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This course is not to be construed as offering legal advice nor for law enforcement agency policy development. All law enforcement executives, trainers, and police officers in Washington State are encouraged and highly recommended to seek legal advice from their agency legal counsel.

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Patrol Tactics Learning Goal

- In order to increase safety for all persons involved in a critical situation and decrease the likelihood of a physical force application, the student will learn the overarching principles associated with patrol tactics and how they relate to scene safety, pace control, de-escalation of critical events through in class presentations, and applied skill practice.


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Performance Objectives

- Given an applied skills test, the student will demonstrate their knowledge and understanding of the overarching principles of patrol tactics as they relate to the response and investigation of the following calls;
 - • Domestic violence
 - • Behavioral Health Crisis
 - • Field interviews
 - • High risk vehicle stops
 - • Traffic stops

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Use of Force Class Learning Goal and Performance Objectives

- **CLASS LEARNING GOALS**
 - In order to preserve the sanctity of life for all parties involved, students will learn the application of force as guided by Washington State House Bill 1310, Washington state House Bill 1054, R.C.W. 9a.16.040, the U.S. and WA State Constitutions regarding the use of force and force options when force becomes necessary in the performance of their duties.
- **CLASS PERFORMANCE OBJECTIVES**
 - Given a written examination, students must pass a use of force exam with over a 70% pass rate based on the information presented in class.
 - Given an applied skills assessment, students will demonstrate the knowledge and skills necessary to properly apply force options in a force situation should force become necessary;
 - Utilizing the 5 overarching principles to manage the pace of an encounter;
 - Effectively manage and respond to a call applying the concepts of distance, hard cover, and shielding to improved outcomes;
 - Utilizing patrol tactics, as instructed in class, to decrease the likelihood of using physical force;
 - Utilizing patrol tactics, as instructed in class, to increase the likelihood of a favorable outcome for all parties involved.

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The Formula



$$PLUOF = \frac{TOC(Q :: GI)}{RC} + p2$$

:: = Proportionality

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$$PLUOF = \frac{TOC(Q :: GI) + p2}{RC}$$

- *The police lawful use of force equals quantum of force that is both necessary and proportional to the governmental interest considering the totality of the circumstances, pace control, and probable cause undergirded by the duty of reasonable care.*



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$$PLUOF = \frac{TOC(Q :: GI) + p2}{RC}$$

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PLUOF Police Lawful Use of Force

- In Washington State, any use of force by the police is predicated on a “necessary standard.” HB-1310 re-defined “necessary” in the use of deadly force as follows. The definition of “Necessary” under R.C.W. 9a.16.010 for the use of any other force other (i.e. force and/or intermediate force) appears to be the same.
- HB-1310 Definition of “Necessary” regarding the lawful use of deadly force is as follows;
- ***Necessary means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others. (HB-1310)***



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$$\text{PLUOF} = \frac{\text{TOC}(Q :: \text{GI})}{\text{RC}} + p2$$



10



TOC = Totality of the Circumstances

Totality of the Circumstances

All facts known to the officer **leading up to** and **at the time** of the use of force and includes the actions of the person against whom force is used, and the actions of the peace officer.

Leading up to the use of force-What facts were known to the officer prior to the event or pre-event. This speaks to pace management, slowing the action and gathering as much information, intel and knowledge as possible pre-contact.

At the time force is used-What facts were known to the officer at the time of the event. Did circumstances evolve and change, was active resistance offered, was the resistance level increased or decreased and did the officer maintain proportionality throughout any such changes?

