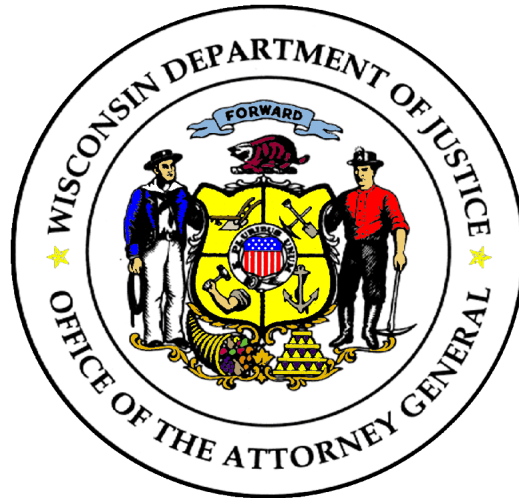


# Handgun Qualification Standard

**Wisconsin Law Enforcement  
Academies, Agencies, and  
Retirees**



**Wisconsin Department of Justice  
June 2020**

## Disclaimer

Every effort has been made to be as accurate as possible. However, this document does not constitute either an informal or formal opinion of the Wisconsin Attorney General or the Wisconsin Department of Justice as described in Wis. Stat. § 165.015(1). It does not constitute legal advice or counsel. It does not create an attorney-client relationship. It creates no rights beyond those established under the constitutions, statutes, regulations and administrative rules of the United States and the State of Wisconsin. It does not attempt to provide answers to every question that may arise regarding law enforcement training or use of weapons. Many factors may affect an agency's policies and practices regarding weapon training and use. Agencies should review the state statutes and administrative code and consult a private attorney for specific information and advice when necessary and appropriate.

This document may be superseded or affected by other versions or changes in the law.

## Acknowledgements

The Training and Standards Bureau, Wisconsin Department of Justice gratefully acknowledges the work of the Law Enforcement Standards Board Tactical Advisory Committee; the Department of Justice Division of Criminal Investigation; the Waukesha Police Department; the Wisconsin Department of Natural Resources; the Wisconsin State Patrol; the Portage Police Department; the Northeast Wisconsin Technical College; the Madison Area Technical College; the Fox Valley Technical College; the La Crosse County Sheriff's Office; the Milwaukee County Sheriff's Office; the Kenosha County Sheriff's Office; the Dane County Sheriff's Office; the Milwaukee Police Department; the Glendale Police Department; the Superior Police Department; the Madison Police Department; the Chippewa Falls Police Department; the Nicolet Technical College; the Southwest Technical College; the Waukesha County Technical College; the Middleton Police Department; the Sun Prairie Police Department; and the Fitchburg Police Department.

### Revision history:

- 10/3/12 (typos)
- 11/30/12 (clarified directions and inserted vendor info)
- 01/09/13 (typo in qualification document)
- 07/02/13 (inserted additional vendor info)
- 12/03/13 (LESB approval of revised course)
- 06/02/14 (inserted additional vendor info)
- 12/02/14 (LESB approval of revised course)
- 12/06/17 (LESB approval of course completion records maintenance requirements)
- 03/06/18 (LESB approval of revised course completion records maintenance requirements)
- 06/05/18 (LESB approval of revised testing and re-testing guidelines for academy students)
- 06/02/20 (LESB approval of revised course)

Copyright © 2020 by the Wisconsin Department of Justice. All rights reserved.

