

Officer Use of Deadly Force Incidents

AN OVERVIEW



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General Legal Principles

1. Purposeful, unjustified killing or injuring of another human being is *criminal* behavior
 - These are *criminal* investigations
2. Only if “justified” does this behavior become lawful
3. State must prove beyond a reasonable doubt that the act was NOT in self-defense (*not* justified)

“Justification” Generally

1. Like any person, Officers may use physical force to reasonably defend themselves or a third person (ORS 161.209, 161.219, 161.229)
2. In addition to these rights, Oregon law further prescribes for law enforcement:
 - a. Officer use of deadly physical force ORS 161.239
 - b. Officer use of physical force to effect an arrest ORS 161.235, 133.605

ORS 161.235

Officer Use of Physical Force

Generally

- A [police] officer may use physical force upon another person to the extent the officer *reasonably* believes it necessary to make an arrest, prevent an escape, or use self-defense or defend a third person (emphasis added).

ORS 161.239

Officer Deadly Physical Force

A [police] officer may use deadly physical force in making an arrest or preventing escape only when the officer reasonably believes:

(a) crime committed was a felony and used or threatened use of imminent use of physical force against a person; -or-

(b) crime was kidnapping, arson, escape I, burglary I or attempt; -or-

(c) *Regardless of the offense*, the use of deadly physical force is necessary to defend the officer or another person from threatened use of imminent deadly physical force; -or-

(d) The person committed or attempt to commit a felony and under the totality of the circumstances existing at the time such force was necessary; -or-

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

Use of Force Investigations are Extremely Comprehensive:

Attorney General's Task Force on Deadly Force (2005)

{3 year process engaging multiple stakeholders
including the public}

www.justice.oregon.gov/sb111/ag_report_on_deadly_force_2005.pdf

-SB 111

- Creates a *local planning authority* for investigations
- Requires specific elements in each county's response plan
- Still relatively unique in the nation

Lessons Learned Since SB111

Officer use of deadly physical force investigations are among the most-complex criminal investigations:

- Tests Trust Within Our 36 Individual Communities
 - Process/ Transparency/ Protecting a Defendant’s Constitutional Rights/Contractual Bargaining Agreements/Release of Information/ Resolving Questions of Criminal Responsibility/Nature of and Process for Review
 - **ACCOUNTABILITY**

- Factually Complicated
 - When is heightened scrutiny warranted? (each have unique facts)
 - Time/Resource Intensive-including engaging expert testimony
 - Use of force experts, memory/recall experts, medical experts, etc.

Case Study

State of Oregon v. Michael Durkan, Cory Skidgel and Tony Hansen.

- April 26, 2017
- Jefferson County Jail
- Major Crimes Team callout (Redmond PD, Deschutes County Sheriff's Office, Bend PD)

- Challenge: Close Community
 - Law enforcement
 - Sheriff
 - Citizens
 - Judge

QUESTIONS?