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# WHEN CAN I LEGALLY SHOOT?

KNOWING THE LAW OF DEADLY FORCE IN KANSAS

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# I'M CHARGED WITH WHAT?

Justification Is Available As A Defense

## Unlawful Discharge of a Firearm in a City Class B Nonperson Misdemeanor

- Recklessly discharging a firearm within or into the corporate limits of any city

*Kan. Stat. Ann. § 21-6308a*

## Reckless Aggravated Battery with a Deadly Weapon

**Severity Level 8, Person Felony**

- Recklessly causing bodily harm to another with a deadly weapon, or in any manner where great bodily harm, disfigurement or death can be inflicted

*Kan. Stat. Ann. § 21-5413(b)(2)(B)*

## Criminal Discharge of a Firearm

**Severity level 7, Person Felony**

- Recklessly discharging a firearm at a dwelling, building, structure, motor vehicle, aircraft, or other means of conveyance of person or property where there is a human being present;
  - If there is no human being present, then it is severity level 8
  - If resulting in bodily harm to another, then it is severity level 5
  - If resulting in great bodily harm to another, then it is severity level 3

*Kan. Stat. Ann. § 21-6308(a)(1)*

## Aggravated Battery with a Deadly Weapon

**Severity Level 7, Person Felony**

- Knowingly causing bodily harm to another with a deadly weapon, or in any manner where great bodily harm, disfigurement or death can be inflicted; or
- Knowingly causing physical contact with another in a rude, insulting, or angry manner with a deadly weapon, or in any manner where great bodily harm, disfigurement or death can be inflicted
- Recklessly causing bodily harm to another with a deadly weapon, or in any manner where great bodily harm, disfigurement, or death can be inflicted is a severity level 8, person felony

*Kan. Stat. Ann. § 21-5413(b)*

## MISDEMEANORS

## FELONIES

## Aggravated Assault with a Deadly Weapon

**Severity Level 7, Person Felony**

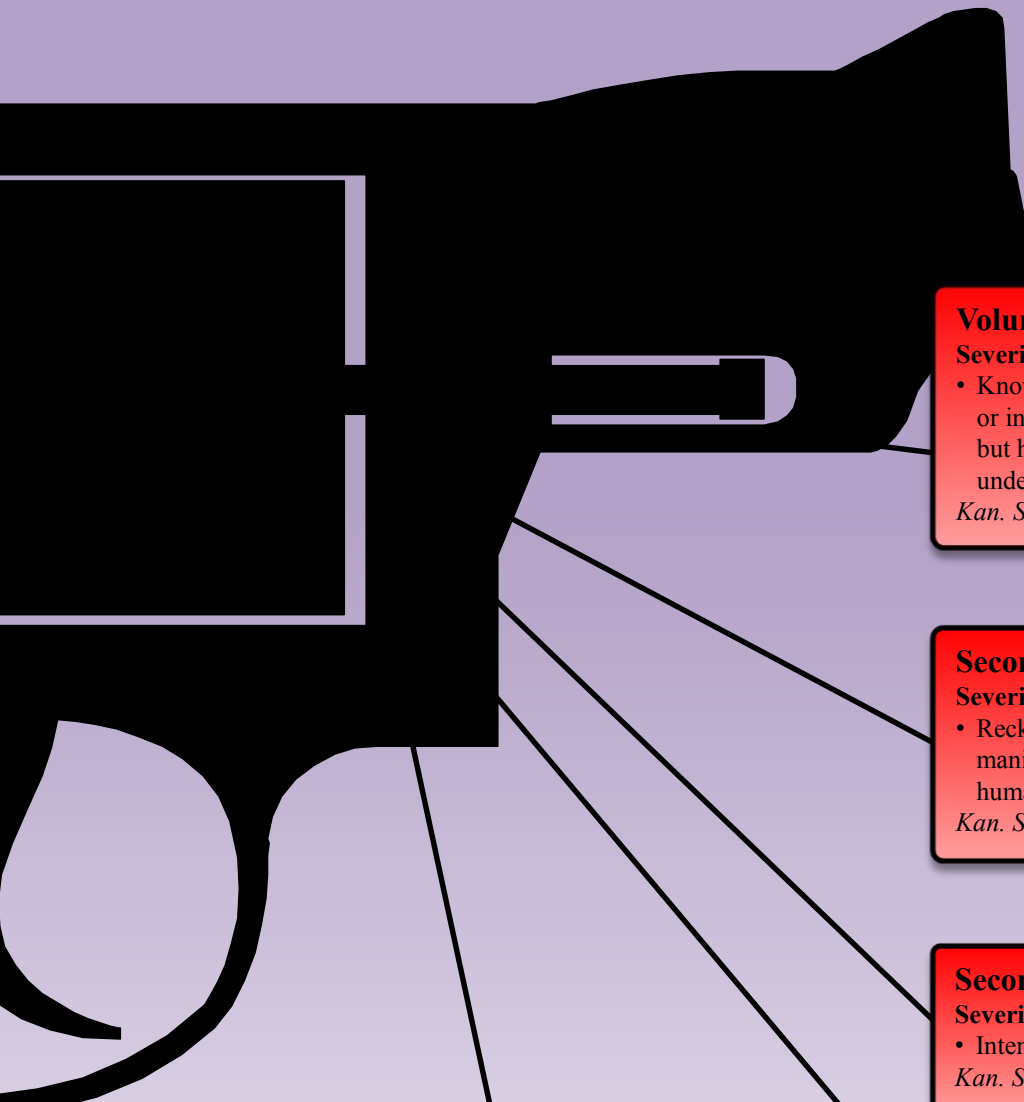
- Knowingly placing another in reasonable apprehension of immediate bodily harm with a deadly weapon

