

2017 USE OF FORCE UPDATE

PURPOSE

- Update to bring policy, training and reporting in line with current law and provide a method that ensures the safety of the officers.
- Provide officers information needed to make force decisions that are both lawful and ethical and that will withstand scrutiny.

Overview of Changes

- Integrated Force Model is being discontinued as reference for use of force at the Kent Police Department
- It is not being replaced by another model but rather a standard of objective reasonableness
- The reporting documents will reflect these changes

CAN I...?

IT DEPENDS.

Sorry, No bright lines



No check lists.



WHY USE FORCE

- Effect an Arrest
- Overcome Resistance
- Prevent Escape
- Defend Self
- Defend Others
- If doing one or more of the above the use of force must be *“objectively reasonable in light of facts and circumstances confronting the officer without regard to the underlying intent or motivation”*

HOW THE AMOUNT OF FORCE IS ANALYZED

- Nature and Quality of the intrusion
- Nature= Foreseeable and expected risk of injury from the type of force used.
- Quality=How bad will the force hurt the subject to who it is being applied

THERE ARE NO “PERFECT ANSWERS”

The Supreme Court stated that, “The test for reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.” Allowance must be made for the fact that “...police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

Obviously, there may be more than one way to effect a seizure in a tense, uncertain, and rapidly evolving event - and while one force option may be better than another - all that really matters under the objective test is whether the force used was reasonable. In short, what would a reasonable officer say? Did the force fall within the range of reasonableness, or was it excessive and unconstitutional?

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Levels of Force

Deadly Force

Intermediate Force

Non-Deadly Force

Officer Subject Factors

Prior contacts

Number of Officers vs. Subjects

Age, Size, Relative Strength

Special Knowledge/Skills

Injury/Exhaustion

Mentally Ill/Under the Influence

Environmental Factors

Proximity to Potential Weapons

835²

Effect an Arrest

Overcome Resistance

Prevent Escape

Defense of Self

Defense of Others

Graham Factors

Immediate Threat to Officers
or Others

Active Resistance

Split-Second Decisions

Severity of the Crime

Attempting to Evade/Escape

OFFICER/SUBJECT FACTORS

1. **Prior Contacts**
2. **Number of Officers vs. Suspects**
 - Are additional officers available to respond?
3. **Age; Size; Gender; Relative Strength**
4. **Special Knowledge or Skill Level**
5. **Injury or Exhaustion**
6. **Mental Illness or Drug Usage**
7. **Environmental Factors**
8. **Proximity to Potential Weapons**

LEVELS OF FORCE

NON DEADLY

- Minimal risk of injury to subject
- Objectively reasonable to defend self or others, effect arrest, overcome resistance or prevent escape.
- Examples-Presence, verbal commands, “empty hand” controls, Taser in drive stun

LEVELS OF FORCE NON DEADLY INTERMEDIATE

- Significant risk of injury to subject
- Objectively reasonable to defend self or others; to effect arrest or overcome resistance **WHEN** there is active resistance **AND** threat of harm to officers or public
- **SOME** examples include Taser in dart mode, LVNR, OC, impact weapons to primary & secondary targets, kicks and punches to primary and secondary targets, etc.

LEVELS OF FORCE

DEADLY

- Substantial risk of serious bodily injury/death
- Objectively reasonable to defend self or others or to effect arrest overcome resistance or prevent escape when threat of serious bodily injury or death (Smith v. Hemet)
- Also with PC for a violent felon who presents an imminent threat (Tenn. v Garner)
- Examples include firearms but can be much broader

“GRAHAM” FACTORS OBJECTIVELY REASONABLE FORCE

In order of importance (Chew v Gates)

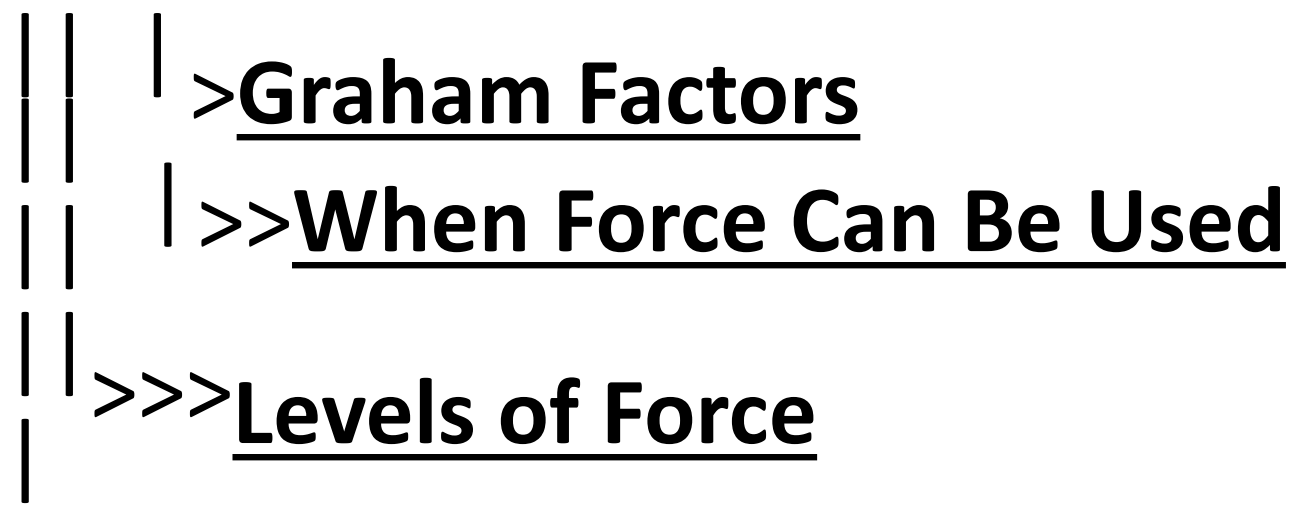
1. Immediate threat to safety of officers/others
2. Actively resisting (vs. passive)
3. Circumstances tense, uncertain, rapidly evolving (“pace” of events) “Split-second judgments”
4. Severity of the crime at issue
5. Attempting to evade seizure by flight

This is taken from what a reasonable officer would have done under the totality of the circumstances, without 20/20 hindsight.

TOTALING UP THE FORCE EQUATION

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= 8 3 5²



Officer/Subject Factors

WARNINGS

Giving a specific warning **and sufficient time to comply** is more important than ever.

“Get on the ground or you will be tased.”

We have previously concluded that an officer's failure to warn, when it is plausible to do so, weighs in favor of finding a constitutional violation. (Mattos v. Arragano)

DE-ESCALATION

De-escalation is using good tactics and officer safety

Controlling the pace of an event by not rushing into non-urgent situations (time sensitive vs analytic event)

Using time in analytic events to gain distance and additional resources and tools.

Time is a factor. Since not every encounter requires a split-second decision, the reasonable officer might say, “The more time to choose a force option, the more reasonable it should be.”