

Use of Deadly Force by Law Enforcement Officers

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Issue

Summarize the law on the use of deadly force by peace officers. (This report updates OLR Report [2020-R-0169](#).) **This report has been updated by OLR Report [2021-R-0094](#).**

Summary

The U.S. Constitution and Connecticut law allow a peace officer (i.e., law enforcement officer) to use deadly physical force on others only under certain circumstances that involve the infliction or threatened infliction of serious physical injury. Under state law, beginning on April 1, 2021, officers will no longer be able to use deadly force for threatened infliction of serious physical injury ([PA 20-1](#), July Special Session (JSS)).

Under existing case law, the test for evaluating whether an officer was justified in using deadly force is based on a subjective-objective test. The jury must determine whether the officer honestly believed deadly force was necessary. If the jury determines 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 officer in the defendant's circumstances. Beginning on April 1, 2021, a new law provides statutory factors in determining whether deadly force was reasonable.

PA 20-1, JSS, among other things, established the Office of the Inspector General (OIG), which is an independent office within the Division of Criminal Justice (DCJ). OIG must investigate use of deadly force cases and prosecute cases where the inspector general determines the force was not justified. (The position has not yet been filled.)

For answers to some frequently asked questions on deadly use of force, see the Department of Emergency Services and Public Protection (DESPP) [website](#).

Constitutional Requirements for Using Deadly Force

The U.S. Supreme Court has ruled that the Fourth Amendment to the U.S. Constitution prohibits the use of deadly force to effect an arrest or prevent the escape of a suspect unless the police officer reasonably believes that the suspect committed or attempted to commit crimes involving the infliction or threatened infliction of serious physical injury and a warning of the intent to use deadly physical force was given, whenever feasible (*Tennessee v. Garner*, 471 U.S. 1 (1985)).

The Court has said that the test of reasonableness under the Fourth Amendment is not capable of “precise definition” or “mechanical application” (*Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). The Court goes on to state, “[t]he reasonableness of a particular use of force must be viewed from the perspective of a reasonable officer at the scene, rather than with 20/20 vision of hindsight” (*Graham v. Connor*, 490 U.S. 396, 397 (1989)). Additionally, there must be “allowance for the fact that police officers 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.”

The question is whether the officers' actions are “objectively reasonable” considering the facts and circumstances confronting them.

Statutory Standards for Using Deadly Physical Force

Until April 1, 2021, the law authorizes peace officers to use deadly physical force only when they reasonably believe it is necessary to:

1. defend themselves or a third person from the use or imminent use of deadly physical force or
2. (a) arrest a person they reasonably believe has committed or attempted to commit a felony that involved the infliction or threatened infliction of serious physical injury; or (b) prevent the escape from custody of a person they reasonably believe has committed such a felony ([CGS § 53a-22\(c\)](#) as amended by [PA 19-90](#)).

The law requires officers to provide a warning, when feasible, of their intent to use deadly force when they arrest or prevent the escape of someone during the aforementioned circumstances.

Beginning April 1, 2021, PA 20-1, JSS narrows the circumstances under which an officer is justified in using deadly physical force by eliminating the justifications based on the threatened infliction of serious physical injury.

The act also establishes specific conditions that must be met in those circumstances in which deadly physical force may be justified. For those situations, the act requires that the officer's actions be objectively reasonable given the circumstances (see below). In situations where an officer is making an arrest or preventing an escape, the act additionally requires that the officer (1) exhaust the reasonable alternatives to the use of deadly physical force and (2) reasonably believe that the force employed creates no substantial risk of injury to a third party.

The act establishes factors to consider when evaluating whether an officer's use of deadly physical force was objectively reasonable. These include whether the:

1. person upon whom deadly physical force was used possessed or appeared to possess a deadly weapon,
2. officer engaged in reasonable de-escalation measures before using deadly physical force, and
3. officer's conduct led to an increased risk of the situation that preceded the use of such force.

The law defines "deadly physical force" as physical force that can be reasonably expected to cause death or serious physical injury ([CGS § 53a-3\(5\)](#)). It defines "serious physical injury" as 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 ([CGS § 53a-3\(4\)](#)).

The law specifies that 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. If the believed facts or circumstances would not constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not make the use of physical force justifiable to make an arrest or to prevent an escape from custody ([CGS § 53a-22\(a\)](#) as amended by [PA 19-90](#)).