*Kan. Stat. Ann. § 21-5412(b)*

# HOW BAD IS IT?



Under Kansas Law, For The Following Crimes:



## **Voluntary Manslaughter**

**Severity Level 3, Person Felony**

- Knowingly killing another upon a sudden quarrel or in the heat of passion, or on an unreasonable but honest belief that deadly force was justified under the circumstances.

*Kan. Stat. Ann. § 21-5404*

## **Second Degree Murder, Reckless**

**Severity Level 2, Person Felony**

- Recklessly killing another under circumstances manifesting extreme indifference to the value of human life

*Kan. Stat. Ann. § 21-5403(a)(2)*

## **Second Degree Murder, Intentional**

**Severity Level 1, Person Felony**

- Intentionally killing another

*Kan. Stat. Ann. § 21-5403(a)(1)*

## **Involuntary Manslaughter**

**Severity Level 4/5, Person Felony**

- Killing of another human being:
  - Recklessly
  - In the commission of, attempt to commit, or flight from a felony, or certain misdemeanors
  - During the commission of a lawful act in an unlawful manner

*Kan. Stat. Ann. § 21-5405(a)*

## **First Degree Murder**

**Off-grid Person Felony**

- Intentionally killing another after premeditation
- In the commission of, attempt to commit, or flight from any inherently dangerous felony

