



Department of Law and Public Safety

Use of Force Training for the Retired Law Enforcement Officer

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Introduction: Use of Force Training for Retired Law Enforcement Officers

When you were an active duty law enforcement officer, you had assumed certain responsibilities in your profession to protect and serve the public and you were authorized to carry a firearm in furtherance of those duties. New Jersey law¹ now authorizes you, the retired law enforcement officer, to carry a firearm if you meet certain criteria. However, it is important for you to understand the changes in your status. A private citizen is not required by law to take action to protect others² unless there is a legal duty to protect that third party.

A retired law enforcement officer is not vested with any special privileges or immunities of office which the officer had while an active law enforcement officer. In other words, the retired officer has the same status as a private citizen. A private citizen is permitted or privileged by law to make an arrest and to use force in limited circumstances which will be explained below. Again, it is important for you, the retired officer, to have a thorough understanding of your change in status as it pertains to arrest and the use of force.

I. Citizen's Authority

A. Authority to Arrest

1. A private citizen is justified in making an arrest when
 - a. an indictable offense was actually committed, and
 - b. the private citizen has reasonable cause to believe that the person, the citizen has arrested, had committed it.³

However, "the citizen acts at his peril."⁴ In order to be privileged to arrest, a private citizen must show that an indictable crime was actually committed and that the person arrested had committed the crime. A mistake as to law or fact does not excuse the private citizen's actions.⁵

Note: The law does not impose any legal obligation upon a private citizen to make an arrest. The retired officer should consider whether there is an immediate need to act or whether the matter could be handled by the appropriate uniformed law enforcement agency with the retired officer acting as a witness for the responding officer.

2. A private citizen may arrest for an offense involving breach of the peace committed in his or her presence.⁶

State law also permits a private citizen to arrest for violations of the disorderly persons laws committed in the citizen's presence. The law provides:

Whenever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person, and take him before any magistrate of the county where apprehended.⁷

"Presence" within this section means that arresting person knows of the offense by use of the senses.⁸

4. When a private citizen makes an arrest, the citizen is required to take the arrested person without unnecessary delay before the nearest available judge where a criminal complaint should be filed.⁹
5. To minimize any resistance, a private citizen should inform the person under arrest that the private citizen is making a citizen's arrest. Where feasible, the private citizen should seek the assistance of a uniformed officer in making the citizen's arrest.

B. Use of Force

A private citizen's authority to make an arrest includes the right to use reasonable force to effect the arrest. The force used must not be excessive in type or amount.¹⁰

C. Liability for Misuse of Force

A private citizen who makes an illegal arrest or uses excessive force in making a citizen's arrest may be subject to criminal charges, such as for assault, or be subject to civil legal action, such as for false arrest or false imprisonment, depending upon the nature of the action taken by the private citizen.

D. Legal Justifications for Use of Force

Chapter 3 of the State's Penal Code¹¹ applies to both law enforcement officers and to private citizens. Thus, you, the retired law enforcement officer, will not find many significant changes in the use of force concepts as they pertain to

- self defense,
- defense of others, or
- defense of property.

Nevertheless, it is extremely important that you are familiar with these concepts so that you will act in accordance with the law.

II. Reasonable Belief

Reasonable belief is the cornerstone of all use of force. It is important that you, the retired officer, be able to state articulable, objective factors that support your conclusion that there was a basis or need for the use of force. A mere conclusion that force was necessary will not be sufficient.

All use of force, either by an active duty law enforcement officer or by a private citizen, must be based on reasonable objective factors or inferences drawn from those factors at the moment force is used.¹²

A key factor that should be considered is whether the actor poses an immediate or imminent threat to the safety of the retired officer or others.

III. Imminent Need

In addition to a reasonable belief that the individual presents a threat, you must determine that there is an imminent need for the use of force.

Imminent need should be viewed as an elastic concept. It involves a brief period of time from the initial incident, dependent on the circumstances confronting the retired officer. For example, the brief period of time would include the time span after a person has committed an offense and is fleeing the scene but would not include the time period after the suspect has left the scene.