# Table of Contents

**DISCLAIMER** ..... 2

**ACKNOWLEDGEMENTS** ..... 2

**EXECUTIVE SUMMARY** ..... 4

**PURPOSE AND APPLICABILITY** ..... 5

**LIMITATIONS** ..... 5

**MINIMUM STANDARDS AND COURSE MODIFICATIONS** ..... 6

    LAW ENFORCEMENT AGENCY CONSIDERATIONS.....6

**ADMINISTRATION OF QUALIFICATION COURSE** ..... 7

    QUALIFIED INSTRUCTOR .....7

    PROCEDURES .....7

    EQUIPMENT REQUIREMENTS.....7

*Required Target*.....7

*Ammunition*.....7

    SAFETY PLAN .....8

    PASS/FAIL CRITERIA .....8

*Universal Standards* .....8

    SCORING .....8

*Scoring Zones* .....9

*Accuracy Requirement* .....9

**REMEDIAL TRAINING**.....10

*Academies* .....10

*Law Enforcement Agencies* .....10

*Former Officers*.....10

**DOCUMENTATION** .....11

**WISCONSIN HANDGUN QUALIFICATION COURSE AND RECORD OF QUALIFICATION ATTEMPT** .....12

**APPENDIX A – CERTIFICATE OF QUALIFICATION FOR LEOSA/HR218** .....13

**APPENDIX B – SELECTIONS FROM RELEVANT COURT CASES** .....15

    FAILURE TO TRAIN .....15

*City of Canton v. Harris [489 U.S. 378 (1989)]*.....15

*Popow v. City of Margate [476 F.Supp. 1237 D.N.J., 1979]*.....15

*Brown v. Gray [227 F.3d 1278, C.A.10 (Colo.), 2000]*.....17

    INAPPROPRIATE TRAINING .....17

*Markham v. White [172 F.3d 486 C.A.7 (Ill.), 1999]*.....17

    DOCUMENTATION OF TRAINING.....18

*Paul v. City of Altus [141 F.3d 1185 (Table) C.A.10 (Okla.), 1998]* .....18

## Executive Summary

This document summarizes the minimum handgun qualification standard to be used by Wisconsin law enforcement academies in the pre-service training of students and law enforcement officers. This standard also applies to active duty officers, who must annually qualify on a course based on this standard. However, this qualification does not constitute proof of sufficient training in use-of-force, tactics, or deadly force.

This document also establishes the standard for former law enforcement officers wishing to qualify for a LEOSA<sup>1</sup> certification card under § 175.49(2), as created by 2011 Wisconsin Act 35.

---

<sup>1</sup> Information on the Law Enforcement Officers Safety Act, commonly referred to as “HR218” is available here: [https://wilenet.org/html/leosa/HR218\\_process.pdf](https://wilenet.org/html/leosa/HR218_process.pdf).

## Purpose and Applicability

The primary purpose of this document is to establish a uniform minimum standard for handgun proficiency for Wisconsin law enforcement academy students and law enforcement officers.

Before the first academy standard was adopted in 2012, handgun skills were evaluated using the *Firearms Skills Competency Evaluation Material* checklist. Although this checklist requires students to demonstrate competence in each enumerated skill, accuracy and speed were evaluated subjectively by individual academies or instructors. Anecdotal evidence showed that LESB-certifiable students demonstrated a wide range of abilities as a result.

In April 2014, the Wisconsin legislature enacted 2013 Wisconsin Act 214, creating Wis. Stat. §165.85(4)(a)7.c. The law states, “Each officer...shall annually complete a handgun qualification course from curricula based upon model standards established by the [law enforcement standards] board...” After soliciting input from active law enforcement agencies, this standard was updated in December, 2014 to better serve the needs of academies *and* agencies.

Finally, under 2011 Wisconsin Act 35<sup>2</sup> this standard establishes the qualification course required for former officers to obtain a LEOSA card. Agencies may choose to delegate the qualification of former officers to LESB-certified Firearm instructors employed by technical colleges or other law enforcement agencies.

## Limitations

This qualification course is limited in scope. This course merely evaluates an officer’s ability to perform basic psychomotor skills in a controlled setting, testing whether an officer can accurately operate a handgun in a low-stress environment. This course does not indicate whether officers have received recent, relevant, and realistic training necessary to perform their job. It does not train or test an officer’s ability to perform psychomotor skills in a rapidly-evolving, dynamic, and realistic work environment.

Thus, this qualification course should be viewed as a stepping stone. While it documents minimal competency in handgun operation, this course does not evaluate whether an officer can recognize pre-assault indicators, select and implement appropriate tactics, or determine what level of force—if any—is appropriate. It does not evaluate one-handed reloads, drawing with the reaction hand, drawing and shooting from a seated position, low-light or flashlight-assisted shooting, multiple assailants, shooting while moving, shooting at moving targets, etc.

Law enforcement agencies must ensure their officers receive additional recent, relevant, and realistic training beyond mere completion of this qualification course. Examples of additional training include force-on-force simulation exercises, training in low-light tactics, training for predictable unknown-risk and high-risk situations, etc. Court cases illustrating the necessity of

---

<sup>2</sup> Wis. Stat. § 175.49.

recent, relevant, and realistic training beyond mere performance of a qualification course are shown in the Appendix.

Law enforcement agencies are strongly encouraged to provide firearms and deadly force training at least three times per year. More frequent training, even of short duration, will produce even better results. Firearm and tactical skills are perishable and can only be maintained with ongoing training and practice.

