

APPENDIX

Survey of All Fifty States Use of Force Law

All Statutes: Current Publication; all bolding added.

Key: CL: common law rule in effect; G: common law rule not in effect (Garner-like rule); MPC: verbatim Model Penal Code; ?: undetermined; -s: by statute; -c: by case law.

Model Penal Code

(1) **Use of Force Justifiable to Effect an Arrest.** Subject to the provisions of this Section and of Section 3.09, 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) **Limitations on the Use of Force.**

(a) The use of force is not justifiable under this Section unless:

(i) 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

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

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

(i) the arrest is for a felony; and

(ii) the 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; and

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

(iv) the actor believes that:

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

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

MODEL PENAL CODE § 3.07.

Alabama Garner category: CL Current category: CL-s

(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.

ALA. CODE § 13A-3-27.

Alaska Garner category: G Current category: G-s

(a) 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.

ALASKA STAT. § 11.81.370.

Arizona Garner category: G Current category: G-s

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.

ARIZ. REV. STAT. § 13-410.

Arkansas

Garner category: G

Current category: G-s

(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.

ARK. CODE ANN. § 5-2-610.

California

Garner category: CL

Current category: G-s

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.**

CAL. PENAL CODE § 196 (West).²¹⁸

Colorado

Garner category: G

Current category: G-s

(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:

218. But see the authority given in *Garner* that construes the word “felony” in subsection 3 of the statute to mean only the kinds of felonies that would justify lethal force as given in the Garner rule. “Consequently, the deadly force authorized by such statutes and regulations may be resorted to only if the felony is a ‘forcible and atrocious one’ which threatens death or serious bodily harm or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or other person.” *Kortum v. Alkire*, 138 Cal. Rptr. 26, 31 (Ct. App. 1977).

Florida

Garner category: CL

Current category: CL-s

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.

FLA. STAT. § 776.05.²¹⁹

Georgia

Garner category: G

Current category: G-s

(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 misdemeanant.

GA. CODE ANN. § 17-4-20.

219. Note: everything from “However” on in subsection 3 pertains only to defenses in a civil action. For purposes of criminal justification defense, the only operative language is the bolded text.

Hawaii

Garner category: MPC

Current category: G-s

(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.

HAW. REV. STAT. § 703-307.²²⁰

Idaho

Garner category: CL

Current category: G-s

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.

IDAHO CODE ANN. § 18-4011.

220. Note the additional limitation in subsection (3)(c) that force may not be used when it poses a risk to innocent bystanders. This provision goes beyond the rule in *Garner*.

Illinois

Garner category: G

Current category: G-s

(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.

720 ILL. COMP. STAT. 5/7-5.

Indiana

Garner category: CL

Current category: G-s

(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.

IND. CODE § 35-41-3-3.²²¹

Iowa

Garner category: G

Current category: G-s

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

221. While *Garner* placed Indiana in the common law category, it noted some limitation: "In Indiana, deadly force may be used only to prevent injury, the imminent danger of injury or force, or the threat of force. It is not permitted simply to prevent escape." *Tennessee v. Garner*, 471 U.S. 1, 17 (1985) (citing *Rose v. State*, 431 N.E.2d 521 (Ind.App.1982)).

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.

IOWA CODE § 804.8.

Kansas Garner category: CL Current category: G-s

(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.**

KAN. STAT. ANN. § 21-5227.

Kentucky Garner category: G Current category: G-s

(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.

KY. REV. STAT. ANN. § 503.090 (West).

Louisiana

Garner category: MPC

Current category: G-s

A person shall submit peaceably to a lawful arrest. **The person making a lawful arrest may use reasonable force to effect the arrest** and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained.

LA. CODE CRIM. PROC. ANN. art. 220.

Section 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.**

LA. REV. STAT. ANN. § 14:20.

Maine

Garner category: G

Current category: G-s

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.

ME. REV. STAT. tit. 17-A, § 107.

Maryland

Garner category: ?

