

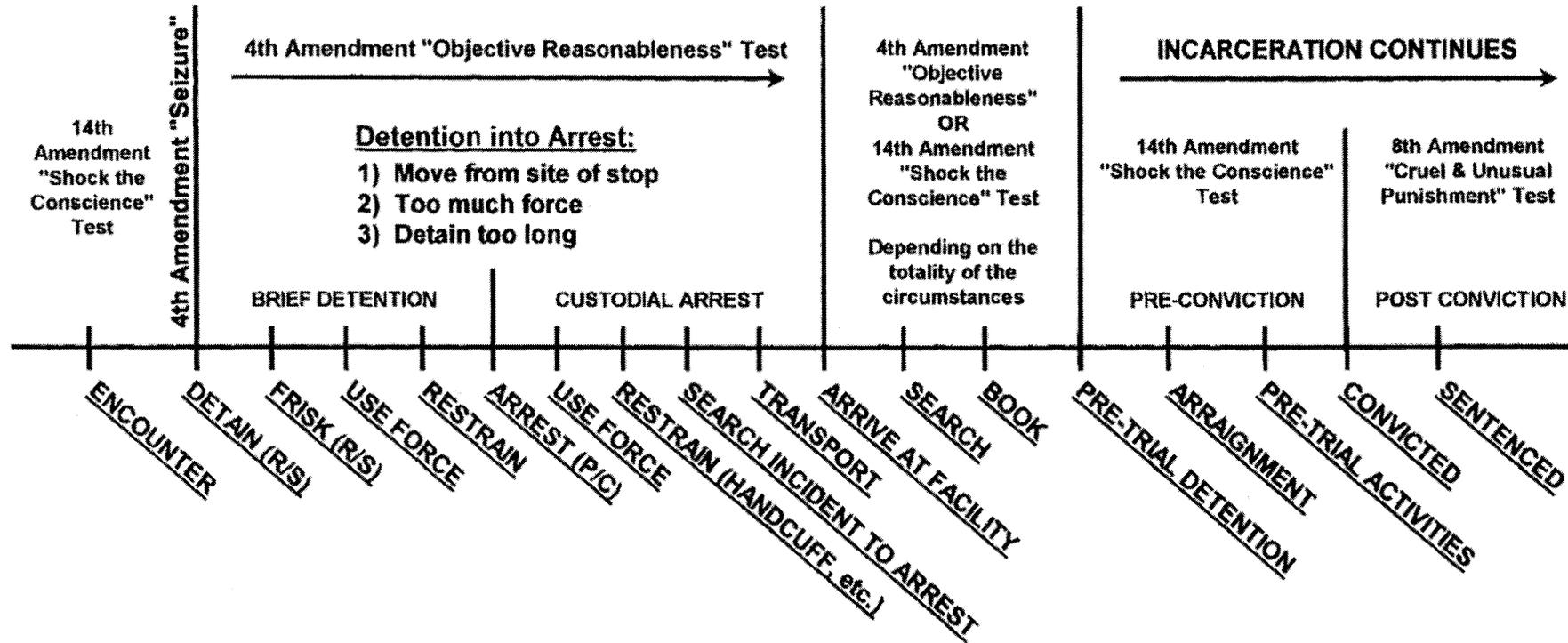
Step 1 - Create Incident Time Line:

Jurisdiction

Justification T-Scale - Concept — Everything that an officer does that has a negative impact on a person, property, etc. must be justified under the applicable established standards.

Jurisdiction, Action, Conduct, Injury, etc.	Compliance - Federal Standards (civil and criminal)	Compliance - More Restrictive (than Federal standards) State Standard(s) (civil and criminal)	Compliance - Policy, Training, Supervision, FTO Standards
1. Jurisdiction?			

USE of FORCE CONSTITUTIONAL STANDARDS TIMELINE



Medical Care Issues -- 14th Amendment "Due Process"
Test -- "Deliberate Indifference" to person's "Serious Medical Needs"

