



State of Connecticut Police Officer Standards and Training Council

Lesson Plan for the CEW Equipped Police Officer in Connecticut

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Disclaimer

- *This lesson plan is intended to be a recommended supplement to the manufacturer's lesson plan for any Conducted Electrical Weapon (CEW) or similar device, used by agencies within the State of Connecticut. It is **not** intended to replace any CEW manufacturer's required training program.*

Purpose

- The purpose of this lesson plan is to provide a resource for instructors when teaching Connecticut police officers the proper, reasonable and lawful use of Conducted Electrical Weapons (CEW) and similar devices.
- This lesson plan provides a review of federal court decisions, state statutes regarding use of force and areas of special emphasis that are specific to the use of CEWs and similar devices.
- The instructor notes section of many slides contain valuable information and should be reviewed by the instructor prior to teaching this lesson.

The Reasonableness Standard:

A Federal, State and Local
Perspective

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

- Petitioner Graham, a diabetic, asked his friend, Berry, to drive him to a convenience store to purchase orange juice to counteract the onset of an insulin reaction.
- Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead.
- Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store, followed Berry's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store.
- Backup police officers arrived on the scene, **handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. During the encounter, Graham sustained multiple injuries.**
- He was released when Connor learned that nothing had happened in the store.

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

- *Held*: All claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

Amendment IV

- The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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

- *Held: The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation*

Key Graham Factors

- Severity of the crime at issue
- Whether the suspect poses an immediate threat to the safety of the officers or others
- Whether suspect is actively resisting arrest or attempting to evade arrest by flight
- Split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about amount of force necessary in particular situation

Graham Factors as Risk Prioritized

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

Officer-Subject Factors
Affecting the Police Officer's
Reasonable Response to
Resistance

Officer-Subject Factors

- Number of Officers vs. Suspects
- Proximity to Potential Weapons
- Age; Size; Gender; Relative Strength
- Special Knowledge or Skill Level
- Injury or Exhaustion
- Mental Illness or Alcohol/drug Usage
- Prior Contacts
- Environmental Factors
- Where circumstances tense, uncertain, rapidly evolving? ("*pace*" of events)
- Did the situation require "Split-second judgments"

Scott v. Harris

The Risk/Benefit Force Standard

- In determining a seizure's reasonableness, the Court balances the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests allegedly justifying the intrusion. (*United States v. Place*, 462 U. S. 696, 703). In weighing the high likelihood of serious injury or death to respondent that Scott's actions posed against the actual and imminent threat that respondent (Harris) posed to the lives of others, (*Scott v. Harris*, 550 U.S. 372, 383 (2007))



Edited chase video (6 min version):

<http://www.youtube.com/watch?v=DBY2y2YsmN0>

Salim v. Proulx

*UNITED STATES COURT OF
APPEALS 2nd CIRCUIT No. 1373
-- August Term 1995*

*UNITED STATES COURT OF APPEALS 2nd
CIRCUIT No. 1373*

KEY FACT:

the officer's actions leading up to the shooting are irrelevant to the objective reasonableness of his conduct at the moment he decides to employ deadly force. The reasonableness of the inquiry depends only upon the officer's knowledge of the circumstances immediately at the moment that he made the split-second decision to employ deadly force

