



Department of Law and Public Safety

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.

Prepared by: *New Jersey State Police
Firearms Investigation Unit*

*Division of Criminal Justice
Office of Public Integrity & Accountability*



Introduction: Use of Force Training for Civilians

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 law¹ authorizes you, a private citizen, to carry a firearm if you meet certain criteria.

However, it is important for you to understand 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. 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 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, 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 sensitive areasⁱ. 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.ⁱⁱ

Private citizens must disclose they are in possession of a firearm and must produce a permit upon request.

I. Private 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 probable 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 private citizen 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 private citizen 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 objectively reasonable and necessary force to effect the arrest. The force used must not be excessive in

type or amount and proportional to the amount of resistance.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.

A person's actions may be based on special circumstances. When deciding on a proper course of action to determine whether force is necessary, things that should be considered include whether the person is having a mental health episode or if the person is in crisis due to drugs or alcohol.

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. Understand that N.J.C.A. 2C:3-1 et seq provides for possible defenses for the use of force. The statute does not provide permissions. Thus, you, private citizen, 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 private citizen, 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.

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.¹²

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.

III. Imminent Danger

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 danger are threatened actions or outcomes that are immediately likely to occur during an encounter absent action by the retired officer. 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.

IV. Force Options

The private citizen must be familiar with the basic force options that may be available to respond to the use of 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 should be used
- The use of deadly force is the **absolute** last resort.¹³

A. Force Option:

1. Constructive Authority - physical presence, voice commands. This is not a use of force.

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

2. Physical Contact – This is a minimal amount of contact such as guiding someone or handcuffing.
3. Physical Force – Used to overcome resistance. This includes any physical restraining techniques, striking with the hands or feet, or certain pain compliance techniques.
4. Mechanical Force – Any device or substance, other than a firearm, used to overcome a subject's resistance to the exertion of the private citizen's authority.

A private citizen is not authorized under State law to possess a nightstick except under certain circumstances.¹⁴ However, the private citizen may possess a chemical agent, such as pepper spray, for self-defense.¹⁵ 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 pepper spray. Thus, the private citizen cannot

possess the larger size of pepper spray that an active duty law enforcement officer may possess.

If a retired officer uses pepper spray or CED 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.

5. Deadly Force - 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 private citizen against unlawful force

C. Deadly force - to protect the private citizen 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 applies in situations involving deadly force and 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 homeowner 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 herself 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 herself 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 herself, 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. 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 officer instructions.
- B. Should a private citizen need to draw a firearm, they should holster the firearm as soon as safe to do so. Do not approach an officer with an unholstered weapon. Do not make any sudden movements. Keep hand visible and away from the weapon. If an officer orders a person to the ground, that person should comply. Remember, the officer does not yet know whom they are encountering.

X. Reporting Deadly Force

If a private citizen uses deadly force, the private citizen must report this incident to the law enforcement agency where the incident occurred and to the State Police immediately after the incident has occurred.

XI. 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.

References

- ¹ *N.J.S.A.* 2C:58-4
- ² *N.J.S.A.* 2C:3-5
- ⁱ 2C:58-4.6
- ⁱⁱ 2C:58-4a
- 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 as amended

¹⁴ *N.J.S.A.* 2C:39-3i

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 *Stat e 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 *Stat e 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 *Stat e 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 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 his or her attorney.

Strong-side kneeling

Strong-side kneeling or standing

- On command, from a secured holstered position, assume the strong-side kneeling or standing position, fire 4 rounds. (30 seconds)

---STOP TIME---

- Decock and remain behind cover with visual focus towards the threat area.
- Reload if needed (revolvers will reload and index the cylinder)
- On command assume a kneeling or standing position and fire 3 rounds. (25 seconds)

---STOP TIME---

- Decock and remain behind cover with visual focus towards the threat area. Reload if necessary
- On command fire 3 rounds, standing or kneeling (25 seconds)

---STOP TIME---

- Reload if required and holster an uncocked weapon.
- Reload loading devices.

Phase II

15-Yard Line. Time: 5 seconds. 3 rounds.
Point shoulder position.

- On command, from a secured holster position, draw and fire 3 rounds in 5 seconds from a point shoulder position.

---STOP TIME---

- Reholster an uncocked weapon.

Phase III 15-Yard Line. Time: 25 seconds. 7 rounds.
Point shoulder position.
Strong-side kneeling position.

