

# ICE Principle

**I**.solate  
**C**.ontain  
**E**.ngage

# Doctrine of Necessity

The Least amount of force  
Reasonable

is

The greatest amount of force  
that is  
Necessary

Fact is  
perception  
based

Subjective  
Honest  
Belief

# Reasonable Belief

Belief...ultimately must be found to be  
reasonable...

# Reasonable Mistake in fact

Objective  
Reasonable  
Officer  
Reasonable  
&  
Necessary

There is no perception  
without the influence  
of emotions....

Past Experience  
dictates perception

Perceptual Habits fill  
in the blanks

# ***F.O.R.C.E.***

**F**ourth Amendment

**O**bjectively

**R**easonable

**C**ontrol

**E**ngagement

1. Dynamic multi-tasking event
2. Fight-Flight Response
3. 80/20 Rule
4. Adrenaline(fear)
5. Nor-adrenaline(rage)
6. Adrenaline narrows the Visual field
7. Conscious Thinking shuts down
8. Automatic Thinking engages below conscious level
9. Perceptual Routines Engage
10. Target fixation
11. Tunnel vision–Zoom Lens
12. Auditory exclusion
13. Time Distortion
14. Brain Lock (Freeze)

Totality of  
***Known***  
Facts  
&  
Circumstances

...counter defensive force must be based  
on sincere belief as opposed to anger,  
malice, or revenge...

Severity of offense

Level of *active*  
resistance

Immediate Threat

Flight

Nature of sustained  
injury

**P**erformance of his duties

**C**olor of law

**P**robable **C**ause

**A**rticulate **S**uspicion

- Objective Reasonableness Standard
- Negligent standard
- Gross negligence standard
- Reckless Standard
- Deliberate indifference standard
- Shocks the conscience standard

**"Physical injury"** means

impairment of physical condition or  
pain;

**"Serious physical injury"**

means physical injury which creates a  
substantial risk of death, or  
which causes serious disfigurement,  
serious impairment of health or  
serious loss or impairment of the  
function of any bodily organ;

**"Deadly physical force"** means

physical force which can be reasonably  
expected to cause death or serious  
physical injury;

**“D**eadly weapon”

means any weapon designed for violence and is capable of causing serious physical injury...billy, blackjack, bludgeon ( police Baton ), taser.

**"D**angerous instrument" means any

instrument, article or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury, and includes a "vehicle"...

**53a-3(11)** A person acts **"intentionally"** with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct;

Shoot to Kill?  
Shoot to Stop?  
Shoot until Dead?

**I.C.E.**

Direct  
Measure  
Proportionate

Form/Content Threat

Time/Motion

Distance/Cover

Weapon system

Officer/Subject Factors

Capability

Opportunity

Intent (verbal/non-verbal)

*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.*

*Maria Salim, Administratrix v. William Proulx, 93 F 3d 86, 92 (2nd Cir.1996)*

*“In assessing reasonableness...it is necessary to consider whether the officer could have reasonably and safely removed himself from deadly physical force risk without resorting to the use of deadly physical force”.*

# Graham v Connors Standard

- (1) *the severity of the crime at issue,*
- (2) *whether the suspect poses an immediate threat to the safety of the officers or others,*  
*and*
- (3) *whether he is actively resisting arrest or attempting to evade arrest by flight.*"
- (4) *Nature of injury sustained*

"[A] factfinder may infer an *intent to cause serious physical injury* from circumstantial evidence such as the:

- (1) *The type of weapon used,*
- (2) *The manner in which it was used,*
- (3) *The type of wound inflicted and*
- (4) *The events leading up to and immediately following the incident."* State v. James, supra, 54 Conn. App. 31. "

A police officer is justified in using deadly physical force under the relevant self-defense statute, CGS § 53a-22, only when (1) he reasonably believes such force to be necessary (2) to defend himself or a third person from the use or imminent use of deadly physical force.

**...reasonableness is to be judged from the perspective of a reasonable police officer...**

The Connecticut test for the degree of force in self-defense is a subjective-objective one. The jury must view the situation from the perspective of the officer. CGS Section 53a-22 requires that the officer's **belief ultimately must be found to be reasonable.**

The reasonableness of the officer's belief under CGS § 53a-22 should be evaluated pursuant to the subjective-objective formulation. Under that test, the jury must first determine whether, on the basis of all the evidence, the defendant in fact honestly believed that deadly force, **rather than some lesser degree of force,** was necessary to repel the suspect's alleged attack. If the jury determines that the officer honestly believed that deadly force was necessary, it then turns to the second, or "objective," part of the test. Here, the jury's inquiry requires it to determine whether the officer's honest belief was reasonable.

