Use of Force and Deadly Force

Training Module

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Deadly Force and self-defense - The Most Important Decision You Will Make

You have more power than the state of Michigan.
You can pass the death sentence with your handgun based on your own decision. You had better hope it is the correct one.

It is most important that you develop a plan to live a safe life style that will help you avoid the use of the handgun.

How?

- Be aware of your surroundings to avoid a confrontation that may result in the use of the handgun.
- Have a plan to respond to a threat at home or on the street.
- Install and use home security devices.

You must have the right mental attitude to carry a handgun; Situations can make you angry or upset; people can do you wrong; this doesn’t mean you can point guns at people. Can you take verbal abuse and control yourself?

If you have and/or carry a handgun, conduct your life as if you don’t have one, then you may not need one. (Don’t take extra risks)

Do you have the mindset, will and skill to survive a violent deadly encounter?

You need to be a person who can make a decision under stress, a shoot / don’t shoot decision. The decision and ability to take a life!

You must be cautious about being involved in a physical encounter while carrying a handgun. It may be taken from you and you may be shot with your own gun.

It may take several rounds to stop an attacker, in the meantime the attacker can be shooting at you. A person who will eventually die from gunshot wounds can still be a deadly threat to you.

Training does not imitate reality - unless you have reality based training

At the Range

- The target does not shoot back
- The target does not move
- The backstop is safe
- If your gun malfunctions it does not matter

Remember

Most all attacks occur within a close distance (4-21 ft)
An average of 3-5 rounds are fired or whatever is in your handgun

Most people do not carry extra ammunition, therefore self-defense shooting skills are very important less than 50% of rounds fired hit the target (Do you have enough rounds to stop an attacker?)

All deadly force confrontations are violent, close, and usually over in a matter of seconds.
Using a firearm for personal protection is a right that must be exercised responsibly.
Gun owners owe it to themselves, their families, and the community to act in a safe and prudent manner.

A firearm is a tool of last resort. It is used only when deadly force is absolutely unavoidable.
Imminent danger: To resort to deadly force, in most cases the defender must be the innocent victim of an attack and the threat of severe bodily harm must be Imminent.

Are you capable of using deadly force? This course teaches how to use a pistol for personal protection when threatened with deadly force. Anyone who has moral, religious or personal objections to using deadly force and possibly taking a life should not incorporate a firearm into their personal protection strategy.

When deciding whether to incorporate a firearm into your personal protection strategy, you must ask yourself the following questions:

- Am I prepared to take the life of another human being to save my own life or the life of a member of my family?
- Does my religion permit taking a life in self-defense?
- Do my personal moral standards permit taking a life in self-defense?
- Am I prepared to tolerate the judgment of my family, friends, and neighbors if I must defend myself with lethal force?

Even when justified and forced to do so, shooting a predatory criminal is not a pleasant experience.
This fact should be understood and planned for in your mental preparation.

Mental preparation
Mental preparation and training are just as important as marksmanship training.
Visualization is a crucial training technique.
You should visualize possible life-threatening scenarios, as well as your response to them.
Your visualization should include the entire encounter from realization of the threat, attempting to avoid the threat, dealing with the threat if necessary, greeting the police, and the aftermath.
The use of deadly force to stop an attack on you or someone else requires that the aggressor present three elements of aggression for you to justify deadly force.

The aggressor must have the —

A — Ability

O - Opportunity – to put you in imminent

J - Jeopardy

Of —

• Death
• Serious Injury
• Forcible Sexual Penetration

The aggressor must demonstrate the intent or will to carry out the attack

Deadly force can only be used to protect people, you or another person under like circumstances.

Deadly force cannot be used to protect property from theft or destruction

The intent is self-defense only.

• Not Anger
• Not Revenge

You do not --

• Shot at a fleeing suspect or aggressor
• Attempt to take law enforcement action
• Chase people
• Shoot at a motor vehicle
• Shoot to wound
• Shoot warning shots
• Shoot to kill - You shoot to stop the attack or threatened attack
The Act affects criminal and civil liability for those who use force to defend themselves or others.

PA 309, creates the Self Defense Act and specifies that it is not a crime to use force or deadly force to defend oneself if that person is not breaking any laws when defensive force was used.

PA 310, puts the burden of proof on the prosecutor to show that a person acted unlawfully in the application of force, rather than the person using the force having to prove they acted lawfully.

PA311, outlines rebuttal presumptions for justified use of self-defense. The bill makes it clear that there is no “duty to retreat” if a person is in a place where they have a legal right to be.

PA 312, allows for the award of court and attorney fees in civil cases where it was determined a person acted in accordance with the Self Defense Act and where civil immunities apply.

PA 313, expands the definition of “dwelling” to include a person’s garage, barn, backyard, etc.

PA 314, gives civil immunities to persons acting in accordance with the Self Defense Act, preventing criminals and their families from suing law-abiding citizens.