- On command, from a secured holster position, draw and fire 3 rounds from a point shoulder position.
- Assume a strong-side kneeling position. Reload with 4 rounds, index if required, and fire 4 rounds from a strong-side kneeling position.

---STOP TIME---

- Reload if required and holster an uncocked weapon.
- Reload loading devices.

Phase IV 10-Yard Line. Ready Position.
Each drill, Time: 3 seconds. 2 rounds.
(Total 6 rounds).

- On command, draw weapon and assume a ready position, i.e., muzzle depressed below eye level.
- On command, bring weapon up to eye level and fire 2 rounds in 3 seconds. Repeat drill twice, firing a total of 6 rounds.

---STOP TIME---

- Reload if required and holster an uncocked weapon.
- Reload loading devices.

Phase V 7-Yard Line. Time: 4 seconds. 3 rounds.
Standing point shoulder position.

- On command, from a secured holster position draw and fire 3 rounds in 4 seconds from a standing point shoulder position.

---STOP TIME---

- Reholster an uncocked weapon.

Phase VI

7-Yard Line. Time: 15 seconds. 6 rounds.
Standing point shoulder position. Mandatory reload/magazine change

- On command, from a secured holster position, draw and fire 3 rounds from a standing point shoulder position.
- Reload and fire 3 more rounds within the 15 second time period.

---STOP TIME---

- Reholster an uncocked weapon.

Phase VII

7-Yard Line. Time: 4 seconds. 3 rounds.
Standing point shoulder position.

- On command, from a secured holster position, draw and fire 3 rounds in 4 seconds from a standing point shoulder position.

---STOP TIME---

- Reload if required and holster an uncocked weapon.
- Reload loading devices.

Phase VIII

5-Yard Line. One-handed - Strong hand.
Each drill, Time: 4 seconds. 2 rounds.
(Total 4 rounds).

- On command, draw and fire 2 rounds using only the strong hand.
- Reholster an uncocked weapon
- Repeat once.

- Reload if required and holster an uncocked weapon.

Phase IX

5-Yard Line. One-handed - Support hand.

Each drill, Time: 3 seconds. 2 rounds.

(Total 4 rounds).

- On command, draw and transfer the weapon to the support hand. Assume a ready position.
- On command fire 2 rounds using only the support hand. Return to ready (The strong arm should be limp along the body).
- Repeat once.
- Reload if required and holster an uncocked weapon

Phase X

1-Yard Line (or as close to 1-yard line as safety dictates).

Weapon Retention Position. (Begin with the support hand across the chest with the hand grasping the collar of the shooter's shirt.)

Each drill, Time: 2 seconds. 2 rounds.

(Total 4 rounds).

- On command, draw and fire 2 rounds in 2 seconds from the weapon retention position.
- Reholster an uncocked weapon.
- Repeat drill once, firing a total of 4 rounds.
- Clear all weapons. Holster a safe, empty weapon.

---END OF COURSE---



NEW JERSEY PERMIT TO CARRY SAFE HANDLING AND PROFICIENCY IN THE USE OF HANDGUNS CERTIFICATION



Name of Permit to Carry Applicant

Street Address

Telephone

City, State Zip Code

SBI # _____

FIREARMS INSTRUCTOR CERTIFICATION OF FIREARMS QUALIFICATION

1. I am a certified firearms instructor with certification from the following organization and have attached a copy of my firearms instructor certification:

Organization

Date of Certification

2. The above-named Permit to Carry applicant has successfully completed Use of Force Training for Private Citizen Concealed Carry prepared by the State of New Jersey and the Provisions of N.J.S.A.2C:3-1, *etseq.*
3. The above-named Permit to Carry applicant has successfully qualified on a course of fire substantially similar to HQC2 (modified) included in the Private Citizen Concealed Carry Use of Force Training manual, utilizing a minimum of 50 rounds and receiving a minimum score of 80%.

I certify the foregoing responses made by me are true and if any responses are willfully false, I am subject to punishment.

Print Name of Firearms Instructor

Print Name of Permit to Carry Applicant

Signature of Firearms Instructor

Signature of Permit to Carry Applicant

Date of qualification / Use of Force Training

*Per 2C:58-4 Permit to Carry Handguns, one permit shall be sufficient for all handguns owned by the holder thereof.

*Any requirement for classroom instruction and target training shall not be required for a renewal applicant who completed the instruction and training when obtaining a permit to carry a handgun issued within the previous two years.

