

USE OF FORCE DEADLY PHYSICAL FORCE TRAINING

(7 HOURS)

TOPIC DESCRIPTION

This block of instruction covers the use and justification of the use of force by a security guard as it pertains to the utilization of Deadly Physical Force.

TRAINING OBJECTIVES

- A. Upon completion of this module of instruction, the trainee will be able to, from memory:
1. Recognize circumstances which generally justify the use of physical force.
Penal Law (PL) §35.05; 35.10
 2. Recognize circumstances which justify use of physical force in defense of a person (PL §35.15)
 3. Recognize circumstances which justify use of physical force in defense of premises and in defense of a person in the course of burglary. (PL §35.20)
 4. Recognize circumstances which justify use of physical force to prevent or terminate larceny or criminal mischief. (PL §35.25)
 5. Recognize circumstances which justify a security guard's use of physical force in making an arrest or preventing an escape. (PL §35.30)
 6. Define "deadly physical force" (PL § 10.00) (11)
 7. Recognize other factors to be considered in the use of deadly physical force.

CURRICULUM OUTLINE

1. Overview

- A. decisions relative to the use of force. The responsibility to make proper decisions is an ever present reality and is not lessened by the fact that the security guard must make these decisions often under the worst of circumstances.
- B. scrutiny both from within and without the security department; criminal and civil prosecution may be the result if the guard's actions are deemed unlawful or inappropriate. Yet, failure to use force when it is reasonable and necessary may very well mean injury or death to the security guard and/or innocent civilians.
- C. practical reasons why a security guard's use of force must be proper. The law demands it. Therefore, the use of force must be **LAWFUL, REASONABLE and NECESSARY** as it relates to the circumstances.

H. DEFINITIONS

- A. Arson: Regardless of the degree, requires that a building or motor vehicle be damaged by the intentional starting of a fire or causing an explosion, or the intentional damaging of a building or motor vehicle by starting a fire or causing an explosion. (PL Article 150.00)
- B. Burglary 1st: Knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein and when in effecting entry or while in the dwelling or immediate flight therefrom, he or another participant:
1. is armed with explosives or deadly weapon; or
 2. causes physical injury to nonparticipant; or
 3. uses/threatens immediate use of a dangerous instrument; or
 4. displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm (PL 140.30)
- C. Custody: Restraint by public servant pursuant to an authorized arrest or court order. (PL §205.00) (2)
- D. Dangerous instrument: Any instrument, including a vehicle, which, under the circumstances it is used, attempted to be used, or threatened to be used, is

readily capable of causing death or other serious physical injury. (PL § 10.00)
(13)

- E. Deadly physical force: that physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. (PL § 10 .00) (I I)
- F. Deadly weapon: Any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged or switchblade knife, dagger, gravity knife, pilum ballistic knife, billy, blackjack, or metal knuckles. (PL § 10 .00) (12)
- G. Physical injury: Impairment of physical condition or substantial pain.(PL S10.00)(9)
- H. Recklessly: A person is aware of and consciously disregards a substantial and unjustifiable risk that a result will occur. (PL. § 15.05) (3)
- 1. Serious physical injury: Injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.(PL § 10.00) (10)

III. USE OF FORCE-SPECIAL CASES

- A. Lesser of two evils: One can use physical force when the result of the force will cause less injury than not using force.

i.e. one pushes a person out of the path of an oncoming vehicle)(PL §35.05)
(2)
- B. Parent, guardian, or person entrusted with the care and supervision of a minor for a special purpose or of an incompetent person may use physical force when he reasonably believes it necessary to maintain discipline or promote the welfare of that person. (PL S35. 10) (1)
- C. A warden or other authorized official of a jail, prison, or correctional institution may use physical force when necessary to maintain order and discipline as is authorized by the Correction Law. (PL §35.10) (2)
- D. A person responsible for the maintenance of order on a common carrier of passengers, or a person acting at his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order, but he may

use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury. (PL §35.10) (3)