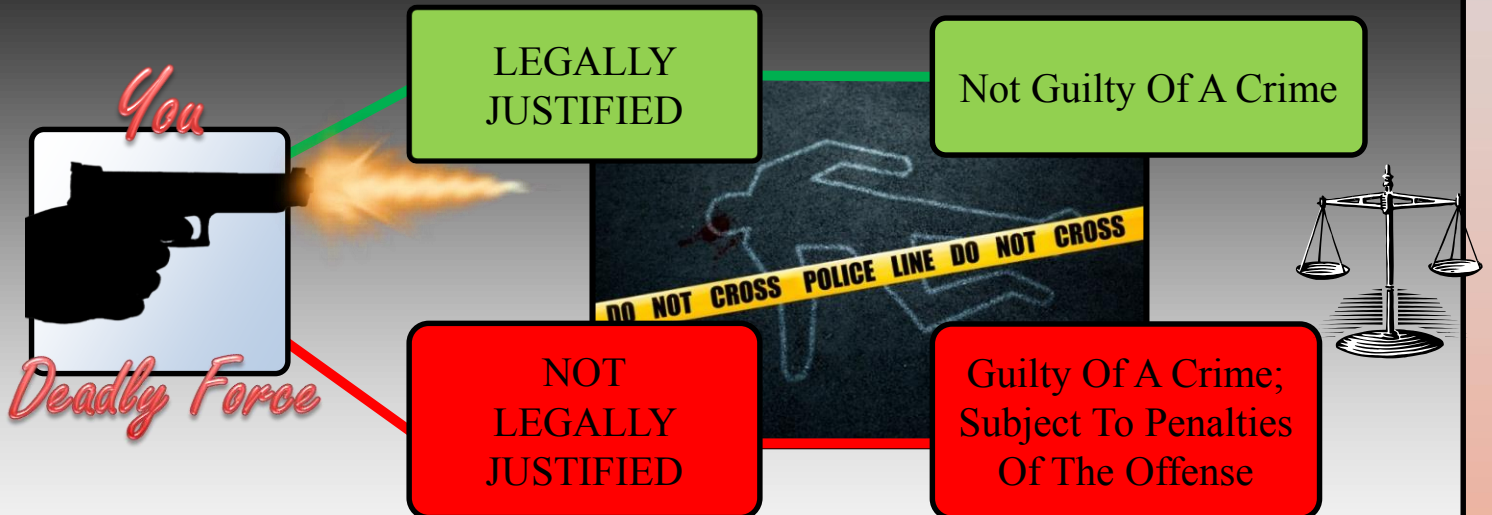
*Kan. Stat. Ann. § 21-5402*



# WHEN IS IT NOT A CRIME?

## Legal Justification Of Deadly Force

Legal justification is a set of circumstances that the law says is a valid excuse for a person doing something that would otherwise be a crime.



As a general rule, it is illegal to shoot someone, however, if done under a particular set of circumstances (*e.g.*, self-defense/defense of others, *etc.*) the law states a person is excused from the illegality or is legally justified.

## Important Legal Terms

### Deadly Force

Kansas law defines deadly force as any physical force which is likely to cause death or great bodily harm to a person.

*Note:* Threatening deadly force by displaying or producing a weapon is not considered the use of deadly force if it is done to create an apprehension that you will use deadly force in legal defense of yourself or another.

*Kan. Stat. Ann. § 21-5221(a)(2)*

### Bodily Harm

Any touching of a victim against their will, with physical force, in an intentional hostile and aggravated manner.

*State v. Taylor*, 538 P.2d.1375, 1882 (Kan. 1975)

### Great Bodily Harm

Bodily harm greater than slight, trivial, minor or moderate harm.

*State v. Dubish*, 675 P.2d 077, 884 (Kan. 1984)



# REASONABLE PERSON STANDARD



If You Use Deadly Force, Your Conduct Will Be Measured By A Reasonable Person Standard



*Threat*

As Outlined on pages 5-8



## What is Reasonable?

The law will judge your actions (*i.e.*, use of deadly force) by using the reasonable person standard. That is – would a reasonable person under the same or similar circumstances have a fear of imminent danger of being killed or sustaining great bodily injury? This reasonable person standard is the law’s attempt to make the concept of reasonableness an objective test. The law does ask whether you honestly believed deadly force was reasonable, but, more importantly, also asks whether a reasonable person would consider it reasonable. If the legal system (ultimately this could be a jury) determines that a reasonable person would have a fear of danger of being killed or sustaining great bodily injury under the circumstances as they existed at the time, then you were legally justified in using deadly force. However, juries, judges, and prosecutors are simply human beings and people can have vastly different ideas of how a reasonable person should act under any given circumstance. This is particularly true if asked to decide whether another person’s fear was reasonable or not.