## **Minimum Standards and Course Modifications**

Academies and law enforcement agencies are free to hold students and employed officers to more rigorous qualification standards. Examples of “more rigorous” standards could include: tighter accuracy standards; shorter time limits; testing expanded or additional skills such as drawing with the reaction hand; shooting while moving; adding a 1-yard stage; requiring specific 15 and 25-yard shooting positions; etc.

Academies are required to use the course as-is, although they may establish more rigorous standards.

## **Law Enforcement Agency Considerations**

Law enforcement agencies may adapt the course as long as the revision tests the same skills at the same level, or a higher level, of competence. Agencies cannot delete a skill evaluation or lower the standards for successful completion.<sup>3</sup> Some examples of modifications are provided within the qualification course itself. Agencies are responsible for justifying any revisions to the course.

For example, an agency might reasonably require an officer to perform a timed draw with the officer’s reaction hand, holding the officer to a “more rigorous” qualification standard. It would be an appropriate modification, if the instructor can still verify the officer can fire 3 rounds in 4.0 seconds after the handgun is out of the holster, aimed in the direction of the threat.

---

<sup>3</sup> “Each officer...shall annually complete a handgun qualification course from curricula based upon model standards established by the [law enforcement standards] board...”

## Administration of Qualification Course

### Qualified Instructor

Instructors/evaluators must possess current Handgun instructor certification from the Law Enforcement Standards Board.<sup>4</sup> These materials are LESB curriculum and require LESB instructor certification to be recognized.

### Procedures

Academy students must qualify using a law enforcement handgun, duty belt and holster as typically worn by patrol officers and issued or approved by their academy. The qualification exam may be administered to the recruit class at anytime deemed appropriate by the lead instructor, as long as it occurs during the Firearms unit. Students must successfully qualify to pass the Firearms unit.

Employed officers should qualify using their normal carry weapon and holster. For example, a patrol officer carrying a Glock 22 in a Safariland 6070 holster will qualify using that pistol and that fully-secured duty holster. It would be inappropriate for the officer to substitute a different handgun or holster, or qualify with an unsnapped or partially-unsecured holster.

Retirees should qualify using their normal carry weapon and a safe belt holster.<sup>5</sup>

### Equipment Requirements

Minimum equipment to perform these qualification courses:

- 25-yard range
- One target stand and target per shooter
- Portable “cover”
- Timer
- Standard range equipment (safety glasses, protective vest, hearing protection, etc.)

### Required Target

Agencies shall use any one of the following targets:

1. WisDOJ qualification target, available from commercial vendors.<sup>6</sup>
2. IALEFI photo target, 23”x35”, with addition of vertical 3”x14” CNS box (just above eyebrows through sternum area) and horizontal line across target at bottom of chest circle.
3. Any life-size photo target with target zones of 4½” diameter (head), 3”x14” (CNS), 8” diameter (chest), and short “bowling pin” (5½” head zone tapering to 12½” wide chest zone, 17” high).

### Ammunition

Pre-employed academy students shall use ammunition provided or approved by their academy. Recruits employed by a law enforcement agency should discuss this course with their agency to learn whether the agency requires a certain type of ammunition be used during this course.

---

<sup>4</sup> Instructor certification status should be confirmed using WILENET’s “Instructor Status Verification” feature.

<sup>5</sup> A belt holster is required for safe range operation, even though the retiree may choose to carry the weapon in another manner at other times.

<sup>6</sup> Approved: [www.letargets.com](http://www.letargets.com) #WISC-DOJ12; [www.targetnet.net](http://www.targetnet.net) #WI-DOJ; [www.targetsonline.com](http://www.targetsonline.com) #7221310; [www.omahatargets.com](http://www.omahatargets.com) #WI-DOJ.

Active law enforcement agencies are encouraged to use the duty ammunition carried since the officer's last qualification, and then replace that old ammunition with fresh duty ammunition.

## Safety Plan

Following standard practices, the lead instructor should develop a written range safety plan, detailing at least the following information and practices:

- “Hot” or “cold” range policies, i.e. when and where handguns may be loaded, unloaded, and removed from holsters.
- Range procedures and commands.
- First-aid kit and medical mishap plan to be followed in medical emergencies.

## Pass/Fail Criteria

The shooter must meet all of the standards—time, accuracy, and universal standards—to pass the course. Time and accuracy standards are detailed in the course. The time limits are measured from the “start” signal to the last shot fired in the stage.

“Universal standards” are described below. Failure to adhere to universal standards at all times during the course is cause for failure, regardless of the shooter's time and accuracy.

