

# DEADLY FORCE

POLICE USE OF LETHAL FORCE IN THE UNITED STATES



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Published in 2015 by

Amnesty International USA  
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New York, NY 10001  
[www.amnestyusa.org](http://www.amnestyusa.org)

For more information:  
[www.amnestyusa.org/deadlyforce](http://www.amnestyusa.org/deadlyforce)

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Original Language: English

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# 1. EXECUTIVE SUMMARY

Hundreds of men and women are killed by police each and every year across the United States. No-one knows exactly how many because the United States does not count how many lives are lost. The limited information available however suggests that African American men are disproportionately impacted by police use of lethal force. While the majority of the unarmed African Americans killed by police officers are men, many African American women have also lost their lives to police violence.<sup>1</sup> Police officers are responsible for upholding the law, as well as respecting and protecting the lives of all members of society. Their jobs are difficult and often dangerous. However, the shooting of Michael Brown in Ferguson, Missouri and countless others across the United States has highlighted a widespread pattern of racially discriminatory treatment by law enforcement officers and an alarming use of lethal force nationwide.<sup>2</sup>

Indeed, just 10 days after Michael Brown was fatally shot in Ferguson, Missouri, on August 9, 2014, St. Louis police officers shot and killed a young black man, Kajieme Powell, 25, who was reportedly holding a knife. Police claims that he was brandishing a knife were not borne out by the available video footage of the shooting.<sup>3</sup> Some of the individuals killed by police in the United States include the following: Rekia Boyd, an unarmed 22 year old black woman was shot and killed by a Chicago police officer on March 21, 2012; Eric Garner, a 43 year old black man, died after being placed in a chokehold by New York Police Department officers after being approached by an officer who attempted to arrest him for selling loose, untaxed cigarettes on July 17, 2014; Ezell Ford, 25, an unarmed black man with a history of mental illness, was shot and killed by Los Angeles police officers on August 11 2014; Tamir Rice, a 12 year-old black boy, was shot and killed by officers in Cleveland, Ohio while playing in a park with a toy gun on November 22, 2014; Walter Scott, a 50 year old unarmed black man, was fatally shot in the back after a traffic stop for a broken light on his car in North Charleston, South Carolina on April 4, 2015; and Freddie Grey, a 25 year old black man, died from a spinal injury after being taken into police custody in Baltimore, Maryland on April 19, 2015. These are all cases that have received national media attention; however, there are many more including Hispanic and Indigenous individuals from communities across the country who have died at the hands of the police.

The use of lethal force by law enforcement officers raises serious human rights concerns, including in regard to the right to life, the right to security of the person, the right to freedom from discrimination and the right to equal protection of the law. The United States has a legal obligation to respect, protect and fulfill these human rights and has ratified the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, which explicitly protects these rights.<sup>4</sup>

One of a state's most fundamental duties which police officers, as agents of the state, must comply with in carrying out their law enforcement duties, is to protect life. In pursuing ordinary law enforcement operations, using force that may cost the life of a person cannot be justified. International law only allows police officers to use lethal force as a last resort in order to protect themselves or others from death or serious injury. The United Nations (UN) Basic Principles on the Use of Force and Firearms provide that law enforcement officials shall not use firearms against persons except in self-defence or the defence of others against the imminent threat of death or serious injury, and that, in any event, "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Furthermore, international law enforcement standards require that force of any kind may be used only when there are no other means available that are likely to achieve the legitimate objective. If the force is unavoidable it must be no more than is necessary and proportionate to achieve the objective, and law enforcement must use it in a manner designed to minimise damage or injury, must respect and preserve human life and ensure medical aid are provided as soon as possible to those injured or affected.

***“States are required to respect and to protect the right to life .... The police in any society will at some point be confronted with a situation where they have to decide whether to use force and, if so, how much. Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations.”***

### **UN Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>5</sup>**

The first step to securing the right to life, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, is the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the State and ensuring a system of responsibility where these limits are transgressed. Furthermore, the UN Special Rapporteur notes that, “The specific relevance of domestic law in this context stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defence for the protection of the right to life, given the irreversibility of its violation. National and local laws play an important role in defining the understanding by law enforcement officials and the population alike of the extent of the police powers, and the conditions for accountability. As such, there is a strong need to ensure that domestic laws worldwide comply with international standards. It is too late to attend to this when tensions arise.”<sup>6</sup>

Amnesty International reviewed US state laws – where they exist – governing the use of lethal force by law enforcement officials and found that they all fail to comply with international law and standards. Many of them do not even meet the less stringent standard set by US constitutional law. Some state laws currently allow for use of lethal force to “suppress opposition to an arrest”; to arrest someone for a “suspected felony”; to “suppress a riot or mutiny”; or for certain crimes such as burglary. A number of statutes allow officers to use lethal force to prevent an escape from a prison or jail. Others allow private citizens to use lethal force if they are carrying out law enforcement activities. Amnesty International found that:

- ❖ All 50 states and Washington DC fail to comply with international law and standards on the use of lethal force by law enforcement officers;
- ❖ Nine states and Washington DC currently have no laws on use of lethal force by law enforcement officers; and
- ❖ Thirteen states have laws that do not even comply with the lower standards set by US constitutional law on use of lethal force by law enforcement officers.

Many of the nationwide protests in the wake of recent police killings have demanded accountability and international law requires it. All cases of police use of lethal force must be subject to an independent, impartial and transparent investigation and if the evidence indicates that the killing was unlawful, the police officer responsible should be criminally prosecuted. However, accountability for police use of lethal force is severely lacking in the United States. The officer’s own police agency usually conducts the investigation before handing the case over to the local prosecutor for review, who, depending on the jurisdiction, either convenes a grand jury or decides directly whether to file charges against the officer.<sup>7</sup> The fact that investigations are handled internally and that prosecutors have to maintain good working relationships with the police as well as fulfill their duty to investigate and prosecute police use of lethal force, has led to calls being made for independent investigations and prosecutors. While this report only examines whether specific accountability measures are provided for in a state’s use of lethal force statute, Amnesty International has previously documented concerns with oversight mechanisms in the United States and the need for independent and effective oversight bodies to be established.<sup>8</sup>

### 3 Deadly Force : Police Use of Lethal Force in the United States

Another concern related to accountability is the overly broad statutes governing the use of force, in particular the use of lethal force: If the facts of the case established during an investigation indicate that police used lethal force despite officers having other – less harmful – options at hand to counter a threat or that there was no threat to the life of officers or members of the public at all, this would have to be considered as a violation of international human rights law and standards and - in cases where it has resulted in death - an arbitrary deprivation of life under international law. However, if statutes allow for a use of lethal force below the threshold and outside the strict criteria established by international law, then such statutes actually prevent holding law enforcement officials accountable for violations of human rights.

The majority of deaths at the hands of police are the result of an officer using a firearm. The pervasiveness of firearms among the general population in the US means that officers have to be prepared for the worst when confronting a suspect. An unexpected movement can be mistaken as someone reaching for a firearm even if the suspect is unarmed. However, any use of a firearm - i.e. a weapon designed to kill - by law enforcement must be regulated by specific provisions of the law, establishing a more specific set of rules than for other forms of use of force, and should only be authorized when there is no other way of protecting against a serious threat of death or serious injury.

A key concern in recent cases involving firearms has been the number of shots fired by officers. Michael Brown, for instance, was shot six times, and Kajieme Powell was shot nine times. The firing of so many shots in an urban environment would often be reckless and puts bystanders at risk, and indicates an intentional lethal use of a firearm which under international law and standards may only ever be employed when strictly unavoidable to protect life.

There are a wide range of “less lethal” weapons and other tools available for use in law enforcement which carry less risk of death and injury than that inherent in police use of firearms. However, it should also be recognized that these so-called “less lethal” weapons can also result in serious injury and sometimes death. For example, at least 540 people in the United States died after being shocked with Tasers from 2001 through 2012.<sup>9</sup> Also, even without the use of weapons, as recent cases have demonstrated, chokeholds or other forms of physical force can also be deadly.<sup>10</sup> As such, any other type of force that implies likelihood or high risk of death must also be subject to the same strict restrictions and only be allowed for the purpose of preventing death or serious injury.

While this report focuses on the use of lethal force by law enforcement officers in the United States – that is, principally the use of firearms – an overall change in approach to all aspects of use of force by law enforcement is needed, as at present, police consider use of force to be a normal part of policing operations rather than the exception. International standards clearly require that force should not be used by law enforcement officials unless there are no other means available that are likely to achieve the legitimate objective. If the use of force is unavoidable, it must be the minimum amount of force necessary to achieve the objective, and the use of lethal force should only be used as a last resort; if the use of force is unavoidable, they should minimize damage and injury and ensure those affected receive prompt medical and other assistance. International standards also emphasize the need for law enforcement to use other means before resorting to the use of force, and to be trained in alternatives to the use of force, including the peaceful settlement of conflicts, understanding of crowd behavior, and skills of persuasion, negotiation and mediation.<sup>11</sup>

What is urgently needed is a nationwide review and reform of existing laws, policies, training and practices on police use of lethal force, as well as a thorough review and reform of oversight and accountability mechanisms. As this demonstrates, one of the steps that needs to be taken is for state laws to be thoroughly reformed or, in some cases, replaced with new laws to ensure that police are not permitted to use lethal force except where it is necessary to protect against an imminent threat of death or serious injury.

## 2. KEY FINDINGS & RECOMMENDATIONS

- ❖ **The United States has failed to track how many people are killed by law enforcement officers.** No-one knows exactly how many people are killed each year but estimates range from **400** to over **1,000**.
- ❖ **African Americans are disproportionately impacted by police killings**, according to the limited data available. While blacks represent 13.2 per cent of the US population, they represent 27.6 per cent of the total deaths at the hands of police (6,338) included in the data on violent deaths recorded by the Center for Disease Control between 1999 and 2013.
- ❖ **The United States has failed to respect and protect the right to life by failing to ensure that domestic legislation meets international human rights law and standards on the use of lethal force by law enforcement officers.**
  - ❖ **All 50 states and Washington, D.C. fail to comply with international law and standards on the use of lethal force by law enforcement officers.**
  - ❖ **Nine states and Washington, D.C. have no laws on use of lethal force by law enforcement officers:** Maryland; Massachusetts; Michigan; Ohio; South Carolina; Virginia; West Virginia; Wisconsin, Wyoming; and the District of Columbia.
  - ❖ **Thirteen states have laws that do not comply even with the lower standards set by US constitutional law on the use of lethal force by law enforcement officers<sup>12</sup> :** Alabama; California; Delaware; Florida; Mississippi; Missouri; Montana; New Jersey; New York; Oregon; Rhode Island; South Dakota; and Vermont.
  - ❖ **None of the state statutes require that the use of lethal force may only be used as a last resort with non-violent and less harmful means to be tried first.**
  - ❖ **No state limits the use of lethal force to only those situations where there is an imminent threat to life or serious injury to the officer or to others.**
  - ❖ **Nine states allow for the use of lethal force to be used to suppress a riot:** Arizona; Delaware; Idaho; Mississippi; Nebraska; Pennsylvania; South Dakota; Vermont and Washington.
  - ❖ **Twenty two states allow for law enforcement officers to kill someone trying to escape from a prison or jail:** Alabama; Colorado; Delaware; Georgia; Hawaii; Idaho; Indiana; Kentucky; Maine; Mississippi; Montana; Nebraska; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Oklahoma; Pennsylvania; South Dakota and Washington.<sup>13</sup>
  - ❖ **Only eight states require that a warning be given (where feasible) before lethal force is used, however no state meets the requirement for a warning under international standards:** Connecticut; Florida; Indiana; Nevada; New Mexico; Tennessee; Utah and Washington.
  - ❖ **Only three states provide that officers should create no “substantial risk” to bystanders when using lethal force:** Delaware; Hawaii and New Jersey.

- ❖ **Twenty states allow for private citizens (non-state actors) to use lethal force if they carry out law enforcement activities, for example assisting an officer in making an arrest:** Alabama; Arizona; California; Colorado; Connecticut; Indiana; Kansas; Kentucky; Louisiana; Maine; Mississippi; Nebraska; New Hampshire; New Jersey; New York; North Dakota; Pennsylvania; South Dakota; Texas and Washington.<sup>14</sup>
- ❖ **Only two states provide by statute for training on the use of lethal force:** Georgia and Tennessee.<sup>15</sup>
- ❖ **None of the states' "use of lethal force" statutes include accountability mechanisms,** including for example the requirement of obligatory reporting for the use of force and firearms by law enforcement officers.

## KEY RECOMMENDATIONS

- ❖ All state legislatures should introduce or amend statutes that authorize the use of lethal force to ensure that they are in line with international standards by limiting the use of lethal force by law enforcement to those instances in which it is necessary to protect against the threat of death or serious injury. The statutes should be brought into compliance with the U.N. Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- ❖ The president and Department of Justice (DOJ) should support the creation of a national commission (National Crime and Justice Task Force) to examine and produce recommendations on policing issues, including a nationwide review of police use of lethal force laws, policies, training and practices, which is urgently needed, as well as a thorough review and reform of oversight and accountability mechanisms. These laws, policies and practices must be brought in line with international standards.
- ❖ The Department of Justice must ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994) and the Death in Custody Act (2014). The data collected should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identity and indigenous status.
- ❖ Congress should take legislative action to ensure that all federal, state and local law enforcement officials restrict their use of lethal force in compliance with international law and standards. This should include enacting legislation requiring all law enforcement agencies to review and amend their policies by limiting the use of lethal force to those instances in which it is necessary to protect against the threat of death or serious injury. Congress should also pass the Police Reporting Information, Data, and Evidence Act and the End Racial Profiling Act.



## 3. SCOPE & METHODOLOGY

This report is primarily based on a state-by-state legislative survey of use of lethal force statutes within the United States. Amnesty International also looked at particularly relevant US Supreme Court and federal court cases,<sup>16</sup> Department of Justice Guidelines on the Use of Force, as well as media reports related to police use of lethal force, and available statistical data including data collected by the Center for Disease Control and the FBI Uniform Crime Reports.

In reviewing state laws on the use of lethal force the following three issues were reviewed:

1. Does the state have a statute governing the use of lethal force?
2. Does the statute comply with international law and standards on the use of lethal force?
3. Does the statute comply with the lower US constitutional standards on the use of lethal force, as established in the US Supreme Court decision in *Tennessee v. Garner*?

This report is based primarily on a review of each state's statute on the use of lethal force by law enforcement officials. It is not intended to provide a comprehensive review of all of the issues related to use of lethal force by law enforcement in the United States. This report does not attempt to examine in detail individual cases or the numbers of those killed every year. It only examines state use of lethal force statutes and does not include a review of the state's broader use of force statutes. Furthermore, it does not examine the relevant case law in each state, which may strengthen or weaken the protections against unlawful use of lethal force. Nor does this report examine the use of lethal force policies and practices that exist in over 18,000 police departments across the country but does recommend that this is something that should be undertaken to ensure that practice by law enforcement agencies complies with the US obligations under international law. Furthermore, this report does not examine the existing oversight and accountability mechanisms that may exist in every state (some aspects of which may be included in other parts of states' statutes), which is an essential element of ensuring compliance with any law, policy or standard.

## TERMINOLOGY

In this report, Amnesty International has used the terms "lethal force" to refer to the use of force that is deadly or has the potential to be deadly. As any use of firearms has the potential to be lethal, the term "lethal force" should be read to include the use of firearms, but does not exclude other forms of force that may also cause death. In the United States the term "deadly force" is frequently the terms used to refer to lethal force, in the statutes on the use of lethal force.

Amnesty International strives to use language that respects the wishes of the individuals or communities concerned. Recognizing that no single term is universally accepted, Amnesty International has used African American and black throughout this report, particularly if it has been used in studies cited to in this report. This is no way intended to minimize or ignore the complexity or the great diversity of ways in which people identify.

## 4. USE OF LETHAL FORCE IN THE UNITED STATES

### 4.1 LIVES LOST

This report is not intended to provide an overview of all those who have lost their lives at the hands of police, but the following are individuals who have been killed in the last few years who have not received as much attention as other recent cases, and have not sparked national media attention or protests.

