

Deadly Force Supplement to Annual Requalification



Ohio Peace Officer Training Academy

1650 State Route 56, SW • P.O. Box 309 • London, Ohio 43140

Phone: 800-346-7682 • Fax: 866-393-1275

Email: AskOPOTA@OhioAttorneyGeneral.gov

REFERENCES

Black's law dictionary. (9th ed.). (2009). St. Paul, MN: West.

Graham v. Connor, 490 U.S. 386 (1989)

Plakas v. Drinski, 19 F.3d 1143 (7th Cir. Ind. 1994)

Tenn. v. Garner, 471 U.S. 1 (1985)

ADDITIONAL RESOURCES

Ohio Peace Officer Training Commission. (current version). *Peace officer basic training: Unit 2-6 civil liability & use of force* [Lesson plan]. London, OH: Ohio Attorney General, Ohio Peace Officer Training Commission.

Ohio Peace Officer Training Commission. (current version). *Peace officer basic training: Unit 6 subject control techniques* [Lesson plan]. London, OH: Ohio Attorney General, Ohio Peace Officer Training Commission.

USE OF DEADLY FORCE

A. Use of force issues

1. Force – any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing
2. Fourth Amendment standards require all use of force to be reasonable
 - a. Objective reasonableness standards
 - (1) From the perspective of a reasonable officer
 - (2) Not with 20/20 hindsight
 - (3) Based on an objective standard
 - b. Irrelevant factors
 - (1) Facts discovered at a later time
 - (2) Violations of departmental policy
 - (3) Subjective factors, such as officer's motive

Black's (2009)

B. *Tenn. v. Garner* defines the concept of use of force

1. Facts – father, whose unarmed son was shot in the back of the head by officer as son was fleeing from burglary of unoccupied house, brought wrongful death action under the federal civil rights violation act (i.e., 42 U.S.C. 1983)
2. The issue was whether the use of deadly force to prevent the escape of an apparently unarmed, non-dangerous fleeing suspect was constitutional
3. **THE PRINCIPLE BY WHICH A USE OF FORCE CASE WILL BE JUDGED is the reasonableness requirement of the Fourth Amendment**
4. Reasonableness depends not only on **when** the seizure is made but also on **how** it is carried out
5. The use of deadly force to prevent the escape of unarmed, non-dangerous fleeing felony suspects is constitutionally unreasonable

Tenn. v. Garner (1985)

Tenn. v. Garner (1985)

6. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend the suspect does not justify the use of deadly force to do so

C. *Graham v. Connor*

Graham v. Connor
(1989)

1. A diabetic brought a federal civil rights action under 42 U.S.C. 1983 seeking to recover damages for injuries allegedly sustained when law enforcement officers used physical force against him during the course of an investigatory stop
2. Determining whether the force used to affect a particular seizure is “reasonable” under the Fourth Amendment requires a careful balancing of the individual’s rights and the rights of the government
3. The “reasonableness” of the use of force applied must be judged from the perspective of the **reasonable** officer on the scene
 - a. The reasonableness of the use of force applied must be judged from the perspective of the **reasonable** officer on the scene at the time force was used
 - b. Reasonableness must allow for the fact that officers are often forced to make split-second judgments in situations that are tense, uncertain, and rapidly changing, about the amount of force that is necessary for a particular situation
 - (1) Subject motivations have no bearing on reasonableness
 - (2) Not capable of precise definition or mechanical application
 - c. The test is one of **objective reasonableness**. Whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation
 - d. Totality of circumstances for use of force
 - (1) Number of suspects v. officers
 - (2) Size, age, condition
 - (3) Injury to suspect/officers
 - (4) Known violent history

- (5) Known mental history
- (6) Pre-assault indicators
- (7) Alcohol or drugs
- (8) Availability of weapons
- (9) Duration of the action
- (10) Environmental actions

D. *Plakas v. Drinski*

1. Estate of decedent who was fatally shot by police brought civil rights action against the officer and county
2. Decedent was moving toward officer with a fireplace poker and had threatened the officer
3. Officers had tried to talk with the decedent without success, he had attacked another officer minutes earlier, had refused several requests to disarm, had told officer that one of them would die that night, had moved toward the officer with the poker raised, and officer's retreat had been blocked by a tree
4. The Court held the lower court's decision
 - a. Officer who fatally shot decedent, when decedent attacked the officer with a fireplace poker, did not have a tort duty to first use non-deadly force before resorting to deadly force
 - b. The officer had tried to talk to the decedent and was justified in using deadly force
 - c. *Plakas v. Drinski* ruled that there is no requirement for officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used
 - d. Plakas also stated there was no precedent which holds that a government unit has a constitutional duty to supply particular forms of equipment to its officers
5. Officer's application of force is judged based on what is reasonable not what is the most minimal

***Plakas v. Drinski
(1994)***

E. Agency policy and procedures

***Cover, at a
minimum, agency
deadly force policy***