## Universal Standards

The shooter must consistently perform all of the following to qualify:

- Handgun is always handled in a safe manner.
  - Trigger finger is on frame outside trigger guard at all times, except when firing.
  - Weapon is always pointed in an appropriate direction and never sweeps the officer or others.
- Proper draw.
  - Does not sweep reaction hand, self, or others during the draw.
  - Punches gun straight out towards target.
- Exhibits acceptable stance and firm, high grip.
- Verbalizes appropriately/as directed.
- Uses cover effectively whenever it is available.
  - Moves towards cover and/or sidesteps while drawing.
  - Maintains at least one arm's length distance from cover/does not “crowd” cover.
  - Uses cover to protect self as much as possible.
- Maintains peripheral view of suspect when reloading or clearing a malfunction.
- Performs autogenic breathing and a 360-degree scan for additional threats following each string. Does not reholster until completion of 360-degree scan.
- Uses one hand to reholster. Does not sweep self or others and does not look at the holster.
- Safely and appropriately follows all range directions and instructor commands.

## Scoring

Rounds touching a scoring line get the higher value. Rounds fired past any time limit are scored as a shot that hit outside target zone “D”.



## Scoring Zones



Scoring zone "A"



Scoring zone "B"



Scoring zone "C"



Scoring zone "D"

### Accuracy Requirement

The course is scored upon completion of each accuracy stage.

- Scoring Phase #1 must have at least 8 rounds in upper chest or center head (target zone C). Mark hits.
- Scoring Phase #2 must have at least 7 newly-fired rounds in upper chest or center head (target zone C). Mark hits.
- Scoring Phase #3 must have at least 10 newly-fired rounds in silhouette (target zone D).

## Remedial Training

In the event of a failure of the course, the following procedures should be followed.

### Academies

Training academies shall follow the Law Enforcement Standards Board testing policy as described in the School Director's Manual on WILENET. Separate "Summative Assessments" are conducted using the *Handgun Skills Competency Checklist* from the *Handgun Skills Competency Evaluation Material Guide* and the *Wisconsin Handgun Qualification Course and Record of Qualification Attempt* form on page 12 of this manual. LESB testing policy requires students to demonstrate competence on the PAT to the satisfaction of LESB-certified instructors.

- If a student does not pass the *Wisconsin Handgun Qualification Course* on the first attempt, the student will receive remedial training and then re-test the portion or portions of the course they failed to pass on the first attempt. For example, if a student passes everything except the 15 and 25-yard section of the course, the student would only have to re-shoot the 15 and 25 yard portion to demonstrate competency. If the instructor observed that the student had no misses at the 15-yard line, the instructor could provide remediation and allow the student to just re-shoot the 25-yard stage.
- A re-test of any student must be completed before the end of Phase 2 of the recruit academy. Any exception must be approved by the school director and documented in writing. Approved exceptions must be kept on file for a minimum of five years.
- A student who passes a re-test successfully passes the Summative Assessment, but documentation of the original failure and re-test must be kept on file for the student for a minimum of five years.
- Failure to pass a re-test results in the student failing preparatory training.

### Law Enforcement Agencies

Wisconsin officers must successfully complete this course once each year between July 1<sup>st</sup> and June 30<sup>th</sup> (during the state's fiscal year).

Law enforcement officers shooting the course may be permitted to re-shoot only the portion of the course they fail to pass on the first attempt. The officer may re-shoot only what is required to demonstrate competence of the specific skill being evaluated.

An agency is free to provide as much remedial training and as many qualification attempts as the agency deems reasonable, and may establish its own standards for time between attempts, remedial training, etc.

### Former Officers

Former officers shooting this course for LEOSA purposes should follow the same re-shoot standard as employed officers. Instructors may provide immediate re-shoot attempt(s); however, departments are not obligated to schedule "special" re-shoots or provide remedial training. Former officers and retirees may, however, demonstrate their ability to qualify on this course to

any LESB-certified Firearm instructor. When a department receives the proof of qualification shown in Appendix A, the department would then issue the LEOSA certification card.<sup>7</sup>

## Documentation

Academies must maintain a record of the qualification attempt(s) of academy students. A form for this purpose is included on page 12. This qualification form supplements, but does not replace, the *Handgun Skills Competency Checklist* from the *Handgun Skills Competency Evaluation Material Guide*.