#### **Antonio Zambrano-Montes February 10, 2015**

Antonio Zambrano-Montes, 35, a Mexican father of two, was shot and killed by police officers in Pasco, Washington, on February 10, 2015. A video capturing the fatal incident shows Antonio Zambrano-Montes running from three police officers across a busy intersection, with police officers opening fire as Antonio Zambrano-Montes started to cross the road and was raising his hands. The police officers chased after Antonio Zambrano-Montes onto the sidewalk and, facing him, discharged several further shots. Of the 17 bullets aimed at Antonio Zambrano-Montes, five to six struck him, causing his death. Investigators have confirmed that Antonio Zambrano-Montes was unarmed at the time of the shooting, although the officers contend that he had thrown rocks at them and traffic, and was holding another in his hand. The officers, who were responding to a 911 call, also allege that they had attempted to subdue Antonio Zambrano-Montes with a Taser prior to opening fire at him. Zambrano-Montes' family has filed a lawsuit against the city following his death.<sup>17</sup> Antonio Zambrano-Montes had a history of erratic and sometimes violent behavior, with at least two confrontations with the police since 2014. Prosecutors declined to file assault charges against Antonio Zambrano-Montes on grounds of his mental health issues.<sup>18</sup> Antonio Zambrano-Montes who grew up in Mexico, had come to the United States about a decade ago to pursue fruit orchards work.<sup>19</sup>

#### **Akai Gurley November 20, 2014**

Akai Gurley, an unarmed 28 year-old black man, was shot dead on the night of November 20, 2014 in a darkened stairwell of a public housing complex in Brooklyn, New York. New York Police Department's (NYPD) newly trained officer Peter Liang and his partner Shaun Landau were conducting a floor-by-floor sweep of the building. The officers were on their way to the roof of the building when they noticed there were no lights in the stairwell leading up to it. According to the NYPD, Liang drew his weapon and a flashlight for safety reasons. Soon after Liang entered the eighth floor of the building, with his partner behind, Liang fired his gun as Akai Gurley entered the landing one floor below following his girlfriend. Akai Gurley, who was hit in the chest by the bullet, was pronounced dead at the hospital. On February 10, 2015, Liang was indicted by a grand jury on several charges, including second-degree manslaughter, criminally negligent homicide, reckless endangerment, second-degree assault and two counts of official misconduct. The prosecutors alleged that Liang had ignored his training to hold his gun with his finger outside the trigger guard. Liang's indictment was the first in more than two years for an NYPD officer's killing of a member of the public.<sup>20</sup> The case is still pending at the time of this report. According to a recent study, in 179 fatalities involving NYPD officers in 15 years (1999-2014), only three cases led to indictment with just one conviction.<sup>21</sup>

### **Mah-hi-vist Goodblanket December 21, 2013**

**Mah-hi-vist Goodblanket, an 18 year-old Native American, died on December 21, 2013 after being shot seven times by police officers in his parents' home in Clinton, Oklahoma. Mah-hi-vist Goodblanket, who was diagnosed with Oppositional Defiant Disorder<sup>22</sup> while in the ninth grade at school, was experiencing an episode because he falsely believed that his girlfriend was breaking up with him when she asked his mother for a ride to a nearby town. As Mah-hi-vist Goodblanket began to break windows and cut himself with a knife, his parents called 911 to ask for help. After two Custer County sheriff deputies arrived on the scene, Mah-hi-vist Goodblanket's parents and younger brother waited in a police truck, while the teen, his girlfriend, and his grandmother were still inside the house. According to the officers, Mah-hi-vist Goodblanket threw one knife at the officers and threatened them with another, so, when, according to the officers, he could not be subdued with a Taser, the officers opened gunfire. The sheriffs' account has been contradicted by Mah-hi-vist Goodblanket's girlfriend, Naomi Barren, who argues that Mah-hi-vist Goodblanket "had his arms up and his hands were free... he had no weapons." Nonetheless, the shooting has been ruled justified<sup>23</sup> by the Custer Country District Attorney and the two deputies have been awarded medals of honor.<sup>24</sup>**

### **Rekia Boyd March 21, 2012**

**Rekia Boyd, an unarmed 22 year-old black woman, was shot and killed by Chicago police officer Dante Servin, 46, on March 21, 2012. Servin was off-duty<sup>25</sup> when he used an unregistered handgun to fire five shots at Rekia Boyd and three of her friends from his car. The fatal incident occurred at approximately 1 a.m., when the group was making its way home from a party. Dante Servin asked the two women and two men to quiet down and an exchange of words followed. According to the prosecutors, the group had started to walk again when Dante Servin fired five rapid shots out of his car window, striking Rekia Boyd in the back of her head and one of her friends' hands. Dante Servin argued that he thought that one of the men in the group had pulled a gun, but no weapon was recovered by the police and it later transpired that the officer had mistaken the man's cellphone for a weapon. Dante Servin was charged with involuntary manslaughter, reckless discharge of a firearm, and reckless conduct but cleared of all charges in April 2015. In a directed verdict, the judge ruled that the state had failed to prove recklessness since "the act of intentionally firing a gun at some person or persons on the street is an act that is so dangerous it is beyond reckless; it is intentional and the crime, if any there be, is first degree murder," rather than involuntary manslaughter. In 2013, the city of Chicago settled a lawsuit with Rekia Boyd's family for \$4.5 million.<sup>26</sup>**

## **4.2 HOW MANY PEOPLE ARE KILLED BY LAW ENFORCEMENT OFFICERS?**

No-one knows exactly how many individuals are killed by police in the United States; however, estimates range from 458 to over a thousand individuals killed each year. For years, the monitoring of lethal force by police has been hampered by the failure of the Department of Justice to collect accurate, national data on police use of force, including the number of people killed by police. The Department of Justice has been required to ensure the collection and publication of nationwide statistics on police use of force (including all police fatal shootings) since the passage of the Violent Crime Control and Enforcement Act (1994); however, it has failed to do so.

## 9 Deadly Force : Police Use of Lethal Force in the United States

Four hundred and sixty one (461) “justifiable homicides” were documented by the Federal Bureau of Investigation (FBI) in 2013, 458 of which were following the use of a firearm.<sup>27</sup> “Justifiable homicides” are defined as “the killing of a felon by a law enforcement officer in the line of duty.” The FBI publishes these numbers in its annual Uniform Crime Reports.<sup>28</sup> However these statistics underestimate the number of those killed by law enforcement officers. This is because they rely on a system of voluntary reporting by law enforcement agencies and it is not clear how many of the over 18,000 police agencies report data (for example, only 6,328 agencies report through the National Incident-Based Reporting System (NIBRS) for the Uniform Crime Report). While the Uniform Crime Reports provide the number of “justifiable homicides” by firearms it does not specify how the remaining deaths occurred and classifies them as “other.” Furthermore, the data does not include cases where the victim was not a suspected felon and does not include cases of “unjustified” homicides.

Other sources of official data include the Center for Disease Control which states that a total of 6,338 people have been killed due to “legal interventions” from 1999-2013.<sup>29</sup> However, only 32 states currently participate in the Center for Disease Control’s National Violent Death Reporting System, limiting its usefulness for assessing the national death toll caused by law enforcement officers.<sup>30</sup> An estimate of the number of deaths caused by law enforcement officers used to be provided by the Bureau of Justice Statistics, which until March 2014 collected data about “arrest-related” deaths, defined as deaths that occur during law enforcement officers’ attempt to detain an individual. However, after an internal evaluation of the data’s reliability, the Bureau of Justice Statistics concluded that its figures likely did not capture all deaths and decided to suspend data collection until further notice.<sup>31</sup>

Due to failure of government agencies to collect reliable and complete data, a number of non-governmental organizations have attempted to collect data related to the number of police killings and they estimate over 1,000 people are killed every year. According to *Killed by Police*, which documents through media reports the occurrence of deaths involving law enforcement interactions, there were 1,100 individuals who were killed by law enforcement in 2014, the first year for which the organization was able to document for an entire calendar year.<sup>32</sup> However, this data includes anyone who may have been killed by a police officer, whether on-duty or off-duty – so, for instance, the data also includes deaths resulting from domestic violence incidents involving someone who works in law enforcement or deaths resulting from automobile accidents involving a police cruiser. Also, according to *Mapping Police Violence* at least 1,149 people were killed by police in 2014.<sup>33</sup> According to *Mapping Police Violence*, their data is formed by sourcing “from the three largest, most comprehensive and impartial crowd-sourced databases on police killings in the country: *FatalEncounters.org*, the US Police Shootings Database and KilledbyPolice.net. Mapping Police Violence has also done research to further improve the quality and completeness of the data; searching social media, obituaries, police reports and other sources to identify the race of 91 percent of all victims in the database.”<sup>34</sup> While this data may include deaths which may not result from use of force by law enforcement officers (such as automobile accidents), it still raises concerns about the incidence of deaths caused by police use of lethal force.

In December 2014, “The Death in Custody Reporting Act” was passed.<sup>35</sup> This law requires states that receive federal criminal justice funding to gather and report data to the US Attorney General on how many individuals die each year while in

On June 2, 2015, Senators Cory Booker and Barbara Boxer introduced legislation for the “Police Reporting Information, Data, and Evidence Act of 2015” or the “PRIDE Act”.<sup>36</sup> The “PRIDE Act” would require states to report on annual basis to the US Attorney General any incident involving the shooting of a civilian by a law enforcement officer; any incident involving the shooting of a law enforcement officer by a civilian; any incident in which use of force by a law enforcement officer against a civilian results in serious bodily injury or death; and any incident in which use of force by a civilian against a law enforcement officer results in serious bodily injury or death. The data is to include:

- The gender, race, ethnicity and age of each individual who was shot, injured, or killed;
- The date, time and location of the incident;
- The number of officers and number of civilians involved in the incident
- Whether the civilian was armed with a weapon; and,
- The type of force used against the officer, the civilian or both, including the types of weapons used.

If enacted, the “PRIDE Act of 2015” would expand on the number of incidents reported by law enforcement agencies through the “Death in Custody Reporting Act”, which only requires the reporting of incidents where people die during the course of an arrest or when already in police custody.

police custody or during the course of an arrest. States have 120 days from when the Act was passed to begin reporting. If states refuse to comply, the Attorney General has the power to fine them by reducing criminal justice funding. The law also requires that the Attorney General analyze the information and evaluate ways to reduce the number of deaths and by December 2016 submit a report to Congress. The Department of Justice has previously had mandates to collect this data and must now ensure that this finally happens.

### 4.3 DISCRIMINATORY POLICING AND DISPROPORTIONATE IMPACT OF POLICE USE OF FORCE ON AFRICAN AMERICANS

The use of lethal force against people of color in the United States should be seen in the context of a wider pattern of racially discriminatory treatment by law enforcement officers, including unjustified stops and searches, and racial profiling. For example, according to the U.S. Department of Labor's Bureau of Justice Statistics, black drivers (4.5 per cent) were twice as likely as white drivers (2.1 per cent) to be arrested during a traffic stop in 2005 – the most recent year that national data is available.<sup>37</sup> State and local data also demonstrate similar trends. For instance in New York City in 2001, at the height of the NYPD's stop and frisk program,<sup>38</sup> police made 685,724 stops. Blacks (53 per cent) and Latinos (34 per cent)<sup>39</sup> made up the overwhelming majority of those stopped by the NYPD in 2011 despite only representing 25.5 per cent and 28.6 per cent of the population respectively.<sup>40</sup>

Amnesty International has also previously raised concerns about racial profiling, including the failure of the federal government to pass the "End Racial Profiling Act", which would prohibit any law enforcement agent or agency from engaging in racial profiling.<sup>41</sup> The Presidential Task Force on 21st Century Policing also recently made a clear recommendation in its final report released in May 2015 that "[l]aw enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/ expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency."<sup>42</sup>

People of color are also disproportionately subjected to harsh treatment and use of force by police. For example, according to the Department of Justice, 88 per cent of all cases in which a Ferguson Police Department officer reported using force involved African Americans, from 2010 to August 2014.<sup>43</sup> The study further concluded that: "at each point in the enforcement process there is a higher likelihood that an African American will be subjected to harsher treatment"<sup>44</sup> and that "statistical analysis shows that African Americans are [...] more likely to have force used against them ..."<sup>45</sup>

Throughout the United States, African Americans are disproportionately impacted by police killings. While recognizing the shortcomings of the data available, according to the Center for Disease Control (CDC) out of 6,338 deaths at the hands of police between 1999 and 2013, blacks represented 27.6 per cent of total deaths, while blacks represent only 13.2 per cent of the US population.<sup>46</sup> Also, Mapping Police Violence estimates that of the 1,149 people killed by police in 2014, 304 of this total (26 per cent) were black. While the majority of the unarmed African Americans killed by police officers are men, many African American women have also lost their lives to police violence.<sup>47</sup>

Other communities of color are also disproportionately impacted, according to the CDC, American Indian and Alaska Native represent 1.9 per cent of the total deaths, while representing just 1.2 per cent of the US population; and Hispanics represent 18.9 per cent of deaths, while representing just 17.1 per cent of the US population.<sup>48</sup> It should be noted that, at present, given the lack of effective data collection, data is not disaggregated on the basis of other identities, including age, gender, nationality, sexual orientation or gender identity.

International law strictly prohibits all forms of discrimination.<sup>49</sup> Under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the prohibition of discrimination encompasses not only policies and practices that are discriminatory in purpose, but also

those that are discriminatory in effect, irrespective of the intention.<sup>50</sup> However, in most cases federal courts in the USA only protect against discrimination that can be shown to arise from discriminatory intent. The USA's approach has been rejected by the UN Committee on the Elimination of Racial Discrimination which called on the USA to review the legal definition of racial discrimination to ensure it prohibits discrimination in all its forms (including practices and legislation that may be discriminatory in its effect). It has also urged the US Congress to pass the "End Racial Profiling Act."<sup>51</sup> The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, has further noted that, "At times, the police exercise higher levels of violence against certain groups of people, based on institutional racism or ethnic discrimination. Discrimination on these, and other, grounds also impacts on patterns of accountability. States must instead adopt a reactive and proactive stance encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations."<sup>52</sup>

### 4.4 FIREARMS

Law enforcement agencies and officers in the United States are heavily armed with firearms and other equipment. The Small Arms Survey (2012) estimates the total number of firearms that law enforcement agencies have is 1,150,000 and number of full-time sworn personnel is 785,000. On average, this represents 1.5 firearms per officer.<sup>53</sup>

US law enforcement increasingly relies on the use of Special Weapons and Tactics (SWAT) teams to effect arrests. SWAT tactics were rare in the 1980s, with approximately 3,000 uses per year. SWAT teams, whose members are equipped with military-style weapons, are now estimated to be used approximately 50,000 times per year (a figure equivalent to more than 130 times per day).<sup>54</sup> Furthermore, according to a recent report by the American Civil Liberties Union (ACLU), "police overwhelmingly use SWAT raids not for extreme emergencies like hostage situations but to carry out such basic police work as serving warrants or searching for a small amount of drugs."<sup>55</sup>

#### Use of military equipment in US law enforcement

Under a US law passed on September 23, 1996, the Department of Defense is authorized to provide surplus property to local law enforcement agencies through the Law Enforcement Support Office program (also referred to as the "1033 Program").<sup>56</sup> As a result, "military grade" equipment including vehicles and weapons are transferred to local law enforcement agencies such as police and sheriff's departments. Since the start of the program, more than \$4 billion USD worth of weapons and equipment has been transferred to local law enforcement agencies across the country. After the attacks of September 11, 2001, the transfers of military grade equipment to local law enforcement agencies surged. In 2011 alone, about 12,000 police organizations in the United States obtained almost \$500 million USD worth of military equipment at no charge.<sup>57</sup>

In response to national debate created in the wake of images from Ferguson of local police outfitted with military grade weapons while policing protests, Representatives Johnson and Labrador introduced the "Stop Militarizing Law Enforcement Act" on September 16, 2014.<sup>58</sup> The Act would prohibit transfers of equipment that are inappropriate for local policing, end incentives for unnecessary use, require accountability, enforce tracking mechanisms, and prohibit resale of transferred equipment.<sup>59</sup>

Also, in May 2015, Senator Claire McCaskill introduced the "Protecting Communities and Police Act" which would reform federal programs that send equipment to local police departments. It would establish a task force to determine what equipment is suitable and what should be prohibited; provide funding for the purchase of body cameras; prevents law enforcement agencies that are under consent decrees by the DOJ for civil rights abuses or excessive use of force from receiving most weapons or funding to procure weapons without the approval of the DOJ; and would establish whistleblower protections for misuse of grant funding and equipment.<sup>60</sup>

On January 16, 2015, President Barack Obama issued Executive Order 13688, "Federal Support for Local Law Enforcement Equipment Acquisition" (EO), to identify actions that can improve federal support for the appropriate use, acquisition, and transfer of controlled equipment by State, local, and Tribal law enforcement agencies (LEAs). On May 18, 2015, President Obama issued an Executive Order banning the federal transfers of certain types of military-style gear to local police departments. While an important step forward, it is important for Congress to also pass legislation to ensure that officers are not equipped in a manner that is more appropriate for a battlefield.<sup>61</sup>

Governments and law enforcement agencies should not blur the line between law enforcement and armed conflict. When carrying out law enforcement duties, it is the absolute and primary duty of the State to save and protect life and taking someone's life can only be accepted in the most extreme circumstances. This is a fundamentally different situation than that of an armed conflict where military armed forces are trained and equipped to use lethal force during the conduct of hostilities.