E. A person acting under the belief that another person is about to commit suicide or inflict serious injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result. (PL §35.10) (4)

F. A duly licensed physician, or a person acting under his direction, for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is under the age of eighteen years or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (in an emergency without consent) may use physical force. (PL §35.10) (5)

IV. USE OF PHYSICAL FORCE-ANYONE

A. Anyone can use physical force when he has reasonable cause to believe that it is necessary to prevent or terminate:

I. Unlawful physical force being used against him (self defense) or another, unless:

c. He is engaged in combat by agreement. (PL §35.15) (1)

2. Any person may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force if he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson. (PL §35.20)(1)

3. A person in possession or control of any premises, or a person licensed or privileged to be thereon or therein, may use physical force upon another

person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, or in the course of a burglary or attempted burglary. (PL §35.20) (2)

4. A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit burglary of such dwelling or building, may use deadly physical force upon such other person when he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary. (PL §35.20) (3)

- a. The terms "premises," "building" and "dwelling" have the meanings prescribed in PL § 140.00;
- b. Persons "licensed or privileged" to be in buildings or upon other premises include, but are not limited to, police officers or peace officers acting in the performance of their duties. (PL §35.20) (4)

B. A private person acting on his own account may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes such to be necessary to effect an arrest or to prevent the escape from custody of a person whom he reasonably believes to have committed an offense and who in fact has committed such offense; and he may use deadly physical force for such purpose when he reasonably believes such to be necessary to:

- I. Defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 2. Effect the arrest of a person who has committed murder, manslaughter in the first degree, robbery, forcible rape or forcible sodomy and who is in immediate flight therefrom. (PL 35.30) (4)
- C. A person who has been directed by a police officer or a peace officer to assist such police officer or peace officer to effect an arrest or to prevent an escape from custody may use physical force, other than deadly physical force, when and to the extent that he reasonably believes such to be necessary to carry out such police officer's or peace officer's direction, unless he knows that the arrest or prospective arrest is not or was not authorized and he may use deadly physical force under such circumstances when:
- I. He reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 2. He is directed or authorized by such police officer or peace officer to use deadly physical force unless he knows that the police officer or peace officer himself is not authorized to use deadly physical force under the circumstances. (PL 35.30) (3)

V. USE OF DEADLY PHYSICAL FORCE SECURITY GUARD/PRIVATE PERSON

A. A person may not use deadly physical force upon another person under circumstances specified in PL 35.15 (1) (set forth above) unless:

I. He reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he knows that he can with complete safety as to himself and others avoid the necessity of so doing by retreating; except that he is under no duty to retreat if he is:

a. in his dwelling and not the initial aggressor; or

b. A person assisting a police officer or a peace officer at the latter's direction, acting pursuant to PL 35.30; or

2. He reasonably believes that such other person is committing or attempting to commit a kidnaping, forcible rape, forcible sodomy or robbery; or

3. He reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by subdivision three of PL 35.(PL35.15)

B. Deadly physical force may be used to prevent or terminate the following crimes (including attempts):

I. Robbery PL §35.15 (2)(b)

2. Burglary PL §35.15 (2)(c)

3. Arson PL §35.20 (1)

4. Rape (forcible only) PL §35.15 (2)(b)

5. Kidnaping PL §35.15 (2)(b)

6. Sodomy (forcible only) PL §35.15 (2)(b)

C. As a memory aid, one should think:

I. Acronym "Dr. Barks"

a.

b.

- c.
 - d.
 - e.
 - f.
- 2.

8

Defense against deadly physical force.

Robbery

Burglary of occupied building or dwelling.

Arson

Rape - forcible

Kidnaping

- 9. Sodomy - forcible

The following crimes have, in fact, taken place and only during immediate flight from the crime scene:

- a.
- b.
- e.