IV. Force Options

The retired officer must be familiar with the basic force options that may be available to respond to the use of force against the retired officer, to protect life or property or to prevent the commission of a crime

In determining which force option is reasonable under the circumstances, the retired officer must remember the general basic concepts in using force:

- If non deadly force could reasonably be expected to accomplish the same objective as deadly force without unreasonably increasing the danger to the retired officer or others, then non deadly force should be used
- The use of deadly force is the last resort.¹³

A. Force Option:

1. Constructive - physical presence, voice commands

The retired officer must remember that the use of constructive force or voice commands can be the most effective force option the retired officer has. More than 95% of use of force encounters can be resolved with the proper use of voice commands.

2. Physical - includes any physical restraining techniques, the martial arts, etc.
3. Mechanical - Any object capable of causing bodily injury

A retired law enforcement officer is not authorized under State law to possess a nightstick.¹⁴ However, the retired officer and any private citizen may possess a chemical agent, such as pepper spray, for self defense.¹⁵

The retired officer is limited to the same quantity a private citizen may carry - not more than 3/4 of an ounce. Thus, the retired officer cannot possess the larger size of pepper spray that active duty law enforcement officers may possess.

If a retired officer uses pepper spray against a perpetrator, the retired officer should, where feasible, summon the immediate assistance of a uniformed officer or first aid squad to provide aftercare to the sprayed individual.

4. Deadly - a firearm, knife or any object capable of causing serious bodily harm or death.

V. Self Defense¹⁶

A. Core Elements

- Reasonable belief
- Force is imminently necessary

- B. Non deadly force - to protect the retired officer against unlawful force
- C. Deadly force - to protect the retired officer against death or serious bodily harm.
- D. Factors to consider:

1. Retreat rule - a private citizen is not justified in using deadly force if the person
 - a. knows that he or she can avoid the necessity of using deadly force
 - b. with complete safety by retreating¹⁷

The duty to retreat only applies in situations involving deadly force, not to situations involving non deadly force.

A person may point a firearm at another and not retreat where the need for self-protection is reasonably perceived and the person merely intends to create an apprehension in the aggressor that deadly force may be used.¹⁸

However, it is important that there be some justification for pointing a firearm at another person. Knowingly pointing a firearm at another person without justification could constitute an aggravated assault.¹⁹

2. Home owner's retreat rule

A person is not required to retreat from his or her dwelling before using deadly force.

A person may stand at the threshold of his or her home and prevent an assailant from entering by any means.²⁰

3. Home owner's protection against intruders

A home owner may use non deadly or deadly force upon an intruder who is unlawfully in a dwelling when

the home owner reasonably believes that the force is immediately necessary to protect him or her self or other persons in the dwelling against the use of unlawful force by the intruder²¹

Reasonable belief exists when:

- a. the home owner to protect him or her self or a third person, was in his or her own dwelling at the time of the offense or was privileged to be there and the encounter between the home owner and the intruder was sudden and unexpected, compelling the home owner to act instantly and
- b. the home owner reasonably believed that the intruder would inflict personal injury upon the home owner or others in the dwelling, or
- c. the home owner demanded that the intruder disarm, surrender or withdraw, and the intruder refused to do so.²²

VI. Defense of Others²³

A. Core elements

- Reasonable belief
- Force necessary to aid victim
- Intervention is immediately necessary to aid victim

B. The justification in using force to aid a third party is the same as for self defense. The person who seeks to aid the third party victim must conclude that the victim needs assistance in defending him or herself.

If the person who seeks to aid the victim reasonably believes that the victim's life is in danger, the person may use deadly force in defense of the third party.

Before using deadly force, the person should attempt to have the victim retreat from the scene. However, the victim's failure to retreat does not prohibit justified intervention if the rescuer tried to cause the victim to retreat.

A person who intervenes in a struggle under a reasonable but mistaken belief that he or she is protecting another who he assumes is being unlawfully assaulted would be exonerated from criminal liability.²⁴

VII. Defense of Property²⁵

A. Core elements

- Reasonable belief
- Force is immediately necessary
- to prevent or terminate a criminal offense on the property

B. But first, the person using force should

1. order the intruder to stop unless
2. it would be useless, dangerous or substantial harm would be done to the property

C. Only non deadly force is justified to protect property. Deadly force is never justified to protect property. Sometimes, however, the person using force may be confronted with a situation where there is a combination of defense of property and defense of a third party or self defense. In those circumstances, deadly force may be justified.