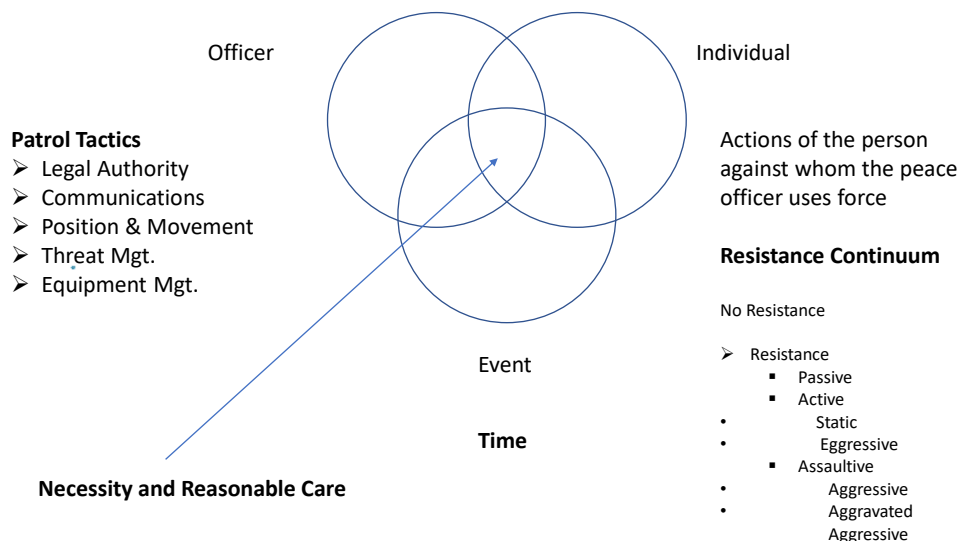
Actions of the person -What conduct, behavior, and action has been (leading up to) and currently is (at the time) being displayed or offered by the subject against whom force is being considered or used.

Actions of the officer -What conduct, behavior, and action has been (leading up to) and currently is (at the time) being displayed by the officer. (Use of proper patrol tactics and pace management).

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Totality of the Circumstances



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Totality of the Circumstances

6 Situational Factors

- Known History of the Violator
(Psychiatric and/or Violent history)
- Number of violators/officers present
- Mismatch
(Age, Size, Skill Level)
- Environmental Factors
Weather, surface, terrain
- Access to weapons
- Injury/exhaustion level

4 Traditional Graham Factors

- Immediate threat to the safety of the officer(s) or others (HB-1310 states "Imminent Threat")
- Severity of the Crime(s)
- Active Resistance (Static, Egressive, Assaultive, Aggressive, Aggravated Aggressive)
- Attempts to escape or evade arrest by flight
- Reasonable alternatives to the force option chosen

3 Types of Force

- Force
- Intermediate
- Deadly

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$$\text{PLUOF} = \frac{\text{TOC}(\text{Q} :: \text{GI})}{\text{RC}} + \text{p2}$$

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Q = Quantum of Force

The reasonably foreseeable (to the officer) effects and injuries of a chosen force option under the totality of the circumstances of the force option use. Quantum of force is a concept to be considered any time an officer uses physical force on another.

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Quantum of Force

- The reasonably foreseeable (to the officer) effects and injuries of a chosen force option under the totality of the circumstances of the force option use. Quantum of force is a concept to be considered any time an officer uses physical force on another.
- Quantum of force is a broad concept that is viewed more globally when determining to use, or using, force.
- Quantum of force and governmental interest are inextricably related, they are not considered in a vacuum...meaning, there is interplay and interaction between the two.
- The following, including but not limited to the following, are considerations to take into account when considering quantum of force...

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Quantum of Force

Including, but not limited to:

Environment

- Surface (hard or soft, forgiving or non)
- Height (elevated platforms)
- Hazards (water, flammable materials, traffic, animals, etc.)

Condition of person against who force is used

- Pregnant (visibly pregnant or states they are);
- Age (elderly, juvenile, vulnerable adult);
- Displays indicia of mental, behavioral or physical impairment;
- Experiencing perceptual or cognitive impairment typically related to the use of alcohol, narcotics, hallucinogens or other drugs;
- Is suicidal;
- Language barrier, limited proficiency in English;
- Is in the presence of children.

3 Types of force used

- Force
- Intermediate
- Deadly

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$$\text{PLUOF} = \frac{\text{TOC}(Q \text{ :: } GI)}{\text{RC}} + p2$$

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Proportionality, Proportional

Proportionality or Proportional

A ratio that is a constant throughout an event, which includes negotiating variability throughout it. The ratio would be in force type, level of resistance, and duration in relation to the threat presented.

The variables throughout the event could be considered as the totality of the circumstances which are different per event and are fluid, which include; officer actions, subject actions, and situational factors.

The constant would be the duty of Reasonable Care standard, which needs to be maintained prior to and throughout an event.