General Provisions of the Act

A person may use deadly force with no duty to retreat if (PA 309)
1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe deadly force is necessary
4. The deadly force is used to prevent imminent death, great bodily harm, or sexual assault of the person another

A person may use force other than deadly force if (PA 309):
1. They are not engaged in a crime
2. They are in a place they have a legal right to be
3. They honestly and reasonably believe force is necessary
4. The force is used to prevent imminent unlawful force against the person or another
REBUTTABLE PRESUMPTION -
The Act (PA311) creates a rebuttable presumption that a person using force has an honest and reasonable belief that imminent death, great bodily harm, or sexual assault will occur if the person using force honestly and reasonably believes the person against whom force is used is any of the following:

1. In the process of breaking and entering a dwelling or business
2. In the process of committing a home invasion
3. Has committed a breaking and entering or home invasion and is still present in the dwelling or business
4. Is attempting to unlawfully remove a person from a dwelling, business, or vehicle against his or her will

SELF-DEFENSE ACT (EXCERPT) - Act 309 of 2006
780.972 Use of deadly force by individual not engaged in commission of crime; conditions.
Sec. 2.
(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

(b) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual.

Duty to retreat
There is no duty to retreat if the following four factors are present:

- You're not engaged in the commission of a crime.
- You are in a place you have a legal right to be.
- You honestly and reasonably believe that deadly force is necessary.
- You are preventing imminent death, great bodily harm or sexual assault to yourself or others.

Michigan law says you have a rebuttal presumption that you honestly and reasonably believed deadly force was necessary if the aggressor is breaking into your home, business or occupied vehicle.

For more on Michigan's Self Defense Act, read MCL 780.951 to MCL 780.974 on the Legislature website
Deadly Force and self-defense

Responsibilities after Using Force

If you have used force of any kind, including deadly force, and if your assailant is no longer a threat, then you should administer first aid, within your ability to do so, and summon medical assistance. This may mean that you stop bleeding; and treat for shock. In order to do this safely, make sure that the individual cannot attack or disarm you as you administer first aid.

Call the police as soon as possible.

Give location of incident

- Report what has just happened (remember you are being recorded-keep it simple and just the facts.
- Do not embellish, go into details or why you think or know you are justified.
- Other people involved
- Injuries
- If the conflict resolved itself without personal injury or property damage make written report with the police.

Use of a firearm

If the threat has been contained and it is safe to do so, holster your gun. Since the police will be responding to a “shots fired” call, they will approach the scene with caution and with guns drawn. It is critical that you identify yourself clearly and do not point your gun at the responding officers. Have your identification in your hand and keep your hands clearly away from your gun. Follow orders given by the officers.

You are not required to talk to the police after shooting someone. You may wish to talk to an attorney before giving a statement. If you refuse to give information to the police, you may be detained or arrested based on the information known to the officers at that time.

Your attorney must be present when making any statements or writing and signing a narrative description of the incident.

Gather you thoughts before making statements
It is best to wait 24-48 hours and have your attorney present before making any statements

You are the victim-
Therefore you should seek first aid for shock and trauma besides any physical injuries. You may look ok but there may be physical or physiological issues not yet discovered.

Fifth and Sixth amendments to the US Constriction
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The use of deadly force has strict requirements you must be aware of, under Michigan law they are: Deadly force becomes justifiable when there is an honest and reasonable belief that you or another person is under the immediate and otherwise unavoidable danger of death, serious physical injury or sexual penetration.

You may be required to defend yourself on the street and in the courtroom.

The use of deadly force is based on the doctrine of the reasonable man. “What a reasonable man would have done under the same circumstances, knowing what the defendant new.”

How do you know what is reasonable?

Answer: Acting within the law and using only the reasonable force necessary to stop the attack.

When the attack is over, the threat has stopped or the aggressor gives up, you must stop.

There should be no other reasonable means of self defense

You have done everything reasonable to avoid the confrontation

You did not put yourself in a position to use your gun just because you have one.

Deadly force can be used to protect you or another person under like circumstances.

Deadly force cannot be used to protect property from theft or destruction

The intent is self-defense only.

Also consider ----- 

A person can be held criminally and civilly liable for wrongfully pointing or discharging a pistol at another person. This could result in trauma to yourself and your family, the loss of freedom, loss of employment, related wages and health benefits, and future wages and employment. There is always the possibility of prosecution and/or a wrongful death lawsuit.

Deadly Force

Any object or degree of force used to protect yourself that a reasonable person would consider capable of causing death or serious injury. If it is your intent to force in that manner, the other person must present that level of threat to you. Is your level of force justified?

Alternatives to the use of the handgun are important. Don’t think the gun can or will solve all your self defense needs.

Non-lethal use of force for subject control (Pepper Spray)

Michigan law allows the reasonable use of a self defense spray device by a person in the protection of a person or property under circumstances which would justify the persons use of physical force.