*State v. Stewart*, 763 P.2d 577 (Kan. 1988)





# WHEN CAN YOU LEGALLY USE DEADLY FORCE...

*Imminent Threats*

## Law of Self-Defense

Deadly Force Is Legally Justified When:

*You*



*Deadly Force*

**Burglary or Aggravated Burglary\***



**Sexual Assault Where Great Bodily Harm May Be Committed**



**Murder or Aggravated Assault\***

**Aggravated Robbery\***



**Home Invasion\***



\*Note that while these crimes are not listed specifically by statute, they all contain an element of a threat of great bodily harm or death.

**Deadly Force is Legally Justified When:**

When and to the extent a person reasonably believes that the use of deadly force is necessary to prevent imminent death or great bodily harm.

*Kan. Stat. Ann. § 21-5222(b)*





# WHEN CAN YOU LEGALLY USE DEADLY FORCE...



## Law of Defense of Others

*Imminent Threats*

Deadly Force Is Legally Justified When:

*You*



*Deadly Force*



*Victim*

Murder or Aggravated Assault\*

Sexual Assault Where Great Bodily Harm May Be Committed

Burglary Or Aggravated Burglary\*

Home Invasion\*

Aggravated Robbery\*



\*Note that while these crimes are not listed specifically by statute, they all contain an element of a threat of great bodily harm or death.

Deadly Force is Legally Justified When:

When and to the extent a person reasonably believes that the use of deadly force is necessary to prevent imminent death or great bodily harm to another person.

*Kan. Stat. Ann. § 21-5222(b)*



# WHEN CAN YOU LEGALLY USE DEADLY FORCE...

## Protection of Your Property

### Trespasser



Trespass  
or Criminal  
Trespass



Theft, Criminal  
Damage to Property



Criminal Deprivation  
of Property



**NO  
DEADLY  
FORCE!**

**DON'T SHOOT!**  
Deadly Force is  
probably NOT  
legally justified!

**But**, the use of force is justifiable to prevent or terminate an unlawful Interference with property other than their dwelling, place of work, or occupied vehicle. A person may only use as much force as a reasonable person would deem necessary to prevent the Interference.

*Kan. Stat. Ann. § 21-5225*

## But, IF...

### Trespasser

Commits or Attempts to Commit...



Aggravated Robbery



Burglary

Aggravated Burglary



**Then deadly  
force is  
justified...**



The use of deadly force is justified when a person reasonably believes that it is necessary to prevent imminent death or great bodily harm to themselves or another who is threatened by an assailant's unlawful entry into or attack on a dwelling, place of work, or occupied vehicle.

Additionally, a person may only use as much force as a reasonable person would deem necessary to prevent the interference. Some cases have held that if it is reasonable to prevent the interference you can use deadly force; just remember that you'll have to convince a jury to agree with you!

*Kan. Stat. Ann. §§ 21-5223 and 21-5225, State v. Clothier, 753 P.2d 1267*



# WHEN CAN YOU LEGALLY USE DEADLY FORCE...



## Protection of a 3<sup>rd</sup> Party's Property



Under Kansas law, a person may only use force to protect property they are in lawful possession of, including, but not limited to, their own dwelling, place of work, or occupied vehicle.



### However

**Deadly force may be used** to prevent or terminate an unlawful entry into or attack upon any dwelling, place of work, or occupied vehicle if you reasonably believe the use of deadly force is necessary to prevent or great bodily harm to or the imminent death of yourself or another.

*Kan. Stat. Ann. § 21-5223*

## Protection Against Animals

Kansas law allows for the justified use of deadly force against animals in a number of different situations. First, *Kan. Stat. Ann. § 47-646* provides that you may lawfully kill any dog at any time it is found injuring or attempting to injure livestock. Livestock are defined as cattle, bison, swine, sheep, goats, horses, mules, domesticated deer, camels, domesticated poultry, domestic waterfowl, non-indigenous ostriches, emus, and rhinos.