### Obligation to address high levels of gun violence in the United States

The pervasiveness of firearms in the United States however may also fuel fear that leads to more police using lethal force, for example even a "routine" traffic stop can turn deadly if someone is armed. Gun ownership by the general population in the United States is high<sup>62</sup> and gun violence is at epidemic levels, with more than 30,000 people killed and an average of 100,000 injured by firearms each year. African Americans are disproportionately impacted by gun violence where they account for 57.5 per cent of gun homicide victims yet represent 13.2 per cent of the US population in 2013.<sup>63</sup>

Governments have an obligation to ensure that officials (state actors) do not commit human rights violations, such as the unlawful use of lethal force by law enforcement officers. However governments also have an obligation to protect the right to life and to address arbitrary deprivation of life by private individuals (non-state actors). The United States government has to act with "due diligence" to address gun violence committed by private individuals, by taking steps to prevent, investigate and punish gun violence.

There is also another factor at play when it comes to weapons in the United States. The pervasiveness of gun ownership among the general population means that officers always have to be prepared for the worst when confronting a suspect. Often an unexpected movement or someone reaching into their pocket for a phone can be mistaken as someone reaching for a firearm, even if the suspect is actually unarmed. Firearms were the leading cause of death for law enforcement officers in the US, with 50 officers killed in 2014.<sup>64</sup> In comparison, in England in 2014, no law enforcement officers were killed by a firearm.<sup>65</sup> While federal law seeks to prevent guns getting into the hands of those that may be high risk, such as previously convicted felons, there are significant loopholes. For example background checks are not required for the private sale of guns which account for a significant number of sales in the US.

With such a heavily armed population and police force, it is important to ensure that all law enforcement officers and agencies understand and adhere to their obligation to respect and preserve human life. Law enforcement officials must always seek to apply non-violent means before resorting to the use of force and firearms. As all firearms are potentially lethal, law enforcement officials should not use them except when there is no less extreme means of protecting themselves or others against an imminent threat of death or serious injury. Furthermore, law enforcement agencies must ensure that operational policies and procedure are in place that adhere to international standards, including guidelines that specify: the circumstances under which officers are authorized to carry firearms; the types of firearms and ammunition permitted; require appropriate control, storage and issuing of firearms; require that police officers using firearms give warning of their intent to do so; and provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.<sup>66</sup> It is also necessary to ensure that all law enforcement officers are selected by proper screening procedures, have appropriate "moral, psychological and physical" qualities and that they receive continuous and thorough professional training.<sup>67</sup>

## 5. LAW GOVERNING THE USE OF LETHAL FORCE

### 5.1 INTERNATIONAL LAW

International standards provide that law enforcement officers should only use force when there are no other means that are likely to achieve the legitimate objective and that the amount of force must be proportionate to the seriousness of the harm it is aiming to prevent, and designed to minimize damage and injury. Officers may use firearms only as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury. The intentional lethal use of firearms is justified only when “strictly unavoidable in order to protect life.”<sup>68</sup>

One of the state’s central obligations is to respect and protect the right to life and to ensure that no-one is arbitrarily deprived of their life. Article 6 of the ICCPR places an obligation on states to ensure that the right to life is protected by law. It must ensure that its own agents – notably police – respect this right, as well as protecting life when it is threatened by others. An essential step in securing the right to life is thus the establishment of an appropriate legal framework for the use of force by the police which sets out the conditions under which force may be used in the name of the state and ensures a system of responsibility where these limits are transgressed.<sup>69</sup> It should be noted that the failure of the State to properly investigate cases of death following the use of force is a violation of the right to life itself.<sup>70</sup>

The UN Human Rights Committee is the expert body established under the ICCPR to monitor implementation of this core human rights treaty. The USA ratified the ICCPR in 1992. In its General Comment 6 on the right to life under the Covenant, the Committee stated that “The deprivation of life by the authorities of the State is a matter of the utmost gravity” and that states must take measures to prevent arbitrary killing by their own security forces. All states must ensure compliance with international law and standards including the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9 of which states:

**“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”** (emphasis added).

As such, in order to comply with international law, laws on the use of force must include the following elements:

- **Legal Basis - Laws:** The police power to resort to lethal force and firearms must be regulated by law. For the use of lethal force not to be arbitrary there must be sufficient legal basis for it. This requirement is not met if “lethal force is used without the authority being provided for in domestic law, or if it is based on a domestic law that does not comply with international standards.”<sup>71</sup>

*States are required to respect and to protect the right to life. This in the words of article 6 (1) of the International Covenant on Civil and Political Rights, includes the duty to do so “by law”. The police in any society will at some point be confronted with a situation where they have to decide whether to use force and, if so, how much. Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations.”*

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- **Legitimate Objective:** Force may be used, and the right to life may be limited, only in pursuit of a legitimate objective. The only objective that can be legitimate when lethal force is used is to save the life of a person or protect a person from serious injury.<sup>72</sup>

- **Necessity:** The use of force law must include the principle of necessity, i.e., it must make clear that in carrying out their duties, law enforcement officials must apply non-violent means before resorting to the use of force and firearms and may use force only if other means are ineffective and the use of force is unavoidable. Moreover the principle of necessity requires that the police use only such force as is required to achieve the objective, and amount of force used must not exceed that which is required to achieve that objective.<sup>73</sup>

#### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 4**

Law enforcement officials, in carrying out their duty, shall as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Also, law enforcement officers must be required to identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.<sup>74</sup>

- **Proportionality:** A use of force law must include the principle of proportionality. The amount of force officers are allowed to use must be proportionate to the seriousness of the harm it is aiming to prevent. Special considerations apply when lethal or potentially lethal force is used. All use of firearms should be considered lethal or potentially lethal. The requirement of proportionality in those situations can be met only if lethal force is used in order to save life or limb – in other words, lethal force may be used only to avert a potentially lethal threat. In other words, what is required in respect of lethal force is not ordinary proportionality but strict proportionality.<sup>75</sup>

#### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 5**

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; [...]

- **Protection of Life:** It is the utmost obligation of police to respect and preserve human life. Intentional lethal use of firearms (i.e. using them in a way that will inevitably kill the individual) may only be justified when it is “strictly unavoidable in order to protect life.” All laws must clearly state this principle.

#### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle 5 (b):**

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(b) Minimize damage and injury, and respect and preserve human life;”

#### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 9:**

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (emphasis added).

- **Accountability:** All laws must require accountability for the use of force and firearms by law enforcement officials.<sup>76</sup> This requires that there be:

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- A system for reporting whenever firearms are used by law enforcement officials;
- A requirement that law enforcement officials promptly report incidents where use of force or firearms results in injury or death, to their superiors.

The procedural component of the right to life requires that States investigate all killings by their agents (the police). The failure of the State to properly investigate cases of death following the use of force is a violation of the right to life itself.<sup>77</sup>

In the case of a death or an injury as a result of police use of force, the case must be subject to a prompt, thorough, independent and impartial investigation with a view to prosecution. The investigation must be independent of the police – it is not for the police to decide that there is no offense and that all that is needed is a disciplinary process. An independent and impartial investigation should include the following elements:

- An official prompt “exhaustive and impartial” investigation which should be independent from those implicated; capable of leading to a determination of whether force was justified; subject to a level of public scrutiny; and seek to establish command responsibility;

The accountability system must also include:

- Provision for criminal, administrative and disciplinary sanctions. Modes of criminal accountability must include command or superior responsibility. The general existence of laws is not enough to ensure accountability of State officials – special measures are needed to ensure that those in office are held responsible.

Independent, external oversight of police is a best practice. In order to be effective, an external policy oversight agency requires the necessary powers, resources, independence, transparency and reporting, with community and political support and civil society engagement.

### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 6:**

Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with Principle 22.

### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 7:**

Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 11 (f):**

Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

### **Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 22:**

Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

In addition to the above, the UN Basic Principles also contain special provisions on the policing of demonstrations and protests and the policing of persons in custody and detention.

• **Policing of demonstrations and protests:** International human rights law places an obligation on states to respect, protect and fulfill the right to peaceful assembly. Accordingly, the state and its agents – law enforcement officials specifically – have an obligation to facilitate peaceful protests. The right to peaceful assembly is explicitly referred to in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which states that in the policing of protests that are non-violent, law enforcement must avoid the use of force. If the use of force is unavoidable, for example to secure their safety or the safety of others, they must use the minimum force necessary. If some protesters engage in violent actions, this does not turn the protest into a non-peaceful assembly.<sup>78</sup> In such a situation, law enforcement officials should protect the peaceful protestors and not use the violent acts of a few as a pretext to restrict the rights of a majority. In any event, even in cases where a protest generally has become violent, any use of firearms may only be used in accordance with the Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Firearms should never be used for the purpose of dispersing a crowd.<sup>79</sup>

**Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principles No. 12, 13 and 14:**

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

• **Policing person in custody and detention:**

The fact that a person is lawfully deprived of freedom does not convey a greater right to law enforcement officials to resort to the use of force and firearms. These remain subject to exactly the same principles of legality, necessity, proportionality and accountability as for persons in liberty. In particular, the use of firearms must meet the same requirement of strict proportionality as established in Principle No. 9 of the Basic Principles on the use of Force and Firearms by Law Enforcement officials.

**Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principles No. 15 and 16**

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9 [emphasis added].

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

**Standard Minimum Rules for the Treatment of Prisoners – Rule 54 (3)**

Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

## 5.2 US LAW AND GUIDELINES

### 5.2.1 USE OF LETHAL FORCE AGAINST “FLEEING FELONS”

There is no federal statute governing the use of lethal force in the United States. The use of lethal force is governed by individual state statutes and US common law. The US Supreme Court has ruled that lethal force may not be used unless it is necessary to prevent escape of someone where the officer has probable cause to believe that the suspect committed a crime involving the infliction or threatened infliction of serious physical harm or where the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. In *Tennessee v. Garner*, the Court held that Tennessee’s statute was unconstitutional, noting that “*Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so ... A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.*”<sup>80</sup> In a second case, *Graham v. Connor*, the US Supreme Court established the standard by which a jury is to judge an officer’s actions in the use of force – namely whether an officer’s actions were “objectively reasonable in light of the facts and circumstances confronting them” and that the “reasonableness” of a particular use of force must be judged from the perspective of a “reasonable officer on the scene.”<sup>81</sup>

#### ***Tennessee v Garner***

*The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.*

*It is not, however, unconstitutional on its face. 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. Thus, 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 given. As applied in such circumstances, the Tennessee statute would pass constitutional muster*

*Tennessee v. Garner*’s key principle is important i.e. that it is not permissible for the police to use deadly force to prevent the escape of an unarmed suspected felon who does not present a threat to the officer; deadly force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officers or others.

However, *Tennessee v. Garner* sets a lower standard than that required by international law and standards, in par-

ticular, with regards to the type of harm threatened by the individual fleeing (the decision notes death/serious injury and serious physical harm interchangeably in the opinion) and also because it allows for police to use deadly force to prevent the escape of a person who is reasonably believed at some time in the past to have committed a crime involving the infliction or threatened infliction of serious physical harm.<sup>82</sup> This is a less stringent standard than set out in the UN Basic Principles which is clear about the requirement of present or future threat, and is also much clearer about the nature of the threat i.e. imminent threat of death or serious injury or grave threat to life. Furthermore, general formulations such as a whether an officer's use of force was "reasonable", as laid out in *Graham v. Connor*, are also problematic as such formulations are largely vague and give a tremendous amount of discretion to the individual law enforcement official, making it almost impossible to hold him or her accountable. This becomes particularly problematic when it comes to the use of lethal force, where, in accordance with international standards, the reasonable belief must not relate to some sort of "necessity", but must be the objectively reasonable belief of an imminent threat of death or serious injury to the officer or other persons.

Laws that exist within the United States should be very clear about what the essential criteria are that define the legal standard for the nature of the harm threatened i.e. the requirement of a present or future threat and the nature of that threat (imminent threat of death or serious injury). Amnesty International found that nine states and Washington, D.C.<sup>83</sup> have not enacted any laws governing the use of lethal force and, therefore, rely strictly on the Supreme Court decisions in *Garner and Graham* in regards to law enforcement's use of lethal force in those jurisdictions. Of the states which do have such laws, none of them were sufficiently stringent to comply with the US's obligations under international law to respect and protect the right to life; 13 states<sup>84</sup> reviewed do not even meet the lower standard than that required by international law and standards set forth in *Tennessee v. Garner* and have statutes that currently violate the US Constitution by allowing officers to use lethal force to apprehend a felon even if the crime committed did not involve the infliction or threatened infliction of serious physical harm or the suspect does not pose a threat of death or serious injury to officers or the public.

Given the failure of *Tennessee v. Garner* to meet international standards as well as many other ways in which current laws in the USA do not meet international standards (such as failing to include provisions requiring non-violent means prior to resorting to any force, failing to reserve lethal force as a last resort and failing to require a warning to be given before lethal force is used) it is necessary for all states to revise their laws, going beyond the criteria set out in *Tennessee v. Garner*, so as to bring them into compliance with the Basic Principles on the Use of Force and Firearms, to ensure that their laws are compatible with the US's obligations under international law to respect and protect the right to life under the ICCPR.

## 5.2.2 USE OF LETHAL FORCE AGAINST PERSONS ESCAPING FROM DETENTION

Many states have use of lethal force statutes that specifically provide authority to officers to use lethal force to prevent the escape or apprehend someone who has escaped from a prison or detention facility without requiring that the escapee presents any specific threat of death or serious bodily injury. Under US law, while *Tennessee v. Garner* governed the use of excessive force by law enforcement officers on fleeing suspects, it does not apply to the use of force in cases involving escaped prisoners. The US Supreme Court in *Whitley v. Albers*<sup>85</sup> stated that the Eighth Amendment's Cruel and Unusual Punishment Clause, rather than the Fourth Amendment or the Due Process Clause of the Fourteenth Amendment, provides the rule for deciding excessive force claims by "those convicted of crimes" because, with respect to such persons, "the State has [already] complied with the constitutional guarantees traditionally associated with criminal prosecutions" (i.e. the person had been lawfully seized, tried and convicted). Although the *Whitley* case involved the use of deadly force during the suppression of a prison riot, courts have used this standard in evaluating the force used, including deadly force, to capture an escaped prisoner (*Gravelly v. Madden*).<sup>86</sup> Therefore, under US Constitutional law, unless a guard or officer's use of force in quelling a prison riot/preventing an escape or recapturing someone who has escaped is deemed "malicious or sadistic for the very purpose of causing harm," a court will find it reasonable.

Amnesty International analyzed the use of force to recapture an escaped prisoner under international law when that provision was included in the larger use of force or use of lethal force statutes for that particular state. However, under Basic Principle 16:

“Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.”

Despite what the US courts have stated in regards to the rights of prisoners under the US Constitution, prisoners do not give up their human rights due to their incarceration, in particular not their right to life and to physical integrity. International standards are clear that officials must not use force against prisoners, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened and lethal force should be restricted to only those instances where it is needed to protect the officer or others from an immediate threat of death or serious injury.<sup>87</sup> In particular, the standards set out by the US Supreme Court in the cases of *Whitley v. Albers* and *Gravelly v. Madden* dealing with the use of force, and specifically the use of lethal force, are not sufficiently stringent to comply with the US's international obligations on the right to life since they are not restricted to those instances when the prisoner presents an imminent threat of death or serious physical injury. Therefore, it is necessary for all states to revise their laws in order to bring them into compliance with the Basic Principles on the Use of Force and Firearms as well as international law on the right to life in relation to policing persons in custody or detention.

### 5.2.3 US DEPARTMENT OF JUSTICE GUIDELINES ON THE USE OF DEADLY FORCE

The DOJ provides guidance to all federal law enforcement officers on the use of deadly force. The guidance states that deadly force is to be used “only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.” When it comes to using such force against someone fleeing arrest, the standard is based on that which the Supreme Court articulated in *Tennessee V. Garner*; however the DOJ guidance is somewhat more stringent. When pursuing a fleeing felon, federal law enforcement officers may use deadly force if there is “probable cause to believe the subject has committed a felony involving the infliction or threatened infliction of serious injury or death, **and**, the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person” [Emphasis added].<sup>88</sup> The policy requires that both of these components be fulfilled before lethal force is used, rather than relying on the past conduct of the suspect to authorize the use of lethal force as a factor, as the Supreme Court has outlined in the *Garner* decision. Furthermore, while not requiring officers to exhaust all other non-violent means before resorting to lethal force, the DOJ guidelines refer to necessity as an additional criterion for the use of deadly force, and that this depends on whether lesser force would be sufficient: “if other force than deadly force reasonably appears to be sufficient to accomplish arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary.” The policy also states that officials should provide warnings prior to resorting to lethal force “[i]f feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.” The guidelines do not include any reporting requirement in regards to the use of firearms explicitly in the policy.