Apply personal safety principles- By applying the principles of personal safety and common sense when out in public areas, we could avoid 90% of the confrontations we may encounter. Anytime you do not have to shoot somebody (even if its justifiably) it is the wise thing to do.
1. You feel you are in danger of being killed, seriously injured or raped.
2. You believe that the threat is immediate.
3. Your only recourse is your final defensive tool - your handgun.
4. You haven’t caused the situation. You haven’t asked for the violence now occurring.
5. However, you have the fortitude to survive.
6. You must act quickly and efficiently.
7. In a matter of seconds you must decide to use your handgun, assess danger to innocents from your shots. Is there a proper backstop?
8. When the final act occurs, your only desire, only motive, is to alleviate the immediate danger to knock the assailant out of the picture. To re-establish safe conditions.
9. You shoot at the torso, or sometimes at the head. These are the areas that will incapacitate the assailant most effectively.
10. Remember, if you shoot an assailant in a non-critical area he may very well shoot you or someone else before he goes down

You Are Not Shooting To Wound, Kill Or Maim
You Are Shooting To Bring A Violent Assault To A Favorable Conclusion
You Are Shooting To “Alleviate Immediate Danger”

Civil liability for Use of Force
If you use force or deadly force which causes harm or injury to someone, you may be sued in civil court for damages. Generally the person suing must show that he or she has been damaged, that your actions caused the damage, that you acted recklessly and without legal justification. (These facts must be demonstrated with a preponderance of the evidence, which means that the weight of the facts supports the claim against you.)

Usually, your defense will be that the injured party, by his own acts, brought about the injury; and that your actions were within the law and in defense of yourself or another. Each case is decided by a judge or jury based on the facts presented.

See the Self Defense Act of Oct, 2006
Continual practice will improve your ability to make quick, accurate shoot/don’t shoot decisions. This practice may be mental (creating “what if” situations in your head and solving them), done on the range with a coach and shoot/don’t shoot targets, or simulated (through the use of films or other visual simulations).

Three conditions must exist to justify the use of deadly force. These three are:

The ABILITY exists for another person to do you great personal injury or cause you or someone else’s death

THE OPPORTUNITY exists for another person to do you or someone else great personal injury or death

Your life or other persons is in JEOPARDY because of the actions of this person.

Ask yourself these questions:

Does this person have the ABILITY to do me great physical harm or to kill me? Usually this means, that this person has a weapon. The weapon could be a knife, a club, and a piece of pipe or a wood 2 X 4

Some people have the strength or ABILITY to seriously damage or kill you with just their hands. Multiple attackers may also be able to seriously harm or kill you even though they are unarmed.

Does this person have the OPPORTUNITY to do me great physical harm or to kill me? This means that the person is in a location or at a distance which will permit them to harm you. A man with a knife is not a threat to you when he is 100 yards away, but he will be able to kill you within two seconds when he is only seven yards from you. Thus, at 100 yards he does not have the OPPORTUNITY to harm you, but at seven yards he does have the opportunity. A man with a high power rifle is a deadly threat when he is 1000 yards away. Obviously the OPPORTUNITY can change very quickly. Things that might affect this include distance, the type of weapon involved, and the kind of protection or cover that you have.

Does this person put you or another person in JEOPARDY by his or her actions? This means that the person’s actions are directed at someone in such a way that they may cause them great physical harm or kill them. For example, a man walking toward you carrying a shotgun has a weapon (ABILITY), is within 20 yards and can see you (OPPORTUNITY), but unless he points the shotgun at you and unless you believe that he intends to do you harm, JEOPARDY does not exist. The situation you are in will help you determine whether or not JEOPARDY exists. For instance, a person who removes a shotgun from his trunk may be merely transferring it to another person’s trunk for a trip to the shooting range, or going into his own home, or he may be heading towards you to seek revenge. You must evaluate all of the circumstances and actions, as well as the person’s response to your questions; all of these things will help you determine whether this person intends to put your life in jeopardy.

All three requirements must exist before you may use deadly force to protect yourself or another.
The reaction gap principle will help answer the following questions:

**What is an imminent threat?**

**What is intent?**

**When is the handgun a viable means of self defense and when is it not?**

**How does this apply to contact or remote weapon?**

Remember you are **RE-Acting** to a deadly threat.

**Defending yourself against a contact or remote weapon ——**

Based on the “**Doctrine of the Reasonable Man**” you have a right to use deadly force if it is reasonable to believe there is an imminent threat of deadly force or grave bodily harm is being used against you or someone else.

You are defending yourself against a contact or remote weapon.

**Contact Weapon:** The person or an extension of the person. Ex: hands, feet or an object in them. (Knife, Baseball bat, etc)

**Remote Weapon:** Devices that can inflict death or grave bodily harm from a remote distance. (Handgun, rifle, shotgun, bow and arrow)

**The reaction gap** is the time it takes to recognize and respond to a threat.

Keep in mind the following principles:

**Action beats reaction**

You can create a **reaction gap** by:

Creating distance to respond

Putting an object between you and the attacker.

