



## Department of Law and Public Safety

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# *Use of Force Interim Training For Private Citizen Concealed Carry*

*The NJSP, in conjunction with the Office of the Attorney General, is working to establish a new comprehensive training program for applicants who are applying for, or renewing, a permit to carry a handgun, pursuant to N.J.S.A. 58-4(g)(1) and (g)(2). See also N.J.S.A. 2C:58-4(d)(3). In addition to online materials and firing range requirements, the newly developed training will include an in-person classroom component, where applicants will learn first-hand from authorized certified instructors the principles of lawful and safe handling and safe storage of firearms. The live component will be standardized across the state to ensure all applicants are provided the same meaningful opportunity to receive a permit to carry. Until such time that the new training is implemented, and in order to comply with the law, this document, as well as the training materials on safe handling and use found on the NJSP website shall be taught by a certified firearms instructor to all applicants. Certified firearms instructors remain responsible for ensuring that applicants for permits to carry handguns are properly trained and proficient before attesting to the applicant's competence on the prescribed certification form.*

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## **Introduction: Use of Force Training for Private Citizens**

Unlike an active duty law enforcement officer, private citizens have no responsibilities to protect the public. When you obtain a concealed weapons permit, you are authorized to carry a firearm for personal protection. New Jersey law authorizes a private citizen to carry a firearm if the private citizen meets certain criteria. *See* N.J.S.A. 2C:58-4.

However, it is important for you to understand your status. A private citizen is not required by law to act to protect others unless there is a legal duty to protect that third party. Often times, being a good witness is the best course of action.

A private citizen is not vested with any of the special privileges or immunities of an active law enforcement officer. A private citizen is justified to use force in very limited circumstances, which will be explained below. Again, it is important for you, as a private citizen, to have a thorough understanding of your status as it pertains to arrest and the use of force.

Additionally, private citizens are prohibited from carrying a firearm into certain prohibited places. *See* N.J.S.A. 2C:58-4.6; *see also Koons/Siegel v. Platkin* case. Prior to bringing a firearm to any location, the private citizen should check to determine if carrying a firearm is permitted in that location. Also, the concealed carry law does not permit the open carry of firearms, only concealed carry. *See* N.J.S.A. 2C:58-4.5(b).

If stopped or detained a private citizen must disclose to law enforcement that they are in possession of a firearm and must produce a permit to carry. N.J.S.A. 2C:58-4.4(b).

Private citizens who hold a lawfully-issued permit to carry a handgun cannot:

- use or consume alcohol, cannabis, or CDS while carrying a handgun;
- be under the influence of alcohol, cannabis, or CDS while carrying a handgun;
- carry outside of the holster or carry in public in a holster that does not meet the carry permit requirements (N.J.S.A. 2C:58-4(h)); or
- carry more than 2 firearms at one time.

[N.J.S.A. 2C:58-4.4.]

Chapter 3 of the New Jersey Code of Criminal Justice applies to both law enforcement officers and to private citizens. Understand that N.J.S.A. 2C:3-1 et seq. provides for possible defenses or justifications for the use of force.

It is extremely important that private citizens are familiar with these concepts so that they will act in accordance with the law.

Private citizens may only use deadly force when there is a reasonable belief that force is immediately necessary to protect the private citizen against the use of unlawful force by another person that may result in the private citizen's death or serious bodily harm.

## **I. Reasonable Belief**

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

Reasonable belief is defined as an objective assessment based upon an evaluation of how a reasonable person with comparable training and experience would react to, or draw inferences from, the facts and circumstances confronting and known by the person at the scene.

All use of force by a private citizen must be based on reasonable objective factors or inferences drawn from those factors at the moment force is used.

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

## **II. Imminent Danger**

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

Imminent danger is a threatened action or outcome that is immediately likely to occur during an encounter absent action by the private citizen. The period of time involved is dependent on the circumstances and facts evident in each situation and is not the same in all situations. The threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the private citizen, but is carrying a weapon and running for cover to gain a tactical advantage.

## **III. Force Options**

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

In determining which force option is reasonable under the circumstances, the private citizen 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 private citizen or others, then non-deadly force, rather than deadly force, must be used.
- The use of deadly force is the **absolute** last resort.

#### A. Force Options:

- Constructive Authority – physical presence, voice commands. This is not a use of force.
- Physical Contact – this is a minimal amount of contact such as guiding someone.
- Physical Force – used to overcome resistance. This includes any physical restraining techniques or striking with the hands or feet.
- Mechanical Force – any device or substance, other than a firearm, used to overcome a subject's resistance.

A private citizen is not authorized under State law to possess a nightstick except under certain circumstances. *See* N.J.S.A. 2C:39-3(i). However, the private citizen may possess a chemical agent, such as pepper spray, for self-defense. Citizens are also permitted to possess a conducted energy device (CED).

The private citizen is limited to not more than 3/4 of an ounce of a chemical agent (pepper spray). Thus, the private citizen cannot possess the larger size of pepper spray that an active duty law enforcement officer may possess. N.J.S.A. 2C:39-6(i).

If a private citizen uses pepper spray or a CED against a perpetrator, the private citizen should, where feasible, summon the immediate assistance of a law enforcement officer or first aid squad to provide aftercare to the individual against whom the chemical agent or CED was deployed.

