CONCEALED HANDGUN PERMITS

AND

THE USE OF DEADLY FORCE

Questions and Answers

North Carolina
Sheriffs' Association

Provided as a Public Service by
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This pamphlet was prepared and is provided as a public service by North Carolina Sheriffs and the North Carolina Sheriffs' Association. It answers some of the most frequently asked questions about the use of deadly force and the authority of a citizen who has been issued a concealed handgun permit.

This pamphlet is not a complete summary of all of the statutes and court opinions on the use of deadly force. The information provided in this pamphlet is not legal advice. Each case has its own unique set of facts, and it is unwise to try to predict how a particular case would be decided.

For legal advice about a specific situation or for more details on the issues discussed in this pamphlet, you should consult an attorney.

Q. What type of weapons can I carry if I am issued a concealed handgun permit?

A. A handgun is the only weapon that the permit authorizes you to carry concealed.

A handgun is defined by law as "a firearm that has a short stock and is designed to be held and fired by the use of a single hand." For example, a handgun would include a revolver or semi-automatic pistol.

A permit does not authorize you to carry a concealed rifle, shotgun, fully automatic weapon or other deadly weapons such as a knife, blackjack, razor, metallic knuckles, bowie knife, loaded cane, stun gun etc.

Q. When is my handgun considered concealed?

A. A concealed handgun must be "about the person" which generally refers to being concealed on your person or within arm's reach or ready access by you.

Q. What documentation must I possess in order to carry a concealed handgun?

A. The permit issued by the sheriff must be in your possession at all times a concealed handgun is carried. Valid identification is also required. Valid identification is not defined but appears to allow any form of customary identification such as a drivers license or state identification card.

Note: Carrying a concealed handgun off your premises without both the permit issued and a valid form of identification is unlawful.

Q. What should I do if approached by a law enforcement officer while carrying a concealed handgun?

A. Disclosure to law enforcement officers is required. You should make the disclosure as soon as you are approached by an officer. You should tell the officer you are carrying a concealed handgun with your hands visible to the officer and you should not attempt to reach for the concealed handgun or your permit. Disclosure to the officer is ONLY required if you are actually carrying the concealed handgun on or "about" your person.

Q. Are there places where I cannot carry a concealed handgun, even with my concealed handgun permit?

A. Yes, the locations where a concealed handgun permit holder may not carry a concealed handgun include (but are not limited to):

1) on public or private school property;

2) in any assembly where a fee has been charged for admission;

3) in any establishment where alcoholic beverages are sold and consumed;

4) in the State Capitol Building, the Executive Mansion, or the Western Residence of the Governor, or the grounds of any of these buildings;

5) in any building or portion of a building used for court purposes;

6) in or at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions;

7) in any area prohibited by federal law;

8) in a law enforcement or correctional facility;

9) in any building that contains only State or federal offices or in any State or federal office which is located in a building not exclusively occupied by the State or federal government;

10) in any local government building and appurtenant premises if the local government has adopted an ordinance and posted signs prohibiting the carrying of concealed handguns upon the premises;

11) upon any premises where the owner or person in legal control has posted a conspicuous notice that concealed handguns are prohibited.

Additionally, it is unlawful for a person, with or without a concealed handgun permit, to carry a concealed handgun while any alcohol remains in the person's body, or while any controlled substance remains in the person's blood (except as prescribed or authorized by a doctor).

Note: Various other North Carolina laws prohibit carrying unconcealed weapons (i.e., weapons in plain view) in certain places. These laws are not changed by the concealed handgun law and must be obeyed.

Q. Are there any state-owned properties where I can carry my concealed handgun?

A. With a carry concealed handgun permit, concealed handguns may be carried at state-owned rest areas, rest stops along the highways, state-owned hunting and fishing reservations, and on the grounds or water of a park within the state park system.

Q. Does my North Carolina concealed handgun permit authorize me to carry a concealed handgun in other states?

A. North Carolinians who have a concealed handgun permit from our state will be able to possess a concealed handgun while visiting some but not all other states, and will be subject to the laws of that state and are responsible for educating themselves about those laws.

The list of states that have agreements with North Carolina to allow North Carolinians with a NC concealed handgun permit to carry a handgun concealed while in the other state may change and will be updated regularly.