This will create the time you need to respond.

**Contact weapon:**

The average trained law enforcement officer takes about 1.5 seconds to recognize and respond to contact weapon threat. (Recognize the threat, draw his handgun fire three rounds and move out of the attackers path). (kill zone)

The average person can cover 21ft in 1.5 seconds.

If the aggressor initiates an attack at 21 ft or closer than you will probably not have enough time to draw your handgun and defend yourself.

An attack with a knife can be an imminent threat from 21 feet or possible more if adequate cover is not available.

An attack with a handgun can be an immediate threat from several hundred feet away if adequate cover is not available.

**How often does an assault occur at closer than 21ft? Answer: Almost all of them are.**

The reality is close proximity assault may require techniques such as hands on self-defense.
Self-defense is another often used defense. In certain crimes, the prosecution has the burden of proving beyond a reasonable doubt that the defendant was not acting in self-defense. The law recognizes the right of a person to use force or even take a life in defense of his own person under certain circumstances. When a person acts in lawful self-defense, such actions are excused and the defendant is not guilty of any crime. Even if the defendant’s perceptions of the incident at hand are false and he was mistaken as to the extent of the real danger, he is to be judged by the circumstances as they appeared to him at the time of the act. The following criminal jury instructions can be given on self-defense.

CJI2d 7.20 Burden of Proof -Self Defense
The defendant does not have to prove that [he/she] acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

For every crime there is a defense which will justify finding a defendant not guilty. Some of these defenses are as follows:

CJI2d7.5 Use of Deadly Force in Self Defense

(1) The defendant claims that (he / she] acted in lawful self defense. A person has the right to use force or even, take a life to defend (himself / herself) under certain circumstances. If a person acts in lawful self-defense, [his / her] actions are excused and [he / she] is not guilty of any crime.

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant’s conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / forcibly sexually penetrated]. If [his her] belief was honest and reasonable, (he / she) could act immediately to defend [himself / herself] even if it turned out later that (he / she) was wrong about how much danger [he / she] was in. In deciding if the defendant’s belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time. (Perception is reality at the time)

(4) Second, a person may not kill or seriously injure another person just to protect (himself / herself) against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury /forcible sexual penetration]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: (the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person’s attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person). (Disparity of force and Prior knowledge)

(5) Third, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what (he / she) did was immediately necessary. Under the law, a person may only use as much force as (he / she) thinks is necessary at the time to protect ( himself / herself ). When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.
CJI 2d 7.23 Past Violence by complainant or Decedent

Specific Acts
(1) There has been evidence that the (complainant / decedent) may have committed violent acts in the past and that the defendant knew about these acts. You may consider this evidence when you decide whether the defendant honestly and reasonably feared for (his / her) safety.

[General Reputation]
(2) There has been evidence that the (complainant / decedent) may have had a reputation for cruelty or violence. You may consider this evidence when you decide whether it was likely the (complainant / decedent) threatened to hurt the defendant physically, and whether the defendant honestly and reasonably feared for (his / her) safety.

CJI 2d 7.19 Nondeadly Aggressor Assaulted with Deadly Force
A defendant who [assaults someone else with fists or a weapon that is not deadly / insults someone with words / trespasses on someone else’s property / tries to take someone else’s property in a nonviolent way] does not lose all right to self defense by doing so. If someone else assaults [him / her] with deadly force, the defendant may lawfully act in self defense.

CJI 2d 7.18 Deadly Aggressor Withdrawal (A person who started an assault on someone else could [under certain circumstances] use force to save [himself / herself] from immediate physical harm.)

A person who started an assault on someone else with deadly force / with a dangerous or deadly weapon cannot claim that (he / she) acted in self defense unless (he / she) genuinely stopped fighting (his / her) assault and clearly let the other person know that (the / she) wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same right to defend (himself herself) as anyone else and could use force to save (himself / herself) from immediate physical harm.

Commentary / Case law
A defendant who was initially the aggressor may still claim self defense if he decided to withdraw from the conflict and communicated that withdrawal to the other person.

CJI 2d 7.21 Defense of Others Deadly Force
(1) The defendant claims that (he/she) acted lawfully to defend another person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, (his/her) actions are excused and (he/she) is not guilty of any crime. (You may defend another person as you would yourself)
Disparity of Force
Size
Age
Weight
Number of Persons
The difference in these can cause the person at an obvious disadvantage to select other “reasonable” options for self defense.

Furtive Movement
A movement, gesture, or intent (based on the circumstances at the time) that a reasonable person would perceive as a threat.

Perception is reality
Circumstances as they appeared at the time of the incident. Your decision is based on what you perceived to be true, even if later it proves to be wrong. If it looks like it is, moves like it is and talks like it is it must be one.