VIII. Use of Force to Prevent the Commission of a Criminal Offense²⁶

- A. A person is justified in using force upon or toward a third party if the person
1. reasonably believes
 2. force is immediately necessary
 3. to prevent the other person from
 - a. committing suicide
 - b. inflicting serious bodily harm upon him or her self, or
 - c. committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace
- B. Deadly force is only justified if the person using force
1. reasonably believes
 2. it is likely that the person he or she seeks to prevent from committing a crime
 3. will endanger human life or inflict serious bodily harm upon another unless
 4. the commission or the consummation of the crime is prevented and

5. the use of deadly force presents no substantial risk of injury to innocent persons

IX. Reporting Deadly Force

If a retired law enforcement officer uses deadly force, the retired officer should report this incident to the law enforcement agency where the incident occurred and to the State Police within 24 hours after the incident occurred.

X. Summary

The retired law enforcement officer must be thoroughly familiar with the legal justifications for the use of force and must be familiar with the restrictions that apply when a private citizen uses force. The retired officer must review these use of force concepts each time he or she qualifies with the firearm. There can be no exceptions to the stringent requirements that were required of the active duty law enforcement officer for the retired officer.

References

¹ *N.J.S.A. 2C:39-61*

² *N.J.S.A. 2C:3-5*

³ *Reuck v. McGregor*, 323 *N.J.L.* 70 (1866)

⁴ *Brown v. State*, 62 *N.J.L.* 666, 695 (E&A 1899); *aff'd* 175 *U.S.* 172, 20 *S.Ct.* 77, 44 *L.Ed.* 119

⁵ Alexander, Clarence, 1 *The Law of Arrest in Criminal and Other Proceedings*, Dennis & Co., Inc., Buffalo, N.Y.

⁶ *Ibid.*

⁷ *N.J.S.A. 2A:169-3*

⁸ *State v. Smith*, 37 *N.J.* 481 (1962); *State v. Ferraro*, 81 *N.J.Super.* 213, (Cty Crt.1963).

⁹ Schlosser; See footnote 4

¹⁰ Schlosser, See footnote 4

¹¹ *N.J.S.A. 2C:3-1 et seq*

¹² *Graham v. Connor*, 490 *U.S.* 386 (1989)

¹³ Attorney General's Guidelines on the Use of Deadly Force

¹⁴ *N.J.S.A. 2C:39-3*

¹⁵ *N.J.S.A. 2C:39-6*

¹⁶ *N.J.S.A. 2C:3-4*

¹⁷ *N.J.S.A. 2C:3-4b(2)(b)*

¹⁸ *State v. Harmon*, 203 *N.J. Super.* 216, 223 (App. Div. 1985), rev'd on other grounds, 104 *N.J.* 189 (189 (1986)); See *N.J.S.A.* 2C:3-11b which provides that pointing a firearm at another to create the apprehension that the actor would use the firearm does not constitute deadly force.

¹⁹ *N.J.S.A.* 2C:12-1b(4)

²⁰ *State v. Martinez*, 229 *N.J. Super.* 593, 604 (App. Div. 1989)

²¹ *N.J.S.A.* 2C:3-4c(1)

²² *N.J.S.A.* 2C:3-4c(2)(a) and (b)

²³ *N.J.S.A.* 2C:3-5

²⁴ *State v. Holmes*, 208 *N.J. Super.* 480 (App. Div. 1986)

²⁵ *N.J.S.A.* 2C:3-6

²⁶ *N.J.S.A.* 2C:3-7

Important Notice

This training material is intended for the use of retired law enforcement officers in order that they may qualify to carry a firearm pursuant to *N.J.S.A.* 2C:39-6l. This material is intended to serve as a summary of legal concepts as they pertain to the law of arrest and use of force by a private citizen. It does not constitute the creation of a prescribed legal standard. It should not be construed as evidential in any criminal or civil proceeding.

If a retired law enforcement officer has a question regarding the law of arrest or the use of force by a private citizen, that retired officer should consult with his or her attorney.