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$$\text{PLUOF} = \frac{\text{TOC}(Q :: \text{GI})}{\text{RC}} + p2$$

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GI = Governmental Interest

- The governmental interest of the state (or government) in law enforcement relates to compelling issues of public safety which allows for some degree of intrusion by the government upon the citizens depending upon how strong that interest is.
- The courts have traditionally defaulted to the Graham Factors to determine the governmental interest.
- Traditionally, crime that is misdemeanor in classification and non-violent in nature carries low or diminished governmental interest. (Ex. shoplifting, trespass, j-walking etc.)
- However, even crimes that are felonious in classification and non-violent in nature also carry a lower, diminished governmental interest. Examples of such crimes would be; Possession of Stolen Property, Burglary, Forgery, etc.
- The strength of the governmental interest, in relation to the proffered formula for police lawful use of force, is a concept to be considered as a constant. An officer should use as much time as is available to gather knowledge about the situation and subject and ask; What do I factually have here?



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$$\text{PLUOF} = \frac{\text{TOC}(Q :: \text{GI})}{\text{RC}} + p2$$

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P2 = Pace Management & Probable Cause



Pace Management

A foundational concept in patrol tactics is using proper patrol tactics to control the pace of an event in order to increase the likelihood of a favorable outcome for all parties involved in the event.

Proper patrol tactics abide by the 5 overarching principles of;

- Legal Authority
- Communication
- Position & Movement
- Threat Management
 - Threat Recognition
 - Threat Prioritization
 - Threat Response
- Equipment Management

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P2 = Pace Management & Probable Cause



Probable Cause

In Washington State, an officer must either arrive at probable cause for the commission of crime and/or articulate imminent threat of bodily harm to the officer or another for the use of physical force (***not to be confused with imminent threat of serious bodily injury or death for the use of deadly force.***)

What particularized, articulable facts and circumstances exist that would lead a reasonable person to believe that a particular person did commit, or is committing, a particular crime wherein all elements of the crime are satisfied.

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$$\text{PLUOF} = \frac{\text{TOC}(Q :: \text{GI})}{\text{RC}} + p2$$

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RC = Reasonable Care

In Washington State, legislation has created a standard of care known as "Duty of Reasonable Care."

When looking at the formula and the positioning of reasonable care, it undergirds and supports the concept of use of force in Washington State and is a constant, not a variable, meaning that reasonable care is the expectation of the public for officers to employ in their use of force decision making.

The standard and expectation of reasonable care

When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force;

- Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover;
- When there are multiple officers, designating one officer to communicate in order to avoid competing commands;
- Calling for additional resources such as a crisis intervention team or mental health professional when possible;
- Calling for back-up officers when encountering resistance;
- Taking as much time as necessary, without using physical force or weapons; and
- Leaving the area if there is no threat of imminent harm or no crime is being committed.

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Definitions

"Necessary" means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others. (HB-1310)

"Totality of the Circumstances" means all facts known to the peace officer leading up to and at the time of the use of force and includes the actions of the person against whom the peace officer uses such force, and the actions of the peace officer. (HB-1310)

"Less Lethal Alternatives" include, but are not limited to, conducted energy weapons, devices that deploy oleoresin capsicum, batons, and beanbag rounds. (HB-1310)

"Good Faith" R.C.W. 9a.16.040(4) A peace officer shall not be held criminally liable for using deadly force in good faith, where "good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

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Definitions

"Imminent Threat" means that, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present and apparent ability, opportunity, and intent to immediately cause death or serious bodily injury to the peace officer or another person. (HB-1310) See variation explanation in subsequent slide.

"Deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. R.C.W. 9a.16.010(2)

"De-Escalation" means that, Through the use of proper patrol tactics, to control the pace of an event, in order to increase the likelihood of a favorable outcome to all persons involved.

"Chokehold" refers to any tactic in which direct pressure is applied to a person's trachea or windpipe or any other tactic intended to restrict another person's airway. (HB-1054)

"Neck Restraint" refers to any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

"Quantum of Force": The reasonably foreseeable (to the officer) effects and injuries of a chosen force option under the totality of the circumstances of the force option use. Quantum of force appears any time an officer uses physical force on another.

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HB-1054 NEW SECTION. Sec. 2.