Second, it is a defense to the charge of Cruelty to Animals that an animal was killed outside of the owned or rented property of its owner or custodian when it was injuring or posing a threat to any person, farm animal, or property. *Kan. Stat. Ann. § 21-6412(c)(7)*. Finally, if you are charged with unlawful taking of wildlife, Kansas law provides a defense that states “the owner or legal occupant of land may kill any animals (including wildlife) when they are found in or near buildings on their premises or are destroying property, provided they try to reasonably alleviate their problems prior to killing them.” *Kan. Stat. Ann. § 32-1002(c)(2)*.



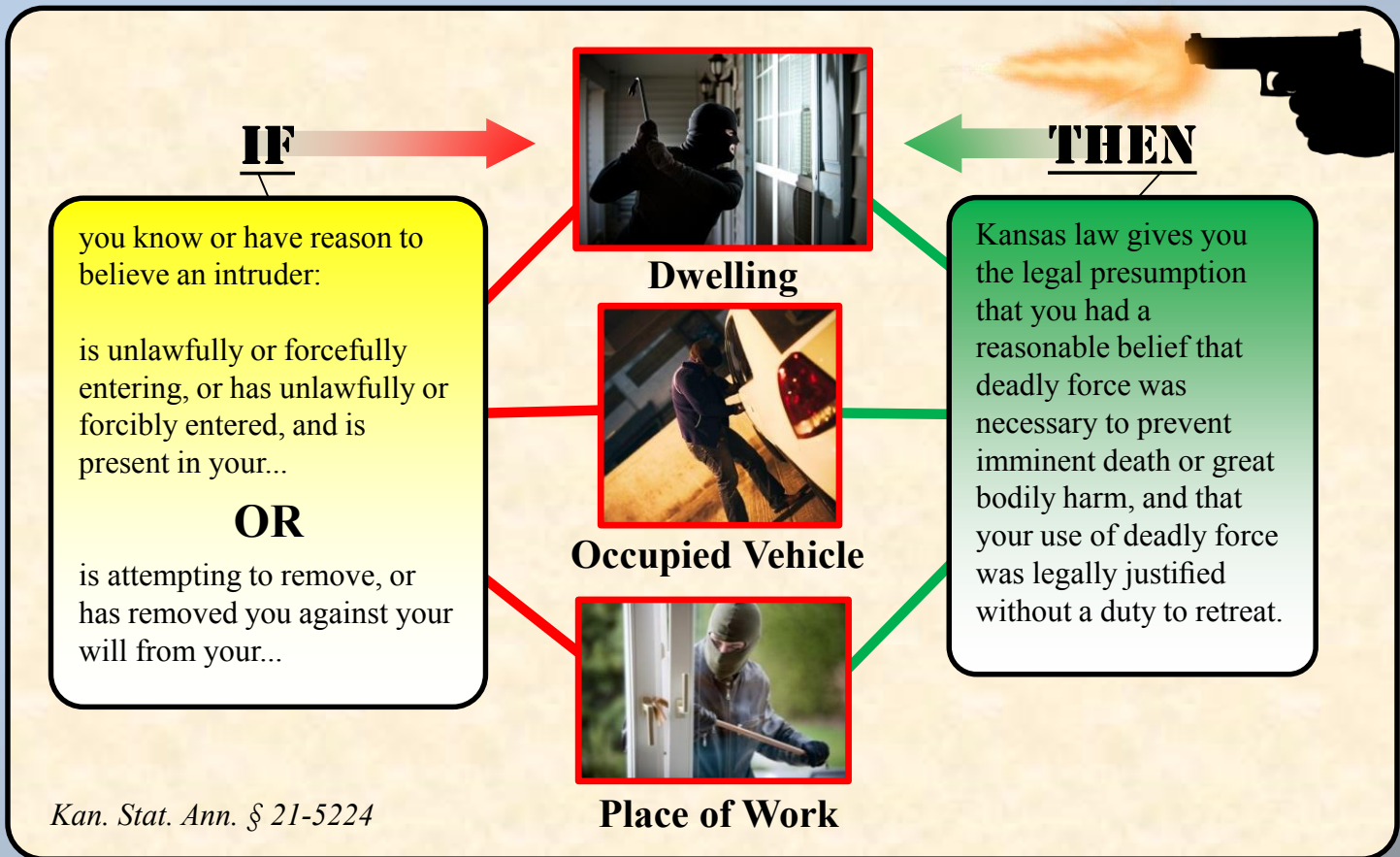


# THE CASTLE DOCTRINE



The “Castle Doctrine” is the popular name for a legal philosophy that every person, as the “King” or “Queen” of their own home, never has to flee the castle before using deadly force against an intruder. Kansas’s version of the Castle Doctrine can be found in Kan. Stat. Ann. § 21-5224

## Use of Deadly Force Under the Castle Doctrine in Kansas



### What is a Dwelling?

A dwelling is a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

Kan. Stat. Ann. § 21-5111(k)



# DO I HAVE TO RETREAT?



Kansas law allows a person to stand their ground and meet force with force or deadly force with deadly force with no duty to retreat.

**No Legal Duty To Retreat!**

## Am I Legally Required To Retreat?

**Kansas Law Provides you have:**

**NO DUTY TO  
RETREAT AND  
HAVE THE RIGHT TO  
STAND YOUR GROUND**

**IF**



all three of the following are met...

- ✓ You are justified in using the force or deadly force
- ✓ You are not engaged in an unlawful activity
- ✓ You are attacked in a place where you have a right to be

The law concerning "No Duty to Retreat" is primarily contained in *Kan. Stat. Ann., § 21-5230*.





# THEFT AND ROBBERY

## The Following Is An Explanation Of Select Crimes In Kansas The Crime of Theft

### Theft

Occurs When A

*Perpetrator*



With intent to permanently deprive the owner of the possession, use, or benefit of the property obtains

or exerts unauthorized control over property

*OR*

control over property by deception or threat

*OR*

control over stolen property knowing the property to have been stolen by another

Kan. Stat. Ann. § 21-5801

### Deprive permanently:

- To take from the owner the possession, use or benefit of property, without intent to restore it