For a current list of states that have concealed handgun permit agreements with North Carolina, consult the North Carolina Department of Justice website at: http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Law-Enforcement-Liason/Concealed-Weapon-Reciprocity.aspx

Q. Does a concealed handgun permit issued by another state to a resident of

that state authorize the permit holder to carry a concealed handgun in North Carolina?

A. North Carolina law allows residents of all other states who have a concealed handgun permit issued by their state to carry concealed handguns in North Carolina.

Q. If I am a military member and my permit expires while I'm out of the state, what can I do to get it renewed?

A. North Carolina allows a concealed carry permit holder who is, or will be, deployed for military service to apply with the sheriff of the county that issued the permit for an extension of the concealed carry permit up to an additional 90 days after the permittee's deployment is scheduled to end.

Q. If I am the victim of domestic violence, can I automatically get a concealed handgun permit?

A. North Carolina law allows a domestic violence victim to apply for a temporary emergency concealed handgun permit by showing proof of the issuance of a domestic violence protective order. However, for the permit to be issued, all other standards for the issuance of an emergency permit must be met.

Q. What is deadly force?

A. Deadly force is force likely to cause death or great bodily harm. A deadly weapon is an instrument which is likely to produce death or great bodily harm, under the circumstances of its use. A handgun is a deadly weapon and use of a handgun against another person is use of deadly force.

Q. When can I use my handgun to protect myself?

A. You are legally justified in using deadly force (i.e., your handgun) against another person, when and only when:

1) You actually believe deadly force is necessary to prevent an imminent threat of death, great bodily harm, or sexual assault, and

2) The facts and circumstances prompting that belief would cause a person of ordinary firmness to believe deadly force was necessary to prevent an imminent threat of death, great bodily harm, or sexual assault, and

3) You were not an instigator or aggressor who voluntarily provoked, entered, or continued the conflict leading to deadly force, and

4) The force used was not excessive, i.e., the force used was not greater than reasonably needed to overcome the threat posed by a hostile aggressor.

Q. When can I use my handgun to protect a family member or to protect another person?

A. In protecting a family member or another person, you can only use deadly force (i.e., your handgun) if, under the circumstances, the family member or other person would be legally justified in using deadly force to protect himself or herself, i.e., to save the person from imminent threat of death, great bodily harm or sexual assault.

Q. What can I do if someone is breaking into my home?

A. An intruder who unlawfully and by force enters or attempts to enter your home, is presumed to be doing so with the intent to commit an unlawful act involving force or violence. This legal concept is called "defense of habitation". Within your home, you do not have a duty to retreat from an intruder.

For example, an insurance salesman normally called upon his customers at their homes between 7:00 and 11:00 at night. These particular customers were husband and wife and told the insurance salesman that it was not necessary for him to call them by telephone before stopping by. One day about 11:00 a.m. the insurance salesman talked with the wife by telephone about some insurance matters, and it was agreed that he would stop by her home the next time he was in the neighborhood. That same evening, about 9:30, he went to the customer's home, knocked on the door, waited 20-30 seconds and knocked again. The woman then discharged a shotgun which hit the salesman and injured his leg. The Court held that because the salesman had made no threat or attempt to forcibly enter her home, she was not justified in shooting him.

You are presumed to have a reasonable fear of imminent death or serious bodily harm to yourself or another when using deadly force if an intruder was in your home and you knew or had reason to believe that an unlawful entry was occurring or had occurred.

If a person is trespassing on your land, but is not attempting to forcibly enter your home, you may not use deadly force against the person.

Also, if a person has unlawfully broken into your home, but is running away, you cannot shoot the fleeing burglar because at that point you would not be preventing his forcible entry into your home and you would not be defending yourself or other occupants of your home from the imminent threat of death, great bodily harm or sexual assault.

Q. What can I do if I am in my place of business and someone comes in to rob me?

A. An intruder who unlawfully and by force enters or attempts to enter your workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence. Within your workplace, you do not have a duty to retreat from an intruder.

However, you may only use reasonable force, but not deadly force, to prevent a person from unlawfully stealing your property or money when there is no reasonable belief of an imminent threat of death, great bodily harm, or sexual assault.