2nd Circuit Case Law on CEWs

AELE

Americans for Effective Law Enforcement

- **Advisory note:** Some ECW experts prefer to categorize ECW applications by event descriptions, such as their use on juveniles, the disabled, elderly persons, pregnant women, or individuals who are perched on ledges, etc. This is a law library, not a policy or training site. Litigants and policymakers are bound by the case law of their federal circuit. However, policymakers may want to prohibit the deployment of ECWs based on situational events.
- [1st Circuit Cases](#) [ME, MA, NH., RI., and PR]
- [2nd Circuit Cases](#) [CT, NY, and VT]
- [3rd Circuit Cases](#) [DE, NJ, PA, and VI].
- [4th Circuit Cases](#) [MD, NC, SC, VA, and WV]
- [5th Circuit Cases](#) [LA, MS, and TX]
- [6th Circuit Cases](#) [KY, MI, OH, and TN]
- [7th Circuit Cases](#) [IL, IN, and WI]
- [8th Circuit Cases](#) [AR, IA, MN, MO, NE, ND, and SD]
- [9th Circuit Cases](#) [AK, AZ, CA, HI, ID, MT, NV, OR, WA, plus GU and MP].
- [10th Circuit Cases](#) [CO, KS, NM, OK, UT, and WY]
- [11th Circuit Cases](#) [AL, FL, and GA]
- [D.C. Circuit Cases](#) [District of Columbia]
- [Fed Circuit Cases](#)
- [Weapon Confusion Cases](#)
- Purpose: This listing of cases is intended to assist state, municipal and county legislators; city and county managers; police chiefs, sheriffs and correctional administrators; law enforcement and correctional supervisors, trainers and officers; lawyers who advise or defend police or correctional agencies and officers; counsel who represent inmates, other claimants, or community and civil liberties organizations; risk managers; criminal justice professors, researchers and students; and criminal justice journalists.

Connecticut State Statutes Regarding the Use of Force by Police Officers

The Reasonableness Standard
at the State Level

CGS 53a-22

Use of physical force in making arrest or preventing escape

- (a) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer, special policeman appointed under section 29-18b, motor vehicle inspector designated under section 14-8 and certified pursuant to section 7-294d or authorized official of the Department of Correction or the Board of Pardons and Paroles who is effecting an arrest pursuant to a warrant or preventing an escape from custody is justified in using the physical force prescribed in subsections (b) and (c) of this section unless such warrant is invalid and is known by such officer to be invalid.

CGS 53a-22

Use of physical force in making arrest or preventing escape

- (b) Except as provided in subsection (a) of this section, a peace officer, special policeman appointed under section 29-18b, motor vehicle inspector designated under section 14-8 and certified pursuant to section 7-294d or authorized official of the Department of Correction or the Board of Pardons and Paroles is **justified in using physical force upon another person when and to the extent that he or she reasonably believes such to be necessary to**: (1) Effect an arrest or prevent the escape from custody of a person whom he or she reasonably believes to have committed an offense, unless he or she knows that the arrest or custody is unauthorized; or (2) defend himself or herself or a third person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

CGS 53a-22

Use of physical force in making arrest or preventing escape

- (c) A peace officer, special policeman appointed under section 29-18b, motor vehicle inspector designated under section 14-8 and certified pursuant to section 7-294d or authorized official of the Department of Correction or the Board of Pardons and Paroles **is justified in using deadly physical force upon another person for the purposes specified in subsection (b) of this section only when he or she reasonably believes such to be necessary to:** (1) Defend himself or herself or a third person from the use or imminent use of deadly physical force; or (2) effect an arrest or prevent the escape from custody of a person whom he or she **reasonably** believes has committed or attempted to commit a felony which involved the infliction or threatened infliction of serious physical injury and if, where feasible, he or she has given warning of his or her intent to use deadly physical force

Department Policies related to Use of Force and CEWs

How does this tool fit in with other,
more traditional tools?

Anytown PD's CEW of Choice



General Order – Use of the CEW

- Insert Anytown PD specific slides here
 - Specific use recommendations
 - CEW reporting procedures
 - Guidelines for review of CEW use