When it comes to the use of deadly force in custodial situations, like someone attempting to escape from a correctional facility, under the DOJ policy, federal officers and guards are allowed to use deadly force when non-deadly force is insufficient to prevent the escape if the prisoner is escaping from a secure facility or while in transit to or from a secure institution; or, if the prisoner is attempting to escape from custody in a way that poses an imminent danger to the safety of other prisoners, staff or the public.<sup>89</sup> The policy relies on the type of facility a person is housed in or being transferred to or from. Therefore, someone who is attempting to escape from a non-secure facility or a facility controlled by immigration authorities, would not warrant the use of lethal force solely for attempting to escape unless

the manner in which the attempt was made posed an imminent danger to other prisoners, staff or the public, or the person has otherwise manifested an imminent threat of death or serious physical injury to the officers or the community. Once a person has escaped from a facility or while in transit, the DOJ's guidance on the use of deadly force in noncustodial situations would then apply.

While the policy requires officers or guards to determine whether less than lethal force would be sufficient before resorting to lethal force in preventing an escape from a facility, it still permits the use of lethal force solely to prevent the escape of someone from a secure institution (or while in transit to or from a secure institution) without requiring the escapee to present an imminent threat of death or serious bodily injury to the guard, officers or others, and therefore violates international standards. The DOJ should revise its policy to bring it in line with international standards.

### The President's Task Force on 21st Century Policing

On December 18, 2014, President Barack Obama signed an executive order establishing the Task Force on 21st Century Policing. The president charged the task force with identifying best practices and offering recommendations on how policing practices can promote effective crime reduction while building public trust.

In May 2015, the Task Force delivered its final report and made a series of recommendations related to many issues such as encouraging law enforcement agencies to work closely with communities of color to address issues of crime and build relationships; refraining from enforcing immigration laws; developing policies and procedures for policing mass demonstrations that avoid using provocative tactics and equipment that undermine civilian trust. The main overarching recommendation from the report was that the President should support the creation of a **National Crime and Justice Task Force** to examine all areas of criminal justice and propose reforms.

The authors made a critical statement in regards to policies on the use of force which would address some of the issues noted in the present report related to the parameters of US Constitutional law on the use of lethal force:

*"Paramount among the policies of law enforcement organizations are those controlling use of force. Not only should there be policies for deadly and nondeadly uses of force but a clearly stated "sanctity of life" philosophy must also be in the forefront of every officer's mind. This way of thinking should be accompanied by rigorous practical ongoing training in an atmosphere of non-judgmental and safe sharing of views with fellow officers about how they behaved in use of force situations."* [Emphasis added.]

Such training is critical to ensure that law enforcement officers respect the right to life whenever they engage in using force, but this principle must also be enshrined in law in order for the USA to meet international standards on the use of lethal force by law enforcement.

The Task Force also made the following recommendations with regards to the use of force and policing practices:

- ❖ Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection and information sharing. These policies must be clear, concise and openly available for public inspection.
- ❖ Law enforcement agency policies for training on the use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate.
- ❖ These policies should also mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.
- ❖ The task force encourages policies that mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officers-involved shootings resulting in injury or death, or in-custody deaths.
- ❖ Policies on use of force should also require agencies to collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or non-fatal, as well as any in-custody death.
- ❖ Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.
- ❖ Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation or language fluency.<sup>90</sup>

## 6. STATE LAWS ON THE USE OF LETHAL FORCE IN THE UNITED STATES

State statutes on use of lethal force vary considerably. Some states have the use of deadly force statute included with in a larger use of force statute; others have it in a separate statute; while others list the statute as a “Justifiable Homicide” statute which applies to both law enforcement officers and the public. Nine states and Washington, D.C. have failed to enact any statute on the use of lethal force.

All statutes take the approach of setting their own criteria on the use of lethal force in permissive terms, rather than taking the more restrictive approach that is required under international law and standards, which sets out a presumption that force should not be used unless certain circumstances apply. A review of the laws on use of lethal force throughout the United States reveals that some states either explicitly allow the use of lethal force in violation of international standards, or leave the standards they set so vague that it amounts to the same result. The twin requirements of necessity and proportionality are often either presented too weakly, or one or both of these requirements are missing altogether.

All state laws fail to meet international law and standards. None of the laws establish the requirement that lethal force may only be used as a last resort with non-violent means and less harmful means to be tried first. The vast majority of the laws do not require officers to give a warning of their intent to use firearms. None of the laws include provisions requiring reporting when an officer uses firearms or when someone dies as a result of other use of force by police, and all laws fail to include measures for accountability.

The following are just some examples to illustrate the deficiencies in laws on the use of lethal force in the United States.

### 6.1 NECESSITY

#### 6.1.1 NON-VIOLENT MEANS AND LETHAL FORCE AS A LAST RESORT

When it comes to the principle of necessity – that officers must attempt non-violent measures prior to resorting to the use of any force – and may only use lethal force as a last resort, none of the states include such a standard in their use of force statutes.

Only four states provide any mention that other means should be attempted prior to resorting to lethal force; however each of those statutes simply refers to other levels of non-lethal force rather than specifically requiring non-violent means first.<sup>92</sup> For instance, “deadly force” is justified in Delaware “if all other reasonable means of apprehension have been exhausted.”<sup>93</sup> However, the use of force statute still does not establish a threshold for the use of deadly force, i.e. the existence of an imminent threat to life or of serious injury, and therefore still fails to meet international standards on proportionality.

#### 6.1.2 PERMISSIVE LANGUAGE RATHER THAN RESTRICTIVE

Several states’ use of force statutes include permissive language such as “a peace officer may ... if”, or the statutes themselves are enacted as “justifiable homicide”

The Department of Justice has the power to investigate police departments. The “Police Accountability Act”, incorporated into the “Violent Crime Control and Law Enforcement Act of 1994” gave the Department of Justice the authority to bring civil actions in federal courts against police departments accused in engaging in a “pattern and practice” of abuses. For example the DOJ’s civil rights division launched a “pattern and practice” investigation on September 14, 2014 into the Ferguson Police Department (FPD) following the fatal shooting of Michael Brown by an FPD officer. This investigation revealed a pattern or practice of unlawful conduct within the Ferguson Police Department, including that nearly 90 per cent of documented force used by FPD officers was used against African Americans. The DOJ report calls for a series of reforms to be made by the Ferguson Police Department.<sup>91</sup>



statutes rather than explicitly as use of force statutes strictly pertaining to law enforcement officers. Rhode Island's statute is but one example of this type of permissive language:

“A police officer **may use force dangerous to human life** to make a lawful arrest for committing or attempting to commit a felony, whenever he or she reasonably believes that force dangerous to human life is necessary to effect the arrest and that the person to be arrested is aware that a peace officer is attempting to arrest him or her.” [Emphasis added]<sup>94</sup>

Other states, such as California, do not even include language requiring the officer to have a “reasonable belief” or even “probable cause” regarding a threat as required under US constitutional law. The statute for California, a “justifiable homicide” statute, simply states:

“Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.”<sup>95</sup>

While California's and Rhode Island's statutes do not even comply with the less stringent US constitutional standard set out in *Garner*, provisions such as the above, if not narrowed by accompanying requirements of proportionality and necessity, allow for wide and uncontrolled discretion to be exercised by the law enforcement official, without any additional safeguards. Beyond the permissive nature of the language of the laws more generally, these types of laws do not meet international standards since: they do not establish a requirement that lethal force be used only as a last resort; they do not require that non-lethal means be used first; nor do they require the suspect to pose an imminent threat of death or serious injury, or any kind of threat whatsoever.

### 6.1.3 VAGUE LANGUAGE

Many statutes also include very broad or vague terms setting out when lethal force would be justified under that law. For instance, North Dakota's statute permits deadly force by “a public servant authorized to effect arrests or prevent escapes” in order to arrest or prevent the escape of “an individual who has committed or attempted to commit **a felony involving violence**, or is attempting to escape by the use of a **deadly weapon**, or has **otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.**” [Emphasis added].<sup>96</sup> With regards to the felony committed or attempted, the statute does not explicitly define what level of “violence” warrants the use of deadly force which means that any or the slightest act of violence involved in the commission of a crime would warrant the use of deadly force by an officer. The statute also does not define what is considered to be a “deadly weapon” or limit the instrument to a firearm or how a person can otherwise “indicate” they are likely to endanger others. These vague terms are exemplary of the type of language seen throughout the state statutes that effectively give officers in those states wide discretion to use deadly force when apprehending a suspect.

### 6.1.4 WARNING

Forty-two states and Washington, D.C. do not include provisions requiring that a warning should be provided prior to resorting to the use of lethal force. One example of the eight states<sup>97</sup> that do include some kind of requirement for a

warning is Indiana's statute, which states:

“an officer is justified in using deadly force only if the officer has probable cause to believe that that deadly force is necessary to prevent the commission of a forcible felony; or to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; **and has given a warning, if feasible, to the person against whom the deadly force is to be used.**”<sup>98</sup> [Emphasis added].

Under the UN Basic Principles, when law enforcement is faced with an imminent threat of death or serious bodily injury, officers must identify themselves as such and **give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officers at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances** of the incident. Despite eight states including provisions regarding the issuing of a warning by law enforcement officers when using lethal force, the statutes are permissive in that the warning should be provided “if feasible,” thereby, largely negating the requirement for officers to provide a warning at all in these instances.

## 6.2 PROPORTIONALITY

Not one statute limits the use of lethal force to the strict scenario of when an officer is facing an imminent threat of death or serious injury. Any use of lethal force must also meet the requirement of proportionality. Proportionality sets a maximum on the force that might be used to achieve a specific legitimate objective. It thus determines at what point the escalation of force that is necessary to achieve that objective must stop. Lethal force is only proportionate when facing an imminent threat of death or serious injury. Only the statutes of Idaho and New Mexico limit the use of lethal force to scenarios where the officer or the public face a threat of death or serious injury. However, even those two states do not require that the threat be “imminent” and therefore still fail to meet international standards in regards to necessity.<sup>99</sup>

As mentioned in the discussion around *Tennessee v. Garner*, most states rewrote their use of force statutes to include the language that was provided in the Supreme Court opinion. However, even that standard is less stringent than required under international law since officers are allowed to use lethal force when apprehending a suspect who committed a crime, or attempted to commit a crime, involving the infliction or threat of infliction of serious physical harm without any additional threat assessment. States whose statutes include this type of language, or which do not have a statute in place and therefore rely on the common law, fail to meet international standards in regards to proportionality since they allow the use of lethal force on the basis of a crime having already been committed or attempted and without an explicit requirement that use of lethal force must depend on the suspect still posing a threat of death or serious injury to the officer or others. So long as the crime which has been committed involved the infliction or threatened infliction of “serious physical harm,” officers are authorized to use all force, including lethal force, to apprehend the suspect under US law. This violates the principle of proportionality as the use of lethal force used in these situations is based on the commission or attempted commission of a past crime, rather than the ongoing commission of a crime or other threat of death or serious injury to the officer or others.

Other states, which do not even comply with the less stringent US constitutional standard of *Tennessee v. Garner*, authorize the use of lethal force in a number of scenarios or in respect to the commission of a wide range of crimes, including non-violent crimes, where there is no threat of death or serious injury to the officer or others. For instance, New Jersey's statute for “Use of force in law enforcement”<sup>100</sup> includes a list of a number of crimes, whether committed or attempted, where “deadly force” is justifiable such as “burglary of a dwelling” and sexual assault (which is listed in the use of force statute as “a crime under 2C:14-2”). The use of deadly force for such crimes goes well beyond the proportionality standard and is just one reason why the New Jersey statute fails to meet international law and standards on the use of lethal force.

While law enforcement officers are authorized to use force, including lethal force, depending on the individual circumstances of the interaction, six states have explicit language in their statutes that officers need not retreat or desist from efforts to make a lawful arrest due to resistance or threatened resistance to the arrest.<sup>101</sup> For instance, Florida's statute for law enforcement on the use of force to make an arrest begins by stating: "A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest."<sup>102</sup> This bears a considerable risk of officers seeking to pursue their law enforcement objective at any cost, without balancing whether the harm they might cause is indeed justified by the objective they want to achieve. While law enforcement officials shall indeed seek to enforce the law, this should never be done at **any** cost. Where minor law enforcement issues are at stake, this can never justify the use of force that would endanger life.

## 6.3 USE OF FORCE IN PREVENTING THE ESCAPE OF PEOPLE IN CUSTODY OR DETENTION

Twenty-two states include language specific to individuals escaping from penal institutions, whether that be jails or prisons.<sup>103</sup> While US constitutional law<sup>104</sup> treats the use of lethal force in preventing the escape from prison or recapturing those who have escaped under a specific set of standards, international law applies the same principles of necessity and proportionality as it does in all other interactions with law enforcement.

In regard to the use of force against those in custody or detention, Principle 16 of the UN Basic Principles for Use of Force and Firearms states:

Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in Principle 9 [that is, that the person presents an imminent threat of death or serious injury to themselves or others].

Most state statutes that include provisions on escape from prison set out very little limitation on officers' use of lethal force to prevent an escape or apprehend someone who has escaped. For instance, Mississippi deems "the killing of a human being...justifiable... [w]hen necessarily committed by public officers, or those acting by their command in their aid and assistance, in retaking any felon who has been rescued or has escaped."<sup>105</sup> In Mississippi and the other 19 of the 22 states that include provisions on the use of lethal force to prevent escape from penal institutions, the person who has escaped from prison need not even present a threat of any kind to the officer or others. Only two of the 22 states, Idaho and New Mexico, require that the person pose a threat of death or serious bodily harm to the officer or others. However international law and standards require that threat to be an *immediate* threat if law enforcement officers are to use lethal force, as stated in Principle 16. Once the person has escaped, the use of lethal force should be guided by Principle 9 of the UN Basic Principles, in that the person must present an imminent threat of death or serious bodily injury to the officer or others. None of the statutes require officers to attempt non-violent or less harmful means first.

The authorization to use lethal force against someone who has escaped from prison, or is attempting to do so, without requiring that the person pose an imminent threat of death or serious injury to the officer or others (and as noted above 20 states do not require that the person poses any kind of threat at all), and without requiring the attempt to use non-violent or less harmful means first, fails to meet the standards of both necessity and proportionality on the use of lethal force under international law and standards.

## 6.4 POLICING OF ASSEMBLIES – DEMONSTRATIONS AND PROTESTS

Nine states provide law enforcement officers with authority to use lethal force to suppress a riot.<sup>106</sup> However none of the statutes that include such provisions require officers to assess the level of threat to life, or to assess what other means – including necessary and proportionate use of force – could be used to disperse the group, or restrict the use of firearms to only those situations where it is necessary to protect against an imminent threat of death or serious injury. For instance, Pennsylvania’s use of force statute<sup>107</sup> includes the following provision on the use of lethal force:

[t]he use of deadly force is not in any event justifiable ... unless ... ***the actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.*** [Emphasis added].

This statute fails to comply with the principle of proportionality, because it does not require that officers face an imminent threat of death or serious bodily injury before resorting to lethal force.

## 6.5 USE OF LETHAL FORCE BY PRIVATE ACTORS

Twenty states authorize private actors to use lethal force in assisting officers in making an arrest.<sup>108</sup> In 17 of the states reviewed, the statute specifically mentions use of lethal force by private actors in aiding or assisting law enforcement or provide authority to private actors to engage in law enforcement activities outright. Colorado’s statute on the use of physical force in making an arrest or in preventing an escape<sup>109</sup> actually provides for both scenarios:

(5) Except as provided in subsection (6) of this section, a person who has been directed by a peace officer to assist him to effect an arrest or to prevent an escape from custody is justified in using reasonable and appropriate physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer’s direction, unless he knows that the arrest or prospective arrest is not authorized.

(6) A person who has been directed to assist a peace officer under circumstances specified in subsection (5) of this section may use deadly physical force to effect an arrest or to prevent an escape only when:

(a) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) He is directed or authorized by the peace officer to use deadly physical force and does not know, if that happens to be the case, that the peace officer himself is not authorized to use deadly physical force under the circumstances.

(7) A private person acting on his own account is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest, or to prevent the escape from custody of an arrested person who has committed an offense in his presence; but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

The Colorado statute therefore authorizes private actors to not only use physical force in assisting an officer with an arrest, but also lethal force when directed by an officer to do so. Furthermore, private actors in the state of Colorado are also justified in making arrests or preventing escapes of suspects who commit crimes in their presence.

Statutes in California, Kentucky and Louisiana are written with such broad and vague language that it could apply to both law enforcement as well as private actors. For instance, Louisiana's statute is written as a "justifiable homicide" statute that does not mention law enforcement specifically, while California's statute provides that "[h]omicide is justifiable when committed by public *officers and those acting by their command in their aid and assistance*" [Emphasis added].<sup>110</sup>

Law enforcement duties should be carried out by law enforcement officials, in particular when it comes to the use of lethal force. Allowing untrained private individuals to make life and death decisions raises serious concerns as they do not receive the same training as law enforcement officials on the use of force, and it also raises concerns about accountability.

