

Use of Force

I. DEFINITIONS

- A. Force – physical power or coercion used upon, or directed toward, another person.
 - 1. Neither force nor excessive force requires actual physical contact (pointing guns, making commands, threatened K-9 release, confinement, etc.).
 - 2. All involve issues of force and reasonableness.
- B. Deadly force – defined as “any application of force that in the manner of its use or intended use creates a substantial risk of causing death or serious bodily injury”.

II. FOUR (4) REASONS OFFICERS ARE AUTHORIZED TO USE FORCE:

- A. For self-defense.
- B. In defense of others.
- C. For arrest/detention.
- D. To prevent escape.
- E. Use of force: *Graham (suspect) v. Connor (officer)*, 490 U.S. 386, 109 S. Ct. 1865 (1989): The Supreme Court looks at allegations of excessive force in light of the 4th Amendment and not the 14th Amendment as was initially done. The Supreme Court looks at whether the officer’s actions are objectively reasonable in light of the facts and circumstances at the time of the situation.

Facts of the case:

On November 12, 1984, Dethorne Graham, a diabetic, went into a convenience store, but ran out because it was overcrowded. The officer thought Graham’s conduct was suspicious and stopped the car. Graham told the officer he was a diabetic and then ran around the car, was cuffed, hit his head on the car and officers did not listen to him or check his wallet or medical identification or allow him to drink orange juice. Injuries included: A broken foot, bruised head, cut wrist, injured shoulder and damaged ear.

Under 4th Amendment review, objective reasonableness is not capable of exact definition, but its proper application requires careful attention to the facts and circumstances of each particular case. The question is whether the officers:

- 1. Actions were objectively reasonable in light of the facts and circumstances confronting them.

Reasonableness must be judged from the perspective of a reasonable officer on the scene, not after the fact.

2. Officers in the situation acted as other “reasonable and prudent” officers would act faced with a similar situation.
3. Relevant factors for determining objective reasonableness (from *Graham v. Connor*):
 - a. The severity of the crime.
 - b. Whether the suspect poses an immediate threat to the safety of the officer or others.
 - c. Did the suspect actively resist arrest?
 - d. Was the suspect attempting to escape?
4. Considerations:

The calculus of reasonableness must embody allowance for the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving.

D. Deadly force.

Tennessee v. Garner (suspect), 471 U.S. 1, 105 S. Ct. 1694 (1985).

Facts of the case:

A prowler call. A neighbor woman says someone is breaking into her house. She heard breaking glass.

Officer Hyman goes behind the house and sees 15-year old Garner run out the back door. The officer yells, “police halt,” saw no weapons and Garner started to climb the fence.

The officer shot Garner to prevent his escape into the woods. Tennessee law and policy authorized this at the time.

The Supreme Court said that the 4th Amendment does not allow the use of deadly force when a suspect poses no threat to officers or others. Police cannot shoot a fleeing, non-dangerous felon. This tells us that deadly force is subject to the 4th Amendment objective reasonableness standard.

The 4th Amendment permits deadly force when necessary:

1. To protect the officer or others from an immediate threat of death or serious physical injury.
2. To prevent escape when probable cause (PC) exists to believe that the suspect poses a threat of serious physical harm to an officer or others.
3. If “feasible,” the officer should give a verbal warning first.

III. LIABILITY

- A. Civil liability (federal and state).
- B. Criminal liability (both state and federal law).
- C. Departmental liability.

- D. §13-410. Justification; use of deadly physical force in law enforcement.
 - 1. The threatened use of deadly physical force by a person against another is justified pursuant to §13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:
 - a. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
 - b. A felon who has escaped from lawful confinement; or
 - c. A felon who is fleeing from justice or resisting arrest with physical force.
 - 2. The use of deadly physical force by a person other than a peace officer against another is justified pursuant to section 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.
 - 3. The use of deadly force by a peace officer against another is justified pursuant to section 13-409 only when the peace officer reasonable believes that it is necessary:
 - a. To defend himself or a third person from what the peace officer reasonable believes to be the use or imminent use of deadly physical force
 - b. To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonable believes:
 - i. Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or threatened use of a deadly weapon.
 - ii. Is attempting to escape by use of a deadly weapon.
 - iii. Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.

- iv. Is necessary to lawfully suppress a riot if the person or another person participating in the riot is armed with a deadly weapon.
 4. Notwithstanding any other provisions of the chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believed it necessary to protect himself against another's potential use of physical force or deadly physical force.
- E. §13-411. Justification; use of force in crime prevention.
 1. A person is justified in threatening or using both physical force and deadly physical force against another if, and to the extent, the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under §13-1704, burglary in the second or first degree under §§13-1507 or 13-1508, kidnapping under §13-1304, manslaughter under §13-1103, second or first degree murder under §§13-1104 or 13-1105, sexual conduct with a minor under §13-1405, sexual assault under §13-1406, child molestation under §13-1410, armed robbery under §13-1904, or aggravated assault under §13-1204, subsection A, paragraphs 1 and 2.
 2. There is no duty to retreat before threatening or using deadly physical force justified by subsection A of this section.
- F. §13-413. No civil liability for justified conduct.
 1. No person in this state shall be subject to civil liability for engaging in conduct otherwise justified pursuant to the provisions of this chapter.
- G. §13-415. Justification; domestic violence.
- H. §13-417. Necessity of defense.
 1. Conduct that would otherwise constitute an offense is justified if a reasonable person was compelled to engage in the proscribed conduct and the person had no reasonable alternative to avoid imminent public or private injury greater than the injury that might reasonably result from the person's own conduct.
 2. An accused person may not assert the defense under subsection A if the person intentionally, knowingly or recklessly placed himself in the situation in which it was probable that the person would have to engage in the proscribed conduct.
 3. An accused person may not assert the defense under subsection A for offenses involving homicide or serious physical injury.

IV. ELEMENTS OF FORCE

- A. Ability – does the suspect have the ability to carry out the act?
- B. Opportunity – is the opportunity available?
- C. Jeopardy – you must be placed in jeopardy.
- D. Preclusion – have you eliminated all the reasonable lesser means of force?
- E. Range of response/levels of control.
 - 1. Levels of resistance:
 - a. Psychological intimidation.

Definition: Non-verbal cues indicating a subject's attitude, appearance and physical readiness.

- b. Verbal non-compliance.

Definition: Verbal responses indicating unwillingness or threats.

- c. Passive resistance.

Definition: Physical actions that do not prevent an officer's attempt of control.

- d. Defensive resistance.

Definition: Physical actions which attempt to prevent an officer's control, but never attempt to harm the officer.