For example, a teenage girl walked out of a convenience store with two six packs of beer that had not been paid for, got into a car driven by another person and they began to drive off. As the car was leaving the parking lot, the store clerk ran out with a pistol and fired three shots, one of which hit the driver in the head and killed him. The Court held that the store clerk's use of deadly force was not justified and upheld his conviction for first-degree murder.

Q. Am I required to retreat before I can use deadly force to protect myself from an assault?

A. Deadly force may be authorized and you do not have a duty to retreat in any place you have the lawful right to be if you reasonably believe that deadly force is necessary to prevent imminent death or great bodily harm to yourself or another.

However, even when you are in your own home, premises or business, you cannot automatically use deadly force. You can only use deadly force when it is reasonably necessary to prevent an imminent threat of death, great bodily harm, or sexual assault. For example, if someone only slaps you while at your business, you are not authorized to shoot that

person.

Q. Can I protect myself if someone starts hitting me?

A. Yes, you may use as much force, but not deadly force, as is reasonably necessary under the circumstances to stop the person from hitting you.

You may not use deadly force to stop an attacker when it does not reasonably appear necessary to protect yourself from death, great bodily harm, or sexual assault.

Also, you may not use force, deadly or non-deadly, against another person because of the fact that the person attacked you in the past or threatens to attack you in the future. Your right to defend yourself by using force only applies when the threat against you creates immediate danger.

For example, a man saw his former girlfriend in a disco club. The man went over to the woman and hit her in the head with his fist. The woman then danced with another man. Her former boyfriend then called her over to where he was and he started punching her in the stomach. The woman then went elsewhere in the disco club, obtained a knife from another man, and returned to where her former boyfriend was and stabbed him with the borrowed knife. Because immediately prior to the stabbing the woman was safely away from the man and perfectly free to remain in a safe place, and because she borrowed a knife and returned to the man's location in the club and stabbed him, the Court held that her use of deadly force was unlawful. It was clear that at the time she stabbed him, she was not in actual or apparent danger of death or great bodily harm and was not justified in using deadly force.

Q. What if someone uses threatening, abusive or insulting language to me?

A. Mere words alone, regardless of how threatening, abusive or insulting they may be, do not justify your use of deadly force. You may be justified in using deadly force if the other person's conduct or actions create a reasonable belief that deadly force is necessary to prevent an imminent threat of death, great bodily harm, or sexual assault.

For example, two men began to argue. One man began verbally abusing the other and challenging him to fight. The verbal abuse included racial slurs, derogatory and obscene references to the other man's mother, and allegations that the other man was too scared to fight. The verbal abuse continued for less than ten minutes before the target of the verbal

abuse violently and repeatedly stabbed the man who was making abusive comments, and he died.

The defendant admitted to the stabbing and made the statement: "I told the man to quit running his mouth at me." The Court upheld the defendant's conviction of second-degree murder with a punishment of life imprisonment and held that mere words, however abusive, do not justify the use of deadly force.

Q. Can I use deadly force if I have instigated a conflict?

A. If you are the aggressor who voluntarily provoked or instigated a conflict, you can only use deadly force if you attempt to withdraw from the conflict and give notice of withdrawal to your adversary. After the attempted withdrawal from the conflict, if the adversary creates a reasonable belief that deadly force is necessary to prevent an imminent threat of death, great bodily harm, or sexual assault then deadly force may be justified.

Q. Can I point my handgun at someone, even if I do not shoot it?

A. You may point your handgun at another person <u>only</u> in situations where you are legally justified in using deadly force. Otherwise, it is unlawful to point any gun, either in fun or otherwise, whether loaded or not loaded, at any person.

Q. Can I use my handgun to stop a "crime in progress"?

A. A concealed handgun permit does not make you a law enforcement officer. North Carolina law does not give a citizen the right to make a citizen's arrest.

You cannot shoot to stop a criminal who is running away. You may use deadly force (i.e., your handgun) only when it is reasonably necessary to prevent an imminent threat of death, great bodily harm, or sexual assault to yourself or others. Otherwise, you cannot use deadly force against a criminal, such as a shoplifter, a thief, a driver leaving the scene of an accident or a trespasser.

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