

Ala. Code 1975, § 13A-3-27

Use of Force in Making an Arrest or Preventing an Escape

One of the issues in this case is the 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/she 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/herself/another]** from what he/she 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/she 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/herself/another]** from what he/she reasonably believes to be the use or imminent use of deadly physical force.

A peace officer is not justified in using reckless or criminally negligent conduct amounting to an offense against or with respect to persons being arrested or to innocent persons whom he/she is not seeking to arrest or retain in custody.

A peace officer who is effecting an arrest pursuant to a warrant is justified in using **[physical force/deadly physical force]** unless the warrant is invalid and is known by the officer to be invalid.

C. A person who has been directed by a peace officer to assist him/her to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he/she reasonably believes that force to be necessary to carry out the peace officer's direction.

D. A person who has been directed by a peace officer to assist him/her to effect an arrest or to prevent an escape from custody is justified in using deadly physical force to effect an arrest or to prevent an escape only when:

- (1) He/she reasonably believes that force to be necessary to defend **[himself/herself/another]** from what he/she reasonably believes to be the use of imminent use of deadly physical force; **(OR)**
- (2) He/she is authorized by the peace officer to use deadly physical force and does not know that the peace officer himself/herself is not authorized to use deadly physical force under the circumstances.

E. A private person acting on his/her own account is justified in using physical force upon another person when and to the extent that he/she reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he/she reasonably believes has committed a felony and who, in fact, has committed that felony.

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

G. 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/she reasonably believes it necessary to prevent what he/she 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; **(OR)**
- (2) In using physical force, but not deadly physical force, when and to the extent that he/she reasonably believes it necessary to prevent what he/she reasonably believes to be the escape of a prisoner from a detention facility.

[Read if appropriate - Instructions for Escape]

[Read appropriate definitions]

A *peace officer* is any public servant vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. [13A-10-1(5)]

Force is physical action or threat against another, including confinement. [13A-3-20(4)]

Deadly physical force is force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.[13A-3-20(2)]

A *reasonable belief* is a belief formed in reliance upon reasonable appearances. It is a belief not formed recklessly or negligently. The test of reasonableness is not whether the defendant was correct in his/her belief but whether the belief was reasonable under the circumstances existing at the time. (Commentary)

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. [13A-3-27(h)(3)]

Use Notes

If a person is justified or excused in using force against a person, but he/she recklessly or negligently injures or creates a substantial injury to another person, the justification is unavailable in a prosecution for recklessness or negligence. [13A-3-21]

Unless inconsistent with a provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his/her official powers, duties or functions. [13A-3-22]

A person may not use physical force to resist a lawful arrest by a peace officer who is known or reasonably appears to be a peace officer. [13A-3-28]

[Approved 10-17-14.]