Law enforcement agencies must report officers' annual successful qualifications to the DOJ using the Acadis online reporting tool. Beginning July 1, 2018, agencies shall document qualification using the *Wisconsin Handgun Qualification Course and Record of Qualification Attempt* form on page 12 (recommended), or may utilize an alternative record-keeping system that records, at a minimum, all of the following information regarding the successful qualification:

- Date and location the course was fired;
- Name of the LESB-certified Handgun instructor who administered the course;
- Expiration date of the LESB-certified Handgun instructor's certification;
- The actual course fired, with certification it was the current LESB qualification course
- The make, model, caliber, and serial number of the weapon the officer used to qualify;
- Certification that the officer met all Universal Standards (p. 8 of this manual) and passed the time & accuracy criteria. The time & accuracy certification may record the actual number of rounds that hit/missed at each stage, or may just record a summative pass/fail evaluation of the officer's performance, at the agency's discretion.

It is recommended that the *Wisconsin Handgun Qualification Course and Record of Qualification Attempt* form or an agency's alternative record-keeping system be uploaded in Acadis when law enforcement agencies or training providers (i.e., technical colleges) report officers' annual successful qualification, as these records will be maintained indefinitely. Alternatively, paper or electronic copies of successful qualification shall be maintained by officers' primary employers for a minimum of five years.

Former officers qualifying to receive a LEOSA certification card under § 175.49(2) should receive the original qualification certificate, signed by the LESB instructor, as shown in Appendix A. (Note: the qualification certificate, in combination with a "retired" identification card, is not sufficient for LEOSA. The former officer's *agency* must issue the "certification card" showing the former officer's status, date of qualification, and card expiration date.) Instructors should vet individuals to ensure they are former law enforcement officers prior to conducting qualification exercises, and keep a copy of the certificate for their own records.

---

<sup>7</sup> Departments are required to issue certification cards to qualifying officers under Wis. Stat. § 175.49. Agencies issuing these cards have civil immunity under § 175.49(6).

# Wisconsin Handgun Qualification Course and Record of Qualification Attempt

OFFICER/STUDENT NAME:			LESB-CERTIFIED HANDGUN INSTRUCTOR NAME:		
AGENCY/ACADEMY NAME:		DATE:	TIME:	TEST	<input type="checkbox"/>
				RE-TEST	<input type="checkbox"/>
LOCATION:	WEAPON MAKE & MODEL:	SERIAL #:	AMMO CALIBER, TYPE:		
<b>QUALIFICATION STANDARDS (ALL MUST BE MET TO QUALIFY)</b>					
<ul style="list-style-type: none"> <li>• Always handles handgun safely.</li> <li>• Performs proper draw and re-holster.</li> <li>• Uses acceptable stance and grip.</li> <li>• Verbalizes correctly.</li> <li>• Uses cover to protect self as much as possible.</li> <li>• Uses tactical breathing and performs 360-degree scan following every shooting.</li> <li>• Consistently follows range rules and instructor commands.</li> </ul>					
Stage	Time & Distance	Performance Standard	Target Zone	Total Rounds	Pass (Y/N)
1	3 yards 4.0 seconds	Dynamically take one side-step, draw and fire 3 rounds.	C	3	
2	3 yards 4.0 seconds	Draw and fire 3 rounds, strong hand only.	C	3	
3	3 yards 4.0 seconds	Draw handgun and transfer to reaction hand (untimed). Upon signal, fire 3 rounds, reaction hand only.	C	3	
<i>Score target. At least 8 rounds must be in the "C" zone. Mark hits or replace target.</i>					
4	7 yards 12.0 seconds	Load pistol with 3 rounds total (1 in chamber, 2 in mag). Take one side-step to cover, verbalize, draw and fire 4 rounds, performing out-of-battery reload. <sup>8</sup>	C	4	
5 <sup>9</sup>	7 yards 10.0 seconds	Load pistol with 3 live rounds and 1 dummy round. (1 live round in chamber; at least 2 live rounds in magazine; dummy round as the top or 2 <sup>nd</sup> round in the magazine). Take one side-step to cover, verbalize, draw and fire 3 rounds. Fix the malfunction using "phase 1". <sup>10</sup>	C	3	
6	7 yards 24.0 seconds	Load pistol with 1 live round in chamber and 3 dummy rounds in the pistol's magazine. Take at least one side-step to cover, verbalize, draw and fire 2 rounds. Attempt to fix the first malfunction using "phase 1"; perform "phase 2" when the 2 <sup>nd</sup> attempt to fire shows "phase 1" was ineffective. <sup>11</sup>	C	2	
<i>Score newly-fired rounds. At least 7 rounds must be in the "C" zone. Mark hits or replace target.</i>					
7 <sup>12</sup>	15 yards 24.0 seconds	From ready position behind cover, fire 4 pairs of 2 rounds from behind cover. Use two to four different cover positions (standing left, standing right, kneeling left, kneeling right) without reappearing in the same spot for consecutive pairs, in shooter's preferred order. Perform in-battery reload (untimed).	D	8	
8	25 yards 20.0 seconds	Draw weapon then assume preferred shooting position (untimed). Upon signal, fire 4 rounds.	D	4	
<i>Score newly-fired rounds. At least 10 rounds must be in the "D" zone.</i>				Total Rounds: 30	
<b>INSTRUCTOR NOTES:</b>					
INSTRUCTOR SIGNATURE:			INSTRUCTOR CERTIFICATION EXP. DATE:		