- (1) A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer.
- (2) Any policies pertaining to the use of force adopted by law enforcement agencies must be consistent with this section.
- (3) For the purposes of this section:
- (a) "Chokehold" refers to any tactic in which direct pressure is applied to a person's trachea or windpipe or any other tactic intended to restrict another person's airway.
- (b) "Neck restraint" refers to any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

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De-Escalation



The use of proper patrol tactics to slow the pace of an event in order to increase the likelihood of a favorable outcome for all persons involved.

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Physical Force

NEW SECTION. **Sec. 3.** (1)(a) Except as otherwise provided under this section, a peace officer may use physical force against another person when necessary to effect an arrest, prevent an escape as defined under chapter 9A.76 RCW, or otherwise protect against an imminent threat of bodily injury to the peace officer or another person.

“Physical Force” Any technique or tactic reasonably likely to cause transient pain and/or injury.

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Transient (adj.) Merriam-Webster

tran·sient | \ 'tran(t)-sh(ē-)ənt ; 'tran-zē-ənt, 'tran(t)-sē-; 'tran-zhənt, -jənt \

Definition of *transient*

1a: passing especially quickly into and out of existence

b: passing through or by a place with only a brief stay

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Definitions

Duty of Reasonable Care:

(2) A peace officer shall use reasonable care when determining whether to use physical force and when using any physical force against another person. To that end, a peace officer shall:

- (a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force:
- (b) When using physical force, use only the minimal degree of physical force necessary to overcome resistance under the circumstances:
- (c) Terminate the use of physical force as soon as the necessity for such force ends:
- (d) When possible, use available and appropriate less lethal alternatives before using deadly force: and
- (e) Make less lethal alternatives issued to the officer reasonably available for their use.

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(2)(a) When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force, such as:

Creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover:

When there are multiple officers, designating one officer to communicate in order to avoid competing commands:

Calling for additional resources such as a crisis intervention team or mental health professional when possible:

Calling for back-up officers when encountering resistance:

Taking as much time as necessary, without using physical force or weapons: and

Leaving the area if there is no threat of imminent harm or no crime is being committed.

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(2)(b) When using physical force, use only the minimal degree of physical force necessary to overcome resistance under the circumstances.



This includes a consideration of the characteristics and conditions of a person for the purposes of determining whether to use force against that person and, if force is necessary, determining the appropriate and minimal degree of force.

Such characteristics and conditions may include, for example, whether the person:

Is visibly pregnant, or states that they are pregnant:

Is known to be a minor, objectively appears to be a minor, or states that they are a minor:

Is known to be a vulnerable adult, or objectively appears to be a vulnerable adult as defined in RCW 74.34.020:

Displays signs of mental, behavioral, or physical impairments or disabilities:

Is experiencing perceptual or cognitive impairments typically related to the use of alcohol, narcotics, hallucinogens, or other drugs:

Is suicidal:

Has limited English proficiency: or

Is in the presence of children

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Nature of Intrusion



Nature of intrusion is **what** the officer did; what type or degree of force did the officer use, what force option(s) were used or considered, what was the duration of the event. How intrusive was the governmental action and was it both reasonable and necessary in inception, type, and duration?

The governmental interest is **why** the officer took that chosen course of action. How compelling of an issue did the officer, based on totality, believe they were dealing with. (i.e. shoplifting v. armed robbery or trespass v. home invasion or medical v. criminal).

Furthermore, the legislature appears to clearly signal that the use of force is an incredible responsibility which requires articulation of probable cause and/or an imminent threat of bodily injury (for general force use) or imminent threat of serious bodily injury or death (for the use of deadly force).

Violent crimes against persons, traditionally, are more compelling in their governmental interest than that of property crime. Further, subjects who are apparently emotionally disturbed or are suffering a behavioral health crisis, without crime or even with crime involved that are on the lower end of the criminal spectrum are being viewed as low in governmental interest.