This can work both ways. If someone perceives you as a threat based on your action; that person might respond with a use of force against you. Be careful how you deal with people and how they may perceive your actions. Remember, that person may be carrying a handgun.

Prior Knowledge
Firsthand knowledge regarding a person’s specifics acts or reputation of violence that affects your decision that he/she is a threat to your safety. This must be your personal knowledge, not hearsay or rumors. Example; He carries a knife and you know he has threatened/assaulted other people with the knife. Now this person is after you. This firsthand information can cause you to fear for your life and take appropriate self defense action.

The 21 ft. reaction gap
The distance the average person can run and attack you with a contact weapon (exa: knife club or other impact weapon) if there is no object to stop him. It’s highly unlikely that you can recognize and respond to that threat in time by drawing a handgun and shooting to stop the person. (Action always beats reaction). Therefore a person with a knife can run at you from 21 ft. and assault you before you can draw your handgun (unless you have practiced and are very skilled with your equipment). Keep in mind that a person standing 21 ft. away can be a real danger to you. You are not at a safe distance.
Honest and Reasonable
What does “honestly and reasonably believed” mean?
You should consider all the circumstances surrounding the situation;
1) The condition of the people involved, including their relative strength;
2) Whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant,
3) The nature of the other person’s attack or threat, and
4) Whether you knew about any previous violent acts or threats made by the other person.
You may consider specific acts of violence or the person’s general reputation for cruelty or violence in determining whether you fear for your safety in a given situation.

It is a subjective test; sometimes called the “Reasonable Man” standard. To determine if a person’s actions were appropriate or reasonable, a determination is made by judging whether a hypothetical “reasonable man” would act in a similar way under the same conditions. Dependent on the makeup of the jury and jurisdiction,

Deadly Force Response is defined as any force used by an person that has a reasonable probability to cause death.

Force is the attempt to establish control through physical means, in the presence of resistance. All force is a means of control, however, control can at times be achieved without the use of physical force.

Nonlethal Force is any force used by a person that will not reasonably be expected to, or have the likely potential to cause death.

Last Resort situations are those wherein certain immediate and drastic measures must be undertaken by a person in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered in this manual or not generally thought of as “weapons” (exa cars, baseball bat bricks, etc; however, they remain to be measured by “reasonable” and “necessary” use of force standards.

Objectively Reasonable Force Individual people may respond differently to a subject’s actions. People are not required to choose the least intrusive control method, only a reasonable one. Guidance on objectively reasonable force comes from current case law, which indicates that the reasonableness of the use of force will be judged by looking at the moment the force was used. When utilized, a person’s action will be judged in light of what a reasonable person would have done given the same set of circumstances.

Rebuttable Presumption
Both in common law and in civil law, a rebuttable presumption is an assumption made by a court, one that is taken to be true unless someone comes forward to contest it and prove otherwise.

A rebuttable presumption is often associated with prima facie evidence.

Rebuttable presumptions in criminal law are somewhat controversial in that they do effectively reverse the presumption of innocence in some cases.
**Totality of Circumstances** describes the facts and circumstances confronting the person, at the time force is used. These include, but are not limited to:

- type of crime committed or attempted
- relative size/stature,
- multiple subjects/persons
- relative strength;
- subject(s) access to weapons;
- subject(s) under the influence of alcohol or drugs;
- exceptional abilities/skills (e.g., martial arts);
- injury to, or exhaustion of the person;
- weather or terrain conditions;
- immediacy of danger;
- distance from the subject;
- special knowledge (e.g., subject’s prior history of violence, etc.)
- Exigent Conditions: number of people, number of subjects involved, and availability of the person to defend themselves or other reasonable courses of action.
Gerald Wrage: President and Chief Instructor
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Firearms legal issues
USE OF FORCE OPTIONS
(What options do you have?)

You

Your physical presence
your Attitude
your ability to communicate
your ability to maintain order

You are what stands between you and the use of the handgun.

You must be a people person

Are you trained and prepared to use other force

Hands On Use Of Force

Defensive Tactics
Pepper Spray
Taser

Deadly Force

An attack (armed or unarmed) that creates the immediate threat of death, serious physical injury or forcible sexual penetration to you or someone else. Must be a person only

Cannot use deadly force to protect property only !!!

Non lethal force weapons

Pepper Spray - Listed as a (standalone) weapon not connected to the CPL
Tazer - Must have a CPL, training and registration/activation of the weapon

You can use only the reasonable amount of force necessary to stop the attack.

Any object or degree of force used to protect yourself that a reasonable person would consider capable of causing death or serious physical injury could be considered using deadly force.

See - The Self Defense Act of October 2006

4. Acts perpetrated by the criminal that put your life in imminent danger. You fear for you life !!

1. In the process of breaking and entering a dwelling or business
2. In the process of committing a home invasion
3. Has committed a breaking and entering or home invasion and is still present in the dwelling or business
4. Is attempting to unlawfully remove a person from a dwelling, business, or vehicle against his or her will
Factors that influence the decision to use a firearm for self defense

First consider -----

A person can be held criminally and civilly liable for wrongfully pointing or discharging a pistol at another person. This could result in trauma to yourself and your family, the loss of freedom, loss of employment, related wages and health benefits, and future wages and employment. There is always the possibility of prosecution and/or a wrongful death lawsuit.