<sup>8</sup> Revolver shooters: load with 3 rounds; when revolver "clicks" on 4<sup>th</sup> trigger pull, reload with speedloader and fire 1 round; time limit = 15.0 seconds.

<sup>9</sup> Eliminating this stage could be an appropriate modification for agency annual qualification requirements, *if* the instructor can confirm the phase 1 clear is properly performed in stage 6 (13 of 16 possible C-zone hits required).

<sup>10</sup> The time limit is measured from the "start" signal to the final shot fired after the malfunction is cleared. Revolver shooters: skip this stage.

<sup>11</sup> The time limit is measured from the "start" signal to the final shot fired (from a spare magazine) after the malfunction is cleared. Revolver shooters: load with 3 rounds; when revolver "clicks" on 4<sup>th</sup> trigger pull, reload with speedloader and fire 1 round; time limit = 15.0 seconds.

<sup>12</sup> Revolver shooters requiring a reload: complete this stage in 29.00 seconds, including any necessary reload.

## **Appendix A – Certificate of Qualification for LEOSA/HR218**

The document shown on the next page illustrates the qualification certificate that LESB-certified Firearms instructors shall issue to former law enforcement officers requesting documentation of successful qualification for the purposes of § 175.49, obtaining a certification card.

This template is available for download from the Firearms portion of WILENET's Training Center by LESB-certified instructors.

**[Instructor Name]**

certifies that

**[Retiree Name]**

successfully qualified on the

**Law Enforcement Standards Board  
Minimum Standards Handgun Qualification Course**

conducted on [Month] [Day], [Year]

at the [Facility Name], [Facility Address], [City], WI [ZIP]

using a [Caliber] [Handgun Brand] [Handgun Model], serial number [serial number]

[Original instructor signature here]

*I affirm, in accordance with § 175.49 of the Wisconsin Statutes, that:*

- (1) I tested this individual on the qualification course specified by the Law Enforcement Standards Board; AND*
- (2) I am certified by the Law Enforcement Standards Board as a Firearms instructor; AND*
- (3) This individual successfully qualified with the weapon specified above; AND*
- (4) The information on this certificate is true and complete to the best of my knowledge.*

This certificate, combined with a "retired" ID card, is not sufficient for carry under LEOSA/HR218.  
This certificate is proof of qualification for agencies to issue a LEOSA/HR218 certification card.

Instructor Name  
Instructor Agency or Tech College  
Mailing Address  
City, WI 5xxxx  
(xxx) xxx-xxxx

## Appendix B – Selections from Relevant Court Cases

Law enforcement agencies have an obligation to ensure officers receive adequate and appropriate training. The following court rulings may provide examples of courts' reasoning in evaluating the sufficiency and adequacy of law enforcement training. The quotes below are snippets; agencies should read the entire opinion and consult legal counsel if adequacy of training is a concern.

### Failure to Train

*Canton*, *Popow*, *Zuchel*, and *Brown* illustrate the importance of training that is relevant, recent, and realistic to their situation. Training must be adequate and ongoing.

#### **City of Canton v. Harris [489 U.S. 378 (1989)]**

*The inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train in a relevant respect amounts to deliberate indifference to the constitutional rights of persons with whom the police come into contact. In contrast to the Court of Appeals' overly broad rule, this "deliberate indifference" standard is most consistent with the rule of Monell v. New York City Dept. of Social Services, 436 U. S. 658, 436 U. S. 694, that a city is not liable under § 1983 unless a municipal "policy" or "custom" is the moving force behind the constitutional violation. Only where a failure to train reflects a "deliberate" or "conscious" choice by the municipality can the failure be properly thought of as an actionable city "policy." Monell will not be satisfied by a mere allegation that a training program represents a policy for which the city is responsible. Rather, the focus must be on whether the program is adequate to the tasks the particular employees must perform, and if it is not, on whether such inadequate training can justifiably be said to represent "city policy." Moreover, the identified deficiency in the training program must be closely related to the ultimate injury. Thus, respondent must still prove that the deficiency in training actually caused the police officers' indifference to her medical needs.*<sup>13</sup>

