before the officer's energy is spent, placing him or her at a dangerous disadvantage. This condition will be experienced despite the added strength adrenalin provides (which a suspect will also have the advantage of). It is what we more commonly call, "hitting the wall," experiencing a sudden depletion of strength. Modern officers are at an added physical disadvantage due to the personal equipment they carry, specifically, wool uniforms, twenty-pound belts, and motion-constricting, heat-retaining ballistic vests. In our usage, the fatigue threshold can be defined as the sudden physical exhaustion experienced during a force encounter when an officer cannot effectively perform to either control a suspect or defend himself. We will often see officers in this situation using increasing levels of force - force that without explanation may appear excessive - to gain control before they reach their impending fatigue threshold."*

The importance of ongoing physical training, (aerobic, strength and flexibility exercises), a proper diet and hydration is crucial for a law enforcement officer in order to stay healthy throughout his/her career. Such diet and exercise may give an officer a few extra seconds or even minutes before hitting the wall when engaging a suspect.

EXHIBIT "A"

## Wa1 Police Department

**CONCLUSION:** Officer Romo was likely justified in using this manner of force to overcome Mr. Jenkins resistance due to the suspect's conduct, the seriousness of the offense, risk of escape by the suspect, potential injury to the officers and their level of fatigue.

Officer Romo should include language in his use of force report that clearly articulates the level of fatigue experienced by both of you in this incident.

**QUESTION:**

In the context of this DTB "hitting the wall" refers to:

- ANSWERS:**
- a) Smashing your fist into a wall instead of the suspect.
  - b) Something that happens in an earthquake.
  - c) An officer's energy is spent causing a sudden depletion of strength.
  - d) None of the above.

**CORRECT ANSWER:** c) An officer's energy is spent causing a sudden depletion of strength.

EXHIBIT "A"

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