- To retain property with intent to restore it only if the owner purchases or leases it back, or pays a reward or compensation for its return
- To sell, give, pledge or otherwise dispose of interest in property or subject it to the claim of someone other than the owner

Kan. Stat. Ann. § 21-5111(f)

## The Crime of Robbery And Aggravated Robbery

Robbery Occurs When A

*Perpetrator*



Knowingly takes property from another or the presence of another by

force

*OR*

threat of bodily harm

Kan. Stat. Ann. § 21-5420(a)

### Aggravated Robbery

Occurs When A

*Perpetrator*



During the Course of a Robbery, the Perpetrator

is armed with a dangerous weapon

*OR*

inflicts bodily harm upon any person

Kan. Stat. Ann. § 21-5420(b)

# BURGLARY



## The Crime of Burglary

**Burglary Occurs When A**

*Perpetrator*



*Kan. Stat. Ann. § 21-5807(a)*

Without authority, enters into or remains in any



Dwelling



Building, manufactured home, mobile home, tent or other structure that is not a dwelling



Vehicle, aircraft, watercraft, railroad car, or other means of conveyance of persons or property

**With intent to commit a felony, theft, or sexually motivated crime**

**Aggravated Burglary Occurs When A**

*Perpetrator*



*Kan. Stat. Ann. § 21-5807(b)*

Without authority, enters into or remains in any



Occupied building, manufactured home, mobile home, tent or other structure



Occupied vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property

**With intent to commit a felony, theft, or sexually motivated crime**

**AND**

**There is a human being present**



# ASSAULT

## The Law of Assault

An Assault  
Occurs When A

*Perpetrator*



*Kan. Stat. Ann. § 21-5412(a)*

Knowingly  
places



*You*

in reasonable  
apprehension of  
immediate bodily  
harm

## What Makes An Assault Aggravated?

Aggravated  
Assault  
Occurs When A

*Perpetrator*



*Kan. Stat. Ann. § 21-5412(b)*

During an  
assault



Uses a deadly  
weapon



Is disguised in any  
manner designed  
to conceal identity



Intends to commit  
any felony



# WHAT TO DO AFTER BANG!



## Invoke Your Legal Rights!

Countless men and women have sacrificed their lives and fortunes so that we Americans may have legal rights – don't waive them. If you are involved in a shooting, you may need every legal right available.