Current category: G-c

Maryland has moved to a Garner-like rule from undetermined (probably closer to the common law rule) by tying its common law “reasonable” analysis to compliance with established law enforcement policies.²²²

Massachusetts

Garner category: MPC-c

Current category: G-c

Garner cited two cases, *Klein* and *Randazzo* in saying Massachusetts should probably be considered to have adopted the MPC via its case law. Both cases explicitly adopt the MPC as their rule. *Com. v. Klein*, 363 N.E.2d 1313, 1318 (Mass. 1977); *Julian v. Randazzo*, 403 N.E.2d 931, 934 (Mass. 1980).²²³

Michigan

Garner category: CL

Current category: CL-c

Michigan has not moved on. It still has no statute and the case law (especially *Couch*) explicitly rejects adopting a *Garner*-like rule. *People v. Couch*, 461 N.W.2d 683, 684 (1990). While *Couch* involves a private citizen attempting to arrest a fleeing felon, the Michigan Supreme Court makes clear that it would apply the same rule if the person attempting the arrest were a police officer:

In our view, even if the defendant *were* a police officer, *Garner* could not apply ‘directly’ as the basis for a homicide charge. That would require, in effect, two different definitions of both murder and manslaughter, one for police officers and one for the rest of us. Such a scheme could raise a significant constitutional question.

Id. at 684 n. 1.

A post-*Couch* case (which, like *Couch*, involved a private citizen asserting the fleeing felon defense) recites the common law rule in Michigan:

222. In 1986, following *Garner*, Maryland’s Attorney General published a letter concluding that Maryland’s law enforcement policies are in line with *Garner*. 1986 WL 287649, 71 Md. Op. Atty. Gen. 87 (1986). Maryland’s common law rule has developed to conclude that force can only be justified when it complies with law enforcement policies. See *State v. Albrecht*, 649 A.2d 336, 349–50 (1994); *State v. Pagotto*, 762 A.2d 97, 103–07, 112 (2000).

223. A recent case repeated the rule from *Randazzo*, though it did not reach the issue. *Com. v. Asher*, N.E.3d 1055, 1059 (Mass. 2015)

To justify the use of deadly force to prevent the escape of a fleeing felon: “(1) the evidence must show that a felony actually occurred, (2) the fleeing suspect against whom force was used must be the person who committed the felony, and (3) the use of deadly force must have been ‘necessary’ to ensure the apprehension of the felon.” *Id.* at 596-597. Necessity is a question of fact for the jury to decide. *Id.* at 597. In addition, the private person must apply reasonable care to prevent the felon’s escape without violence. *People v. Couch*, 436 Mich. 414, 421; 461 NW2d 683 (1990), quoting *People v. Gonsler*, 251 Mich. 443, 446-447; 232 NW 365 (1930).

People v. Spears, 267572, 2007 WL 1203537, at *2 (Mich. Ct. App. Apr. 24, 2007).

Minnesota

Garner category: G

Current category: G-s

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.**

MINN. STAT. § 609.066.

Mississippi

Garner category: CL

Current category: CL-s

(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;**

MISS. CODE. ANN. § 97-3-15.

Missouri

Garner category: CL

Current category: CL-s

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.

MO. REV. STAT. § 563.046.

Montana

Garner category: ?

Current category: ?

Still no statute or case law on point. The closest it comes is a statute regarding use of force to prevent escape from custody.

MONTANA STAT. 45-3-106.

Nebraska

Garner category: MPC

Current category: G-s

(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.**

NEB. REV. STAT. § 28-1412.

Nevada

Garner category: CL

Current category: G-s

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.

NEV. REV. STAT. § 171.1455.

New Hampshire Garner category: G

Current category: G-s

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.

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.

N.H. REV. STAT. ANN. § 627:5.

New Jersey

Garner category: G

Current category: G-s

(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) 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.

N.Y. PENAL LAW. § 35.30 (Consol.).