## 6.6 REPORTING AND ACCOUNTABILITY

None of the state statutes reviewed include provisions requiring the reporting when an officer uses firearms or when someone dies as a result of other use of force by police, or any other accountability measures. International law and standards require that there should be a system for reporting whenever law enforcement officials use firearms in the performance of their duty and that, in case of death or injury as a result of police use of force, the case must be the subject of a prompt, thorough, effective, independent and impartial investigation with a view to prosecution as a criminal offense.

## 7. RECOMMENDATIONS

### To the president of the United States

- ❖ The president of the United States should establish a “National Crime and Justice Task Force” as recommended by the Presidential Task Force on 21st Century Policing to review and evaluate all components of the criminal justice system, including the use of lethal force by law enforcement officers.
- ❖ The “National Crime and Justice Task Force” should examine all state statutes, local law enforcement policies and trainings on the use of lethal force and require that they be brought in line with international standards on the use of lethal force, including the UN Basic Principles on the Use of Force and Firearms.

### To the Department of Justice

- ❖ Ensure the collection and publication of nationwide statistics on police use of lethal force in accordance with the Violent Crime Control and Enforcement Act (1994) and the Death in Custody Act (2014). The data collected should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identity and indigenous status.
- ❖ Support the creation of a national commission as recommended by the Presidential Task Force on 21st Century Policing (National Crime and Justice Task Force) to examine and produce recommendations on policing issues, including use of excessive and lethal force, and adherence of all law enforcement agencies to human rights standards for law enforcement.
- ❖ Review and revise all federal policies on the use of lethal force, including the Department of Justice’s *Guidance on the Use of Deadly Force* by law enforcement officials to ensure compliance with international law and standards, including the *U.N. Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms*.
- ❖ Review and revise the Department of Justice’s *Guidance on the Use of Race* by law enforcement officials to include a comprehensive ban on racial profiling by federal and state law enforcement agencies.
- ❖ The Civil Rights Division of the Department of Justice should pursue “pattern and practice” investigations against police agencies nationwide that commit widespread abuses, including use of lethal force, particularly against communities of color and, where applicable, bring civil rights charges against officers who violate US civil rights law.

### To the US Congress

- ❖ Support and provide funding for the creation of a commission (the “National Crime and Justice Task Force”) and ensure that it reviews and makes recommendations on the use of lethal force by law enforcement.
- ❖ Take legislative action to ensure that all federal, state and local law enforcement officials restrict their use of lethal force in compliance with international law and standards. This should include enacting legislation that requires all federal, state and local law enforcement agencies to review and amend their policies on the use of lethal force and law enforcement to ensure that they are in line with international law and standards by limiting the use of lethal force by law enforcement officials to those instances in which it is necessary to protect against the threat of death or serious injury and to oblige law enforcement officials in any case to attempt non-violent and less harmful means first. The policies should contain specific provisions requiring a system of reporting when-

ever law enforcement officers use firearms in the performance of their duty, and for accountability. The laws and policies should be brought fully into compliance with the U.N. Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms; they should furthermore emphasize the obligation of law enforcement officials to carry out their duty and to exercise the power to use force and firearms without any discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR, Art. 26).

❖ Pass appropriate legislative measures to address issues related to the use of lethal force and discrimination by law enforcement including the:

- “Police Reporting Information, Data, and Evidence Act”;
- “End Racial Profiling Act”;
- “Stop Militarizing Law Enforcement Act”; and
- “Protecting Communities and Police Act”.

### To State Governments

❖ All state legislatures should introduce or review and amend statutes that authorize the use of lethal force to ensure that they are in line with international law and standards by limiting the use of lethal force by law enforcement to those instances in which it is necessary to protect against the threat of death or serious injury and to oblige law enforcement officials in any case to attempt non-violent and less harmful means first. The statutes should contain specific provisions requiring a system of reporting whenever law enforcement officers use firearms in the performance of their duty, and for accountability. The statutes should be brought fully into compliance with the *U.N. Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms*; they should furthermore emphasize the obligation of law enforcement officials to carry out their duty and to exercise the power to use force and firearms without any discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR, Art. 26).

❖ Ensure that state and local authorities’ investigations into the use of lethal force are thorough, transparent, independent and impartial; and concluded as promptly as possible. If the evidence indicates that the use of force was unlawful, the police officer(s) responsible should be criminally prosecuted.

❖ All states should review oversight and accountability mechanisms currently in place for the use of force and firearms and bring them into compliance with international standards, including the establishment of independent and effective oversight bodies.

❖ All states should require by law that police departments publish regular statistics on the number of people shot and killed or injured by police officers. This data should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identify and indigenous status. All states should report data to the federal government including through the National Incident-Based Reporting System and the Center for Disease Control’s National Violent Death Reporting System.

❖ Ensure that the state has adequate protections in place against racial discrimination, including legislation prohibiting racial discrimination and profiling.

### To Police Departments

❖ Review and revise current policies, standards, practice, and training on the use of force and firearms, to ensure that they conform fully to international standards, including those set out under the U.N. Code of Conduct

for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms and make them publicly available; policies and training should give priority to peaceful means of settlement of conflicts, de-escalation, negotiation and persuasion, prior to any use of force, including firearms.

- ❖ Review and revise law enforcement policies and training related to race and policing diverse communities.
- ❖ Review and revise law enforcement policies and training related to the policing of protests to bring them in line with international standards.
- ❖ All police departments should publish regular statistics on the number of people shot and killed or injured by police officers. This data should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identify and indigenous status and be made available to all state and federal agencies, including the National Incident-Based Reporting System and the Center for Disease Control's National Violent Death Reporting System.
- ❖ All police departments should also provide information on the internal disciplinary process by publishing regular statistical data on the type and outcome of complaints and disciplinary action. The data related to the complainant should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identity and indigenous status.

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## ENDNOTES

1. See: African American Policy Forum, Say Her Name: Resisting Police Brutality Against Black Women, May 20, 2015 available at: <http://www.aapf.org/say-her-name-report/>
2. See: Amnesty International, Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States, 2004; Amnesty International, United States of America: Rights for All, 1998; and Amnesty International Race, Rights and Police Brutality, 1998
3. Ford, Dana, "Man shot and killed by St. Louis Police", CNN, 20 August 2014, available at <http://www.cnn.com/2014/08/19/us/missouri-police-shooting/index.html>
4. The United States ratified the ICCPR in 1992 and CERD in 1994. Articles 6 and 9 of the ICCPR protect the right to life and security of person respectively. States parties to the ICCPR are obliged to ensure these and other rights set out in the ICCPR to everyone within their jurisdiction without discrimination and Article 26 of the ICCPR underlines that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 5 of the CERD underlines the state obligation to respect and protect the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution, and Article 6 underlines the state obligation to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate their human rights.
5. Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36.
6. Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36.
7. According to a recent study, only 54 police officers have been charged over the past decade for fatally shooting someone, representing a small fraction of the thousands of fatal shootings that have taken place. See: Study conducted by the Washington Post and Bowling Green State University. Kindy, Kimberly and Kimbriell Kelly, "Police officers charged in fatal shooting while on duty: 54 in the past decade", The Washington Post, 12 April 2015, available at: <http://www.washingtonpost.com/news/post-nation/wp/2015/04/12/police-officers-charged-in-fatal-shootings-while-on-duty-54-cases-in-the-past-decade>
8. See: Amnesty International, United States of America, Rights for All, AI Index: AMR 51/35/98
9. Amnesty International, Annual Report: United States of America 2013, available at <http://www.amnestyusa.org/research/reports/annual-report-united-states-of-america-2013?page=2> documenting at least 540 deaths in the USA from 2001 through 2012, see also Amnesty International, "Less than Lethal: The Use of Stun Weapons in US Law Enforcement", AMR 0/010/2008
10. All police departments should ban chokeholds and ensure that such bans are implemented.
11. See: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 20 and the UN Code of Conduct for Law Enforcement Officials, Article 3.



12. Amnesty International has reviewed for compliance with the US Supreme Court decision in *Tennessee v Garner*.
13. Only two of these states (Idaho and New Mexico) require a threat for lethal force to prevent a prison escape however neither of them require that threat to be imminent.
14. States that allow citizens use force if they aid, assist or are directed by a law enforcement officer: California; Kansas; Kentucky; Nebraska; New Jersey; North Dakota; Pennsylvania; South Dakota; Texas; Washington. States that allow citizens to use lethal force make arrests without the involvement of law enforcement: Arizona; Indiana; Louisiana. States that allow for citizens to use lethal force in both scenarios i.e. if directed by law enforcement or on their own without law enforcement involvement: Alabama; Colorado; Connecticut; Maine; Mississippi; New Hampshire; New York
15. Tennessee requires that all law enforcement "shall receive instruction" and Georgia requires that it should be "offered" as part of at least one in-service training program each year.
16. *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989); *Whitley v. Albers*, 475 U.S. 312, (1986); *Gravelly v. Madden*, 142 F.3d 345 (6th Cir. 1998)
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  45. US Department of Justice, Civil Rights Division, Investigation of the Ferguson Police Department, 4 March 2015, p. 71, available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)
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79. See further: Amnesty International USA, "On the streets of America: Human Rights Abuses in Ferguson", October 24, 2014 available at: <https://www.amnestyusa.org/sites/default/files/onthestreetsofamericaamnestyinternational.pdf>

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80. *Tennessee v. Garner*, 471 U.S. 1 (1985).
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  82. Allowing for the use of lethal force for certain types of crime i.e. for a “felony involving the infliction or threatened infliction of serious bodily injury” is also problematic as it allows for the use of lethal force independently of whether there are any indications that the person currently poses a threat of death or serious injury to the police or the public. For example, Michael Steven Ireland, who had been convicted for forgery, drug distribution and identify theft, was shot and killed by police officers in Springfield in February of 2015 when he attempted to run from the officers, despite being unarmed at the time of the incident. Report by News-leader.com (February 18, 2015).
  83. Maryland, Massachusetts, Michigan, Ohio, South Carolina, Virginia, West Virginia, Wisconsin, Wyoming and Washington, D.C.
  84. Even in states that currently do not comply with *Tennessee v. Garner*, the US Supreme Court decision still applies in those states. However it is still important for states to revise their laws to ensure compliance for example, in the Grand Jury proceedings to determine whether Officer Darren Wilson should be indicted for the fatal shooting of Michael Brown in Ferguson, an Assistant District Attorney involved in the case gave inaccurate and misleading instructions to the Grand Jury at the beginning of the proceeding regarding controlling law on whether officers can kill a fleeing suspect without considering the officer’s fear of life. She cited a Missouri statute that had been overturned by the U.S. Supreme Court in 1985 in *Tennessee v. Garner*. She corrected the record weeks after citing the wrong statute and long after Officer Wilson had testified. See *State of Missouri v. Darren Wilson*, Grand Jury Transcript, Grand Jury: Volume 5 , 16 September 2014 (page 674) and Grand Jury: Volume 24, 21 November 2014 (page 4788), available at <http://graphics8.nytimes.com/newsgraphics/2014/11/24/ferguson-assets/grand-jury-testimony.pdf>.
  85. *Whitley v. Albers*, 475 U.S. 312, (1986).
  86. *Gravelly v. Madden*, 142 F.3d 345 (6th Cir. 1998).
  87. Principle 15, UN Basic Principles on the Use of Force and Firearms.
  88. See Department of Justice, “Policy Statement Use of Deadly Force”, Attorney General October 17, 1995 Memorandum on Resolution 14, available at <http://www.justice.gov/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment>.
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  91. US Department of Justice, Civil Rights Division, Investigation of the Ferguson Police Department, 4 March 2015, p. 5, available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).
  92. Delaware, Iowa, Rhode Island and Tennessee.
  93. 11 Del.C. § 467
  94. R.I. Gen.Laws 1956, § 12-7-9
  95. West’s Ann. Cal. Penal Code § 196
  96. NDCC § 12.1-05-07
  97. Connecticut, Florida, Indiana, Nevada, New Mexico ,Tennessee, Utah and Washington.
  98. IC § 35-41-3-3
  99. See I.C. § 18-4011 and N.M.S.A. § 30-2-6
  100. N.J.S.A. § 2C:3-7
  101. Florida, Illinois, Kansas, Missouri, Pennsylvania, and Texas.
  102. West’s F.S.A. § 776.05
  103. Alabama, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Kentucky, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Washington.
  104. See *Whitley v. Albers* and *Gravelly v. Madden*
  105. Miss. Code Ann. § 97-3-15
  106. Arizona, Delaware, Idaho, Mississippi, Nebraska, Pennsylvania, South Dakota, Vermont and Washington.
  107. 18 Pa.C.S.A. § 508
  108. Alabama, Arizona, California, Connecticut, Colorado, Indiana, Kansas, Kentucky, Louisiana, Maine, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Texas, and Washington.
  109. C.R.S.A. § 18-1-707
  110. La. R.S. § 14:20; West’s Ann.Cal.Penal Code § 196

## APPENDIX – STATE USE OF LETHAL FORCE STATUTES

# ALABAMA

## Use of Lethal Force

*§ 13A-3-27. Use of force in making an arrest or preventing an escape., AL ST § 13A-3-27*

Ala.Code 1975 § 13A-3-27

§ 13A-3-27. Use of force in making an arrest or preventing an escape.

(a) A peace officer is justified in using that degree of physical force which he reasonably believes to be necessary, upon a person in order:

(1) To make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or to prevent the escape from custody of a person arrested for a misdemeanor, violation or violation of a criminal ordinance, unless the peace officer knows that the arrest is unauthorized; or

(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or while preventing or attempting to prevent an escape from custody of a person who has been legally arrested for a misdemeanor, violation or violation of a criminal ordinance.

**(b) A peace officer is justified in using deadly physical force upon another person when and to the extent that he reasonably believes it necessary in order:**

**(1) To make an arrest for a felony or to prevent the escape from custody of a person arrested for a felony, unless the officer knows that the arrest is unauthorized; or**

**(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.**

(c) Nothing in subdivision (a)(1), or (b)(1), or (f)(2) constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to persons being arrested or to innocent persons whom he is not seeking to arrest or retain in custody.

(d) A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (a) and (b) unless the warrant is invalid and is known by the officer to be invalid.

(e) Except as provided in subsection (f), a person who has been directed by a peace officer to assist him to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction.

(f) A person who has been directed to assist a peace officer under circumstances specified in subsection (e) may use deadly physical force to effect an arrest or to prevent an escape only when:

(1) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

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(2) He is authorized by the peace officer to use deadly physical force and does not know that the peace officer himself is not authorized to use deadly physical force under the circumstances.

(g) A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes has committed a felony and who in fact has committed that felony, but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

### **h) A guard or peace officer employed in a detention facility is justified:**

**(1) In using deadly physical force when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard;**

**(2) In using physical force, but not deadly physical force, in all other circumstances when and to extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention facility.**

(3) "Detention facility" means any place used for the confinement, pursuant to law, of a person:

- a. Charged with or convicted of an offense; or
- b. Charged with being or adjudicated a youthful offender, a neglected minor or juvenile delinquent; or
- c. Held for extradition; or
- d. Otherwise confined pursuant to an order of a criminal court.



## Use of Lethal Force

*§ 11.81.370. Justification: Use of force by a peace officer in making an arrest or terminating an escape, AS § 11.81.370*

AS § 11.81.370

§ 11.81.370. Justification: Use of force by a peace officer in making an arrest or terminating an escape

(a) In addition to using force justified under other sections of this chapter, a peace officer may use nondeadly force and may threaten to use deadly force when and to the extent the officer reasonably believes it necessary to make an arrest, to terminate an escape or attempted escape from custody, or to make a lawful stop. **The officer may use deadly force only when and to the extent the officer reasonably believes the use of deadly force is necessary to make the arrest or terminate the escape or attempted escape from custody of a person the officer reasonably believes**

**(1) has committed or attempted to commit a felony which involved the use of force against a person;**

**(2) has escaped or is attempting to escape from custody while in possession of a firearm on or about the person; or**

**(3) may otherwise endanger life or inflict serious physical injury unless arrested without delay.**

(b) The use of force in making an arrest or stop is not justified under this section unless the peace officer reasonably believes the arrest or stop is lawful.

(c) Nothing in this section prohibits or restricts a peace officer in preparing to use or threatening to use a dangerous instrument.