### The 911 Call

If you use your gun, call 9-1-1 and get medical and police assistance. However, the only information that the 9-1-1 dispatcher needs to know from YOU is your name, the location of the emergency, what assistance is needed, and that you have been a victim of a crime. **DO NOT DISCUSS WHAT HAPPENED WITH THE OPERATOR!** All calls are recorded.

### Don't Talk After A Shooting

Talk to your lawyer before you make any statements about a shooting. If what you say does not match the physical or material evidence at the scene, you may have a huge problem regardless of how innocent your mistake may be. Your freedom, liberty, and fortune are at risk, so invoke your right to remain silent and your right to a lawyer.

### The Role Of The Police

Law enforcement's main job after a shooting is to investigate. Remember, what you say to the police can and **WILL** be used against you. Note: the U.S. Supreme Court, in 2010, held that a police interrogation may go on indefinitely until you invoke your legal rights – so **INVOKE YOUR RIGHTS!**

Make sure the threat has been controlled.
Call 911.
Return the firearm to safe keeping if possible.
Do not disturb the scene.
<b>CALL YOUR LAWYER!</b>
When police arrive, comply with all commands in a non-threatening manner, keeping your hands clearly visible. The police do not know who the good guys and bad guys are when they first arrive.
Inform the police that you have been a victim of a crime. State to the police: "I wish to invoke my right to remain silent, and I want to consult my attorney before making any statements."
Make no statement to anyone about the incident; wait to talk to your attorney.
If asked to accompany law enforcement, comply, but make no statements.
Do not make jokes or cute remarks and say nothing, even if you believe you have done nothing wrong.





# WHERE CAN YOU CARRY

**OK TO CARRY,**

**EXCEPT:**



OR



School Building

OR



State or Municipal Building With Adequate Security Measures

OR



Private Property

**= DON'T CARRY**

Note that criminal penalties do not apply unless you have received verbal notice

*KSA 75-7c10(c)(1), (e)(1); KSA 21-5808(1)(A)*

## ALWAYS PROHIBITED

- Tribal Casinos
- State Race Tracks
- School for the deaf or school for the blind if any kind of weapons sign is posted
- Tribal land (but check with local authorities in case the Tribe has created exceptions)

# CIVIL LIABILITY



## Two Independent Legal Systems



## The Bad News – Your Insurance Won't Cover It



Unfortunately, if you have used justified deadly force against another, your homeowners insurance or most other insurances will provide you no coverage. Why? Because insurance generally only covers acts of negligence and not intentional acts. You intentionally shot the bad guy, thus, no coverage.

## The Good News – Statute Offers Some Protection

Fortunately, Kansas law provides a certain degree of immunity if you have justifiably used force or deadly force. Kansas' civil liability immunity statute is contained in *Kan. Stat. Ann. § 215231*, and it provides that if a person uses legally justified force or deadly force in defense of self, another person, or property, that person:

”...is immune from criminal prosecution and civil action...”

Unfortunately, in order to invoke this "protection" or "immunity" offered by the statute, you must put forth the immunity defense in court and show that you were justified in using deadly force. This means that even with the protection of this statute, if the bad guy sues you, you will have to introduce facts to the judge or jury to prove by a preponderance of the evidence that you were justified.

