

§ 19.2-83.3. Definitions

As used in this chapter, unless the context requires a different meaning:

"Deadly force" means any force that is likely or intended to cause serious bodily injury or death.

"Deadly weapon" means any object, other than a body part or stationary object, that in the manner of its actual, attempted, or threatened use is likely to cause serious bodily injury or death.

"Excessive force" means any force that is objectively unreasonable given the totality of the circumstances, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

"Kinetic impact munitions" includes impact rounds and baton rounds, such as rubber batons, bean bag rounds, foam baton rounds, and plastic, wax, wood, or rubber-coated projectiles.

"Neck restraint" means the use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting the person's blood flow or breathing, including chokeholds, carotid restraints, and lateral vascular neck restraints.

2020, Sp. Sess. I, cc. [25](#), [35](#), [37](#), [55](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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Excessive Force



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Excessive Force claims examine the officer's use of force to determine its reasonableness. This determination depends on the surrounding facts and circumstances. Excessive force by the police violates several amendments of the United States Constitution and officers may be held civilly or criminally liable for their actions.

Basis of Law

Excessive force is generally prohibited by the [Fourth](#), [Eighth](#), and [Fourteenth Amendments](#). The [Fourth Amendment](#) protects free citizens from “unreasonable searches and seizures” and the [Eighth Amendment](#) protects those convicted of a crime against “cruel and unusual punishments.” For those who are not free citizens but who have not yet been convicted, i.e. a pretrial detainee, the [Fourteenth Amendment's](#) due process clause is used to protect against the use of excessive force.

Civil lawsuits based on the use of excessive force are brought under [42 USC § 1983](#), which provides that anyone acting under the color of law who deprives someone of their Constitutional rights “shall be liable to the injured party.” [Section 1983](#) is the statutory mechanism for the relief, but the underlying injury must be based on the violation of separate “federal rights elsewhere conferred.” [Baker v. McCollan](#), 443 U.S. 137, 145, 99 S. Ct. 2689, 2695, 61 L. Ed. 2d 433 (1979).

The Standard

Whether the force used is excessive depends on “whether the officers' actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” [Graham v. Connor](#), 490 U.S. 386, 397, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989). This objective test means that “[a]n officer's evil intentions will not make a [Fourth Amendment](#) violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.” [Id.](#)

Seminal Cases and Authority

[Graham v. Connor](#) (U.S. May 15, 1989)

[Tennessee v. Garner](#) (U.S. Mar. 27, 1985)

[42 U.S.C.A. § 1983](#)

[U.S. Const. Amend. IV](#)

State & Federal Cases

[Search federal cases related to excessive force](#)

[Graham v. Connor \(U.S. May 15, 1989\)](#)

[Tennessee v. Garner \(U.S. Mar. 27, 1985\)](#)

[Brosseau v. Haugen \(U.S. Dec. 13, 2004\)](#)

[Search state cases related to excessive force](#)

[Gutierrez v. Massachusetts Bay Transp. Auth \(Mass. Aug. 2, 2002\)](#)

[City of Miami v. Sanders \(Fla. App. Feb 21, 1996\)](#)

[Oliver v. Smith \(Mich. App. Jan. 31, 2006\)](#)

State & Federal Statutes

[Search federal statutes related to excessive force](#)

[42 U.S.C.A. § 1983 – Civil action for deprivation of rights](#)

[U.S. Const. Amend. IV – Searches and Seizures; Warrants](#)

[Search state statutes related to excessive force](#)

[NY PENAL § 35.30 - Justification; use of physical force in making an arrest or in preventing an escape](#)

[CA PENAL § 835a - Legislative findings and declarations; use of force to effect arrest, prevent escape, or overcome resistance; use of deadly force; definitions](#)

[IL ST CH 720 § 5/7-5 - Peace officer's use of force in making arrest](#)

Attorney General Opinions

[Search Attorney General opinions related to excessive force](#)

[Co. Op. Atty Gen. 06-06 \(Aug. 29, 2006\)](#)

[Md. Op. Atty Gen. 86-060 \(Nov. 17, 1986\)](#)

Proposed Legislation

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[Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020 \[S 3985\]](#)