## Use of Lethal Force

*§ 13-410. Justification; use of deadly physical force in law enforcement, A.R.S. § 13-410*

A.R.S. § 13-410

§ 13-410. Justification; use of deadly physical force in law enforcement

A. The threatened use of deadly physical force by a person against another is justified pursuant to § 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is:

1. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
2. A felon who has escaped from lawful confinement; or
3. A felon who is fleeing from justice or resisting arrest with physical force.

B. The use of deadly physical force by a person other than a peace officer against another is justified pursuant to § 13-409 only if a reasonable person effecting the arrest or preventing the escape would believe the suspect or escapee is actually resisting the discharge of a legal duty with physical force or with the apparent capacity to use deadly physical force.

**C. The use of deadly force by a peace officer against another is justified pursuant to § 13-409 only when the peace officer reasonably believes that it is necessary:**

1. To defend himself or a third person from what the peace officer reasonably believes to be the use or imminent use of deadly physical force.
2. To effect an arrest or prevent the escape from custody of a person whom the peace officer reasonably believes:
  - (a) Has committed, attempted to commit, is committing or is attempting to commit a felony involving the use or a threatened use of a deadly weapon.
  - (b) Is attempting to escape by use of a deadly weapon.
  - (c) Through past or present conduct of the person which is known by the peace officer that the person is likely to endanger human life or inflict serious bodily injury to another unless apprehended without delay.
  - (d) Is necessary to lawfully suppress a riot if the person or another person participating in the riot is armed with a deadly weapon.

**D. Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.**



# ARKANSAS



## Use of Lethal Force

*§ 5-2-610. Use of physical force by law enforcement officers, A.C.A. § 5-2-610*

A.C.A. § 5-2-610

§ 5-2-610. Use of physical force by law enforcement officers

(a) A law enforcement officer is justified in using nondeadly physical force or threatening to use deadly physical force upon another person if the law enforcement officer reasonably believes the use of nondeadly physical force or the threat of use of deadly physical force is necessary to:

- (1) Effect an arrest or to prevent the escape from custody of an arrested person unless the law enforcement officer knows that the arrest is unlawful; or
- (2) Defend himself or herself or a third person from what the law enforcement officer reasonably believes to be 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.

**(b) A law enforcement officer is justified in using deadly physical force upon another person if the law enforcement officer reasonably believes that the use of deadly physical force is necessary to:**

- (1) Effect an arrest or to prevent the escape from custody of an arrested person whom the law enforcement officer reasonably believes has committed or attempted to commit a felony and is presently armed or dangerous; or**
- (2) Defend himself or herself or a third person from what the law enforcement officer reasonably believes to be the use or imminent use of deadly physical force.**



## Use of Lethal Force

*§ 196. Justifiable homicide; public officers, West's Ann. Cal. Penal Code § 196*

West's Ann.Cal.Penal Code § 196  
§ 196. Justifiable homicide; public officers

**Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either--**

- 1. In obedience to any judgment of a competent Court; or,**
- 2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,**
- 3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.**



## Use of Lethal Force

*§ 18-1-707. Use of physical force in making an arrest or in preventing an escape, C.R.S.A. § 18-1-707*

C.R.S.A. § 18-1-707

§ 18-1-707. Use of physical force in making an arrest or in preventing an escape

(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

**(2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:**

**(a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or**

**(b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:**

**(I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or**

**(II) Is attempting to escape by the use of a deadly weapon; or**

**(III) Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.**

**(3) Nothing in subsection (2)(b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.**

(4) 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 force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

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(5) Except as provided in subsection (6) of this section, a person who has been directed by a peace officer to assist him to effect an arrest or to prevent an escape from custody is justified in using reasonable and appropriate physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction, unless he knows that the arrest or prospective arrest is not authorized.

(6) A person who has been directed to assist a peace officer under circumstances specified in subsection (5) of this section may use deadly physical force to effect an arrest or to prevent an escape only when:

(a) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(b) He is directed or authorized by the peace officer to use deadly physical force and does not know, if that happens to be the case, that the peace officer himself is not authorized to use deadly physical force under the circumstances.

(7) A private person acting on his own account is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest, or to prevent the escape from custody of an arrested person who has committed an offense in his presence; but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

**(8) A guard or peace officer employed in a detention facility is justified:**

**(a) In using deadly physical force when he reasonably believes it necessary to prevent the escape of a prisoner convicted of, charged with, or held for a felony or confined under the maximum security rules of any detention facility as such facility is defined in subsection (9) of this section;**

**(b) In using reasonable and appropriate physical force, but not deadly physical force, in all other circumstances when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention facility.**

(9) "Detention facility" as used in subsection (8) of this section means any place maintained for the confinement, pursuant to law, of persons charged with or convicted of an offense, held pursuant to the "Colorado Children's Code",<sup>1</sup> held for extradition, or otherwise confined pursuant to an order of a court.

# CONNECTICUT



## Use of Lethal Force

*§ 53a-22. Use of physical force in making arrest or preventing escape, C.G.S.A. § 53a-22*

C.G.S.A. § 53a-22

§ 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.

(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.

**(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.**

(d) Except as provided in subsection (e) of this section, a person who has been directed by 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 to assist such peace officer, special policeman, motor vehicle inspector or official to effect an arrest or to prevent an escape from custody is justified in using reasonable physical force when and to the extent that he or she reasonably believes such to be necessary to carry out such peace officer's, special policeman's, motor vehicle inspector's or official's direction.

(e) A person who has been directed to assist 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 under circumstances specified in subsection (d) of this section may use deadly physical force to effect and arrest or to prevent an escape from custody only

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when: (1) He or she reasonably believes such to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or (2) he or she is directed or authorized by such peace officer, special policeman, motor vehicle inspector or official to use deadly physical force, unless he or she knows that the peace officer, special policeman, motor vehicle inspector or official himself or herself is not authorized to use deadly physical force under the circumstances.

(f) A private person acting on his or her own account is justified in using reasonable physical force upon another person when and to the extent that he or she reasonably believes such to be necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he or she reasonably believes to have committed an offense and who in fact has committed such offense; but he or she is not justified in using deadly physical force in such circumstances, except in defense of person as prescribed in section 53a-19.



## Use of Lethal Force

*§ 467. Justification--Use of force in law enforcement, 11 Del.C. § 467*

11 Del.C. § 467

§ 467. Justification--Use of force in law enforcement

(a) The use of force upon or toward the person of another is justifiable when:

(1) The defendant is making an arrest or assisting in making an arrest and believes that such force is immediately necessary to effect the arrest; or

(2) The defendant is attempting to arrest an individual that has taken a hostage, and refused to comply with an order to release the hostage; and

a. The defendant believes that the use of force is necessary to prevent physical harm to any person taken hostage; or

b. The defendant has been ordered by an individual the defendant believes possesses superior authority or knowledge to apply the use of force.

(b) The use of force is not justifiable under this section unless:

(1) The defendant makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and

(2) When the arrest is made under a warrant, the warrant is valid or believed by the defendant to be valid; or

(3) When the arrest is made without a warrant, the defendant believes the arrest to be lawful.

**(c) The use of deadly force is justifiable under this section if all other reasonable means of apprehension have been exhausted, and:**

**(1) The defendant believes the arrest is for any crime involving physical injury or threat thereof, and the deadly force is directed at a vehicle to disable it for the purpose of effecting the arrest, or the defendant believes the arrest is for a felony involving physical injury or threat thereof;**

**(2) The defendant believes that the force employed creates no substantial risk of injury to innocent persons; and**

**(3) The defendant believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury, or will never be captured if apprehension is delayed.**

**(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which the person believes to be immediately necessary to prevent the escape of a person from a jail, prison or other institution**

for the detention of persons charged with or convicted of a crime.

(e) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious physical injury upon the person's self or committing a crime involving or threatening physical injury, damage to or loss of property or a breach of the peace, except that the use of deadly force is not justifiable under this subsection unless:

(1) The defendant believes that there is a substantial risk that the person whom the defendant seeks to prevent from committing a crime will cause death or serious physical injury to another unless the commission of the crime is prevented and that the use of deadly force presents no substantial risk of injury to innocent persons; or

(2) The defendant believes that the use of deadly force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any manner that the law may require, that such force will be used if they do not obey.

(f) The use of deadly force is justifiable under this section if the defendant is attempting to arrest an individual that has taken a hostage, and has refused to comply with an order to release the hostage; and

(1) The defendant believes that the use of force is necessary to prevent physical harm to any person taken hostage, or the defendant has been ordered by an individual the defendant believes possesses superior authority or knowledge to apply the use of force; and

(2) The defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant or a person of superior authority or knowledge who order the use of deadly force believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury.





## Use of Lethal Force

*§ 776.05. Law enforcement officers; use of force in making an arrest, West's F.S.A. § 776.05*

West's F.S.A. § 776.05

§ 776.05. Law enforcement officers; use of force in making an arrest

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. **The officer is justified in the use of any force:**

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;**
- (2) When necessarily committed in retaking felons who have escaped; or**
- (3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:**
  - (a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or**
  - (b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.**

# GEORGIA

## Use of Lethal Force

*§ 17-4-20. Arrest without warrant; use of deadly force; training recommendations; authority of nuclear power facility security officers, Ga. Code Ann., § 17-4-20*

Ga. Code Ann., § 17-4-20

§ 17-4-20. Arrest without warrant; use of deadly force; training recommendations; authority of nuclear power facility security officers

(a) An arrest for a crime may be made by a law enforcement officer:

(1) Under a warrant; or

(2) Without a warrant if:

(A) The offense is committed in such officer's presence or within such officer's immediate knowledge;

(B) The offender is endeavoring to escape;

(C) The officer has probable cause to believe that an act of family violence, as defined in Code Section 19-13-1, has been committed;

(D) The officer has probable cause to believe that the offender has violated a criminal family violence order, as defined in Code Section 16-5-95; provided, however, that such officer shall not have any prior or current familial relationship with the alleged victim or the offender;

(E) The officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult, who shall be for the purposes of this subsection a person 18 years old or older who is unable to protect himself or herself from physical or mental abuse because of a physical or mental impairment; or

(F) For other cause there is likely to be failure of justice for want of a judicial officer to issue a warrant.

**(b) Sheriffs and peace officers who are appointed or employed in conformity with Chapter 8 of Title 35 may use deadly force to apprehend a suspected felon only when the officer reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; when the officer reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm. Nothing in this Code section shall be construed so as to restrict such sheriffs or peace officers from the use of such reasonable nondeadly force as may be necessary to apprehend and arrest a suspected felon or misdemeanor.**

**(c) Nothing in this Code section shall be construed so as to restrict the use of deadly force by employees of state and county correctional institutions, jails, and other places of lawful confinement or by peace officers of any agency in the State of Georgia when reasonably necessary to prevent escapes or apprehend escapees from such institutions.**

**(d) No law enforcement agency of this state or of any political subdivision of this state shall adopt or promulgate any rule, regulation, or policy which prohibits a peace officer from using that degree of force to apprehend a suspected felon which is allowed by the statutory and case law of this state.**

(e) Each peace officer shall be provided with a copy of this Code section. Training regarding elder abuse, abuse of vulnerable adults, and the requirements of this Code section should be offered as part of at least one in-service training program each year conducted by or on behalf of each law enforcement department and agency in this state.

(f) A nuclear power facility security officer, including a contract security officer, employed by a federally licensed nuclear power facility or licensee thereof for the purpose of securing that facility shall have the authority to:

(1) Threaten or use force against another in defense of a federally licensed nuclear power facility and the persons therein as provided for under Code Sections 16-3-21 and 16-3-23;

(2) Search any person on the premises of the nuclear power facility or the properties adjacent to the facility if the facility is under imminent threat or danger pursuant to a written agreement entered into with the local enforcement agency having jurisdiction over the facility for the purpose of determining if such person possesses unauthorized weapons, explosives, or other similarly prohibited material; provided, however, that if such person objects to any search, he or she shall be detained as provided in paragraph (3) of this subsection or shall be required to immediately vacate the premises. Any person refusing to submit to a search and refusing to vacate the premises of a facility upon the request of a security officer as provided for in this Code section shall be guilty of a misdemeanor; and

(3) In accordance with a nuclear security plan approved by the United States Nuclear Regulatory Commission or other federal agency authorized to regulate nuclear facility security, detain any person located on the premises of a nuclear power facility or on the properties adjacent thereto if the facility is under imminent threat or danger pursuant to a written agreement entered into with the local law enforcement agency having jurisdiction over the facility, where there is reasonable suspicion to believe that such person poses a threat to the security of the nuclear power facility, regardless of whether such prohibited act occurred in the officer's presence. In the event of such detention, the law enforcement agency having jurisdiction over the facility shall be immediately contacted. The detention shall not exceed the amount of time reasonably necessary to allow for law enforcement officers to arrive at the facility.



## Use of Lethal Force

*§ 703-307. Use of force in law enforcement, HRS § 703-307*

HRS § 703-307

§ 703-307. Use of force in law enforcement

(1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable under this section unless:

(a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

**(3) The use of deadly force is not justifiable under this section unless:**

**(a) The arrest is for a felony;**

**(b) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he believes to be authorized to act as a law enforcement officer;**

**(c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and**

**(d) The actor believes that:**

**(i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or**

**(ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.**

**(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using force which he believes to be immediately necessary to prevent the escape from a detention facility.**

(5) A private person who is summoned by a law enforcement officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful. A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a law enforcement officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he believes the arrest is lawful, and the arrest would be lawful if the facts were as he believes them to be.



## Use of Lethal Force

*§ 13A-3-27. Use of force in making an arrest or preventing an escape., AL ST § 13A-3-27*

I.C. § 18-4011

§ 18-4011. Justifiable homicide by officer

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

- 1. In obedience to any judgment of a competent court; or**
- 2. When reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including suppression of riot or keeping and preserving the peace. Use of deadly force shall not be justified in overcoming actual resistance unless the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons; or**
- 3. When reasonably necessary in preventing rescue or escape or in retaking inmates who have been rescued or have escaped from any jail, or when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the inmate, or persons assisting his escape, or the person suspected of or charged with the commission of a felony poses a threat of death or serious physical injury to the officer or other persons.**

# ILLINOIS



## Use of Lethal Force

*5/7-5. Peace officer's use of force in making arrest, 720 ILCS 5/7-5*

720 ILCS 5/7-5

5/7-5. Peace officer's use of force in making arrest

§ 7-5. Peace officer's use of force in making arrest.

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. **However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:**

**(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and**

**(2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.**

(b) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.



## Use of Lethal Force

*35-41-3-3 Use of force relating to arrest or escape, IC 35-41-3-3*

IC 35-41-3-3

35-41-3-3 Use of force relating to arrest or escape

Sec. 3. (a) A person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if:

- (1) a felony has been committed; and
- (2) there is probable cause to believe the other person committed that felony.

However, such a person is not justified in using deadly force unless that force is justified under section 2 of this chapter.

**(b) A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. However, an officer is justified in using deadly force only if the officer:**

**(1) has probable cause to believe that that deadly force is necessary:**

**(A) to prevent the commission of a forcible felony; or**

**(B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and**

**(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.**

(c) A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.

**(d) A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person. However, an officer is justified in using deadly force only if the officer:**

**(1) has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and**

**(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.**

**(e) A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.**

(f) Notwithstanding subsection (b), (d), or (e), a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under IC 35-41-3-2.



## Use of Lethal Force

*804.8. Use of force by peace officer making an arrest, I.C.A. § 804.8*

I.C.A. § 804.8

804.8. Use of force by peace officer making an arrest

1. A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. **However, the use of deadly force is only justified when a person cannot be captured any other way and either of the following apply:**

**a. The person has used or threatened to use deadly force in committing a felony.**

**b. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.**

2. A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which the peace officer would be justified in using if the warrant were valid, unless the peace officer knows that the warrant is invalid.





## Use of Lethal Force

*§21-5227. Same; law enforcement officer making arrest, K.S.A. §21-5227*

K.S.A. 21-5227

21-5227. Same; law enforcement officer making arrest

(a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and the use of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. **However, such officer is justified in using deadly force only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving death or great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.**

(b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

# KENTUCKY



## Use of Lethal Force

*§503.090 Use of physical force in law enforcement, KRS § 503.090*

KRS § 503.090

503.090 Use of physical force in law enforcement

(1) The use of physical force by a defendant upon another person is justifiable when the defendant, acting under official authority, is making or assisting in making an arrest, and he:

(a) Believes that such force is necessary to effect the arrest;

(b) Makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and

(c) Believes the arrest to be lawful.

**(2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when:**

**(a) The defendant, in effecting the arrest, is authorized to act as a peace officer; and**

**(b) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; and**

**(c) The defendant believes that the person to be arrested is likely to endanger human life unless apprehended without delay.**

**(3) The use of physical force, including deadly physical force, by a defendant upon another person is justifiable when the defendant is preventing the escape of an arrested person and when the force could justifiably have been used to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be necessary to prevent the escape of a person from jail, prison, or other institution for the detention of persons charged with or convicted of a crime.**

# LOUISIANA

## Use of Lethal Force

§ 14:20. *Justifiable homicide, La. R.S. § 14:20*

§ 14:22. *Defense of others, La. R.S. § 14:22*

La. R.S. § 14:20

### § 14:20. Justifiable homicide.

A. A homicide is justifiable:

**(1) When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.**

**(2) When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.**

(3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle.

