

Summary

- Never display a handgun to gain “leverage” in an argument, even if it isn’t loaded or you never intend to use it.
- The amount of force that you use to defend yourself must not be excessive under the circumstances:
 - Never use deadly force in self-defense unless you are afraid that if you don’t, you will be killed or seriously injured;
 - Verbal threats never justify your use of deadly force;
 - If you think someone has a weapon and will use it unless you kill them, be sure you are right and are not overreacting to the situation.
- The law permits you to carry a concealed weapon for self-defense. Carrying a concealed weapon does not make you a free-lance policeman or a “good samaritan.”
- Never carry your concealed weapon into any place where the statute prohibits carrying it.

This pamphlet is not a complete summary of all the statutes and court opinions on the use of deadly force. Because the concealed weapons statute specifies that concealed weapons are to be used for lawful self-defense, we have not attempted to summarize the body of law on lawful defense of property. The pamphlet is not intended as legal advice. Every self-defense case has its own unique set of facts, and it is unwise to try to predict how a particular case would be decided. It is clear, however, that the law protects people who keep their tempers under control and use deadly force only as a last resort.

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FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

In receiving a license to carry a concealed weapon for lawful self-defense, you are undertaking a great responsibility. A license to carry a concealed weapon is not a license to use it. I am sure you share my hope that you will never find it necessary to use a weapon in self-defense. If you do, the law will protect you only if you have acted within the law. Those who are choosing to arm themselves with weapons should, therefore, be armed also with the most indispensable weapon of all – knowledge.

We are providing this pamphlet to you as a public service in pursuit of that goal. Only you can provide the wisdom, restraint, and good judgment that the law demands of those who possess the ability to take another human life.

A handwritten signature in cursive, appearing to read "Adam H. Putnam".

*A LICENSE TO CARRY A
CONCEALED WEAPON
IS NOT A LICENSE TO USE IT.*

Changes to Chapter 776, Florida Statutes, The Part of the Law Pertaining to Justifiable Use of Force

On October 1, 2005, changes to Chapter 776, Florida Statutes, became effective. The changes relate to: the protection of persons and property; authorizing a person to use force, including deadly force, against an intruder or attacker in a dwelling, residence, or vehicle under specified circumstances; creating a presumption that a reasonable fear of death or great bodily harm exists under certain circumstances; creating a presumption that a person acts with the intent to use force or violence under specified circumstances; the justification in using deadly force under certain circumstances; the lack of a duty to retreat and a person’s right to stand his or her ground and meet force with force if that person is in a place where he or she has a right to be and the force is necessary to prevent death, great bodily harm, or the commission of a forcible felony; creating immunity from criminal prosecution or civil action for using deadly force; the definition of the term “criminal prosecution”; authorizing a law enforcement agency to investigate the use of deadly force but prohibiting the agency from arresting the person unless the agency determines that there is probable cause that the force the person used was unlawful; providing for the award of attorney fees, court costs; compensation for loss of income, and other expenses to a defendant in a civil suit who is immune from prosecution under this section. See *Chapter 2005-27, Laws of Florida*.

Concealed weapon licensees should be advised that matters pertaining to the lawful use of deadly force do not fall within the purview of the Division of Licensing; therefore, the Division cannot comment or provide specific guidance as to any particular set of circumstances in which this law would apply.

The Division strongly recommends that you read Chapter 776, Florida Statutes at www.leg.state.fl.us. If you have specific concerns regarding this law you should direct them to your attorney or speak with your local law enforcement agency to determine how this law will be implemented within a particular jurisdiction in Florida.

Questions and Answers Pertaining to the use of Deadly Force for Lawful Self-Defense

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES
Division of Licensing

Adam H. Putnam
Commissioner

This pamphlet was prepared by the Division of Licensing in an attempt to answer some of the most frequently asked questions about the use of deadly force for lawful self-defense. Included are examples of real situations involving the legal consequences of the use of deadly force.

Q. WHAT KINDS OF WEAPONS ARE INCLUDED IN THE CONCEALED WEAPONS LAW?

A. The Jack Hagler Self-defense Act defines concealed weapons or firearms as follows: handguns, electronic weapons or devices, tear gas guns, knives and billies. This pamphlet emphasizes handguns, because they are one of the most commonly used weapons for self-defense.

Q. WHAT IF I AM IN MY VEHICLE?

A. A person has no duty to retreat in his lawfully occupied vehicle against a person who was in the process of unlawfully and forcefully entering or had unlawfully and forcefully entered an occupied vehicle or had unlawfully and forcefully removed or was attempting to remove another against that person's will from the occupied vehicle.

Q. WHEN IS A HANDGUN "CONCEALED?"

A. The Florida Legislature defines a concealed firearm as any firearm "carried on or about a person in such a manner as to conceal it from the ordinary sight of another person." A person carrying a concealed firearm without a license is guilty of a felony of the third degree. The penalty for this offense is a prison term of up to five years.

