

USE OF FORCE AND RELATED INVESTIGATIONS

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USE OF FORCE

- Kansas Statutes that define and authorize the Use of Force by law enforcement officers.
 - K.S.A. 21-5221 -- Use of Force
 - K.S.A. 21-5222 -- Authorization to use reasonable force to defend one's self or another.
 - K.S.A. 21-5227 -- Authorization to use force when making an arrest.



USE OF FORCE

- **21-5221. Use of force; definitions.** (a) As used in article 32 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, K.S.A. 2014 Supp. 21-5202 through 21-5208, 21-5210 through 21-5212, and 21-5220 through 21-5231, and K.S.A. 2014 Supp. 21-3212a, 21-3220 and 21-3221, and amendments thereto:
 - (1) "Use of force" means any or all of the following directed at or upon another person or thing: (A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person; (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon or through the actions of another.
 - (2) "Use of deadly force" means the application of any physical force described in paragraph (1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest.
- (b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of K.S.A. 21-3211, prior to its repeal, or subsection (a) of K.S.A. 2014 Supp. 21-5222, and amendments thereto, and not to the determination in subsection (b) of K.S.A. 21-3211, prior to its repeal, or subsection (b) of K.S.A. 2014 Supp. 21-5222, and amendments thereto.



USE OF FORCE

- **21-5222. Same; defense of a person; no duty to retreat.** (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force
- (b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.
- (c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.



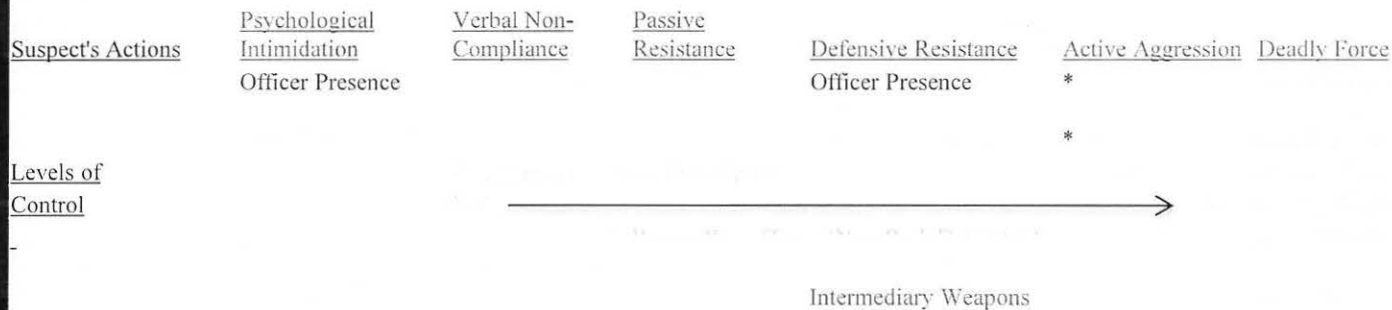
USE OF FORCE

- **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.



USE OF FORCE

Use of Force Continuum



* Start above this level of control if you are being attacked

Variables that affect the appropriate level of control

Size and/or Strength Disparity	Availability of Cover	Subject's Willingness to Resist
Number of Officers/Suspects	Distance	Special Knowledge of the Suspect
Proximity to Weapons	Reaction Time	
Physical Condition	Type of Crime Committed	
Officer Exhaustion/Injury	Special Skills	

5 Key Rules of Responding to Resistance

1. The purpose for using force is to gain Control in furtherance of a law enforcement objective.
2. If the level of force being used is not effective, you may disengage or escalate to a higher level of force.
3. You do not have to escalate force step-by-step through the Use of Force Continuum.
4. Once you have gained control, you must reduce the level of force as long as you can maintain control at that level.
5. You must always maintain a position of advantage.