Use-of-Force Recipient Status Matrix

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Force Recipient	Free Person		Pre-Trial Detainee	Convicted and Incarcerated Person
	Seized Free Person - 4th Amendment Standard	Not Seized Free Person Under 4th Amendment		
Constitutional Amendment	4th Amendment - Federal Officers 14th Amendment - State/Local Officers	5th Amendment - Federal Officers 14th Amendment - State/Local Officers		8th Amendment - Fed Officers 14th Amendment - State/Locals
Use-of-Force Standard	Objective Reasonableness Standard (Objective Test)	Shock the Conscience - Deliberate Indifference Standards Due Process Clause (Subjective Tes)		Cruel & Unusual Punishment (Subjective Test)
Qualified Immunity	"every reasonable official would have understood that what he" did violated the law. <i>Ashcroft v. al-Kidd</i> , 131 U.S. 2011, 131 S. Ct. 2074, 2080 (2011) (emphasis added); <i>Pearson v. Callahan</i> , 555 U.S. 223, 129 S.Ct. 808 (2009); and <i>Saucier v. Katz</i> , 533 U.S. 194, 121 S. Ct. 2151, 150 L.Ed.2d 272 (2001).			
Some Leading Cases	<i>Graham v. Connor</i> , 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989); <i>Tennessee v. Garner</i> , 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); <i>Brower v. County of Inyo</i> , 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); <i>Scott v. Harris</i> , 550 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007); <i>Chew v. Gates</i> , 27 F.3d 1432 (9th Cir. 1994).	<i>County of Sacramento v. Lewis</i> , 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998); <i>Johnson v. Glick</i> , 481 F.2d 1028 (2 nd Cir. 1973), <i>cert denied</i> , 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973) <i>Bell v. Wolfish</i> , 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); <i>Rochin v. California</i> , 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952). See also <i>Brothers v. Klevenhagen</i> , 28 F.3d 452 (5 th Cir. 1994); <i>Valencia v. Wiggins</i> , 981 F.2d 1440 (5 th Cir.), <i>cert. denied</i> , 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993).		<i>Hudson v. McMillian</i> , 503 U.S. 1, 112 S.Ct. 995 (1992); <i>Wilson v. Seiter</i> , 501 U.S. 294, 111 S.Ct. 2321 (1991); <i>Whitley v. Albers</i> , 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986); <i>Estelle v. Gamble</i> , 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); <i>Hope v. Pelzer</i> , 536 U.S. 730, 122 S. Ct. 2508, 153 L.Ed.2d 666 (2002).
Use-of-Force Test Parameters	<p>- A "seizure" occurs when there is a "governmental termination of freedom of movement through means intentionally applied. <i>Brower</i>, 489 U.S. at 597. The 4th Amendment addresses "misuse of power," not the accidental effects of otherwise lawful conduct. <i>Brower</i>, 489 U.S., at 596.</p> <p>- Are the officers' actions "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation?</p> <p>- Reasonableness is determined by balancing the nature and quality of the intrusion with the countervailing governmental interests.</p> <p>- Reasonableness contemplates (<i>Graham</i>):</p> <ol style="list-style-type: none"> 1. Is the suspect an immediate threat to officers and/or others? 2. Is the suspect actively resisting seizure? 3. Are the circumstances tense, uncertain, and/or rapidly evolving? 4. What is the severity of the crime(s) at issue? 5. Is the suspect attempting to evade seizure by flight (trying to get away)? 	<p><i>County of Sacramento v. Lewis</i> - Police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. Holding - in such circumstances, "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." Two standards:</p> <p>(1) Where a state actor is afforded a reasonable opportunity to deliberate various alternatives prior to electing a course of action, the chosen action will be deemed "conscience shocking" if the action was taken with "deliberate indifference." <i>Lewis</i>, 118 S. Ct. at 1719.</p> <p>(2) In rapidly evolving, fluid, and dangerous situations which preclude the luxury of calm and reflective deliberation, a state actor's action will shock the conscience only if the actor intended to cause harm. See <i>Lewis</i>, 118 S.Ct. at 1720.</p> <p><i>Johnson v. Glick</i> - Four-Part "Shock the Conscience Test"</p> <ol style="list-style-type: none"> 1. The need for the use of force; 2. Relationship between that need and the amount of force that was used; 3. The extent of the injuries inflicted; and 4. Whether force applied was in good faith or maliciously and sadistically for the purpose of causing harm. 		<p><i>Whitley</i> held that only an "unnecessary and wanton infliction of pain" and "actions taken in bad faith and for no legitimate purpose" are a cruel and unusual punishment.</p> <p><i>Hudson</i> stated that the <i>Whitley</i> standard applies in both prison-riot and non-riot contexts. <i>Hudson</i> also held that all excessive force claims must show malice, sadism, and intent to cause harm.</p> <p><i>Hudson</i> also held the 5th Circuit's "significant injury" requirement was improper under the 8th Amendment analysis.</p> <p><i>Hope</i> - The policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the 8th Amendment.</p>

UNDERSTANDING THE 4TH AMENDMENT'S OBJECTIVE REASONABLENESS STANDARD

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Balancing Test (*Graham*): reasonableness inquiry requires a careful balancing of the nature and quality of the intrusion (use of force) on the individual's 4th Amendment interests against the countervailing governmental interests at stake.

Risk/Benefit Test (*Scott*): In judging whether the Law Enforcement Officer's (LEO's) actions were reasonable, we must consider the risk of bodily harm that LEO's actions posed to the subject in light of the threat to the public posed by the subject that the LEO was trying to eliminate.

Reasonableness at the Moment Force is Used (*Graham*): reasonableness test considers that LEOs are often forced to make split-second judgments-in-circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

Reasonableness Test (*Graham*): requires careful attention to the facts and circumstances of each particular case, including:

- whether the subject poses an immediate threat to the safety of officers or others,
- whether the subject is actively resisting arrest or attempting to evade arrest by flight, and,
- the severity of the crime at issue,

Reasonable LEO's Perspective (*Graham*): The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable LEO on the scene, rather than with the 20/20 vision of hindsight.