**Note To U.S. Law Shield Members:**

**All of Your Attorneys' Fees Are Covered For Both The Criminal and Civil Systems.**

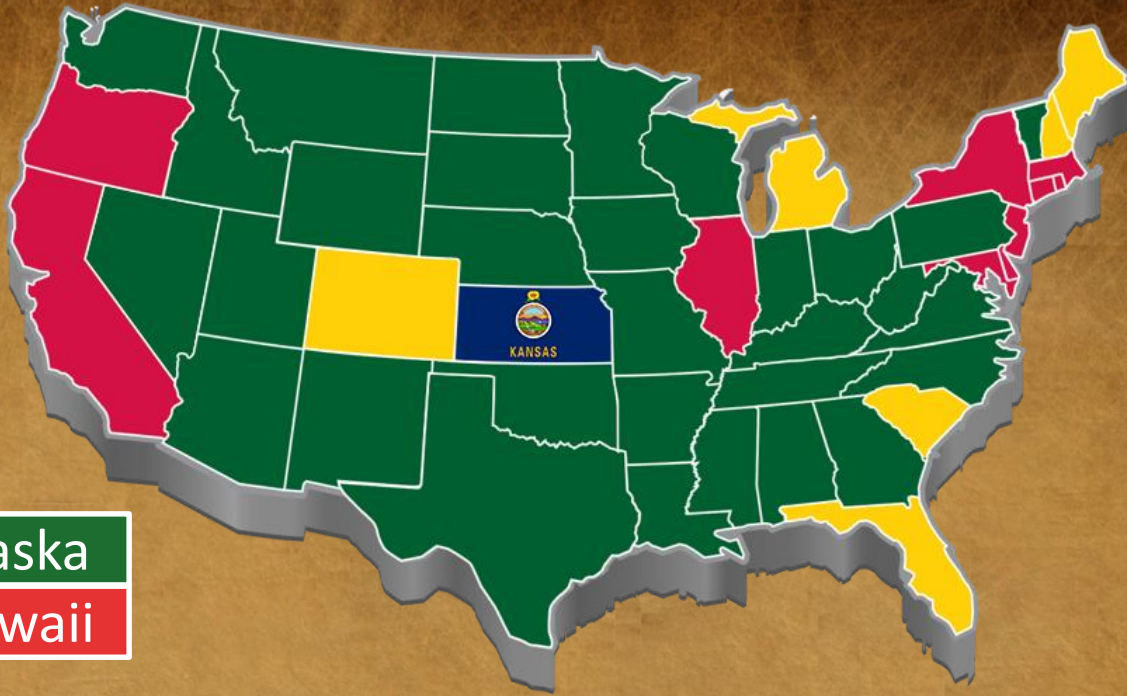


U.S. Law Shield.  
“We Defend Your Right To Bear Arms”



# Notes:

# Notes:



Alaska  
Hawaii

 License Recognized	 Not Recognized	 Recognizes Kansas License Issued to Kansas Residents Only
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## Traveling With Your Firearm

If travel plans take you beyond the borders of the Sunflower State, and you wish to continue exercising your 2<sup>nd</sup> Amendment rights in one of the other states of the Union, familiarize yourself with that state’s laws! When you are in another state, you are subject to that state’s laws. There is no standardization of gun laws within the 50 individual states (not to mention Indian Reservations). Even states that are thought of as “gun friendly” can have peculiar quirks in their firearm laws. The firearm laws of the various states are usually found on that state’s chief law enforcement department or attorney general website. If you are traveling to or through a state which does not honor a Kansas license, it is imperative that you check the laws of that state concerning legally traveling with a firearm. In states that do not recognize a Kansas license, a good general rule when traveling is to unload your firearm, lock and stow it in a locked trunk or other area that is not accessible to the driver. **Take the time to know the law!**

Any of the information in this manual is solely a general legal discussion of the law in Kansas and should not be considered as giving legal advice, nor creating an attorney-client relationship. This manual is not a substitute for legal advice on any particular situation. Your situation may be different so contact an attorney regarding your personal circumstances. Only a licensed attorney may give you legal advice. Please call our office for more information:  
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