

Raising the Standard for Using Force

Dan Sutton

For decades, a series of U.S. Supreme Court rulings have dominated debates and decisions about when police can use force. Specifically, *Graham v. Connor*, which the Supreme Court decided in 1989, has shaped the contemporary understanding of acceptable policing practices.¹ This pivotal ruling guided lower courts in evaluating constitutional and federal excessive force claims by introducing an “objectively reasonable” standard for assessing excessive force that rises to the level of violating an individual’s 4th Amendment rights.²

The influence of the *Graham* decision on policing has been profound and extensive.³ In a 2014 article in Police Magazine, an experienced officer likened the case to “part of our law enforcement DNA, often unnoticed as it works in the background to determine our actions.”⁴ “A generation of officers,” the veteran sergeant explained, “has been trained in the case’s practical meaning and has spent decades applying it to every use of force decision.”⁵ A 2019 study found that all the force policies from the nation’s 75 largest cities contained a reference to *Graham’s* reasonableness standard.⁶ The same language appears in federal law enforcement agency policies, and the standard has been invoked to justify many recent uses of force by immigration agents, including fatal shootings of U.S. citizens.

But there is a growing trend among forward-thinking law enforcement agencies to recognize that *Graham* establishes only a floor, not a ceiling, for use of force policies. Our recent research shows that nearly half of the police agencies in America’s 100 largest U.S. cities have now adopted some version of a “necessary” standard for force use that surpasses the “objectively reasonable” standard set by *Graham v. Connor*.⁷ These agencies are, in the words of the Oakland Police

KEY TAKEAWAYS

***Graham v. Connor* establishes a troublingly low threshold for police behavior.** The Supreme Court’s “objectively reasonable” standard provides officers with significant discretion in use of force situations, creating what experts describe as “lawful but awful” incidents that meet constitutional requirements but fall short of community expectations.

Police departments are already moving beyond constitutional minimums. Our research shows that 48% of departments in America’s 100 largest cities have adopted “necessary” standards that exceed *Graham’s* requirements, demonstrating that higher standards are both achievable and already in practice.

The Model Use of Force Policy provides a framework for raising standards through four core principles: officers must use non-force options before resorting to force, employ only minimum necessary force for lawful objectives, ensure force is both necessary and proportionate, and consider totality of circumstances.

Department's policy, going "beyond the Constitutional minimum" to develop more comprehensive and restrictive force regulations that may better reflect their communities' values and the imperative to avoid unnecessary force.⁸

The Stanford Center for Racial Justice's **Model Use of Force Policy** embraces these trends in American law enforcement and advances an approach that expands on the *Graham* standard, proposing a straightforward checklist of threshold requirements that must be met for an officer to be authorized to use force.⁹ These requirements rest on four core principles: officers must use available non-force options and issue a verbal warning before resorting to force; force should only be employed to achieve a lawful objective, and only the minimum force necessary should be used; the force used must be both necessary and proportionate to the situation; and the totality of the circumstances should be considered when evaluating any use of force—a principle unanimously reaffirmed by the U.S. Supreme Court in *Barnes v. Felix* (2025).¹⁰

Concerns about unnecessary force cut across America's political divides. For example, after the January 6th, 2021 killing of Ashli Babbitt by a U.S. Capitol Police officer, President Trump denounced the shooting as "unthinkable" and "a disgrace."¹¹ Although the Biden-era Justice Department concluded the officer's actions did not violate federal law, the Trump administration later agreed to a nearly \$5 million settlement with Babbitt's family, illustrating how debates over force standards resonate well beyond partisan lines.¹²

Drawing from our research and analysis of leading practices, this policy brief examines the limitations of the current constitutional standard, documents how police departments are already moving beyond these minimums, and outlines a framework for higher standards in authorizing force that can help create safer communities while maintaining effective policing. The evidence suggests that raising the standard is not only possible but already happening—and that this trend represents a modest, achievable path toward better policing practices.