Factors about you

- Your experience
- Your training
- Your decision making capabilities
- Reflex shooting habits
- Does think of alternatives ideas or methods
- No alternative self-defense devises
- Thinks it only happens to the other person

Other factors of influence

Disparity of Force is defined as a situation that any reasonable person would conclude places you at an overwhelming disadvantage in your effort to protect yourself against immediate and serious bodily injury.

Here are some examples of Disparity of Force:

- Size
- Age
- Weight
- Relative strength
- Large man against small man.
- Able bodied man against disabled man.
- Man against woman.
- Two or more men against one man.
- Two or more juveniles against one man or one woman.
- Man or woman known to have training in the martial arts against untrained man or woman.
Generally speaking, you can only legally use a reasonable use of force necessary including deadly force when your adversary demonstrates the ability, opportunity and intent to inflict immediate and serious bodily injury or death to you or those around you.

The difference in the disparity of force can put the person at an obvious disadvantage requiring the person to select other “reasonable” options for self-defense.

**Furtive Movement**

A movement, gesture, or intent (based on the circumstances at the time) that a reasonable person would perceive as a threat.

**Perception is reality**

*Circumstances as they appeared at the time of the incident.* Your decision is based on what you perceived to be true, even if later it proves to be wrong. If it looks like it is, moves like it is and talks like it is then it must be one.

**This can work both ways.** If someone perceives you as a threat based on your action; that person might respond with a use of force against you. Be careful how you deal with people and how they may perceive your actions. Remember, that person may be carrying a handgun.

**Prior Knowledge**

Firsthand knowledge regarding a person’s specifics acts or reputation of violence that affects your decision that he/she is a threat to your safety. This must be your personal knowledge, not hearsay or rumors. Example; He carries a knife and you know he has threatened/assaulted other people with the knife. Now this person is after you. This firsthand information can cause you to fear for your life and take appropriate self-defense action.

**The 21 ft. reaction gap**

The distance the average person can run and attack you with a contact weapon (exa: knife club or other impact weapon) if there is no object to stop him. It’s highly unlikely that you can recognize and respond to that threat in time by drawing a handgun and shooting to stop the person. (Action always beats reaction). Therefore a person with a knife can run at you from 21 ft. and assault you before you can draw your handgun.
(unless you have practiced and are very skilled with your equipment). Keep in mind that a person standing 21 ft. away can be a real danger to you. You are not at a safe distance.

Fifth and Sixth Amendment Protection

The Fifth Amendment of the United States Constitution provides you with certain rights and protections, chief among them being that you have no obligation to talk to the police until you have consulted with your attorney.

The Sixth Amendment gives you the right to have your attorney present during all questioning, making any statements or signing any documents.

Honest and Reasonable

What does “honestly and reasonably believed” mean?

You should consider all the circumstances surrounding the situation;

The condition of the people involved, including their relative strength;

Whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant,

The nature of the other person’s attack or threat, and whether you knew about any previous violent acts or threats made by the other person. You may consider specific acts of violence or the person’s general reputation for cruelty or violence in determining whether you fear for your safety in a given situation.

It is a subjective test; sometimes called the “Reasonable Man” standard. To determine if a person’s actions were appropriate or reasonable, a determination is made by judging whether a hypothetical “reasonable man” would act in a similar way under the same conditions. Depends on the makeup of the jury and jurisdiction,

Deadly Force

Deadly Force response is defined as any force used by a person that has a reasonable probability to cause death.

Force
Force is the attempt to establish control through physical means, in the presence of resistance? All force is a means of control, however, control can at times be achieved without the use of physical force.

Nonlethal Force

Nonlethal Force is any force used by a person that will not reasonably be expected to, or have the likely potential to cause death.

Last Resort situations

Last Resort situations are those wherein certain immediate and drastic measures must be undertaken by a person in order to protect human life. Force used in these situations may involve the use of techniques or weapons not covered in this manual or not generally thought of as “weapons” (exa cars, baseball bat bricks, etc; however, they remain to be measured by “reasonable” and “necessary” use of force standards.

Objectively Reasonable Force

Objectively Reasonable Force - Individual people may respond differently to a subject’s actions. People are not required to choose the least intrusive control method, only a reasonable one. Guidance on objectively reasonable force comes from current case law, which indicates that the reasonableness of the use of force will be judged by looking at the moment the force was used.

When utilized, a person’s action will be judged in light of what a reasonable person would have done given the same set of circumstances.

Rebuttable Presumption
Both in common law and in civil law, a rebuttable presumption is an assumption made by a court, one that is taken to be true unless someone comes forward to contest it and prove otherwise.