(4)

(a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1 (40) when the conflict began, against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the dwelling, place of business, or motor vehicle.

(b) The provisions of this Paragraph shall not apply when the person committing the homicide is engaged, at the time of the homicide, in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law.

B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the dwelling, place of business, or motor vehicle when the conflict began, if both of the following occur:

(1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle.

(2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.

C. A person who is not engaged in unlawful activity and who is in a place where he or she has a right to be shall have no duty to retreat before using deadly force as provided for in this Section, and may stand his or her ground and meet force with force.

D. No finder of fact shall be permitted to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm or to prevent the unlawful entry.

La. R.S. § 14:22

**§ 14:22. Defense of others.**

**It is justifiable to use force or violence or to kill in the defense of another person when it is reasonably apparent that the person attacked could have justifiably used such means himself, and when it is reasonably believed that such intervention is necessary to protect the other person.**



## Use of Lethal Force

§ 107. *Physical force in law enforcement, 17-A M.R.S.A. § 107*

17-A M.R.S.A. § 107

§ 107. Physical force in law enforcement

1. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person:
  - A. When and to the extent that the officer reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless the officer knows that the arrest or detention is illegal; or
  - B. In self-defense or to defend a 3rd person from what the officer reasonably believes to be the imminent use of unlawful nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.
2. **A law enforcement officer is justified in using deadly force only when the officer reasonably believes such force is necessary:**
  - A. For self-defense or to defend a 3rd person from what the officer reasonably believes is the imminent use of unlawful deadly force; or**
  - B. To effect an arrest or prevent the escape from arrest of a person when the law enforcement officer reasonably believes that the person has committed a crime involving the use or threatened use of deadly force, is using a dangerous weapon in attempting to escape or otherwise indicates that the person is likely to endanger seriously human life or to inflict serious bodily injury unless apprehended without delay; and**
    - (1) The law enforcement officer has made reasonable efforts to advise the person that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and the officer has reasonable grounds to believe that the person is aware of this advice; or**
    - (2) The law enforcement officer reasonably believes that the person to be arrested otherwise knows that the officer is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.**

**For purposes of this paragraph, “a reasonable belief that another has committed a crime involving use or threatened use of deadly force” means such reasonable belief in facts, circumstances and the law that, if true, would constitute such an offense by that person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous but reasonable belief that the law is otherwise justifies the use of deadly force to make an arrest or prevent an escape.**
3. A private person who has been directed by a law enforcement officer to assist the officer in effecting an arrest or preventing an escape from custody is justified in using:
  - A. A reasonable degree of nondeadly force when and to the extent that the private person reasonably believes such to be necessary to carry out the officer’s direction, unless the private person believes the arrest is illegal; or

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B. Deadly force only when the private person reasonably believes such to be necessary for self-defense or to defend a 3rd person from what the private person reasonably believes to be the imminent use of unlawful deadly force, or when the law enforcement officer directs the private person to use deadly force and the private person believes the officer is authorized to use deadly force under the circumstances.

4. A private person acting on that private person's own is justified in using:

A. A reasonable degree of nondeadly force upon another person when and to the extent that the private person reasonably believes it necessary to effect an arrest or detention that is lawful for the private person to make or prevent the escape from such an arrest or detention; or

B. Deadly force only when the private person reasonably believes such force is necessary:

(1) To defend the person or a 3rd person from what the private citizen reasonably believes to be the imminent use of unlawful deadly force; or

(2) To effect a lawful arrest or prevent the escape from such arrest of a person who in fact:

(a) Has committed a crime involving the use or threatened use of deadly force, or is using a dangerous weapon in attempting to escape; and

(b) The private citizen has made reasonable efforts to advise the person that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe the person is aware of this advice or the citizen reasonably believes that the person to be arrested otherwise knows that the citizen is a private citizen attempting to effect an arrest or prevent the escape from arrest.

**5. Except where otherwise expressly provided, a corrections officer, corrections supervisor or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2. The officer or another individual responsible for the custody, care or treatment of those persons is justified in using a reasonable degree of nondeadly force when and to the extent the officer or the individual reasonably believes it necessary to prevent any escape from custody or to enforce the rules of the facility.**

**5-A. A corrections officer, corrections supervisor or law enforcement officer is justified in using deadly force against a person confined in the Maine State Prison when the officer or supervisor reasonably believes that deadly force is necessary to prevent an escape from custody. The officer or supervisor shall make reasonable efforts to advise the person that if the attempt to escape does not stop immediately, deadly force will be used. This subsection does not authorize any corrections officer, corrections supervisor or law enforcement officer who is not employed by a state agency to use deadly force.**

**6. Repealed.** 1975, c. 740, § 32, eff. May 1, 1976.

7. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

8. Nothing in this section constitutes justification for conduct by a law enforcement officer or a private person amounting to an offense against innocent persons whom the officer or private person is not seeking to arrest or retain in custody.

# MARYLAND

***NO LAW***

# MASSACHUSETTS



***NO LAW***



# MICHIGAN



***NO LAW***

# MINNESOTA

## Use of Lethal Force

*§609.066 Authorized Use of Deadly Force by Peace Officers, Minn. Stat. § 609.066*

Minn. Stat. § 609.066 (2015)

### 609.066 AUTHORIZED USE OF DEADLY FORCE BY PEACE OFFICERS

**Subdivision 1. Deadly force defined.** -- For the purposes of this section, “deadly force” means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. “Less lethal munitions” means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. “Peace officer” has the meaning given in section 626.84, subdivision 1.

**Subd. 2. Use of deadly force.** -- Notwithstanding the provisions of section 609.06 or 609.065, the use of deadly force by a peace officer in the line of duty is justified only when necessary:

(1) to protect the peace officer or another from apparent death or great bodily harm;

(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

(3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.

**Subd. 3. No defense.** -- This section and sections 609.06, 609.065 and 629.33 may not be used as a defense in a civil action brought by an innocent third party.

# MISSISSIPPI



## Use of Lethal Force

§ 97-3-15. *Justifiable homicide, Miss. Code Ann. § 97-3-15*

Miss. Code Ann. § 97-3-15  
§ 97-3-15. Justifiable homicide

**(1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases:**

- (a) When committed by public officers, or those acting by their aid and assistance, in obedience to any judgment of a competent court;**
- (b) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty;**
- (c) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in retaking any felon who has been rescued or has escaped;**
- (d) When necessarily committed by public officers, or those acting by their command in their aid and assistance, in arresting any felon fleeing from justice;**
- (e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be;**
- (f) When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished;**
- (g) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed;**
- (h) When necessarily committed in lawfully suppressing any riot or in lawfully keeping and preserving the peace.**

(2)

(a) As used in subsection (1)(c) and (d) of this section, the term "when necessarily committed" means that a public officer or a person acting by or at the officer's command, aid or assistance is authorized to use such force as necessary in securing and detaining the felon offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm; but such officer or person shall not be authorized to resort to deadly or dangerous means when to do so would be unreasonable under the circumstances. The public officer or person acting by or at the officer's command may act upon a reasonable apprehension of the surrounding circumstances; however, such officer or person shall not use excessive force or force that is greater than reasonably necessary in securing and detaining the offender, overcoming the offender's resistance, preventing the offender's escape, recapturing the offender if the offender escapes or in protecting himself or others from bodily harm.

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(b) As used in subsection (1)(c) and (d) of this section the term “felon” shall include an offender who has been convicted of a felony and shall also include an offender who is in custody, or whose custody is being sought, on a charge or for an offense which is punishable, upon conviction, by death or confinement in the Penitentiary.

(c) As used in subsections (1)(e) and (3) of this section, “dwelling” means a building or conveyance of any kind that has a roof over it, whether the building or conveyance is temporary or permanent, mobile or immobile, including a tent, that is designed to be occupied by people lodging therein at night, including any attached porch;

(3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person’s will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. This presumption shall not apply if the person against whom defensive force was used has a right to be in or is a lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or is the lawful resident or owner of the dwelling, vehicle, business, place of employment or the immediate premises thereof or if the person who uses defensive force is engaged in unlawful activity or if the person is a law enforcement officer engaged in the performance of his official duties;

(4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force under subsection (1)(e) or (f) of this section if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person’s failure to retreat as evidence that the person’s use of force was unnecessary, excessive or unreasonable.

(5)

(a) The presumptions contained in subsection (3) of this section shall apply in civil cases in which self-defense or defense of another is claimed as a defense.

(b) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant acted in accordance with subsection (1)(e) or (f) of this section. A defendant who has previously been adjudicated “not guilty” of any crime by reason of subsection (1)(e) or (f) of this section shall be immune from any civil action for damages arising from same conduct.

# MISSOURI

## Use of Lethal Force

*563.046. Law enforcement officer's use of force in making an arrest, V.A.M.S. 563.046*

V.A.M.S. 563.046

563.046. Law enforcement officer's use of force in making an arrest

1. A law enforcement officer need not retreat or desist from efforts to effect the arrest, or from efforts to prevent the escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. In addition to the use of physical force authorized under other sections of this chapter, he is, subject to the provisions of subsections 2 and 3, justified in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

2. The use of any physical force in making an arrest is not justified under this section unless the arrest is lawful or the law enforcement officer reasonably believes the arrest is lawful.

**3. A law enforcement officer in effecting an arrest or in preventing an escape from custody is justified in using deadly force only**

**(1) When such is authorized under other sections of this chapter; or**

**(2) When he reasonably believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested**

**(a) Has committed or attempted to commit a felony; or**

**(b) Is attempting to escape by use of a deadly weapon; or**

**(c) May otherwise endanger life or inflict serious physical injury unless arrested without delay.**

4. The defendant shall have the burden of injecting the issue of justification under this section.



## Use of Lethal Force

*45-3-102, Use of force in defense of person, MCA 45-3-102 and 45-3-106, Use of force to prevent escape, MCA 45-3-106*

MCA 45-3-102

45-3-102. Use of force in defense of person

A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary for self-defense or the defense of another against the other person's imminent use of unlawful force. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent imminent death or serious bodily harm to the person or another or to prevent the commission of a forcible felony.

\*\*\*

MCA 45-3-106

45-3-106. Use of force to prevent escape

(1) A peace officer or other person who has an arrested person in custody is justified in the use of force to prevent the escape of the arrested person from custody that the officer or other person would be justified in using if the officer or other person were arresting the person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, that the guard or officer reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the guard or officer reasonably believes to be lawfully detained in the institution under sentence for an offense or awaiting trial or commitment for an offense.

\*\*\*

MCA 45-3-101

45-3-101. Definitions.

(1) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

(2) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

# NEBRASKA



## Use of Lethal Force

*28-1412. Use of force in law enforcement, Neb.Rev.St. § 28-1412*

Neb.Rev.St. § 28-1412

28-1412. Use of force in law enforcement

(1) Subject to the provisions of this section and of section 28-1414, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable under this section unless:

(a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

**(3) The use of deadly force is not justifiable under this section unless:**

**(a) The arrest is for a felony;**

**(b) Such person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer;**

**(c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and**

**(d) The actor believes that:**

**(i) The crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or**

**(ii) There is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.**

**(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.**

(5) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful; Provided, that he does not believe the arrest is unlawful.

(6) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, if:

- (a) He believes the arrest is lawful; and
- (b) The arrest would be lawful if the facts were as he believes them to be.

**(7) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:**

**(a) Any limitations imposed by the other provisions of sections 28-1406 to 28-1416 on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and**

**(b) The use of deadly force is not in any event justifiable under this subsection unless:**

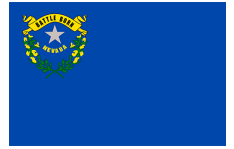
**(i) The actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or**

**(ii) The actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.**

(8) The justification afforded by subsection (7) of this section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can do so, unless the person confined has been arrested on a charge of crime.



# NEVADA



## Use of Lethal Force

*§ 171.1455. Use of deadly force to effect arrest: Limitations, N.R.S. § 171.1455*

N.R.S. 171.1455

171.1455. Use of deadly force to effect arrest: Limitations

If necessary to prevent escape, an officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person:

1. Has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or
2. Poses a threat of serious bodily harm to the officer or to others.

# NEW HAMPSHIRE



## Use of Lethal Force

*N.H. Rev. Stat. § 627:5 Physical Force in Law Enforcement*

N.H. Rev. Stat. § 627:5  
627:5 Physical Force in Law Enforcement.

I. A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person, unless he knows that the arrest or detention is illegal, or to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or detention or while seeking to prevent such an escape.

**II. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:**

**(a) To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or**

**(b) To effect an arrest or prevent the escape from custody of a person whom he reasonably believes:**

**(1) Has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and**

**(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.**

**(c) Nothing in this paragraph constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.**

III. A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using:

(a) Non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or

(b) Deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

IV. A private person acting on his own is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from custody of such other whom he reasonably believes to have committed a felony and who in fact has committed that felony: but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force.

IV. A private person acting on his own is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from custody of such other whom he reasonably believes to have committed a felony and who in fact has committed that felony: but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force.

**V. A guard or law enforcement officer in a facility where persons are confined pursuant to an order of the court or as a result of an arrest is justified in using deadly force when he reasonably believes such force is necessary to prevent the escape of any person who is charged with, or convicted of, a felony, or who is committing the felony of escape from official custody as defined in RSA 642:6. The use of non-deadly force by such guards and officers is justified when and to the extent the person effecting the arrest believes it reasonably necessary to prevent any other escape from the facility.**

VI. A reasonable belief that another has committed an offense means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

VII. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

**VIII. Deadly force shall be deemed reasonably necessary under this section whenever the arresting law enforcement officer reasonably believes that the arrest is lawful and there is apparently no other possible means of effecting the arrest.**

# NEW JERSEY



## Use of Lethal Force

*2C:3-7. Use of force in law enforcement, N.J.S.A. 2C:3-7*

N.J.S.A. 2C:3-7

2C:3-7. Use of force in law enforcement

a. Use of force justifiable to effect an arrest. Subject to the provisions of this section and of section 2C:3-9, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor reasonably believes that such force is immediately necessary to effect a lawful arrest.

b. Limitations on the use of force.

(1) The use of force is not justifiable under this section unless:

(a) The actor makes known the purpose of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the actor to be valid.

(2) **The use of deadly force is not justifiable under this section unless:**

**(a) The actor effecting the arrest is authorized to act as a peace officer or has been summoned by and is assisting a person whom he reasonably believes to be authorized to act as a peace officer; and**

**(b) The actor reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and**

**(c) The actor reasonably believes that the crime for which the arrest is made was homicide, kidnapping, an offense under 2C:14-2 or 2C:14-3, arson, robbery, burglary of a dwelling, or an attempt to commit one of these crimes; and**

**(d) The actor reasonably believes:**

**(i) There is an imminent threat of deadly force to himself or a third party; or**

**(ii) The use of deadly force is necessary to thwart the commission of a crime as set forth in subparagraph (c) of this paragraph; or**

**(iii) The use of deadly force is necessary to prevent an escape.**

c. **Use of force to prevent escape from custody. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could, under subsections a. and b. of this section, have been employed to effect the arrest under which the person is in custody. A correction officer or other person authorized to act as a peace officer is, however, justified in using any force including deadly force, which he reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the**

**for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.**

**d. Use of force by private person assisting an unlawful arrest.**

(1) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(2) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (a) he reasonably believes the arrest is lawful, and (b) the arrest would be lawful if the facts were as he believes them to be and such belief is reasonable.

**e. Use of force to prevent suicide or the commission of a crime.** The use of force upon or toward the person of another is justifiable when the actor reasonably believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(1) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) The use of deadly force is not in any event justifiable under this subsection unless the actor reasonably believes that it is likely that the person whom he seeks to prevent from committing a crime will endanger human life or inflict serious bodily harm upon another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons.

# NEW MEXICO



## Use of Lethal Force

*§ 30-2-6. Justifiable homicide by public officer or public employee, N. M. S. A. 1978, § 30-2-6*

N. M. S. A. 1978, § 30-2-6

§ 30-2-6. Justifiable homicide by public officer or public employee

A. Homicide is justifiable when committed by a public officer or public employee or those acting by their command and in their aid and assistance:

- (1) in obedience to any judgment of a competent court;
- (2) when necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;
- (3) when necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or
- (4) when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.

B. For the purposes of this section, homicide is necessarily committed when a public officer or public employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a public officer or employee should give warning prior to using deadly force.