THE GRAHAM STANDARD: A PROBLEM WITH CONSTITUTIONAL POLICING

In *Graham*, the Supreme Court established an "objectively reasonable" standard for assessing police excessive force that rises to the level of violating an individual's 4th Amendment rights.¹³ This means that when evaluating potential civil or criminal liability for excessive force under 42 U.S.C. § 1983, federal courts examine the perspective of a "reasonable officer" at the scene, acknowledging the split-second decisions officers often face.¹⁴ Though the *Graham* Court characterized the standard as objective, courts often shift the focus from the officer's actions to their mental state, questioning if the officer's belief was reasonable, regardless of the outcome.¹⁵ This interpretation provides officers with significant discretion in use of force situations, and courts and juries evaluating those force decisions after the fact have similarly broad discretion in deciding whether to impose legal liability.¹⁶

Legal scholars continue to debate whether the Supreme Court correctly interpreted the Fourth Amendment's safeguards.¹⁷ But the significant influence of *Graham* is evident in the language of force regulations across the country. The Irving, Texas Police Department, for instance, states "The U.S. Supreme Court case of *Graham v. Connor* established 'Objective Reasonableness' as the standard for all applications of force in the United States."¹⁸ As police departments have increasingly set out to practice constitutional policing—policing that respects the rights and freedoms guaranteed by the U.S. Constitution—the *Graham* standard has become a defining benchmark of what constitutional policing requires.

This is problematic because the *Graham* standard is a troublingly low threshold for police behavior. How low of a standard is it? When Sacramento police officers fatally shot Stephon Clark six times in the back because they thought the phone in his hand was a gun, California Attorney General Xavier Becerra determined that they reasonably believed they

were in danger.¹⁹ After an Atlanta police officer shot and killed a fleeing Rayshard Brooks, who had grabbed an officer's Taser and fired the incapacitating weapon at officers as he fled, a special prosecutor announced that the officer's use of deadly force was objectively reasonable.²⁰ Chuck Wexler, the executive director of the Police Executive Research Forum, has described similar incidents as "lawful but awful" because the Supreme Court's constitutional standard shields officers in these situations from criminal prosecution or civil liability.²¹

Despite calls for reforming Fourth Amendment doctrine to more effectively regulate use of force, the current Court has shown strong reluctance to revisit the core tenets of *Graham*.²² This consistent adherence to objective reasonableness, along with the Court's conservative majority and its tendency to favor the interests of law enforcement, indicates that the constitutional policing standard is likely to remain unchanged for the foreseeable future.²³

There is a more modest path. Policymakers should recognize that *Graham* sets a baseline, not the ultimate standard, for use of force policies. Some police agencies are already embracing this approach, recognizing that constitutional requirements can serve as a starting point for policy development, rather than an end goal.

Our research has shown that agencies are already reaching beyond constitutional minimums.²⁴ Using a dataset of use of force policies collected from the 100 largest U.S. cities through 2023, we found that 48% of police departments have adopted some version of a "necessary" standard for force use that exceeds *Graham*.²⁵ We also demonstrated that by 2023, 79% of the 100 departments had reformed their policies to include de-escalation mandates, another more stringent constraint on officer discretion than constitutional law requires.²⁶

How are these higher standards framed in practice? The Albuquerque Police Department explicitly states it "holds Department personnel to a higher standard than that articulated in *Graham v. Connor...*"²⁷ In bold capital letters, the Cleveland Division of Police underscores that "**OFFICERS SHALL USE ONLY THE AMOUNT OF FORCE**

As a federal appellate court has explained, "A city can certainly choose to hold its officers to a higher standard than that required by the Constitution without being subjected to increased liability. To hold that cities with strict policies commit more constitutional violations than those with lax policies would be a violation of common sense."

NECESSARY TO ACHIEVE A LAWFUL OBJECTIVE," (emphasis in original) while Tampa's policy authorizes "only the minimum level of force necessary to control the situation."²⁸

Opponents of raising use of force standards argue that these policy changes will handcuff officers, causing hesitation in their responses that could jeopardize their safety.²⁹ But this argument is difficult to sustain given that most departments have already implemented precisely these kinds of restrictions.³⁰ Chokehold bans, which restrict a force technique that could satisfy *Graham*'s objective reasonableness standard depending on the circumstances, surged from 22% in 2015-2016 to 92% in 2023, a dramatic shift among the 89 departments for which we have data for both periods.³¹

Another critique is that standards appearing to conflict with *Graham* will confuse courts and expose officers and their municipalities to more liability. However, courts have

recognized that departments can set higher standards without creating additional legal exposure. As the U.S. Court of Appeals for the Sixth Circuit explained in *Smith v. Freland* (1992), “A city can certainly choose to hold its officers to a higher standard than that required by the Constitution without being subjected to increased liability under [42 U.S.C. § 1983]. To hold that cities with strict policies commit more constitutional violations than those with lax policies would be an unwarranted extension of the law, as well as a violation of common sense.”³²

Departments have identified ways to address this concern within their own regulations. The Arlington Police Department’s policy acknowledges the tension between *Graham* decision and the agency’s intent to impose higher standards, stating, “Oftentimes the department requires employee conduct that exceeds civil and criminal legal standards.”³³ It clarifies that policy violations will only form the basis for departmental administrative sanctions, while legal violations—e.g. unconstitutional conduct under *Graham*—will be subject to civil and criminal sanctions in judicial settings.³⁴

The Model Use of Force Policy embraces these trends in law enforcement and advances an approach that expands on the *Graham* standard.³⁵ Drawing from the practices that nearly half of major departments have already adopted, it recommends establishing a straightforward checklist of threshold requirements that must be met for an officer to be authorized to use force—a modest policy reform that builds on proven practices.

