

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 these 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 or firearm for self-defense. Carrying a concealed weapon or firearm does not make you a freelance policeman or a “good samaritan.”

Never carry your concealed weapon or firearm 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 Florida law specifies that the carrying of a concealed weapon or firearm is for lawful self-defense, the Division of Licensing has not attempted to summarize the body of law regarding lawful defense of property. This pamphlet is not intended as legal advice. Every self-defense case has its own unique set of facts, and it is unwise to attempt 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.

Florida Department of Agriculture
and Consumer Services
Division of Licensing
P.O. Box 6687
Tallahassee, Florida 32314-6687
www.mylicensesite.com



**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. [Section 790.06, Florida Statutes](#), defines a concealed weapon or firearm as a handgun, electronic weapon or device, tear gas gun, knife or billie. This pamphlet emphasizes handguns, because they are one of the most commonly used weapons for self-defense.

Q. IS THERE A FLORIDA LAW REGARDING THE USE OF DEADLY FORCE?

A. Yes, see [Chapter 776, Florida Statutes](#), entitled, “Justifiable Use of Force.” [Section 776.06](#), 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. WHAT DOES IT MEAN TO CARRY A FIREARM “CONCEALED?” DO I HAVE TO CARRY MY FIREARM CONCEALED OR CAN I CARRY IT OPENLY?

A. The law 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.” Moreover, [section 790.053, F. S.](#), specifically prohibits the open carrying of a weapon. This section of law was amended by the Legislature in 2011, however, to provide that a person who is licensed to carry a concealed firearm

is not in violation of the law if the firearm is “briefly and openly” displayed to the ordinary sight of another person, “unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.”

Q. IF LICENSED, CAN I CARRY MY CONCEALED WEAPON OR FIREARM ANYWHERE?

A. No. When you apply for the license, you must sign an oath that you have read and understand [Section 790.06, Florida Statutes](#), which lists several places where you may not carry a concealed weapon or firearm. You should read subsection 12 for the 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.

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 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 or 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 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, whether 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 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 I SEE A CRIME BEING COMMITTED?

A. *A license to carry a concealed weapon or firearm 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. 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 if you are licensed to carry a firearm concealed, 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 did 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.*



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.

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. 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.