# NEW YORK

## Use of Lethal Force

*§ 35.30 Justification; use of physical force in making an arrest or in preventing an escape, McKinney's Penal Law § 35.30*

McKinney's Penal Law § 35.30

§ 35.30 Justification; use of physical force in making an arrest or in preventing an escape

1. A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of physical force; **except that deadly physical force may be used for such purposes only when he or she reasonably believes that:**

**(a) The offense committed by such person was:**

**(i) a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person; or**

**(ii) kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; or**

**(b) The offense committed or attempted by such person was a felony and that, in the course of resisting arrest therefor or attempting to escape from custody, such person is armed with a firearm or deadly weapon; or**

**(c) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the police officer or peace officer or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force.**

2. The fact that a police officer or a peace officer is justified in using deadly physical force under circumstances prescribed in paragraphs (a) and (b) of subdivision one does not constitute justification for reckless conduct by such police officer or peace officer amounting to an offense against or with respect to innocent persons whom he or she is not seeking to arrest or retain in custody.

3. A person who has been directed by a police officer or a peace officer to assist such police officer or peace officer to effect an arrest or to prevent an escape from custody may use physical force, other than deadly physical force, when and to the extent that he or she reasonably believes such to be necessary to carry out such police officer's or peace officer's direction, unless he or she knows that the arrest or prospective arrest is not or was not authorized and may use deadly physical force under such circumstances when:

(a) He or she reasonably believes such to be necessary for self-defense or to defend a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or

(b) He or she is directed or authorized by such police officer or peace officer to use deadly physical force unless he or she knows that the police officer or peace officer is not authorized to use deadly physical force under the circumstances.

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4. A private person acting on his or her own account may use physical force, other than deadly physical force, upon another person when and to the extent that he or she reasonably believes such to be necessary to effect an arrest or to prevent the escape from custody of a person whom he or she reasonably believes to have committed an offense and who in fact has committed such offense; and may use deadly physical force for such purpose when he or she reasonably believes such to be necessary to:

(a) Defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force; or

(b) Effect the arrest of a person who has committed murder, manslaughter in the first degree, robbery, forcible rape or forcible criminal sexual act and who is in immediate flight therefrom.

5. A guard, police officer or peace officer who is charged with the duty of guarding prisoners in a detention facility, as that term is defined in section 205.00, or while in transit to or from a detention facility, may use physical force when and to the extent that he or she reasonably believes such to be necessary to prevent the escape of a prisoner from a detention facility or from custody while in transit thereto or therefrom.



# NORTH CAROLINA



## Use of Lethal Force

§ 15A-401. Arrest by law-enforcement officer, N.C.G.S.A. § 15A-401

N.C.G.S.A. § 15A-401

§ 15A-401. Arrest by law-enforcement officer

(a) Arrest by Officer Pursuant to a Warrant.--

(1) Warrant in Possession of Officer.--An officer having a warrant for arrest in his possession may arrest the person named or described therein at any time and at any place within the officer's territorial jurisdiction.

(2) Warrant Not in Possession of Officer.--An officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named therein at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant upon him as soon as possible. This subdivision applies even though the arrest process has been returned to the clerk under G.S. 15A-301.

(b) Arrest by Officer Without a Warrant.--

(1) Offense in Presence of Officer.--An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.

(2) Offense Out of Presence of Officer.--An officer may arrest without a warrant any person who the officer has probable cause to believe:

- a. Has committed a felony; or
- b. Has committed a misdemeanor, and:
  1. Will not be apprehended unless immediately arrested, or
  2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
- c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
- d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or
- e. Has committed a misdemeanor under G.S. 50B-4.1(a); or
- f. Has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2).

(3) Repealed by Session Laws 1991, c. 150.

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(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5.

### (c) How Arrest Made.--

(1) An arrest is complete when:

- a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or
- b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.

(2) Upon making an arrest, a law-enforcement officer must:

- a. Identify himself as a law-enforcement officer unless his identity is otherwise apparent,
- b. Inform the arrested person that he is under arrest, and
- c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.

### (d) Use of Force in Arrest.--

(1) Subject to the provisions of subdivision (2), a law-enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary:

- a. To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or
- b. To defend himself or a third person from what he reasonably believes to be 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.

**(2) A law-enforcement officer is justified in using deadly physical force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby:**

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;**
- b. To effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or**
- c. To prevent the escape of a person from custody imposed upon him as a result of conviction for a felony.**

**Nothing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.**

(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

- a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,
- b. The officer has reasonable cause to believe the person to be arrested is present, and
- c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose.

(f) Use of Deadly Weapon or Deadly Force to Resist Arrest.--

(1) A person is not justified in using a deadly weapon or deadly force to resist an arrest by a law-enforcement officer using reasonable force, when the person knows or has reason to know that the officer is a law-enforcement officer and that the officer is effecting or attempting to effect an arrest.

(2) The fact that the arrest was not authorized under this section is no defense to an otherwise valid criminal charge arising out of the use of such deadly weapon or deadly force.

(3) Nothing contained in this subsection (f) shall be construed to excuse or justify the unreasonable or excessive force by an officer in effecting an arrest. Nothing contained in this subsection (f) shall be construed to bar or limit any civil action arising out of an arrest not authorized by this Article.

(g) Care of minor children.--When a law enforcement officer arrests an adult who is supervising minor children who are present at the time of the arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable period of time, the law enforcement officer shall contact the county department of social services.

# NORTH DAKOTA



## Use of Lethal Force

*§ 12.1-05-07. Limits on the use of force--Excessive force--Deadly force, NDCC, § 12.1-05-07*

NDCC, 12.1-05-07

§ 12.1-05-07. Limits on the use of force--Excessive force--Deadly force

1. An individual is not justified in using more force than is necessary and appropriate under the circumstances.
2. Deadly force is justified in the following instances:
  - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
  - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the individual menaced. An individual seeking to protect another individual must, before using deadly force, try to cause the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. However, the duty to retreat or avoid force does not apply under the following circumstances:
    - (1) A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and
    - (2) An individual is not required to retreat within or from that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless the individual was the original aggressor or is assailed by another individual who the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer.
  - c. When used by an individual in possession or control of a dwelling, place of work, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
  - d. **When used by a public servant authorized to effect arrests or prevent escapes, if the force is necessary to effect an arrest or to prevent the escape from custody of an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.**

**e. When used by a guard or other public servant, if the force is necessary to prevent the escape of a prisoner from a detention facility, unless the guard or public servant knows that the prisoner is not an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of an individual charged with or convicted of an offense, charged with being or adjudicated a juvenile delinquent, held for extradition, or otherwise confined under court order.**

f. When used by a duly licensed physician, or an individual acting at the physician's direction, if the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered in an emergency; with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or by order of a court of competent jurisdiction.

**g. When used by an individual who is directed or authorized by a public servant, and who does not know that the public servant is not authorized to use deadly force under the circumstances.**



***NO LAW***

# OKLAHOMA



## Use of Lethal Force

*§ 732. Justifiable homicide by officer, 21 Okl.St. Ann. § 732*

21 Okl.St. Ann. § 732  
§ 732. Justifiable homicide by officer

A peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

1. The officer is acting in obedience to and in accordance with any judgment of a competent court in executing a penalty of death; or
2. In effecting an arrest or preventing an escape from custody following arrest and the officer reasonably believes both that:
  - a. such force is necessary to prevent the arrest from being defeated by resistance or escape, and
  - b. there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily harm, or the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay; or
3. The officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of the force is necessary to protect himself or others from the infliction of serious bodily harm; or
4. The force is necessary to prevent an escape from a penal institution or other place of confinement used primarily for the custody of persons convicted of felonies or from custody while in transit thereto or therefrom unless the officer has reason to know:
  - a. the person escaping is not a person who has committed a felony involving violence, and
  - b. the person escaping is not likely to endanger human life or to inflict serious bodily harm if not apprehended.



## Use of Lethal Force

*161.235. Making arrest or preventing escape, O.R.S. § 161.235*

*161.239. Deadly physical force; making arrest or preventing escape, O.R.S. § 161.239*

O.R.S. § 161.235

161.235. Making arrest or preventing escape

Except as provided in ORS 161.239, a peace officer is justified in using physical force upon another person only when and to the extent that the peace officer reasonably believes it necessary:

(1) To make an arrest or to prevent the escape from custody of an arrested person unless the peace officer knows that the arrest is unlawful; or

(2) For self-defense or to defend a third person from what the peace officer reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

O.R.S. § 161.239

161.239. Deadly physical force; making arrest or preventing escape

**(1) Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly physical force only when the peace officer reasonably believes that:**

**(a) The crime committed by the person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person; or**

**(b) The crime committed by the person was kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; or**

**(c) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or another person from the use or threatened imminent use of deadly physical force; or**

**(d) The crime committed by the person was a felony or an attempt to commit a felony and under the totality of the circumstances existing at the time and place, the use of such force is necessary; or**

**(e) The officer's life or personal safety is endangered in the particular circumstances involved.**

(2) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.



# PENNSYLVANIA



## Use of Lethal Force

*§ 508. Use of force in law enforcement, 18 Pa.C.S.A. § 508*

18 Pa.C.S.A. § 508

§ 508. Use of force in law enforcement

(a) Peace officer's use of force in making arrest.--

(1) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. **However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:**

**(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and**

**(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.**

(2) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.

(b) Private person's use of force in making arrest.--

(1) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which he would be justified in using if he were summoned or directed by a peace officer to make such arrest, except that he is justified in the use of deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or another.

(2) A private person who is summoned or directed by a peace officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.

(3) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, if:

(i) he believes the arrest is lawful; and

(ii) the arrest would be lawful if the facts were as he believes them to be.

(c) Use of force regarding escape.--

(1) A peace officer, corrections officer or other person who has an arrested or convicted person in his custody is justified in the use of such force to prevent the escape of the person from custody as the officer or other person would be justified in using under subsection (a) if the officer or other person were arresting the person.

**(2) A peace officer or corrections officer is justified in the use of such force, including deadly force, which the officer believes to be necessary to prevent the escape from a correctional institution of a person whom the officer believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.**

**(3) A corrections officer is justified in the use of such force, which the officer believes to be necessary to defend himself or another from bodily harm during the pursuit of the escaped person. However, the officer is justified in using deadly force only when the officer believes that such force is necessary to prevent death or serious bodily injury to himself or another or when the officer believes that:**

**(i) such force is necessary to prevent the apprehension from being defeated by resistance; and**

**(ii) the escaped person has been convicted of committing or attempting to commit a forcible felony, possesses a deadly weapon or otherwise indicates that he will endanger human life or inflict serious bodily injury unless apprehended without delay.**

(d) Use of force to prevent suicide or the commission of crime.--

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily injury upon himself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property or a breach of the peace, except that:

(i) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used.

**(ii) The use of deadly force is not in any event justifiable under this subsection unless:**

**(A) the actor believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or**

**(B) the actor believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.**

(2) The justification afforded by this subsection extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

# RHODE ISLAND

## Use of Lethal Force

*§ 12-7-8. Restraint and force used, Gen.Laws 1956, § 12-7-8*

*§ 12-7-9. Conditions justifying force dangerous to life, Gen.Laws 1956, § 12-7-9*

Gen.Laws 1956, § 12-7-8  
§ 12-7-8. Restraint and force used

No greater restraint than is necessary shall be used for the detention of any person, and no unnecessary or unreasonable force shall be used in making an arrest.

Gen.Laws 1956, § 12-7-9  
§ 12-7-9. Conditions justifying force dangerous to life

A police officer may use force dangerous to human life to make a lawful arrest for committing or attempting to commit a felony, whenever he or she reasonably believes that force dangerous to human life is necessary to effect the arrest and that the person to be arrested is aware that a peace officer is attempting to arrest him or her.

# SOUTH CAROLINA



***NO LAW***

# SOUTH DAKOTA



## Use of Lethal Force

*§ 22-18-2. Justifiable force used by public officer in performance of duty--Assistance or direction of officer*  
*SDCL § 22-18-2*

*§ 22-18-3. Lawful force in arrest and delivery of felon, SDCL § 22-18-3*

*§22-16-32. Justifiable homicide-Law enforcement officers or at command of officer--Overcoming resistance--Capturing or arresting fleeing felons, SDCL § 22-16-32*

*§22-16-33. Justifiable homicide--Apprehending felon--Suppressing riot--Preserving peace, SDCL § 22-16-33*

SDCL § 22-18-2

22-18-2. Justifiable force used by public officer in performance of duty--Assistance or direction of officer

To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by a public officer in the performance of any legal duty or by any other person assisting the public officer or acting by the public officer's direction.

SDCL § 22-18-3

22-18-3. Lawful force in arrest and delivery of felon

To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by any person in arresting someone who has committed any felony or in delivering that person to a public officer competent to receive him or her in custody.

SDCL § 22-16-32

22-16-32. Justifiable homicide-Law enforcement officers or at command of officer--Overcoming resistance--Capturing or arresting fleeing felons.

**Homicide is justifiable if committed by a law enforcement officer or by any person acting by command of a law enforcement officer in the aid and assistance of that officer:**

**(1) If necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or**

**(2) If necessarily committed in retaking felons who have been rescued or who have escaped; or**

**(3) If necessarily committed in arresting felons fleeing from justice.**

SDCL § 22-16-33

22-16-33. Justifiable homicide--Apprehending felon--Suppressing riot--Preserving peace.

**Homicide is justifiable if necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.**

# TENNESSEE



## Use of Lethal Force

*§ 40-7-108. Resisting arrest; law enforcement officer; powers and duties, T. C. A. § 40-7-108*

T. C. A. § 40-7-108

§ 40-7-108. Resisting arrest; law enforcement officer; powers and duties

(a) A law enforcement officer, after giving notice of the officer's identity as an officer, may use or threaten to use force that is reasonably necessary to accomplish the arrest of an individual suspected of a criminal act who resists or flees from the arrest.

**(b) Notwithstanding subsection (a), the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of the officer's identity as an officer and given a warning that deadly force may be used unless resistance or flight ceases, and:**

**(1) The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; or**

**(2) The officer has probable cause to believe that the individual to be arrested poses a threat of serious bodily injury, either to the officer or to others unless immediately apprehended.**

(c) All law enforcement officers, both state and local, shall be bound by this section and shall receive instruction regarding implementation of this section in law enforcement training programs.



## Use of Lethal Force

### *§ 9.51. Arrest and Search, V.T.C.A., Penal Code § 9.51*

V.T.C.A., Penal Code § 9.51  
§ 9.51. Arrest and Search

(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

**(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) and:**

**(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or**

**(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.**

**(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) and:**

**(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or**

**(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.**

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(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d).

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d).





## Use of Lethal Force

*§ 76-2-403. Force in arrest, U.C.A. 1953 § 76-2-403*

*§ 76-2-404. Peace officer's use of deadly force, U.C.A. 1953 § 76-2-404*

U.C.A. 1953 § 76-2-403  
§ 76-2-403. Force in arrest

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

U.C.A. 1953 § 76-2-404  
§ 76-2-404. Peace officer's use of deadly force

**(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:**

**(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);**

**(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and**

**(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or**

**(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or**

**(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.**

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1) (b) or (1)(c).

# VERMONT



## Use of Lethal Force

*§ 2305. Justifiable homicide, 13 V.S.A. § 2305*

13 V.S.A. § 2305  
§ 2305. Justifiable homicide

If a person kills or wounds another under any of the circumstances enumerated below, he or she shall be guiltless:

- (1) In the just and necessary defense of his or her own life or the life of his or her husband, wife, parent, child, brother, sister, master, mistress, servant, guardian or ward; or
- (2) In the suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary or robbery, with force or violence; or
- (3) In the case of a civil officer; or a military officer or private soldier when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty.

# VIRGINIA

***NO LAW***

# WASHINGTON



## Use of Lethal Force

*9A.16.040. Justifiable homicide or use of deadly force by public officer, peace officer, person aiding, West's RCWA 9A.16.040*

West's RCWA 9A.16.040

9A.16.040. Justifiable homicide or use of deadly force by public officer, peace officer, person aiding

(1) Homicide or the use of deadly force is justifiable in the following cases:

- (a) When a public officer is acting in obedience to the judgment of a competent court; or
- (b) When necessarily used by a peace officer to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty.
- (c) When necessarily used by a peace officer or person acting under the officer's command and in the officer's aid:
  - (i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;
  - (ii) To prevent the escape of a person from a federal or state correctional facility or in retaking a person who escapes from such a facility; or
  - (iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or
  - (iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

(2) In considering whether to use deadly force under subsection (1) (c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

- (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
- (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

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(4) This section shall not be construed as:

(a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or

(b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

# WEST VIRGINIA

***NO LAW***

# WISCONSIN



***NO LAW***

# WYOMING

***NO LAW***



# WASHINGTON D.C.

***NO LAW***