USE OF FORCE

FORCE SCIENCE INSTITUTE

- Speed of the incident: Why suspects are shot in the back
 - .24 seconds from the time a suspect shoots and then turns to run.
 - From low ready it takes an officer on average .83 seconds to:
 - 1. Raise weapon
 - 2. Acquire sight picture
 - 3. Fire one round
 - If the officer has to draw his firearm from a holster, add approximately 1.7 seconds to the above time.



USE OF FORCE

FORCE SCIENCE INSTITUTE

- Speed of the incident: Force Science Institute did a study that examined reaction times for police officer.
 - Average suspect can pull trigger of a firearm every .25/sec.
 - Average officer takes between 1.8 and 2.0 seconds to draw & fire his/her weapon (with arm extended) from the holster in reaction to threat.
 - Timer starts after first shot = 5 shots in 1 second.
 - $1.8 \text{ sec} / .25 \text{ sec} = \text{approx. } 7 \text{ shots} + 1^{\text{st}} \text{ shot} = 8 \text{ shots fired by suspect before officer discharges } 1^{\text{st}} \text{ shot.}$



OFFICER INVOLVED SHOOTINGS (OIS) IN KANSAS



Officer Involved Shooting Incidents SFY 2013 to Present

Cheyenne	Rawlins	Decatur 1	Norton	Phillips	Smith	Jewell	Republic	Washington 1	Marshall	Hernaha	Brown	Doniphan
Sherman	Thomas 1	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	Clay	Riley 1	Pottawatomie	Jackson	Atchison 1
Wallace	Logan	Gove	Trego	Ellis	Russell	Lincoln	Ottawa	Dickinson	Geary	Wabaunsee	Shawnee 5	Jefferson
Greeley	Wichita	Scott	Lane	Ness	Rush	Barton 2	Ellsworth	Saline 2	Morris	Lyon	Osage 1	Douglas 1
Hamilton	Keamy	Finney	Hodgeman	Pawnee	Stafford	Reno 3	Rice	McPherson 2	Marion	Chase	Coffey	Franklin 1
Stanton	Grant	Haskell	Gray	Ford	Kiowa	Pratt 1	Kingman 1	Harvey 1	Sedgwick 13	Butler 2	Woodson 1	Johnson 6
Morton	Stevens 1	Seward	Meade	Clark	Comanche	Barber	Harper	Sumner	Cowley 1	Chauauqua	Montgomery 2	Wyandotte 4
											Anderson 1	Johnson 4
											Allen 1	Miami 1
											Wilson	Neosho
											Elk	Crawford
											Cherokee	

57 Total Incidents

Dissemination: Unclassified



OIS INVESTIGATIONS

- OIS Incidents in the State of Kansas
 - SFY 2013 12
 - SFY 2014 18
 - SFY 2015 27
 - SFY 2016 6 (as of 10/29/2015) *
 - Association of State Criminal Investigative Agencies (ASCIA) Initiative



PURPOSE OF AN OIS INVESTIGATION

- A fatality resulting from an intentional law enforcement action must be investigated as a Homicide, since it is a death at the hands of another.
- The criminal investigation will determine whether the homicide was legally justified. The possibility always exists that an officer's application of force was unlawful.



OIS INVESTIGATIONS

OIS Investigative Process:

- Following an OIS incident a request for assistance is received
- Crime scene processing
- Witness interviews (civilian witnesses as well as non-shooting officer witnesses)
- Review video and audio evidence (if available)
- Officer(s) who used deadly force (delayed interview)
- Autopsy (if necessary) and forensic science testing
- Presentation of investigation to the county or district attorney
- Takeaway – Understanding the officer's perception is critical



ROLE OF THE COUNTY / DISTRICT ATTORNEY

- To determine whether the actions of the officer were justified under the law.
- District Attorney could determine actions were:
 1. Legally Justified
 2. Not Legally Justified
 3. Not enough information to determine whether the officer's actions were justified or not justified.