Objective Test (*Graham*): whether LEOs actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Each Force Application Must be Justified: Each strike, OC use, force application, trigger pull, 5-second CEW cycle must be legally justified.

All Force Must be Unambiguously Justified in LEO's Reports/Statements: Any factor used to justify use of or escalation of force must be explained.

Basic Test of "Objective Reasonableness" <i>Graham</i> risk prioritized by <i>Chew</i>	Not an <i>Intentional</i> Immediate Threat/Flight Risk Person In Need of Medical Assistance Due to Mental Health, Drugs, or Illness	Additional (minimum passive) Force Factors (<i>Mattos/Brooks</i>) Force To Gain Volitional Compliance (Person not an immediate threat or flight risk)
<ol style="list-style-type: none"> 1. Immediate threat <ul style="list-style-type: none"> - beware "<i>possible</i>" threat fallacy 2. Actively resisting seizure 3. Circumstances tense, uncertain rapidly evolving (pace of events) 4. Severity of crime at issue 5. Attempting to evade seizure <ul style="list-style-type: none"> - by flight - flight from serious event <p style="text-align: center;">Additional Basic Factors</p> <ol style="list-style-type: none"> 6. Availability of alternative methods of capturing, controlling, restraining, or subduing subject 7. What officers knew about subject's health, mental condition, or other relevant frailties 	<p>Mentally ill/Drugs (<i>Bryan v. MacPherson</i>): LEO should make greater effort to control situation through less intrusive means.</p> <p>Some courts believe acting out by emotionally disturbed person diminishes the level of force necessary and such persons are in need of a doctor, not a jail cell and in the usual case – where such a person is neither a threat to himself or anyone else—the government's interest in deploying force to detain him is not as substantial as its interest in deploying force to apprehend a dangerous criminal.</p> <p>Pain: If pain is used to gain compliance, (1) consideration of whether person will perceive the pain and (2) be able to comply with LEO's commands.</p> <p>Distraction: must be able to articulate that force used for distraction to assist custody is reasonable.</p>	<p>Person must be given reasonable opportunity to comply with directives prior to each X26 ECD drive-stun application</p> <p>LEO:</p> <ol style="list-style-type: none"> 1. must not have a reasonable perception that person is not capable of volitional compliance to commands, 2. must reasonably perceive person is "actively resisting," 3. must give warning of imminent application of force, 4. must give person a reasonable: <ol style="list-style-type: none"> a. time "to recover from extreme pain" experienced, b. opportunity to "gather herself," c. opportunity to "consider her refusal to comply," 5. the duration of time between each X26 ECD drive-stun application (according to <i>Mattos</i>) must be > 36 seconds, and 6. LEO needs to include in report that before each X26 ECD drive-stun used to attempt to gain the person's volitional compliance LEO followed these guidelines. <p>Consider Alternates: less risk of injury ("Quantum of Force")</p> <p style="text-align: center;">(Some courts may require greater justification)</p>

SEIZURE CHART

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<p align="center">Encounter (No Basis for "Seizure")</p>	<p align="center">4th Amendment Seizure (4th Amendment "Seizure" of a "Free Person")</p>		
<p align="center">DO NOT - STOP DO NOT - DEMAND ID DO NOT - USE FORCE</p> <p align="center">DO - ASK TO TALK DO - ASK FOR ID DO - ASK FOR EXPLANATION</p>	<p align="center">Detention/Frisk <u>Terry v. Ohio</u>, 392 U.S. 21, 88 S.Ct. 1868 (1968) "Reasonable Articulate Suspicion"</p>	<p align="center">Arrest "Probable Cause"</p>	
	<p align="center"><u>Brief Detention</u></p> <p>- While the officer diligently investigates his/her suspicions</p> <p align="center">"Reasonable Articulate Suspicion"</p> <p>To believe that:</p> <ol style="list-style-type: none"> (1) a crime has been committed, (2) a crime is being committed, or (3) a crime is about to be committed; AND (4) the person about to be stopped is the person who did one of the above. <p align="center">The Procedure:</p> <ol style="list-style-type: none"> (1) After identifying as a police officer (2) an officer may stop a person: <ol style="list-style-type: none"> (a) in a public place (b) for a reasonable period of time (c) when the officer reasonably suspects that such person is committing, is about to commit, or has committed a crime. (3) Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped <p>The officer must diligently pursue his/her suspicions.</p>	<p align="center"><u>(Pat) Frisk - for Weapons</u></p> <p align="center">AFTER - Lawful Detention</p> <p align="center">"Reasonable Articulate Suspicion"</p> <ol style="list-style-type: none"> (1) The officer reasonably believes (2) that the lawfully detained person (3) is armed and/or dangerous or that the officer or another is in danger of physical injury, (4) the officer may search (pat frisk) such person for weapons or any instrument, article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. (5) If the officer finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, or which may constitute a threat to his safety, (6) the officer may take it and keep it until the completion of the questioning; (7) at completion of the questioning the officer shall either return it, if lawfully possessed, or arrest the person so questioned 	<p>Probable Cause - a "fair probability" that a crime has been committed and the person being seized has committed it</p>