#### **Popow v. City of Margate [476 F.Supp. 1237 D.N.J., 1979]**

*"Thus, according to Monell and Rizzo, to establish municipal liability, a plaintiff must prove either (a) an official policy or custom which results in constitutional violations or (b) conduct by officials in authority evincing implicit authorization or approval or acquiescence in the unconstitutional conduct. Where a city's failure to train, supervise or discipline police officers is reckless or grossly negligent, it may fall into one of these categories and serve as the basis for holding a city liable under § 1983."*

*"First, as to the allegations of failure to train and supervise, Leite, supra, indicates that a complete failure to train would qualify, as would training that is so reckless or grossly negligent as to make future police misconduct almost inevitable. "The training and supervising of these police officers must be so inadequate and the resulting conduct so probable, that the city can fairly be considered to have acquiesced in the probability of serious police misconduct." This court adopts the Leite standard, construing it to require of plaintiff proof of extremely inadequate procedures. We reject the Second Circuit's recently expressed view that a single*

---

<sup>13</sup> <http://supreme.justia.com/cases/federal/us/489/378/case.html>

*brutal incident such as the one which gives rise to the suit is alone sufficient to establish a city's liability.”*

*“ In the instant case, the court finds that the deposition testimony as well as the answers to interrogatories, which we read in the light most favorable to plaintiff as we must on a motion for summary judgment, create a genuine question of fact as to whether the City of Margate's police department training and supervision procedures were grossly inadequate. While police officers receive training at the State Police Academy in Sea Girt, New Jersey, when they first join the force, in Biagi's case that was ten years prior to the shooting incident.*

*The only continuing training was shooting instruction approximately every six months at a range in Atlantic County. However, there was no instruction on shooting at a moving target, night shooting, or shooting in residential areas. Margate is almost completely residential. The possibility that a Margate police officer will in the course of his duties have to chase a suspect in a residential area at night is not in the least remote; therefore, a finder of fact could determine that the City of Margate's training of officers regarding shooting was grossly inadequate within the Leite standard. Furthermore, the officers viewed no films or participated in any simulations designed to teach them how the state law, city regulations or policies on shooting applied in practice.”*

**Zuchel v. City and County of Denver, 997 F.2d 730 C.A.10 (Colo.), 1993.**

*“Denver asserts that it can only be liable for an unconstitutional use of deadly force if it had a policy condoning the unprovoked shooting of citizens. However, in City of Canton v. Harris, the Supreme Court expressly rejected the argument that a city is only liable when the municipal policy itself is unconstitutional. Rather, the Court held that ‘if a concededly valid policy is unconstitutionally applied by a municipal employee, the City is liable if the employee had not been adequately trained and the constitutional wrong has been caused by that failure to train.’”*

*“Thus, a city is deliberately indifferent if (1) its training program is inadequate, and (2) the city deliberately or recklessly made the choice to ignore its deficiencies.”*

*“In addition, we note that Mr. Fyfe, who was qualified as an expert in police training on the use of deadly force and who was familiar with the program in place when Officer Spinharney was trained, stated his belief that failure to institute periodic live range training left Denver far below generally accepted police custom and practice, and constituted deliberate indifference to the rights of Denver citizens. “It's my opinion ... that large departments like Denver's could not have avoided that kind of training or not offered that kind of training without being deliberately indifferent to situations like this. It's predictable in big cities that police officers will run into situations where they're going to have to make judgments as to whether or not to shoot. And if they're not periodically trained and instructed on how to do that appropriately, they'll make mistakes.” This evidence is clearly sufficient to permit the jury reasonably to infer that Denver's failure to implement Mr. Early's recommendation on periodic live range training constituted deliberate indifference to the constitutional rights of Denver citizens.”*



### **Brown v. Gray [227 F.3d 1278, C.A.10 (Colo.), 2000]**

*“In order to prevail on a claim against a municipality for failure to train its police officers in the use of force, a plaintiff must first prove the training was in fact inadequate, and then satisfy the following requirements: (1) the officers exceeded constitutional limitations on the use of force; (2) the use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal; (3) the inadequate training demonstrates a deliberate indifference on the part of the city toward persons with whom the police officers come into contact, and (4) there is a direct causal link between the constitutional deprivation and the inadequate training. Allen v. Muskogee, 119 F.3d 837, 841-842 (10th Cir.1997) (citing City of Canton, 489 U.S. at 389-91, 109 S.Ct. 1197).”*