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Nature of Intrusion & Governmental Interest

WHY

Governmental Interest; compelling issues such as violent crime against persons or imminent threat of bodily injury



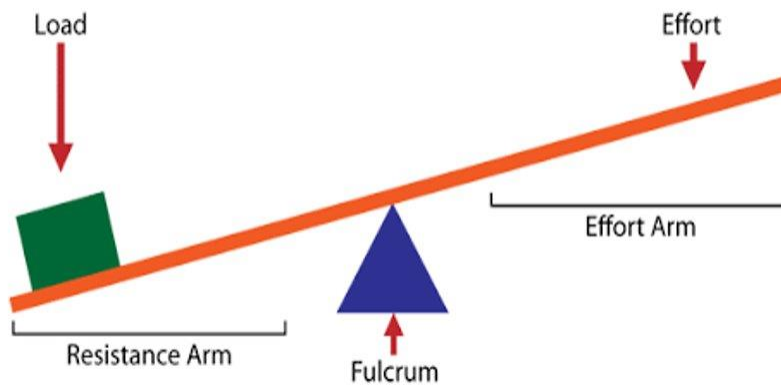
Nature of Intrusion; type of force used by the officer, force options utilized, if any.

WHAT

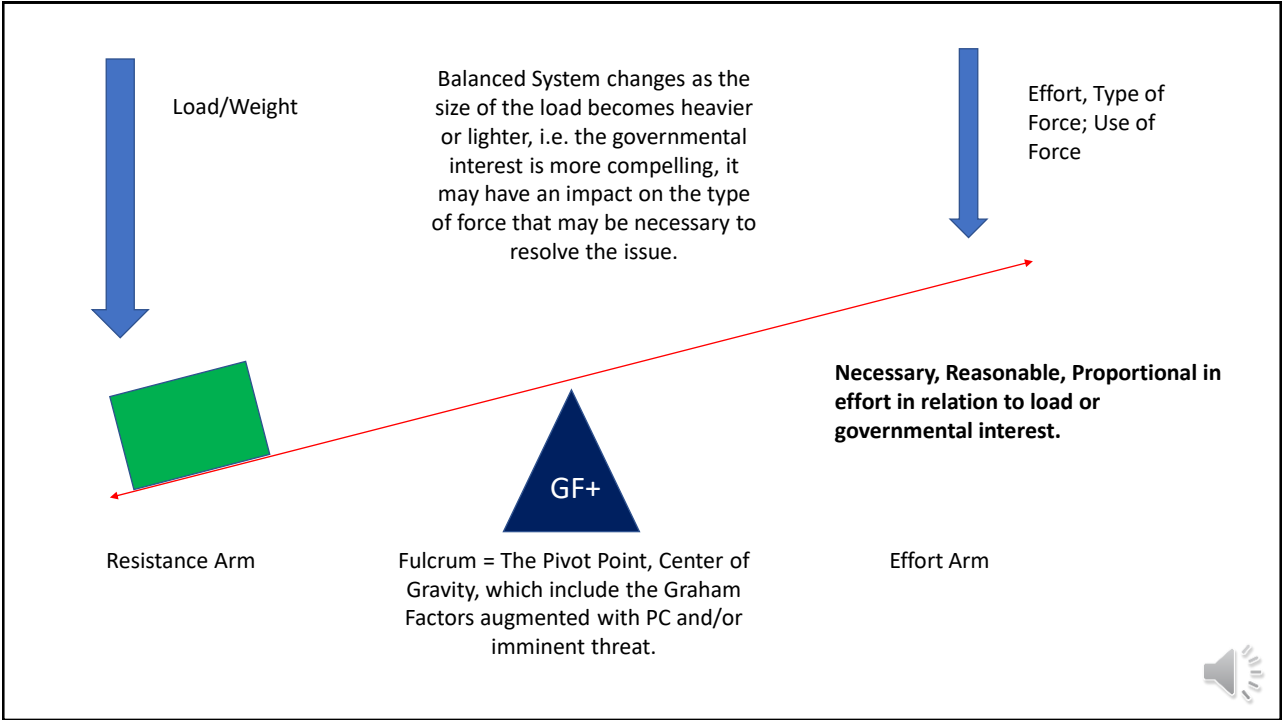
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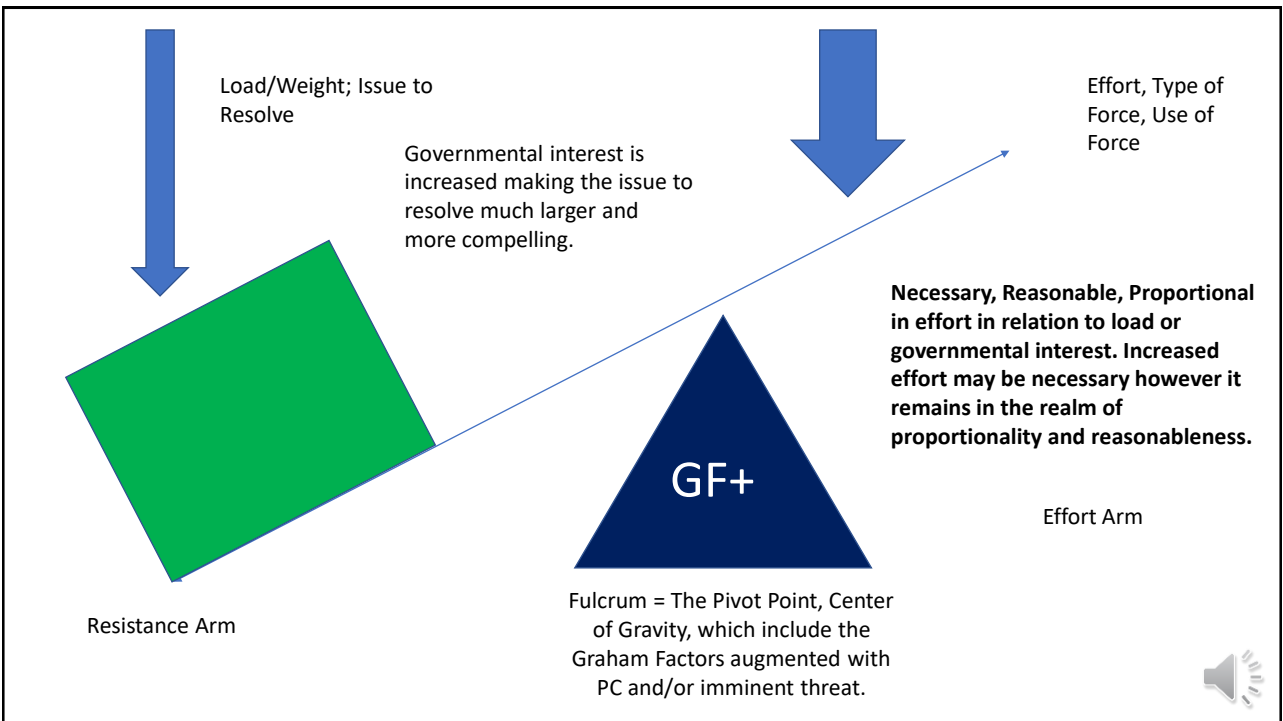
Nature of Intrusion & Governmental Interest



