

October 20, 1971

MEMORANDUM TO: Commission on Community Relations

FROM: Field Division Staff

SUBJECT: Control of the Use of Deadly Force by Police Officers

There is no current Michigan statute concerning the use of deadly force by a police officer in the apprehension of a suspected felon. The rule which has developed through case law seems to be that the officer may use such force as he reasonably believes is necessary to arrest and detain a person whom he has reasonable grounds to suspect is a felon. The circumstances must justify the force and the fact that he is a police officer does not give him any privilege to use excessive force. An officer may use deadly force only when he reasonably believes that it is necessary to arrest or prevent the escape of a suspected felon. He also has the same right as any citizen to use deadly force to defend himself or another person (including prisoners and fellow officers) against the possibility of death or serious bodily harm.

The Michigan Proposed Criminal Code bases its provision on the demonstrated dangerousness of the felon stating that an officer should be allowed to use deadly force only if he reasonably believes that the suspected felon has committed or attempted to commit a felony involving the use or threatened use of deadly physical force. The Committee which drafted the Proposed Code also adopted an official alternative to this section which extends the officer's authority to use deadly force to a situation where the suspect is reasonably believed to have committed any felony involving force against either person or property. (If the Proposed Code were passed, the legislature would probably choose one of these two alternatives.)

The Model Penal Code, Section 3.07, focuses upon the officer's perception of the potential dangerousness of the fleeing felon and offers the standard that the officer must reasonably believe that there is substantial risk that the suspected felon will cause death or serious bodily harm if his apprehension is delayed and that the use of deadly force would create no substantial risk of injury to innocent persons. This again does not effect the right to use deadly force in self-defense or the defense of other persons. The New York Penal Law adopted this Model Penal Code provision almost exactly in 1967. The Texas Penal Code, passed in 1961, states that the use of deadly force is only justified when the officer or a third person is threatened with death or serious bodily harm. No information could be found on the effect of these statutory provisions in New York and Texas on the actual exercise of discretion by the officers on the street.

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