THE MODEL USE OF FORCE POLICY’S APPROACH TO AUTHORIZING FORCE: NECESSARY AND PROPORTIONATE

The Model Use of Force Policy’s approach to authorizing force is rooted in a set of common-sense concepts that our research

shows are increasingly adopted in American policing. To the extent there is novelty in the Model Policy’s approach, it lies not in the basic concepts themselves but in pulling them together into a coherent framework that both police and their communities can get behind, something that has largely eluded criminal justice policymakers. These requirements distill into four core principles:

1. Officers must use available non-force options and issue a verbal warning before resorting to force.
2. Force should only be employed to achieve a lawful objective, and only the minimum force necessary should be used.
3. The force used must be both necessary and proportionate to the situation.
4. The totality of the circumstances should be considered when evaluating any use of force—a principle unanimously reaffirmed by the U.S. Supreme Court in *Barnes v. Felix* (2025).

Working together, these principles create a framework that can minimize the use of unnecessary force and ensure safe, fair, and effective policing.

USING AVAILABLE NON-FORCE OPTIONS

The Model Policy’s approach starts with a simple premise that many communities and police agree on: officers should avoid using force if there are other, non-force options available to safely resolve a situation.³⁶ These non-force options include de-escalation tactics, reducing an officer’s exposure to potential threats, and verbal warnings. The Model Policy requires officers to issue verbal warnings before using force because they can often lead to a person’s compliance.

De-escalation techniques are tools of first resort. Officers must attempt to use these techniques before resorting to force, with the goal of stabilizing the situation and reducing the intensity

of the potential threat. Turning to non-force options first can significantly influence public perceptions of law enforcement, building trust and legitimacy over time.

LAWFUL OBJECTIVE

The Model Policy stipulates that officers can only employ force to achieve a specific “lawful objective,” and even then, only the minimum amount the officer believes is feasible to carry out the objective. There are a limited number of lawful objectives: (1) conducting a lawful search; (2) preventing serious damage to property; (3) effecting a lawful arrest or detention; (4) gaining control of a combative person; (5) preventing and/or terminating the commission of a crime; (6) intervening in a suicide or self-inflicted injury; and/or (7) defending an officer or another person from the physical acts of another.

Central to these objectives is the respect for the value and sanctity of human life. Objectives like controlling a combative individual, intervening in self-harm, or defending against threats are tailored to minimize harm to all involved, including the individual in question. While the required level of force may vary, the core principle remains preserving human life. Objectives like lawful searches, arrests, or preventing the commission of crimes, on the other hand, relate more to past, present, or prospective unlawful actions, and permit officers to act in ways that shield the wider community from such conduct.

NECESSITY AND PROPORTIONALITY

Necessity and proportionality are critical components of an effective use of force standard. The Model Policy emphasizes both when officers use any form of force. It states that force should only be employed when it is essential for fulfilling a lawful objective and must be in proportion to the situation’s full context.

For a use of force to qualify as necessary, there should be no other viable alternatives for the officer to achieve the lawful

objective. If non-force or less aggressive options are available, or if the force does not align with the Lawful objective, then it is deemed unnecessary. This principle’s importance becomes clear in an incident in Windsor, Virginia, where officers stopped U.S. Army Lieutenant Caron Nazario for an alleged license plate issue.³⁷ Body camera footage reveals that despite Lt. Nazario’s speaking calmly with officers and making no threatening movements, the officers drew their guns and later pepper sprayed him. This incident underscores the need for a strict necessity standard, as the force used was not necessary for the officers’ objectives.

The January 2026 killing of Renée Good by an ICE agent in Minneapolis presents another stark example: video footage shows Good appearing to drive away from agents when she was shot three times, contradicting federal officials’ claims that she was attempting to run over officers. The shooting raises serious questions about whether alternatives to lethal force were available.