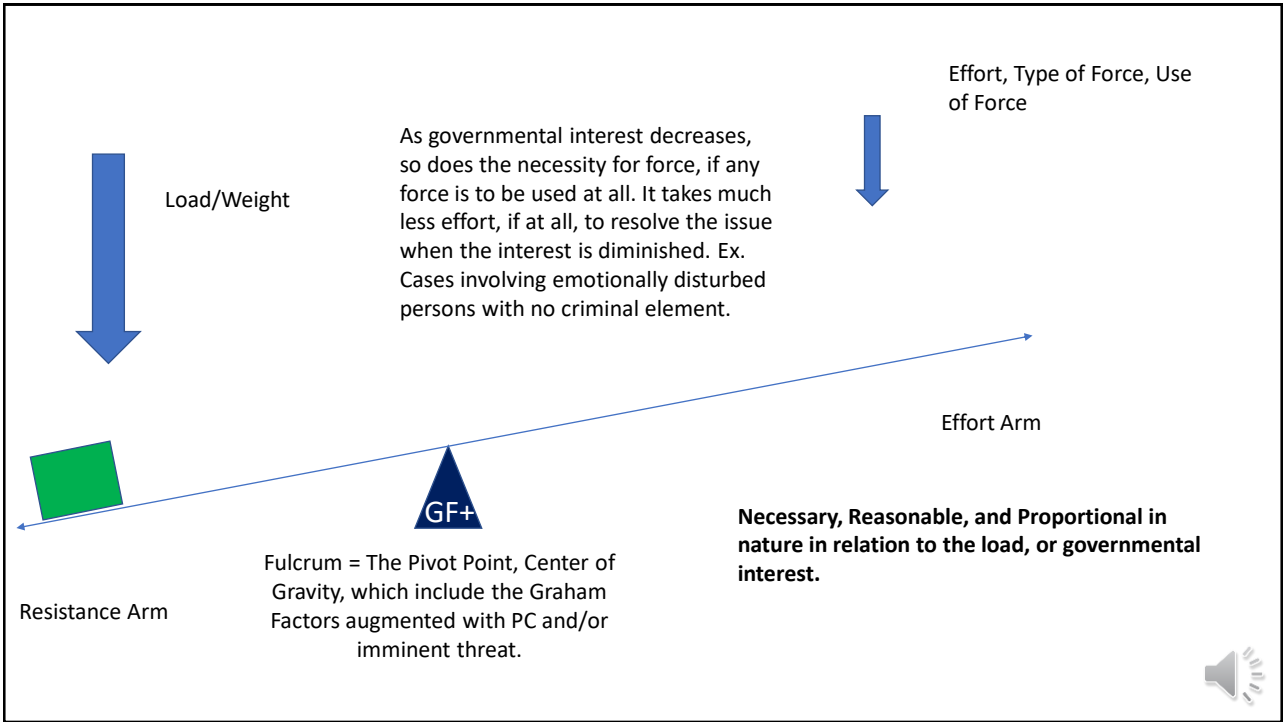
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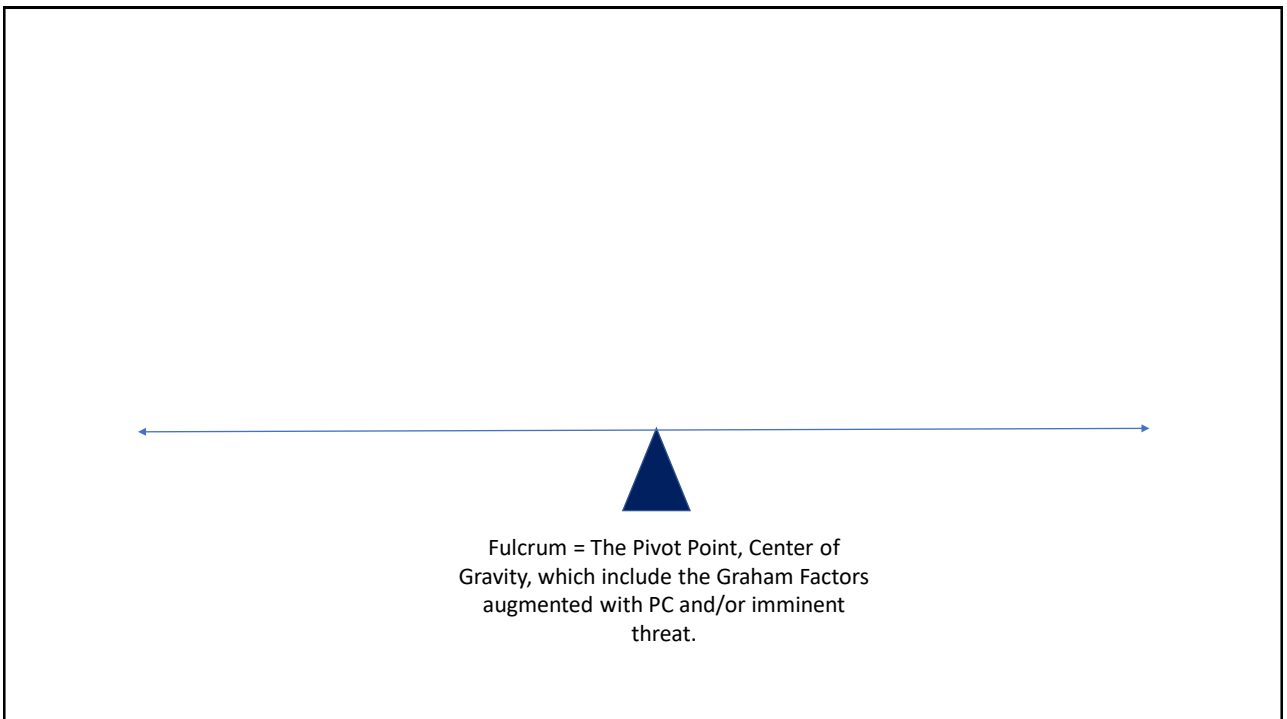
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Graham v. Connor 1989 490 U.S. 386