As a general rule, police officers are entitled to **qualified immunity** if:

- (1) their conduct does not violate clearly established constitutional rights, or
- (2) it was objectively reasonable for them to believe their acts did not violate those rights.' Oliveira v. Mayer, 23 F.3d 642, 648 (2d Cir. 1994)."



## Force Paradigm:

Tennessee v Garner - 1985

Graham v Connor - 1989

Salim v Proulx - 1996

State of Connecticut v Smith - 2002

C.G.S. 53a-22

## *13thjuror, LLC*

*Tennessee v. Garner* and *Graham v. Connor* ...“where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

### Garner Rule

- The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. Where the suspect poses no immediate threat to the officer, and no threat to others...a police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.
- Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to officers or others, it is constitutionally reasonable to prevent escape by using deadly force. If the suspect threatens the officer with a weapon, or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been give.
- These are the elements addressed in Sec. 53a-22, Use of physical force in making arrest or preventing escape, Connecticut General Statutes.

Section § 53a-22, entitled "[u]se of physical force in making arrest or preventing an escape," applies to peace officers. It provides in relevant part: "A peace officer . . . is justified in using deadly physical force upon another person [to effectuate an arrest or to prevent an escape, or to defend himself or a third person from the use or imminent use of physical force while doing so] only when he reasonably believes such to be necessary to:

- Defend himself or a third person from the use or imminent use of deadly physical force; or
- effect an arrest or prevent the escape from custody of a person whom he 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 has given warning of his intent to use deadly physical force." (Emphasis added.) General Statutes § 53a-22 (c).

***There is no “magical on/off Switch”***

***Reginald F. Allard, Jr.***

## *13thjuror, LLC*

The *test for evaluating self-defense claims pursuant to § 53a-22* is a subjective-objective test. The jury is required, first, to determine whether the defendant honestly believed that the use of deadly force was necessary in the circumstances. If, however, the jury determines that the defendant in fact had believed that the use of deadly force was necessary, the jury must make a further determination as to whether that belief was reasonable, from the perspective of a reasonable police officer in the defendant's circumstances. *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989) (evaluating reasonableness of police officer's belief that deadly force justified in context of fourth amendment excessive use of force claims, stating that "[t]he [objective] reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight"); *Weyel v. Catania*, 52 Conn. App. 292, 296, 728 A.2d 512 (all claims that law enforcement officers have used **excessive force** in the course of an arrest, whether deadly force or not, should be analyzed under the reasonableness standard of the fourth amendment), cert. denied, 248 Conn. 922, 733 A.2d 846 (1999).

...the test for determining whether a police officer's use of deadly force was reasonable is to be judged according to the subjective/objective formulation used in evaluating self-defense claims under § 53a-19. With respect to the objective part of the test, however, the **reasonableness is to be judged from the perspective of a reasonable police officer.**

The objective part of the test under General Statutes § 53a-19 requires the jury to measure the *defendant's honest belief* against the *standard of a reasonable person* in the defendant's circumstances. *State v. Prioleau*, 235 Conn. 287.

In addressing the objective part of the test under General Statutes § 53a-22, however, the ***standard is that of a reasonable peace officer.***

### ***Davis v. Little, 851 F.2d 605 (2nd Cir. 07/12/1988)***

The *collective knowledge* of the police may bear directly on the legality of a decision to arrest a suspect, but *reasonableness is to be determined in reference to the specific circumstances, acts, and individuals involved in effecting the arrest.* Cf. *United States v. Valez*, 796 F.2d 24, 26 (2d Cir. 1986) (difference between probable cause to arrest a suspect and reasonable belief that individual was the suspect in question), cert. denied, 479 U.S. 1067, 107 S. Ct. 957, 93 L. Ed. 2d 1005 (1987). Probable cause goes to the underlying validity of the arrest; reasonableness goes to the way in which the arrest was carried out.

To determine the constitutionality of a seizure "we must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." . . . Because one of the factors is the *extent of the intrusion*, it is plain that ***reasonableness depends on not only when a seizure is made, but also how it is carried out.***

***Reginald F. Allard, Jr.***