A rebuttable presumption is often associated with prima facie evidence.
Rebuttable presumptions in criminal law are somewhat controversial in that they do effectively reverse the presumption of innocence in some cases.

Totality of Circumstances

Totality of Circumstances describes the facts and circumstances confronting the person, at the time force is used. These include, but are not limited to:

- Type of crime committed or attempted
- Relative size/stature,
- Multiple subjects/ persons
- Relative strength;
- Subject access to weapons;
- Subject under the influence of alcohol or drugs;
- Exceptional abilities/skills (e.g., martial arts);
- Injury to, or exhaustion of the person;
- Weather or terrain conditions;
- Immediacy of danger;
- Distance from the subject;
- Special knowledge (e.g., subject’s prior history of violence, etc.)

Exigent Conditions: number of people, number of subjects involved, and availability of the person to defend themselves or other reasonable courses of action.
Jury Instruction

Self-defense Jury instructions

Self-defense is another often used defense. In certain crimes, the prosecution has the burden of proving beyond a reasonable doubt that the defendant was not acting in self-defense. The law recognizes the right of a person to use force or even take a life in defense of his own person under certain circumstances. When a person acts in lawful self-defense, such actions are excused and the defendant is not guilty of any crime. Even if the defendant’s perceptions of the incident at hand are false and he was mistaken as to the extent of the real danger, he is to be judged by the circumstances as they appeared to him at the time of the act. The following criminal jury instructions can be given on self-defense.

CJI2d 7.20 Burden of Proof -Self Defense
The defendant does not have to prove that [he/she] acted in self-defense. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant did not act in self-defense.

For every crime there is a defense which will justify finding a defendant not guilty. Some of these defenses are as follows:

CJI2d7.5 Use of Deadly Force in Self Defense

(1) The defendant claims that (he / she] acted in lawful self-defense. A person has the right to use force or even, take a life to defend (himself / herself) under certain circumstances. If a person acts in lawful self-defense, [his / her] actions are excused and [he / she] is not guilty of any crime.

(2) You should consider all the evidence and use the following rules to decide whether the defendant acted in lawful self-defense. Remember to judge the defendant’s conduct according to how the circumstances appeared to [him / her] at the time [he / she] acted.

(3) First, at the time [he / she] acted, the defendant must have honestly and reasonably believed that [he / she] was in danger of being [killed / seriously injured / forcibly sexually penetrated]. If [his her] belief was honest and reasonable, (he / she) could act immediately to defend [himself / herself] even if it turned out later that (he / she) was wrong about how much danger [he / she] was in. In deciding if the defendant’s belief was honest and reasonable, you should consider all the circumstances as they appeared to the defendant at the time. (Perception is reality at the time)
(4) **Second**, a person may not kill or seriously injure another person just to protect (himself / herself) against what seems like a threat of only minor injury. The defendant must have been afraid of [death / serious physical injury / forcible sexual penetration]. When you decide if the defendant was afraid of one or more of these, you should consider all the circumstances: (the condition of the people involved, including their relative strength / whether the other person was armed with a dangerous weapon or had some other means of injuring the defendant / the nature of the other person’s attack or threat / whether the defendant knew about any previous violent acts or threats made by the other person). **(Disparity of force and Prior knowledge)**

(5) **Third**, at the time [he / she] acted, the defendant must have honestly and reasonably believed that what [he / she] did was immediately necessary. **Under the law, a person may only use as much force as (he / she) thinks is necessary at the time to protect (himself / herself).** When you decide whether the amount of force used seemed to be necessary, you may consider whether the defendant knew about any other ways of protecting [himself / herself], but you may also consider how the excitement of the moment affected the choice the defendant made.

**CJI 2d 7.23 Past Violence by complainant or Decedent**

**Specific Acts**

(2) There has been evidence that the (complainant / decedent) may have committed violent acts in the past and that the defendant knew about these acts. You may consider this evidence when you decide whether the defendant honestly and reasonably feared for (his / her) safety.

**[General Reputation]**

(3) There has been evidence that the (complainant / decedent) may have had a reputation for cruelty or violence. You may consider this evidence when you decide whether it was likely the (complainant / decedent) threatened to hurt the defendant physically, and whether the defendant honestly and reasonably feared for (his / her) safety.
**CJI 2d 7.19 Nondeadly Aggressor Assaulted with Deadly Force**

A defendant who [assaults someone else with fists or a weapon that is not deadly / insults someone with words / trespasses on someone else’s property / tries to take someone else’s property in a nonviolent way] does not lose all right to self-defense by doing so. If someone else assaults [him / her] with deadly force, the defendant may lawfully act in self-defense.

**CJI 2d 7.18 Deadly Aggressor Withdrawal** (A person who started an assault on someone else could [under certain circumstances] use force to save [himself / herself] from immediate physical harm.)

