



## ALLIED PUBLIC RISK - ALTERNATIVE MARKETS

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# POLICE EXCESSIVE FORCE

### Excessive Force

Excessive force refers to situations where government officials legally entitled to use force exceed the **minimum** amount necessary to diffuse an incident or protect themselves or others from harm.

Officers also have a duty to protect individuals from constitutional violations by fellow officers. Therefore, an officer who witnesses a fellow officer violating an individual's constitutional rights may also be liable to the victim for failing to intervene.

The extent of the problem regarding excessive force is not definitively known. The Uniform Crime Reporting Program is charged with keeping the statistics, however reporting incidents / allegations of excessive force is voluntary, so it is assumed that the data is incomplete. In light of media attention, we anticipate allegations of excess force to increase.

### The Use of Force Spectrum

The Supreme Court has recognized that "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat." However, the degree of coercion or force used must be proportional to the threat and escalate only in response to the threat. The recommended graduated methods to diffuse a situation are:

- Physical Presence – Using the officer's mere presence.
- Verbalization – Using verbal statements, from non-threatening requests to direct orders.
- Empty-Hand Control – Using physical bodily force through grabs, holds, punches or kicks.
- Less Lethal Methods – Using weapons such as a baton, chemical sprays, Tasers, or police dogs.
- Lethal Force – Using lethal weapons such as firearms.

To be considered reasonable and Constitutional, whenever force is used (the last three methods), it must stop when the need for the force ceases, i.e., when a suspect is successfully restrained, or a situation has de-escalated.

### Remedies for Victims of Excessive Force

Excessive force is a constitutional violation. Individuals that were subject to excessive force can file a civil rights complaint (which is not subject to any tort cap) or can file for injunctive relief under Section 1983 of the United States Code. They can also file a complaint with the civil rights division of the US Department of Justice. The Department of Justice may or may not elect to investigate the case.



### Law Enforcement Wrongful Acts

Our Law Enforcement policy defines a “Law Enforcement Wrongful Act” as an actual or alleged act, error or omission, neglect or breach of duty by an insured which arises out of and is committed during the course and scope of “law enforcement activities” which results in “personal and advertising injury”, “bodily injury” or “property damage,” and which is caused by an “occurrence”. Therefore, if your client has been accused of excessive force / police brutality, our policy will respond.

If you have any questions regarding police excessive force or any other Public Entity related issue, please contact any one of our team members. We are always happy to answer your questions.

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