Proportionality extends beyond necessity. Even if the force is necessary to achieve the lawful objective, it must also match the threat posed to the officer or public. Consider an incident in Loveland, Colorado, where officers arrested Karen Garner, a 73-year-old, 80-pound woman with dementia, for alleged minor theft.³⁸ Their response—forcibly restraining and injuring Garner—was clearly disproportionate to her actions and the threat she posed. This example highlights the need for a proportional standard, guiding officers to evaluate and match their response to the situation’s true demands.

Another recent immigration enforcement encounter, the shooting of Alex Prett, illustrated how proportionality failures can compound. Video of the incident showed Prett, who was holding a cell phone, not a weapon, surrounded by at least five officers who wrestled him to the ground. One agent removed Prett’s legally carried firearm from his waistband—rendering him even less of a threat—and then two agents shot him approximately ten times.

The Model Policy underscores that necessity and proportionality should be assessed at the time of the incident.

What may be necessary and proportionate at the outset of an officer’s interaction can quickly become inappropriate as the situation evolves. Officers must therefore remain vigilant and continually reassess the changing dynamics of their interactions.

TOTALITY OF THE CIRCUMSTANCES

Running throughout the Model Policy’s approach is another principle dating back to *Graham*: the analysis of whether force is appropriate should consider the facts and circumstances of the situation.³⁹ A “totality of the circumstances” analysis positions officers, and the courts who may eventually judge their decisions, to take into account multiple factors that can improve decisions about using force. This assessment can encompass several considerations: the feasibility of de-escalation tactics, the time available for a person to comply, the person’s physical and mental ability to comply, the presence of bystanders, potential consequences and risks—including escape, and the initial reason for engagement with the person. Despite the practical importance of this approach—since the circumstances leading up to an officer’s choice likely bear on how the officer responds—courts have not always agreed on which circumstances should be considered when evaluating use of force.⁴⁰

In *Barnes v. Felix* (2025), the Supreme Court settled this question, reaffirming that courts analyzing the reasonableness of an officer’s use of force under *Graham* must look at the “totality of the circumstances.”⁴¹ The case involved Ashtian Barnes, a 24-year-old Black man killed by Officer Roberto Felix Jr. during a 2016 traffic stop outside Houston.⁴² Barnes was pulled over for unpaid tolls linked to the car’s license plate, though he was not responsible for the debt.⁴³ When Barnes began to drive away with his car door open, Felix jumped onto the moving vehicle and shot him twice.⁴⁴

The Fifth Circuit had previously ruled for the officer under its “moment of threat” doctrine, treating the events “leading up to the shooting” as “not relevant,” and limiting its consideration to the final two seconds when Felix was clinging to the moving

car.⁴⁵ Writing for a unanimous Court, Justice Elena Kagan explained that the totality of the circumstances has no time limit and that in excessive force cases courts must look at “any relevant events coming before.”⁴⁶ The Court’s ruling reinforces the Model Policy’s emphasis on considering the full picture when making force decisions, an approach that is both legally sound and practically effective.

CONCLUSION

The evidence from our research is clear: nearly half of the police departments in America’s largest cities have already recognized that *Graham* defines a floor, not the ceiling, for acceptable force policies. The Model Policy’s approach—a necessary and proportionate standard for authorizing force—brings these emerging practices together into a coherent framework. This path forward is not revolutionary but evolutionary, building on what forward-thinking agencies have already put into practice.

Rather than waiting for change from Washington or the courts, communities and their police departments can act now. This represents a significant opportunity for police departments: it offers a powerful framework to align a community’s values with the operations of its police force. Effective policing ultimately goes beyond meeting minimum legal requirements, recognizing constitutional standards as the starting point for building more robust, community-responsive policies.

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About the Author

Dan Sutton directs research on AI, public safety, and economic opportunity at Stanford Law School's Center for Racial Justice, where his work examines the intersection of AI and the criminal justice system, policing regulations, and model use of force policies that have shaped regulations across the United States. His approach to research is informed by his experience in federal, state, and local government navigating complex public policy challenges. On the Rhode Island Attorney General's leadership team, he designed criminal justice and police reform initiatives and negotiated settlements stemming from the nationwide opioid crisis; he also held senior economic policy positions in Governor Gina Raimondo's Executive Office of Commerce. During Detroit's historic bankruptcy, Dan advised the city's Emergency Manager on rebuilding the city's finances and services, and earlier in his career worked on national security issues at the White House Office of Management and Budget during the Obama administration. He teaches law and policy courses at Stanford and has advised law enforcement agencies, policymakers, and technology startups. Dan received his JD from the University of Michigan Law School and is a graduate of the Georgetown University School of Foreign Service.

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Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305
scrj@law.stanford.edu