Q. ARE THERE SPECIAL LAWS THAT APPLY TO THE USE OF HANDGUNS?

A. Yes, special laws apply anytime anyone uses deadly force, whether or not the weapon is concealed. Florida law defines deadly force as force that is likely to cause death or great bodily harm. When you carry a handgun, you possess a weapon of deadly force. The law

considers even an unloaded gun to be a deadly weapon when it is pointed at someone.

Q. WHEN CAN I USE MY HANDGUN TO PROTECT MYSELF?

A. Florida law justifies use of deadly force when you are:

- Trying to protect yourself or another person from death or serious bodily harm;
- Trying to prevent a forcible felony, such as rape, robbery, burglary or kidnapping.

Using or displaying a handgun in any other circumstances could result in your conviction for crimes such as improper exhibition of a firearm, assault, manslaughter, or worse.

Example of the kind of attack that will not justify defending yourself with deadly force: Two neighbors got into a fight, and one of them tried to hit the other by swinging a garden hose. The neighbor who was being attacked with the hose shot the other in the chest. The court upheld his conviction for aggravated battery with a firearm, because an attack with a garden hose is not the kind of violent assault that justifies responding with deadly force.

Q. WHAT IF SOMEONE USES THREATENING LANGUAGE TO ME SO THAT I AM AFRAID FOR MY LIFE OR SAFETY?

A. Verbal threats are not enough to justify the use of deadly force. There must be an overt act by the person, which indicates that he immediately intends to carry out the threat. The person threatened must reasonably believe that he will be killed or suffer serious bodily harm if he does not immediately take the life of his adversary.

Q. WHAT IF SOMEONE IS ATTACKING ME IN MY OWN HOME?

A. The courts have created an exception to the duty to retreat called the "castle doctrine." Under the castle doctrine, you need not retreat from your own home to avoid using deadly force against an assailant. The castle doctrine applies if you are

attacked in your own home by an intruder or an invited guest.

Q. WHAT IF I AM IN MY PLACE OF BUSINESS AND SOMEONE COMES IN TO ROB ME? DO I HAVE TO RETREAT BEFORE USING DEADLY FORCE?

A. The castle doctrine also applies when you are in your place of business. If you are in danger of death or great bodily harm or you are trying to prevent a forcible felony, you do not have to retreat before using deadly force in self-defense.

Q. WHAT IF I POINT MY HANDGUN AT SOMEONE BUT DON'T USE IT?

A. Never display a handgun to gain "leverage" in an argument. Threatening someone verbally while possessing a handgun, even licensed, will land you in jail for three years. Even if the gun is broken or you don't have ammunition, you will receive the mandatory three-year sentence if convicted. The law does not allow any possibility of getting out of jail early.

Example: In a 1987 case, a woman refused to pay an automobile mechanic who she thought did a poor job of repairing her car. They argued about it, and the mechanic removed the radiator hose from the car so she couldn't drive it away. She reached into her purse, pulled out an unloaded gun, and threatened to kill the mechanic if he touched her car again. The mechanic grabbed the gun and called the police.

The woman was convicted of aggravated assault with a firearm and sentenced to serve a mandatory three-year prison term. The fact that the gun was not loaded was irrelevant. Even though she was the mother of three dependent children and had no prior criminal record, the statute does not allow for parole. Her only recourse was to seek clemency from the Governor.

Q. WHEN CAN I USE DEADLY FORCE IN THE DEFENSE OF ANOTHER PERSON?

A. If you see someone who is being attacked, you can use deadly force to defend him/her if the circumstances would justify that person's use of

deadly force in his/her own defense. In other words, you "stand in the shoes" of the person being attacked.

Q. WHAT IF I SEE A CRIME BEING COMMITTED?

A. A license to carry a concealed weapon does not make you a free-lance policeman. But, as stated earlier, deadly force is justified if you are trying to prevent the imminent commission of a forcible felony. The use of deadly force must be absolutely necessary to prevent the crime. Also, if the criminal runs away, you cannot use deadly force to stop him, because you would no longer be "preventing" a crime. If use of deadly force is not necessary, or you use deadly force after the crime has stopped, you could be convicted of manslaughter.

Q. IF I GET A LICENSE TO CARRY A CONCEALED WEAPON, CAN I CARRY IT ANYWHERE?

A. No. To get a license you must sign an oath that you have read and understand the Jack Hagler Self-defense Act (Section 790.06, Florida Statutes). That statute lists several places where you may not carry a concealed weapon. You should read subsection 12 for a complete list, but some examples are football, baseball, and basketball games (college or professional) and bars.

A cool head and even temper can keep handgun carriers out of trouble. You should never carry a gun into a situation where you might get angry.