*“‘[A] showing of specific incidents which establish a pattern of constitutional violations is not necessary to put the City on notice that its training program is inadequate.’ Allen, 119 F.3d at 842. In a failure to train case where, as here, the policy itself is not unconstitutional, a single incident of excessive force can establish the existence of an inadequate training program if there is some other evidence of the program's inadequacy.”*

*“Officer Gray clearly and repeatedly testified he had never received training in how to handle this type of situation...This evidence, along with the shooting itself, provided a sufficient basis for the jury to determine that Denver's training program with respect to implementing the always armed/always on duty policy in off-shift scenarios was inadequate.”*

*“Mr. Brown must show that the situation Officer Gray was faced with on the day of the shooting was “common” (or at least not “uncommon”), ... “likel[y],” ... “foreseeable,” or “predictable.” The situation need not be frequent or constant; it must merely be of the type that officers can reasonably expect to confront. Other circumstances that constitute usual and recurring situations for police include individuals requiring medical care while in custody, ...arrests of fleeing felons, ... and encounters with armed mentally ill people.”*

### **Inappropriate Training**

*Markham v. White* demonstrates the importance of conducting training in a professional manner.

### **Markham v. White [172 F.3d 486 C.A.7 (Ill.), 1999]**

*“The agents argued that in 1994, when the named plaintiffs attended the DEA seminars, there was no clearly established constitutional right to be free of sexual harassment in a short-term training program (as opposed to the workplace, over a longer term). They also argued that no one would have realized that harassment outside the employer-employee context violated anyone's rights. The district court ruled that it was clear in 1993 and 1994 that male and female participants in a seminar like this one were entitled to equal treatment, and the fact that the parties did not stand in an employer-employee relationship was immaterial.”*

## Documentation of Training

*Paul v. Altus* demonstrates the importance of documenting what was actually trained, and the officer's understanding of that training.

### **Paul v. City of Altus [141 F.3d 1185 (Table) C.A.10 (Okla.), 1998]**

*"To establish a city's liability under 42 U.S.C. § 1983 for inadequate training of police officers in the use of force, a plaintiff must show (1) the officers exceeded constitutional limitations on the use of force; (2) the use of force arose under circumstances that constitute a usual and recurring situation with which police officers must deal; (3) the inadequate training demonstrates a deliberate indifference on the part of the city toward persons with whom the police officers come into contact, and (4) there is a direct causal link between the constitutional deprivation and the inadequate training.*

*A civil rights plaintiff ordinarily cannot rely on a single incident of unusually excessive force to prove failure to train. However, the city's liability may arise from a single incident where there is other evidence of inadequate training."*

*"Plaintiff asserts that the City improperly trained Officer Gilpatrick to place his knee on plaintiff's neck while handcuffing him. In support of its motion for summary judgment, the City presented materials from the Council of Law Enforcement Educational Training (CLEET). The CLEET materials specifically included instructions not to apply pressure in the neck area while handcuffing a suspect, "for obvious medical reasons." The City also presented records showing that Officer Gilpatrick had received the CLEET training. Thus, the City argued, if Officer Gilpatrick placed his knee on plaintiff's neck, it was in violation of his training.*

*If this were all that was presented, summary judgment for the City would have been appropriate. However, the City also presented an incident report from Officer Howland, who was on the scene during the handcuffing. Officer Howland's statement reads in part as follows: "Gilpatrick then brought the subjects [sic] right arm around to the middle of his back and had his knee on the subject's neck. The way we're instructed to handcuff from the felony prone position." Officer Howland's statement creates a material issue of fact concerning whether the City, or CLEET itself, instructed its officers to place their knees on suspects' necks while arresting them, even though the CLEET manual instructs them to do otherwise.*

*Given Officer Howland's statement, the summary judgment materials demonstrated a genuine issue of material fact concerning each of the four criteria required for a failure to train claim. Placing a knee on the vulnerable area of an arrestee's neck could be considered excessive force. Police officers obviously must handcuff people as a regular part of their duties. Training officers to place their knees on an arrestee's neck shows deliberate indifference to public safety. Plaintiff's neck injuries could have been the result of this improper training. We must therefore reverse summary judgment against the City on the failure to train claim, and remand for further proceedings as to this claim."*