- Facts of the landmark case decision in Graham v. Connor (1989)
- Why is it important?
- Graham Factors (+ Smith v. Hemet)
- Objective Reasonableness Standard
- Inception-Degree-Duration (Totality = Objective Reasonableness Standard)
- Level of Intrusion & Governmental Interest



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Traditional Graham Factors (+)

- Immediate Threat to the Safety of the Officer or Another
- Severity of Crime
- Active Resistance
- Attempts to Escape/Evade Arrest (Flight)
- (+) Additional Factors (Less Intrusive Alternatives, Warnings, Emotionally Disturbed Person/People Experiencing Behavioral Health Crisis)



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Washington State HB-1310 & Graham

- Graham v. Connor created an “objective reasonableness standard” which means; were the officers’ actions objectively reasonable in inception, duration and degree.

- Objective = fact based, a factual analysis inquiry based on totality of the circumstances, what the officer knew at the time, and what a similarly situated officer would have chosen to do who has the same amount of training and experience.

- The Graham Factors are traditionally where the courts turn to in an excessive force claim in order to determine objective reasonableness.

- The Graham Factors are present in any use of force event involving the police whether deadly or not.



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Use of Force HB-1310 (1)(a)

- (1)(a) Except as otherwise provided under this section, a peace officer may use physical force against another person when:

- Necessary to effect an arrest:

- Prevent an escape as defined under chapter 9A.76 RCW, or:

- Otherwise protect against an *imminent threat of bodily injury* to the peace officer or another person.



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R.C.W.
9a.16.110
(4)(a) Bodily
Injury Defined

- (4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition.

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R.C.W. 9a.76.110 Escape in the 1st Degree



RCW [9A.76.110](#)

Escape in the first degree.

- (1) A person is guilty of escape in the first degree if he or she knowingly escapes from **custody or a detention facility** while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.
- (2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.
- (3) Escape in the first degree is a class B felony.

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RCW. 9a.76.010 (2) Custody Defined

- (2) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: **PROVIDED**, That custody pursuant to chapter [13.34 RCW](#) and RCW* [74.13.020](#) and [74.13.031](#) and chapter [13.32A RCW](#) shall not be deemed custody for purposes of this chapter.



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RCW.9a.76.010 (3) Detention Facility Defined

- (3) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in [RCW 13.40.020](#) as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter [13.34 RCW](#) or chapter [13.32A RCW](#), or (e) in any work release, furlough, or other such facility or program.



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R.C.W. 9a.76.115

- [RCW 9A.76.115](#)
- **Sexually violent predator escape.**
 - A person is guilty of sexually violent predator escape if:
 - Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;
 - (b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or
 - (c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.
- (2) Sexually violent predator escape is a class A felony with a minimum sentence of sixty months, and shall be sentenced under [RCW 9.94A.507](#).



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R.C.W. 9a.76.120 Escape in the 2nd Degree

- [RCW 9A.76.120](#)
- **Escape in the second degree.**
 - (1) A person is guilty of escape in the second degree if:
 - (a) He or she knowingly escapes from a **detention facility**; or
 - (b) Having been charged with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody; or
 - (c) Having been committed under chapter [10.77](#) RCW for a sex, violent, or felony harassment offense and being under an order of conditional release, he or she knowingly leaves or remains absent from the state of Washington without prior court authorization.
 - (2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.
- (3) Escape in the second degree is a class C felony.



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R.C.W. 9A.76.130 Escape in the 3rd Degree

- [RCW 9A.76.130](#)
- **Escape in the third degree.**
- (1) A person is guilty of escape in the third degree if he or she:
 - (a) Escapes from custody; or
 - (b) Knowingly violates the terms of an electronic monitoring program.
- (2) Escape in the third degree is a misdemeanor, except as provided in subsection (3) of this section.
- (3)(a) If the person has one prior conviction for escape in the third degree, escape in the third degree is a gross misdemeanor.
- (b) If the person has two or more prior convictions for escape in the third degree, escape in the third degree is a class C felony.