North Carolina Garner category: G

Current category: G-s

(d) Use of Force in Arrest.— . . .

(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.

N. C. GEN. STAT. § 15A-401.

North Dakota Garner category: G

Current category: G-s

2. **Deadly force is justified in the following instances: . . .**

(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.**

N.D. CENT. CODE 12.1-05-07.

Ohio Garner category: CL

Current category: G-c

Post *Garner*, Ohio has adopted a *Garner*-like rule by case law.

Courts therefore apply *Garner* and *Graham* in reviewing criminal convictions arising from a police officer's use of deadly force. *See, e.g., United States v. Ramos*, 537 F.3d 439, 457 (5th Cir.2008) ("there is no question but that a police officer's unjustifiable shooting of a victim qualifies as a crime of violence; there is no question but that a police officer's shooting a victim who

poses no physical threat to the safety of the officer or the public is unjustifiable”); *State v. Pagotto*, 361 Md. 528, 555, 762 A.2d 97 (2000) (prosecution of police officer for involuntary manslaughter and reckless endangerment); *State v. Smith*, 73 Conn. App. 173, 198, 807 A.2d 500 (2002) (prosecution of police officer for first-degree manslaughter); *State v. Mantelli*, 131 N.M. 692, 2002–NMCA–033, 42 P.3d 272, ¶ 31 (prosecution of police officer for voluntary manslaughter, aggravated assault with a deadly weapon, and shooting at a motor vehicle resulting in injury); *People v. Martin*, 168 Cal. App. 3d 1111, 1124, 214 Cal. Rptr. 873 (1985) (noting that *Garner* “limits the scope of justification for homicide”).

State v. White, 29 N.E.3d 939, 947 (Ohio 2015).²²⁴

Oklahoma

Garner category: CL

Current category: G-s

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

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.

OKLA. STAT. TIT. 21 § 732.

224. See also *State v. White*, 988 N.E.2d 595, 612 (Ohio Ct. App. 2015) (stating that “it would seem logical” that *Garner* would apply in a criminal prosecution).

Oregon

Garner category: CL

Current category: CL-s

(1) Notwithstanding the provisions of ORS 161.235 [general provisions for use of force while making an arrest or preventing escape], **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.

OR. REV. STAT. § 161.239.

Pennsylvania

Garner category: G

Current category: G-s

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

(1) **A peace officer . . . 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.

PA. CONS. STAT. § 508.

Rhode Island

Garner category: CL

Current category: CL-s

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.

R.I. GEN. LAWS § 12-7-9.

South Carolina Garner category: ?

Current category: CL-s

South Carolina seems to follow the old common law rule by case law, despite apparently applying the *Garner* rule to test the legality of the officer's use of force in *Sheppard v. State*. South Carolina still has confusing and incoherent case law. In 2004, the Supreme Court of South Carolina incorrectly recited the *Garner* rule:

The trial court also properly charged that an officer may use whatever force is necessary to effect the arrest of a felon including deadly force to effect that arrest. See *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985) (during felony arrest, if arresting officer has probable cause to believe suspect poses threat of serious physical harm, officer may prevent escape by using deadly force).

Sheppard v. State, 594 S.E.2d 462, 473 (2004).

South Dakota Garner category: CL

Current category: CL-s

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.

S.D. CODIFIED LAWS § 22-18-3.

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**

S.D. CODIFIED LAWS § 22-18-2.

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.
S.D. CODIFIED LAWS § 22-16-33.

Tennessee

Garner category: CL

Current category: G-s

(b) Notwithstanding subsection (a) [general provision allowing officer, after identifying self, to use or threaten to use force], **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.**

TENN. CODE ANN. § 39-11-620.

Texas

Garner category: G

Current category: G-s

(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.**

TEX. PENAL CODE ANN § 9.51

Utah

Garner category: G

Current category: G-s

(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).

UTAH CODE ANN. § 76-2-404.

Vermont

Garner category: G

Current category: G-s

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.

VT. STAT. ANN. § 2305.