Prosecution of Peace Officers for Using Deadly Force

A peace officer who is prosecuted for murder or manslaughter would be able to claim as a defense that he or she complied with the statutory standard for using deadly force. Once this defense has been properly raised at trial, the state would have to disprove it beyond a reasonable doubt in order

to convict (*State v. Hardwick*, 1 Conn. App. 609, cert. den 193 Conn. 804 (1984)). To meet the initial burden of proof to establish this defense either the state or the defense must present sufficient evidence to raise a reasonable doubt in the mind of a rational juror as to whether the officer's use of deadly force was statutorily justified (*State v. Lewis*, 220 Conn. 602 (1991) and *State v. Bailey*, 209 Conn. 322 (1988)).

Currently, the test for evaluating statutory self-defense claims is a subjective-objective test. The jury must first determine whether the defendant honestly believed that the use of deadly force was necessary in the circumstances. If 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 (*State v. Smith*, 73 Conn. App. 173, cert den. 262 Conn. 923 (2002)). Beginning on April 1, 2021, PA 20-1, JSS provides statutory factors to determine whether an officer's action is reasonable (see above).

Office of the Inspector General (OIG)

PA 20-1, JSS, §§ 33-35 & 46, establishes OIG as an independent office within DCJ. The act requires OIG to, among other things,

1. investigate peace officers' (i.e., law enforcement officers') use of force and
2. prosecute any case in which the inspector general determines that the use of force was not justified.

Powers

The act allows the inspector general to issue subpoenas to municipalities and law enforcement units, or any of their current or former employees. The subpoenas may (1) require the production of reports, records, or other documents concerning an investigation by the inspector general and (2) compel the attendance and testimony of any person having knowledge pertinent to the investigation.

The act allows a municipal chief of police and the DESPP commissioner to refer any use of force incident under OIG's jurisdiction to the inspector general for investigation. The inspector general must accept these referrals.

Use of Force Investigations

Under prior law, DCJ had to investigate whenever a peace officer, while performing his or her duties, used physical force that caused someone's death or used deadly force on another person. DCJ had

to determine whether the officer's use of force was appropriate under the law and submit a report of its findings and conclusions to the chief state's attorney.

The act instead requires the inspector general to (1) conduct the investigation, (2) determine whether the use of force was justifiable, rather than appropriate as under prior law, and (3) report on the investigation.

OIG must complete a preliminary status report with certain information whenever a peace officer, in the performance of the officer's duties, uses physical force on another person and the person dies as a result. The report must include: (1) the deceased person's name, gender, race, ethnicity, and age; (2) the date, time, and location of the injury causing such death; (3) the law enforcement agency involved; and (4) the toxicology report status and death certificate, if available.

OIG must complete the report and submit a copy to the Judiciary and Public Safety and Security committees within five business days after the cause of death is available.

The law requires OIG to ask the appropriate law enforcement agency to provide whatever assistance is necessary to determine the circumstances surrounding the incident.

Investigation Report

When the investigation is finished, OIG must file a report with the chief state's attorney that includes:

1. the circumstances of the incident,
2. a determination of whether the use of deadly physical force by the officer was justifiable under the standards the statute establishes, and
3. any future action that OIG will take as a result of the incident.

The law requires the chief state's attorney to provide a copy of the report to the chief executive officer of the municipality in which the incident occurred and to the DESPP commissioner or the chief of police of the municipality, as applicable ([CGS § 51-277a\(c\)](#) as amended by [PA 19-90](#) and [PA 20-1](#), JSS). He must also make the report available to the public on the DCJ website within 48 hours after the copies are provided to the police.

The act requires OIG to prosecute any (1) case in which the inspector general determines that a peace officer's use of force was not justifiable and (2) failure by a peace officer or correctional

officer to intervene in or report such an incident to the applicable law enforcement unit, respectively.

Complaints Regarding Failure to Prosecute

After an investigation where the prosecutorial official decides not to criminally prosecute anyone in connection with a death, any member of the deceased person's immediate family may file a written complaint with the Chief State's Attorney or the Criminal Justice Commission ([CGS § 51-277d](#)). Within 30 days of receiving the complaint, the Chief State's Attorney or commission chair must respond in writing informing the complainant of the action taken or to be taken, if any. The [Criminal Justice Commission](#) is an autonomous body charged with, among other things, appointing, disciplining, and removing state prosecutors ([CT. Const.. Art. XXIII](#); [CGS § 51-278b](#)).

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