OIS INVESTIGATIONS RESOURCE MANAGEMENT CHALLENGE

- Resource Management
 - These types of investigations can use up manpower and resources quickly.
 - KBI Crime Scene Response Team (CSRT) would be activated.
 - The number of Agent personnel is often determined by the scope and size of the incident (Wichita standoff, July 2013)
 - What local resources are available?



RESOURCE MANAGEMENT CHALLENGE

- Two investigations in one:
 1. Use of deadly force by the officer
 2. Circumstances which led to the use of deadly force.
- Must examine the totality of the circumstances to include the criminal acts that predicated the officers' use of force.
- Important to keep in mind that while the criminal investigation is occurring; the parent department will also be conducting an administrative investigation. Which can complicate the criminal investigation.



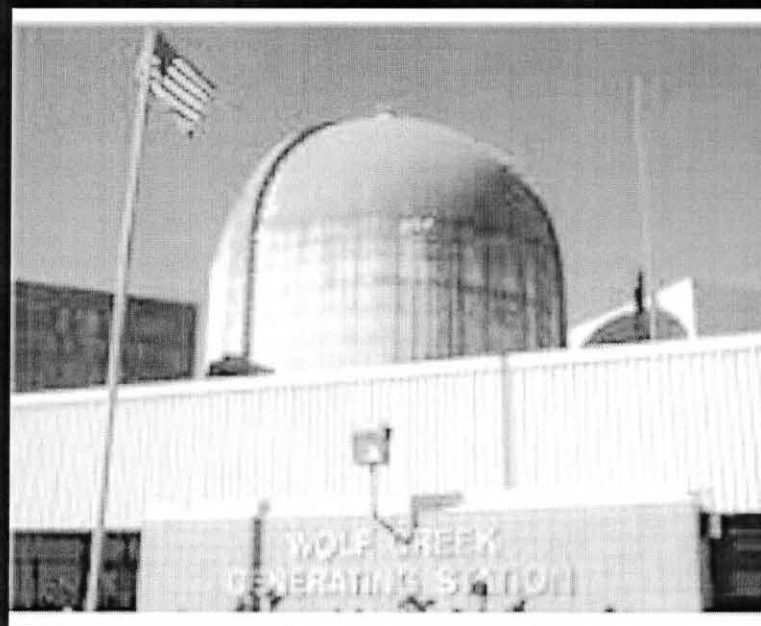
RESOURCE MANAGEMENT CHALLENGE

KBI Commissioned Agents:

- 76 commissioned Agents
- 12 Administrative staff and supervisors (64)
- 8 Agents working on Federal Task Forces and unavailable for OIS investigations (56)
- 56 Agents conducting investigations
 - 25 Agents assigned to the Special Operations Division (S.O.D.)
 - 31 Agents assigned to the Field Investigations Divisions (F.I.D.)
- 31 Agents available to work OIS investigations throughout 105 counties in Kansas.



SPECIAL CONSIDERATIONS



CODE OF FEDERAL REGULATIONS

- **§1047.7 Use of deadly force. -- Title 10--Energy**
- (a) Deadly force means that force which a reasonable person would consider likely to cause death or serious bodily harm. Its use may be justified only under conditions of extreme necessity, when all lesser means have failed or cannot reasonably be employed. A protective force officer is authorized to use deadly force only when one or more of the following circumstances exists:
 - (1) *Self-Defense*. When deadly force reasonably appears to be necessary to protect a protective force officer who reasonably believes himself or herself to be in imminent danger of death or serious bodily harm.
 - (2) *Serious offenses against persons*. When deadly force reasonably appears to be necessary to prevent the commission of a serious offense against a person(s) in circumstances presenting an imminent danger of death or serious bodily harm (e.g. sabotage of an occupied facility by explosives).
 - (3) *Nuclear weapons or nuclear explosive devices*. When deadly force reasonably appears to be necessary to prevent the theft, sabotage, or unauthorized control of a nuclear weapon or nuclear explosive device.
 - (4) *Special nuclear material*. When deadly force reasonably appears to be necessary to prevent the theft, sabotage, or unauthorized control of special nuclear material from an area of a fixed site or from a shipment where Category II or greater quantities are known or reasonably believed to be present.
 - (5) *Apprehension*. When deadly force reasonably appears to be necessary to apprehend or prevent the escape of a person reasonably believed to: (i) have committed an offense of the nature specified in paragraphs (a)(1) through (a)(4)1 of this section; or (ii) be escaping by use of a weapon or explosive or who otherwise indicates that he or she poses a significant threat of death or serious bodily harm to the protective force officer or others unless apprehended without delay.
- These offenses are considered by the Department of Energy to pose a significant threat of death or serious bodily harm.
- (b) *Additional Considerations Involving Firearms*. If it becomes necessary to use a firearm, the following precautions shall be observed:
 - (1) A warning, e.g. an order to halt, shall be given, if feasible, before a shot is fired.
 - (2) Warning shots shall not be fired.