Virginia

Garner category: CL

Current category: CL-c

Still has the older common law rule. However, Virginia courts get much use out of “necessity” by giving the question of whether the use of lethal force was necessary to the jury with virtually no limits on what the jury can consider (including the gravity of the felony committed by the fleeing person and apparently even the gravity of the crime the officer is charged with) and have affirmed manslaughter convictions against police officers, both before and after *Garner*.²²⁵

225. See *Hendricks v. Com.*, 178 S.E. 8, 12 (Va. 1935); see also *Couture v. Com.*, 656 S.E.2d 425, 427-28 (Va. Ct. App. 2008).

Washington

Garner category: CL

Current category: G-s

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:

False

(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;

(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.

WASH. REV. CODE §9A.16.040.

If after notice of the intention to arrest the defendant, he or she either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

WASH. REV. CODE §10.31.050.

West Virginia

Garner category: CL

Current category: CL-c

West Virginia still has the common law rule by its case law. A 2012 civil case (including state tort claims as well as § 1983) involving a claim for damages for excessive (but not lethal) use of force by an officer in dealing with a person reported as being suicidal did not even mention *Garner*:

Respondents Cayton and the West Virginia State Police argue that an excessive force claim must be analyzed under an objectionably reasonable standard, which does not require the officer to use the least intrusive means to effectuate a seizure or even the minimum amount of force available. According

to respondents, reasonableness is instead judged by whether the officer’s use of force was within a range of conduct that could be deemed to have been reasonable under the circumstances. Because the officers had a reasonable belief petitioner would harm himself, respondents argue that the actions were warranted and did not constitute excessive force. Further, respondents argue that petitioner’s expert’s testimony did not create a genuine issue of material fact because the circuit court found that the expert misstated the relevant legal standard for the use of force and then properly ruled his testimony to be irrelevant.

Posey v. Davis, 11-1204, 2012 WL 5857309, at *2 (W. Va. Nov. 16, 2012).

Wisconsin Garner category: CL Current category: CL-s

939.45 Privilege. The fact that the actor’s conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. **The defense of privilege can be claimed under any of the following circumstances:**

(4) When the actor’s conduct is a reasonable accomplishment of a lawful arrest;

WIS. STAT. § 939.45(4) (2015).²²⁶

Wyoming Garner category: ? Current category: G-c

Wyoming still has no statute and no case law on point. It remains in the unknown category.

The title of Article 6 of the criminal code is “Justification.” The only justification statute is the justified use of force in self-defense/defense of others statute which makes no mention of arrest or any special justification for police officers. WYO. STAT. ANN. § 6-2-602. Section 6-2-601, however, states, “The common law shall govern in all cases not governed by this article.”

But a post-*Garner* case seems to apply *Garner* to this fact set:

During that felony traffic stop, the suspect exited the vehicle as directed by the police officers, but he failed to follow police orders to keep his hands up and began to move forward as if to run in spite of a police order to halt. As the suspect moved, he also reached with his left hand toward the small of his back. One of the officers, believing the suspect was reaching for a weapon and

226. But, the annotated statutes published by the legislature mentions the same case mentioned in *Garner* footnote 14:

“Flight on the part of one suspected of a felony does not, of itself, warrant the use of deadly force by an arresting officer, and it is only in certain aggravated circumstances that a police officer may shoot a fleeing suspect. *Clark v. Ziedonis*, 368 F. Supp. 544 (1973).” See also <http://docs.legis.wisconsin.gov/document/statutes/939.45>.

perceiving a threat, discharged his shotgun, hitting the suspect. The suspect was then apprehended.

Roose v. State, 759 P.2d 478, 479 (Wyo. 1988). The Wyoming Supreme Court quoted the rule from *Garner*, and then concluded, “Looking at the totality of the circumstances in this case and recognizing that a police officer must make split second decisions regarding such grave matters, we hold that the police officer was justified in using the force he used in this instance.” *Id.* at 484.