[Law Enforcement Trust and Integrity Act of 2019 \[S 3063\]](#)

[Police Exercising Absolute Care with Everyone Act of 2019 \[HR 4359\]](#)

[US House Resolution 988](#)

Search state proposed legislation related to excessive force

[D.C. LB 774](#)

[Fla. SB 562](#)

[Iowa HF 2647](#)

[Minn. HF 4122](#)

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161.233 Use of physical force by peace officer. (1) A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

(a) That the person poses an imminent threat of physical injury to the peace officer or to a third person; or

(b) That the use of physical force is necessary to:

(A) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime; or

(B) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a crime.

(2) A peace officer may use physical force upon another person under this section only to the degree that the peace officer reasonably believes necessary to prevent physical injury under subsection (1)(a) of this section or to carry out a purpose described in subsection (1)(b) of this section.

(3) Prior to using physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:

(a) Consider alternatives such as verbal de-escalation, waiting or using other available resources and techniques if reasonable, safe and feasible; and

(b) Give a verbal warning to the person that physical force may be used and provide the person with a reasonable opportunity to comply. [2020 s.s.2 c.3 §7]

161.242 Use of deadly physical force by peace officer. (1) A peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

(a) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a violent felony;

(b) Defend the peace officer or a third person from the imminent threat of death or serious physical injury; or

(c) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.

(2) Prior to using deadly physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:

(a) Consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe and feasible, or using a lesser degree of force; and

(b) Give a verbal warning to the person that deadly physical force may be used and provide the person with a reasonable opportunity to comply.

(3) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer constituting an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

(4) As used in this section, “violent felony” has the meaning given that term in ORS 419A.004. [2020 s.s.2 c.3 §8]

161.245 “Reasonable belief” described; status of unlawful arrest. (1) For the purposes of ORS 161.233 and 161.242, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would constitute an offense.

(2) A peace officer who is making an arrest is justified in using the physical force prescribed in ORS 161.233 and 161.242 unless the arrest is unlawful and is known by the officer to be unlawful. [1971 c.743 §29; 2020 s.s.2 c.3 §9]

PPB Policies

<https://www.portland.gov/policies/police-directives/weapons-ammunition-equipment-1000/101000-use-force>

- **Constitutional Force Standard (Graham Standard):** Under *Graham v. Connor* and subsequent cases, the federal courts have established that when determining whether to use force, members must balance the individual's Fourth Amendment rights against the government's interest. When using force under this standard, members shall only use force necessary to accomplish a lawful objective, and the force must be objectively reasonable under the totality of the circumstances.

- **Objectively Reasonable:** The reasonableness of a use of force is based on the totality of circumstances known by an officer at the time of action or decision-making. It shall be judged from the perspective of a reasonable officer on the scene, without the clarity of 20/20 hindsight after the event has concluded. The measure of reasonableness gives consideration to the reality that officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving. In the application or evaluation of the use of force, uses of the terms "reasonable" and "reasonably" in this policy refer to objective reasonableness. All assertions of a member's knowledge, intent, deliberateness, or inadvertence under this policy must be objectively reasonable and the Bureau shall assess all assertions under the objective reasonableness standard.

2. Authorized Use of Force.

2.1. Constitutional Force Standard (Graham Standard): Force Performance Requirements.

2.1.1. Members shall only use force necessary to accomplish a lawful objective, and the force must be objectively reasonable under the totality of the circumstances.

2.1.2. When determining whether to use force, members must balance the individual's Fourth Amendment rights against the government's interest. At a minimum, members shall consider the following three factors prior to using force:

2.1.2.1. **Threat.** Whether the individual poses a threat to the safety of officers or others. The extent and immediacy of the threat are the most important determining factors when considering the need for and type of force that may be reasonable during an encounter.

2.1.2.2. **Severity.** The severity of the crime at issue.

2.1.2.3. **Active Resistance or Evading.** Whether the individual is actively resisting control or attempting to evade.

2.1.3. A reasonableness inquiry is not limited to these factors, and the Bureau will evaluate a member's use of force based on the totality of the circumstances and all policy requirements.