CODE OF FEDERAL REGULATIONS

- **§1047.6 Use of physical force when making an arrest**
- (a) When a protective force officer has the right to make an arrest as discussed above, the protective force officer may use only that physical force which is reasonable and necessary to apprehend and arrest the offender; to prevent the escape of the offender; or to defend himself or herself or a third person from what the protective force officer believes to be the use or threat of imminent use of physical force by the offender. It should be noted that verbal abuse alone by the offender cannot be the basis under any circumstances for use of physical force by a protective force officer.
- (b) Protective force officers shall consult the local DOE Office of Chief Counsel and contractor legal counsel, as appropriate, for additional guidance on use of physical force in making arrests.



SPECIAL CONSIDERATIONS

INVESTIGATIONS

- A use of deadly force incident at either the Wolf Creek Generating Facility or the National Bio and Agro Defense Facility (NBAF) would most likely be investigated by a federal agency.
- There is currently no Memorandum of Understanding (MOU) in place for the KBI to automatically assume primary role of the investigation.
- The KBI would likely provide investigative assistance to the federal agency conducting an investigation in to the use of deadly force upon request.
- Wolf Creek Generating Facility – Department of Energy.
- NBAF – Department of Homeland Security & Department of Agriculture.



SPECIAL CONSIDERATIONS

- Kansas Intelligence Fusion Center monitors threats to the State of Kansas.
 - For security reasons no further information can be provided regarding specific Kansas Utilities.
- KBI has investigated threats to schools in Kansas.
 - Each school district has their own security and safety plan.



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THANK YOU

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Officer Involved Shooting Incidents SFY 2013 to 2015

Cheyenne	Rawlins	Decatur 1	Norton	Phillips	Smith	Jewell	Republic	Washington 1	Marshall	Nemaha	Brown	Doniphan		
Sherman	Thomas 1	Sheridan	Graham	Rooks	Osborne	Mitchell	Cloud	Clay	Riley 1	Pottawatomie	Jackson	Atchison 1		
Wallace	Logan	Gove	Trego	Ellis	Russell	Lincoln	Ottawa	Dickinson	Geary	Wabaunsee	Shawnee 5	Jefferson 1	Leavenworth 1	Wyandotte 6
Greeley	Wichita	Scott	Lane	Ness	Rush	Barton 2	Ellsworth	Saline 2	McPherson 2	Monroe	Osage 1	Douglas 1	Johnson 4	Miami
Hamilton	Keamy	Finney	Hodgeman	Pawnee	Stafford	Reno 3	Rice	Harvey 1	Marion	Chase	Lyon	Franklin 1	Linn 1	
Stanton	Grant	Haskell	Gray	Ford	Edwards	Pratt 1	Kingman 1	Sedgwick 13	Butler 2	Greenwood	Woodson 1	Allen	Bourbon	
Morton	Stevens 1	Seward	Meade	Clark	Comanche	Barber	Harper	Sumner	Cowley 1	Elk	Wilson	Neosho	Crawford	
										Chautauqua	Montgomery 2	Labette	Cherokee	

57 Total Incidents