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

## IV. Self Defense

#### A. Core Elements:

- Reasonable belief;
- Force is immediately necessary;
- For the purpose of protecting the private citizen against the

use of unlawful force by another person on the present occasion.

[N.J.S.A. 2C:3-4.]

**B. Deadly force may only be used to protect the private citizen against death or serious bodily harm.**

C. Non-deadly force may be used to protect the private citizen against unlawful force.

D. Factors to consider:

- Duty to Retreat: A private citizen is not justified in using deadly force if the private citizen:
  - knows that he or she can avoid the necessity of using deadly force;
  - with complete safety by retreating;

[N.J.S.A. 2C:3-4(b)(2).]

The duty to retreat applies in situations involving deadly force.

A person may point a firearm at another 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. *See* N.J.S.A. 2C:3-11(b).

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 may constitute an aggravated assault. *See* N.J.S.A. 2C:12-1(b)(4).

Engaging in the unjustified display of a handgun is a crime. *See* N.J.S.A. 2C:58-4.4(a).

A person is not required to retreat from their dwelling before using deadly force. N.J.S.A. 2C:3-4(b)(2)(b)(i).

- Resident's protection against intruders: A resident may use non-deadly or deadly force upon an intruder who is unlawfully in a dwelling when the resident reasonably believes that the force is immediately necessary to protect themselves or other persons in the dwelling against the use of unlawful force by the intruder. *See* N.J.S.A. 2C:3-4(c)(1).
- Reasonable Belief: Reasonable belief exists when:
  - the resident, to protect themselves or a third person, was in

their own dwelling at the time of the offense or was privileged to be there and the encounter between the resident and the intruder was sudden and unexpected, compelling the resident to act instantly; and,

- the resident reasonably believed that the intruder would inflict personal injury upon the resident or others in the dwelling, or
- the resident demanded that the intruder disarm, surrender or withdraw, and the intruder refused to do so.

[See N.J.S.A. 2C:3-4(c)(2)(a) and (b).]

## V. Defense of Others

### A. Core elements:

- Reasonable belief;
- Force necessary to aid victim;
- Intervention is immediately necessary to aid victim;
- The use of such force would be justified as lawful self-defense if the private citizen was the intended victim.

[N.J.S.A. 2C:3-5.]

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

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

Before using deadly force, the private citizen 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.

Neither the actor nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling to any greater extent than in his own. See N.J.S.A. 2C:3-5(b)(3).

## **VI. Defense of Premises or Personal Property**

Only non-deadly force may be utilized to protect premises or personal property. Deadly force is **never** justified in such situations. N.J.S.A. 2C:3-6.

### A. Core elements:

- Reasonable belief;
- Force is immediately necessary;
- to prevent or terminate a criminal trespass, with respect to premises, or a theft, criminal mischief or other criminal interference with respect to personal property.

### B. But first, the person using force should:

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

## **VII. Use of Force to Prevent the Commission of a Criminal Offense**

### A. A person is justified in using non-deadly force upon or toward a third party if the person:

- reasonably believes;
- force is immediately necessary;
- to prevent the other person from;
  - committing suicide;
  - inflicting serious bodily harm upon him or herself; or
  - 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

- reasonably believes;
- it is likely that the person he or she seeks to prevent from committing a crime;
- will endanger human life or inflict serious bodily harm upon another unless;
- the commission or the consummation of the crime is prevented; and
- the use of deadly force presents no substantial risk of injury to innocent persons.

[N.J.S.A. 2C:3-7.]

### **VIII. Private Citizen Actions after Firearm use**

- A. Law enforcement encounters with persons that are carrying a firearm can be tense. Private Citizens that are armed should comply with all instructions from the law enforcement officer.
- B. Should a private citizen need to draw a firearm, they should holster the firearm as soon as it is safe to do so. Private citizens should not approach an officer with their weapon unholstered. Private citizens should not make any sudden movements. Private citizens should keep their hands visible and away from the weapon. If an officer orders the private citizen to the ground, that person should comply. Remember, the officer does not know whom they are encountering.
- C. The holder of a Permit to Carry a handgun, if stopped or detained by a law enforcement officer while carrying a handgun in public or traveling with a handgun in a motor vehicle, shall:
- (1) immediately disclose to the law enforcement officer that they are carrying a handgun or that a handgun is stored in the vehicle; and
  - (2) display their Permit to Carry a handgun.

A violation of the duty to disclose requirement is a crime. Failing to display your Permit to Carry a handgun is a disorderly persons offense for the first offense and a crime for a second or subsequent offense.

A holder of a Permit to Carry a handgun, who is carrying a handgun in public and is detained by a law enforcement officer as part of a criminal investigation, shall provide the handgun to the law enforcement officer upon request for purposes of inspecting the handgun. A violation of this subsection is a crime."



## **IX. Reporting Deadly Force**

If a private citizen uses deadly force, the private citizen must immediately report the incident to the law enforcement agency having jurisdiction where the incident occurred.

## **X. Summary**

The private citizen 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 private citizen 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 apply to all persons authorized to carry a firearm.

***Important Notice***

This training material is intended for the use of private citizens in order that they may qualify to carry a firearm pursuant to N.J.S.A. 2C:58-4. 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 private citizen has a question regarding the law of arrest or the use of force, that person should consult with their attorney.