Murder; or

Robbery; or

c. Manslaughter in the first degree, or

d. Rape (forcible); or

Sodomy (forcible) PL §35.30 (4)(b)

- D. As a memory aid, one should think:

- I. Acronym "Mr Mrs"

- a. Murder

- b. Robbery

- d. Manslaughter I st

- d. Rape (forcible)

- e. Sodomy (forcible)

VI. PROGRESSION OF FORCE

- A. In the use of force, both physical and deadly physical, **security guards/civilians** are reminded that their actions will be judged under the criteria of REASONABLENESS and NECESSITY. Typically, levels of force which are available to the **security guard/civilian** are as follows:
 - 1. Verbal Direction - this is the least intrusive level of force and may vary from a simple request to an emphatic command.
 - 2. Physical Direction - often, control of a person requires physical contact; the direction and extent varies with the circumstances, but may be as slight as a mere touch to as severe as a carotid restraint hold.
 - 3. Mace - the chemical agent in mace often has controlling effect on a non-compliant subject because it causes a sensation of pain; it should be noted, however, that mace is not totally effective on all subjects and may be ineffective against mentally disabled persons, as well as individuals who are under the influence of alcohol and/or drugs. In New York State, Security Guards/Civilians are authorized by law to possess and/or use Mace, since PL 270.05 was repealed.
 - 4. Impact Weapons - Police baton, billy, blackjack and chuka sticks are examples of impact weapons which are also defined as dangerous weapons in PL 265.00. In New York State, Security Guards/Civilians are prohibited from carrying and/or possessing deadly weapons. PL Article 265
 - 5. Firearm - the highest level of force available to the security guard is the firearm. Firing this weapon at another person is restricted to those situations in which deadly physical force is justified by a security guard/civilian as cited under. PL Article 35.00.

VII. PRINCIPLES OF THE PROGRESSION

- A. A stage in the progression may be skipped due to the circumstance.

10

- B. If possible, the security guard should give the subject the opportunity to comply at each stage. Once compliance is achieved, the escalation ceases.

(To do otherwise may be tantamount to using excessive force.)

It is not the security guard who is the aggressor. It is his opponent who is escalating the use of force by not complying, and in so doing, the subject compels the security guard to progress to the next level.

The progression is not always upward. The situations in which force is used are often in a state of flux; therefore, the security guard must continually assess the circumstances, and, as appropriate, escalate or deescalate the use of force.

D.
E.

Remember - all force situations must be judged in the light of-

I . reasonableness

2. necessity

VIII. OTHER FACTORS TO CONSIDER IN THE USE OF DEADLY PHYSICAL FORCE

A. Making advanced judgement concerning situation:

I Drawing weapon

a. Guard would be justified in using weapon

b. Employer's policy should be considered

2. Insuring accuracy of identification

a. Storekeepers on robbery calls

b. Fleeing hostages

c. Home owners, on prowler calls

3. Using verbal commands

a. Identification of self

b. Order to cease behavior

B. Situational dynamics

1. Consider factors related to nature of offense

2. Consider factors related to nature of offender:

a. Age

b. Mental state

c. Other considerations

3. Consider danger to security guard

a. Availability of cover for protection

- b. Availability of assistance of other security guards/police officers
4. Consider danger to third persons and property
 - a. Will offender's actions create danger to himself
 - b. Will security guard's actions create a danger to a third party
5. Consider if offender will be continuing threat if his apprehension is delayed
6. Consider likelihood of later apprehension

IX. SUMMARY

- A. Review of Objectives

X. EXAMINATION

- A. The 47 Hour Firearms Training Course for Armed Security Guards requires a student to successfully pass a written examination at the conclusion of training to receive certification as an Armed Security Guard.
- B. The Seven Hour Use of Force/Deadly Physical Force component of the Firearms Training Course requires **a review and examination**. The school is required to develop a bank of questions to be used to construct a minimum ten (10)question examination consisting of multiple choice questions. **The bank of examination questions and corresponding answers must be submitted to SGP for review prior to the commencement of training.** The examination is to be administered at the completion of the training course. **A minimum of 70 percent** must be achieved by each student to satisfactorily complete this mandated training. **However, due to the litigious nature of this topic area, SGP strongly recommends the minimum passing score be set at 100 percent.**