

FORCE CONTINUUM v. REASONABLE OFFICER STANDARD

The Use of Force Continuum

- A guide that allows officer to conceptualize what amount or type of force to use in a certain situation.
- The Use of Force Continuum gained popularity in the 80 and 90s.
- It is typically presented as a stepped approach to what level of force may be used to overcome a violator's resistance to being apprehended.
- Because the police use force to apprehend violators for a lawful purpose and not for sport, the force continuum is designed to allow the officer to use more force than the violator.

Ex. A violator strikes an officer with a punch or a kick, the officer can respond with an impact weapon.

- Three levels of Force were taught.

Level 1 Control Tactics – Pain Compliance (Counter joint movements, hair holds, takedowns, OC)

Level 2 Defensive Tactics – Impact Impedance (Strikes, Kicks, Impact Weapons, VNR, Taser)

Level 3 Termination Tactics – Deadly Force

Reasonable Officer Standard

- Reasonable Officer Standard – An officer with similar training and experience would have done something similar in the same or similar situation.
- Graham v. Connor 490 U.S. 386 (1989) – United States Supreme Court that determined objective reasonableness would be the standard to which law enforcement use of force would be judged.
 - Graham had Type 1 Diabetes/friend take him to a convenience store to get orange juice. Graham entered the store but left quickly after seeing that many people were waiting in line. Connor, a police officer, observed Graham's behavior and became suspicious/stopped them. Graham was acting Soon after questioning, Connor put Graham in handcuffs. Once Connor confirmed that nothing had occurred at the store, he released Graham.

Graham claimed that he had sustained multiple injuries from the encounter and filed a law suit against the officer for violating his Fourth Amendment rights.

- Objective Reasonableness of a particular use of force is based upon;
 - Totality of the circumstances known by the officer at the time
 - Judged from the perspective of a reasonable officer on the scene rather than with 20/20 vision of hindsight

- Determining Objective Reasonable
 - The severity of the crime at issue
 - Whether the subject poses an immediate threat to the safety of the officer or others
 - Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
 - Other factors to be considered
 - Availability of alternative methods to capture or subdue the suspect
 - Influence of drugs/alcohol, or other mental history known by the officer at that time
 - Proximity of weapons to the suspect
 - Previous history of violence, training, etc. of the suspect known by the officer at that time
 - Officer/suspect factors – age, size, relative strength, skill level, injury/exhaustion, number of officer v. suspects
 - Training and experience of the officer.

Discussion Points

Many law enforcement agencies used the Force Continuum to define or guide their policy. After many years, agencies were encouraged to move away from the Force Continuum and to adopt the Reasonable Officer Standard by professional law enforcement training groups such as Lexipole and the Washington State Criminal Justice Training Commission to name a couple for several reasons.

In a nutshell, the courts do not use the Force Continuum to determine if an officer's use of force was reasonable under the 4th Amendment. The courts use the Objective Reasonableness Standard, which is defined in *Graham v. Connor*.

To have a policy that based on factors that are not to be considered by the court is doing the citizens, the city, the department, and the officers a disservice. The Force Continuum was never meant to serve as a policy, but simply a way for officers to conceptualize what type of force could be considered under certain conditions, but the overriding factor is objective reasonableness. Furthermore, the Force

Continuum is flawed as a policy because it does not consider the totality of the circumstances. For example;

An officer encounters an elderly person using a walker or a cane to walk. The elderly person is angry about the incident and strikes the officer in the leg with the walker or a cane. The officer is not injured, the officer is about 6ft tall and over 180lbs, while the elderly person is about 5-8 tall and 130 lbs and frail.

Under the Force Continuum, the officer is justified to use level 2 defensive tactics against the elderly person, which could include punches, kicks, impact weapons, VNR, or taser. However, using the Objective Reasonableness Standard, the officer is required to consider the above factors and the totality of the circumstances before deciding to use force and what force is reasonable.

Further discussion:

Some mistakenly believe that under the Objective Reasonableness Standard, that officers are not allowed to use force on minor crimes due to the "seriousness of the crime" being a consideration for reasonableness. The fact is, officer can use force to enforce the law and apprehend suspects, per RCW and Graham v. Connor. They just have to consider the amount and type of force used. For example;

An officer is attempting to apprehend a shoplifter. The officer can use chase and tackle the shoplifter or use a take-down to arrest the shoplifter. Minus any other exigent circumstances, tasing the shoplifter, using a VNR, striking the suspect with a vehicle or impact weapon would appear to be unreasonable.

Response to Resistance v. Use of Force

Calling Use of Force a Response to Resistance is semantics. Some agencies, to include the APD, have changed the terms from Use of Force to Response to Resistance. Ultimately, officers are using force to overcome resistance, and no matter what we call it, the use of force must be reasonable under Graham v. Connor.

It is also important to understand that when law enforcement uses force, it is not about a fair fight; it is about subduing the violator and ensuring the safety of the public and/or the officer. The violator always has the choice whether or not to comply, resist, or flee.

Neck restraints are not air chokes and do not cause death, and do not cause any long term effects beyond temporarily loss of consciousness. They are a proven method of quickly subduing a violator without minimal risk of injury to the violator and the officers. Many times, the alternative to a neck restraint is strikes and kicks, or the use of impact weapons.

CONTINUUM OF RESISTANCE: REASONABLE OFFICER'S PERCEPTIONS OF VIOLATOR'S ACTIONS

NON VERBAL intimidation through posturing	VERBAL	PASSIVE	ACTIVE a violator who is trying to defeat your physical control			
clenched fists eyes stance	threats, statements that indicate un- cooperative subject	a subject who will not move or "come along"	<u>Static Resistance</u> actively uncooperative i.e. isometric resistive tension is generated by the violator	<u>Egressive</u> a violator is attempting to escape control using reactive type movements	<u>Aggressive</u> the violator is attacking the officer and is attempting to injure the officer in the process of resisting	<u>Aggravated Aggression</u> the violator has pre-planned the attack or is implementing weapons and/or tactics that are highly injurious or potentially lethal

OFFICER PRESENCE: identification by: verbal announcement, badge, vehicle, uniform etc.

VERBAL INTERACTION: dialogue, open / closed questions, persuasion, advice, or lawful order.

This continuum is only a model to assist in

ESCORT/TOUCH CONTROL: guiding, escorting, and out muscling the individual who exhibits only minor resistance

conceptualizing reasonable force options and comparing one level of force to another.

LEVEL ONE CONTROL (RESTRAINT) TACTICS
Pain compliance via: control points, distractions, counter-joint tactics, hair hold control tactics. OC Spray, TASER, LVNR, can be used at this level.

Each situation may require the officer to utilize a different "path" through this force continuum. It is expected that officers can and should move both up and down this force continuum using only reasonable force to overcome violator resistance.

LEVEL TWO DEFENSIVE TACTICS
Impact counter measures such as striking Techniques impact weapons; baton or flashlights. chemical agents in projectile forms, TASER, LVNR

At any point after initial contact the officer may be required to move immediately to the highest level, conversely the officer should decrease the level of force once violator resistance has decreased and officer safety is assured.

LEVEL THREE TACTICS
Tertiary targets with the baton or other focused impact tools, firearms, etc.

CONTINUUM OF ENFORCEMENT: REASONABLE OFFICER'S ACTIONS

Federal Law Enforcement Training Center

Use of Force Model