A person who started an assault on someone else with deadly force / with a dangerous or deadly weapon cannot claim that (he / she) acted in self-defense unless (he / she) genuinely stopped fighting (his / her) assault and clearly let the other person know that (the / she) wanted to make peace. Then, if the other person kept on fighting or started fighting again later, the defendant had the same right to defend (himself / herself) as anyone else and could use force to save (himself / herself) from immediate physical harm.

**Commentary / Case law**

A defendant who was initially the aggressor may still claim self-defense if he decided to withdraw from the conflict and communicated that withdrawal to the other person.

**CJI 2d 7.21 Defense of Others Deadly Force**

(1) The defendant claims that (he/she) acted lawfully to defend another person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, (his/her) actions are excused and (he/she) is not guilty of any crime. (You may defend another person as you would yourself.)
The use of deadly force has strict requirements you must be aware of, under Michigan law they are: Deadly force becomes justifiable when there is an honest and reasonable belief that you or another person is under the immediate and otherwise unavoidable danger of death, serious physical injury or sexual penetration.

A person can be held criminally and civilly liable for wrongfully pointing or discharging a pistol at another person. This could result in trauma to yourself and your family, the loss of freedom, loss of employment, related wages and health benefits, and future wages and employment. There is always the possibility of prosecution and/or a wrongful death lawsuit.

You may be criminally and civilly liable for any harm caused by a person less than 18 years of age who lawfully gains unsupervised access to your firearm if unlawfully stored. As such, a trigger lock, gun case or other device designed to prevent unauthorized access to a firearm is strongly recommended.

**Firearms laws Of Michigan Manual 2013**

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Refer to the above pages to find the most important parts of the manual
Gun Charges –

**Accidental** display of a handgun for non-threatening reasons

**Concealed Carry** – To carry in a manner that the handgun cannot be identified by the casual observer

**Open Carry** – can be seen from 3 sides (typical officer duty carry) **Brandish** – To display in a challenging and menacing manner

**Very generally, however,** for an operating definition “brandishing” means to display, show, wave, or exhibit the firearm in a manner which another person might find threatening. You can see how widely and differently this can be subjectively interpreted by different “reasonable” individuals and entities. The crime can actually be committed in some states by not even pointing a firearm at someone. In some states it’s a Misdemeanor crime and in others a Felony.

**Felonious Assault**
Michigan state law defines the crime of felonious assault as “a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both. Felonious assault is defined as including the use, attempted use, or threatened use of physical force against the person of another.” United States v. Mosley, 2009 U.S. App. LEXIS 16953 (6th Cir. Mich. 2009)

**More often referred to as CCW**, Carrying a Concealed Weapon is a very common charge brought in the State of Michigan. The maximum penalty for a CCW conviction is up to 5 years in prison and a $2,500.00 fine. A CCW conviction can prevent you from getting your Concealed Pistol License, have employment consequences, and even have an effect on your driver’s license.

As in all criminal cases, in order to be convicted of carrying a Concealed Weapon, the prosecutor must prove your guilt *beyond a reasonable doubt.*

To be convicted of CCW, the prosecutor must prove that: 1) that you were carrying a gun or dangerous weapon; 2) that the gun/dangerous weapon was concealed or partially concealed while you were carrying it.
**Felony Firearm**
Felony Firearm, also known as FF, is one of the most feared charges in the world of criminal defense. The reason; FF carries with it a Mandatory 2 year prison sentence that must be served consecutively with any other sentence a defendant may have to serve.

**Dangerous Weapon**
A dangerous weapon can be any number of things. Case law in Michigan has shown that a dangerous weapon can include a knife, sword, brass-knuckles, switchblade…etc. If you get stopped by the police and are found to be carrying this type of item, you could be charged with a felony.

**Felon in Possession of a Firearm**
More commonly known in defense attorney circles as FIP or Felon In Possession, a person may only be charged with Felon In Possession if they have been convicted of a specified felony AND their rights to possess a firearm have not yet been restored. It doesn’t matter if the weapon is concealed or not, if you have been convicted of a felony and a firearm is within your reach, you can guarantee that you will be charged with FIP. Click on the blue link above to read more about FIP and the possible defenses.

**4th Amendment Rights**
More often than not, weapons charges will involve complex 4th Amendment issues. These cases usually stem from a “stop and frisk” or the execution of a warrant…or lack of warrant in some cases. These issues not only require a criminal defense attorney who knows the law, but also one who can paint officers into a corner where they have to admit that they violated your rights. While the average attorney may be able to tell you that the 4th Amendment protects you against unreasonable searches and seizures, it takes a expert defense lawyer to know all of the facets of 4th Amendment law and how to use the law to your advantage.

**Defenses**
As previously stated, many CCW cases will turn on whether or not there were any violations of you 4th Amendment rights. However, even if a judge determines that your rights were not violated all hope is not lost. A prosecutor must prove that you knew the weapon was in your possession and that the firearm was actually operable. These are almost always points of contention.