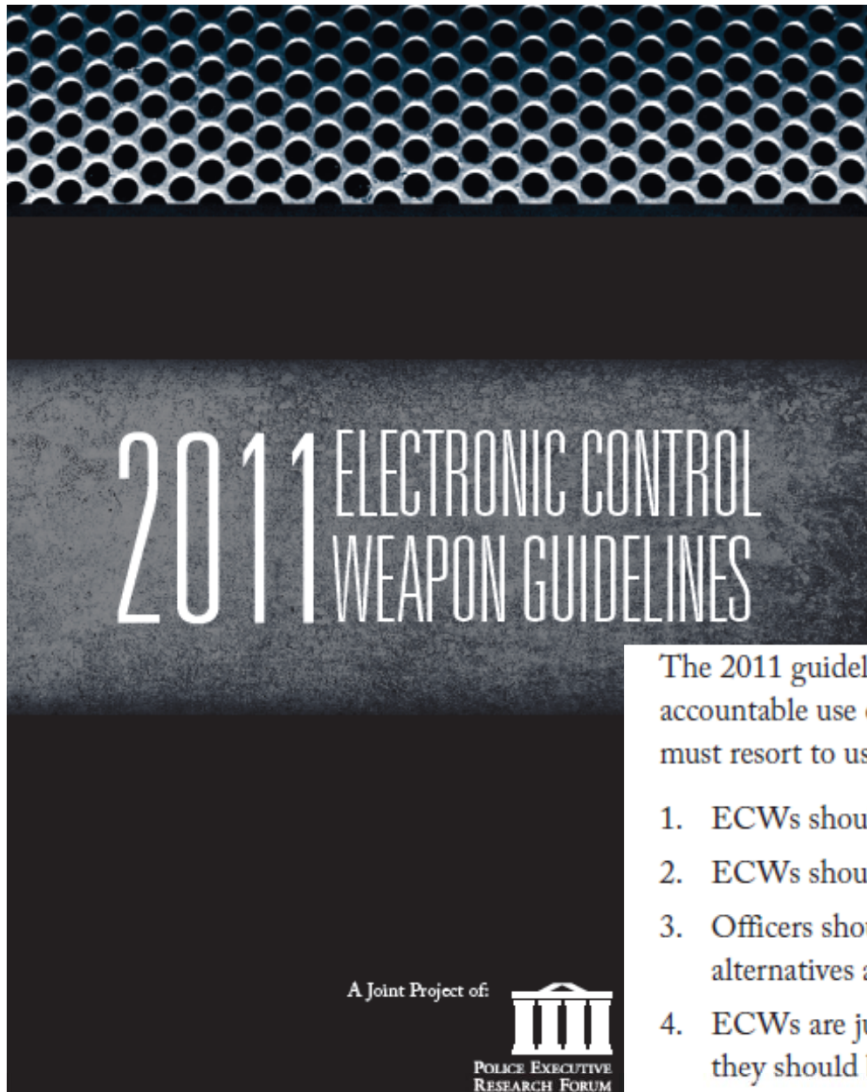
Areas of Concern for CEW Users

Avoiding Problems with your CEW
program

Defining Resistance

- **Defiance** – essentially, defiant behavior means being verbally uncooperative or arguing with an officer. It may not rise to resistance unless or until the subject fails to comply with an officer's lawful order or otherwise hinders the officer from achieving a lawful objective.
- **Passive** – The subject fails to obey verbal direction, preventing the officer from taking lawful action.
- **Active** - The subject's actions are intended to facilitate an escape or prevent an arrest. The action is not likely to cause injury.
- **Aggressive** – The subject has assaulted or is about to assault an officer, and the subject's action is likely to cause injury.
- **Deadly** – The subject's actions are likely to cause death or serious physical injury.

2005 and 2011 PERF: ECW Guidelines



The 2011 guidelines are based on a set of principles that foster the responsible and accountable use of ECWs, while recognizing that they are an appropriate tool for officers who must resort to use of force. These guiding principles are the following:

1. ECWs should be considered less-lethal weapons.
2. ECWs should be used as a weapon of need, not a tool of convenience.
3. Officers should not over-rely on ECWs in situations where more effective and less risky alternatives are available.
4. ECWs are just one of a number of tools that police have available to do their jobs, and they should be considered one part of an agency's overall use-of-force policy.
5. In agencies that deploy ECWs, officers should receive comprehensive training on when and how to use ECWs.
6. Agencies should monitor their own use of ECWs and should conduct periodic analyses of practices and trends.
7. Agencies should consider the expectations of their community when developing an overall strategy for using ECWs.

Discussion Question

- **According to PERF guidelines [CEWs] should be used as a weapon of need, not a tool of convenience.**
- Consider the statement shown above....would following this guidance essentially remove the possibility of an unreasonable CEW use?

CEW Topics Requiring Additional Emphasis

Higher Risk Populations

- Being exposed to the effects of a CEW can be a physically stressful event for the subject, and certain types of people may experience the effects of the exposure more than others.
- In order to minimize unnecessary risk, officers should be instructed to carefully consider the reasonableness of using the CEW against certain members of the population. In determining the reasonableness of the application, officers should consider what other force options may be available to them in order to achieve the lawful objective in a particular case.
- Examples of persons that may be at an increased risk are the elderly, persons of small stature irrespective of age, or those who the officer has reason to believe are pregnant, equipped with a pacemaker, or in obvious ill health.

