

Use of Deadly Force by Law Enforcement Officers

By: Duke Chen, Principal Analyst
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Issue

Summarize the law on the use of deadly force by peace officers. (This report updates OLR Report [2008-R-0074](#).) **This report has been updated by OLR Report [2020-R-0272](#).**

Summary

The U.S. Constitution and Connecticut law allow a peace officer (i.e., law enforcement officer) to use deadly physical force on others only under certain circumstances that involve the infliction or threatened infliction of serious physical injury. Additionally, a recent [executive order](#) requires the State Police to exhaust all other reasonable alternatives before using deadly force.

The test for evaluating whether an officer was justified in using deadly force is based on a subjective-objective test. The jury must determine whether the officer honestly believed deadly force was necessary. If the jury determines that the use of deadly force was necessary, the jury must make a further determination as to whether that belief was reasonable, from the perspective of a reasonable officer in the defendant's circumstances.

The law requires the Division of Criminal Justice (DCJ) to investigate whenever an officer, while performing his or her duties, uses deadly physical force that causes someone's death. Starting in 2020, the law requires DCJ to complete a preliminary status report whenever a peace officer uses physical force on another person and the person dies as a result and to submit the report to the Judiciary and Public Safety committees within five business days after the cause of death is

available. The division is a state executive branch agency headed by the chief state's attorney and oversees the investigation and prosecution of all criminal matters in the Superior Court.

For the investigation, the law requires DCJ to designate a state's attorney or a special attorney to determine whether the officer's use of deadly physical force was appropriate under the statutory standards and submit a report of its findings and conclusions to the chief state's attorney.

If the division concludes it cannot adequately investigate the incident, the chief state's attorney or a state's attorney may apply to a panel of judges selected by the chief justice for the appointment of an investigatory grand jury to investigate the circumstances of the death. (For more information on the Investigatory Grand Jury System, see OLR Report [2013-R-0366](#).)

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

Constitutional Requirements for Using Deadly Force

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

The Court has said that the test of reasonableness under the Fourth Amendment is not capable of "precise definition" or "mechanical application" (*Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). The Court goes on to state, "[t]he reasonableness of a particular use of force must be viewed from the perspective of a reasonable officer at the scene, rather than with 20/20 vision of hindsight" (*Graham v. Connor*, 490 U.S. 396, 397 (1989)). Additionally, there must be "allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

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

Statutory Standards for Using Deadly Physical Force

The law authorizes peace officers to use deadly physical force only when they reasonably believe it is necessary to:

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

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

The law defines “deadly physical force” as physical force that can be reasonably expected to cause death or serious physical injury ([CGS § 53a-3\(5\)](#)). It defines “serious physical injury” as physical injury which creates a substantial risk of death or which causes serious disfigurement, serious impairment of health, or serious loss or impairment of the function of any bodily organ ([CGS § 53a-3\(4\)](#)).

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

Prosecution of Peace Officers for Using Deadly Force

A peace officer who is prosecuted for murder or manslaughter would be able to claim as a defense that he or she complied with the statutory standard for using deadly force. Once this defense has been properly raised at trial, the state would have to disprove it beyond a reasonable doubt in order to convict (*State v. Hardwick*, 1 Conn. App. 609, cert. den 193 Conn. 804 (1984)). To meet the initial burden of proof to establish this defense either the state or the defense must present sufficient evidence to raise a reasonable doubt in the mind of a rational juror as to whether the officer’s use of deadly force was statutorily justified (*State v. Lewis*, 220 Conn. 602 (1991) and *State v. Bailey*, 209 Conn. 322 (1988)).

The test for evaluating statutory self-defense claims is a subjective-objective test. The jury must first determine whether the defendant honestly believed that the use of deadly force was necessary in the circumstances. If the jury determines that the defendant in fact had believed that the use of deadly force was necessary, the jury must make a further determination as to whether that belief was reasonable, from the perspective of a reasonable police officer in the defendant's circumstances (*State v. Smith*, 73 Conn. App. 173, cert den. 262 Conn. 923 (2002)).

Thus, if the officer properly asserted a defense that he used deadly force to defend himself from the use or imminent use of deadly physical force, the prosecutor would have to prove beyond a reasonable doubt that (1) the police officer did not believe that the person was using or about to use deadly force against him, (2) the officer did not use the deadly force to protect himself, or (3) the officer's belief was unreasonable.

Division of Criminal Justice Investigations

DCJ is the state executive branch agency in charge of investigating and prosecuting of all criminal matters in the Superior Court ([CGS § 51-276](#)). The division must take all steps necessary and proper to prosecute all state and local crimes and offenses ([CGS § 51-277](#)).

Duty to Investigate

The law requires the division to:

1. investigate whenever a peace officer, while performing his or her duties, uses physical force that causes someone's death or uses deadly force on another, and
2. determine whether the officer's use of physical force was appropriate under legal standards established by statute ([CGS § 51-277a\(a\)](#) as amended by [PA 19-90](#)).

Starting January 1, 2020, the law requires DCJ to complete a preliminary status report with certain information whenever a peace officer, in the performance of the officer's duties, uses physical force on another person and the person dies as a result. The report must include: (1) the deceased person's name, gender, race, ethnicity, and age; (2) the date, time, and location of the injury causing such death; (3) the law enforcement agency involved; and (4) the toxicology report status and death certificate, if available.

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

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

Designation or Appointment of Prosecutor

For the investigation, the law requires the chief state's attorney to (1) designate a state's attorney from a judicial district other than the one where the incident occurred or (2) appoint a special assistant state's attorney or special deputy assistant state's attorney. The chief state's attorney must appoint a special inspector to assist in the investigation upon the state's attorney or special attorney's request ([CGS § 51-277a\(b\)](#)) as amended by [PA 19-90](#)).

Investigation Report

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

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

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

Complaints Regarding Failure to Prosecute

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

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