Cautions

CEWs Shall not be used:

1. In a punitive or coercive manner;
2. On a handcuffed or secured prisoner, absent overtly assaultive behavior that cannot be reasonably dealt with in any other less intrusive fashion;
3. On any suspect who does not demonstrate an overt intention (1) to use violence or force against themselves, the officer or another person, or (2) to flee in order to resist or avoid detention or arrest, (3) actively resist arrest;
4. On any subject demonstrating only passive resistance unless clear warnings are given by the officer who will then be responsible for administering the application of the CEW on the subject;
5. In any environment where an officer knows that a potentially flammable, volatile, or explosive material is present (including but not limited to OC spray with volatile propellant, gasoline, natural gas, or propane);
6. In any environment where the subject's fall could reasonably result in death (such as in water or on an elevated structure).

Avoid Extended Durations

Several law enforcement groups have set out 15 seconds (multiple applications or continuous) of CEW exposure as a significant safety point:

- Police Executive Research Forum (PERF), Community Oriented Policing Services (COPS), and US Department of Justice (DOJ) (March 2011)
- Int'l Association of Chiefs of Police (IACP) (April 2010)
- American Academy of Emergency Medicine (AAEM) (May 2011)
- National Institute of Justice (NIJ) (May 2011)
- Civil Rights Division, DOJ (December 2012)

Multiple Applications

- Officers should, unless faced with exigent circumstances, avoid exposing a subject to the simultaneous effect of multiple CEW devices.
- This applies to separate devices, and not a single device with multiple cartridges whose electrical output is governed by a rotational pulse controller or similar mechanism.

PERF Guideline 21

“Personnel should use [a CEW] for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary.”

“Personnel should consider that exposure to the [CEW] for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.”

“Any subsequent [CEW] applications [beyond 15 seconds] should be independently justifiable, and the risks should be weighed against other force options.

Awareness Training

- Officers who are not equipped with a CEW but work with and around officers who are, should receive familiarization training on the effects of the CEW.
- This is important so the non-CEW equipped officer can effectively assist in gaining control of a subject who has been exposed to the CEW.

Data Collection Recommendations (PERF)

- Date, time, location of incident
- The use of display, laser painting and/or arcing, and whether those tactics deterred a subject and gained compliance
- Identifying and descriptive information and investigative statements of the subject (including membership in an at-risk population), all personnel firing [CEWs], and all witnesses
- The type and brand of [CEW] used
- The number of [CEW] activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications

Data Collection Recommendations (PERF) Continued:

- Level of aggression encountered
- Any weapons possessed by the subject
- The type of crime/incident the subject was involved in
- Determination of whether deadly force would have been justified
- The type of clothing worn by the subject
- The range at which the [CEW] was used
- The type of mode used (probe deployment or drive stun)
- The point of probe impact on a subject with the device in probe mode
- The point of impact on a subject with the device in drive stun mode

Data Collection Recommendations (PERF) Continued:

- The point of impact on a subject with the device in drive stun mode
- Location of missed probe(s)
- Terrain and weather conditions during [CEW] use
- Lighting conditions
- The type of cartridge used
- Suspicion that subject was under the influence of drugs (specify if available)
- Medical care provided to the subject
- Any injuries incurred by personnel or the subject

Arrest – Related Death Prevention

IPICD Lesson Plan; Addressing risk factors; Awareness training for officers and civilian personnel

Minimum Training Standards

- POSTC accepts the CEW manufacturer's training standards as a minimum
 - Agencies should conduct scenario and stress training* in regards to the CEW
- Incorporate the CEW into multi-faceted training as opposed to a stand-alone topic
- Review recent court decisions
- Conduct training in how to document a subject's response to resistance

State of Connecticut Office of the Attorney General

- Policy & Lesson Plan reviewed by
 - Deann Varunes, POSTC Legal Advisor
 - Terrence O’Neill, Department Head