

Title: Law Enforcement Officer Safety Act (LEOSA) – North Carolina Requirements

Lesson Purpose: The purpose of this block of instruction is to explain to the student the Law Enforcement Officer Safety Act and its implications to retired and/or separated officers.

Training Objectives: At the end of this block of instruction, the student will be able to perform the following objectives in accordance with the information received during the instructional period:

1. Explain the provisions under North Carolina Common and Statutory Law in which the use of deadly physical force would be justifiable by a private citizen.
2. Identify the places that handguns may not be carried even if an individual met the requirements of LEOSA.
3. Demonstrate proficiency in marksmanship fundamentals by meeting the qualification requirements of the agency from which the individual retired or separated or meet the provisions established by the North Carolina Criminal Justice Education & Training Standards Commission

Hours: MINIMUM TWO (2)

Instructional Method: Lecture/Demonstration

Materials Required: Lesson Plan  
Blackboard/Easel

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## I. Introduction

### A. Opening Statement

In 2004, the 108<sup>th</sup> Congress of the United States enacted HR 218 or the “Law Enforcement Officer Safety Act” that allows qualifying retired or separated law enforcement officers the right to carry a concealed weapon throughout the United States. As a provision of this legislation, the individual must complete a required training program from the agency from which they retired/separated or meet the standard of the state in which they reside.

### B. Student Performance Objectives

### C. Reasons

With the right under law to carry a concealed handgun, comes a tremendous responsibility. The owner of a handgun must have complete knowledge of handgun safety, knowledge of the laws regarding use of force in each state in which he/she carries, and the ability to use the weapon safely and in a responsible manner. Finally, and most importantly, is the ability to use good judgment in any facet of handgun operation and use, whether in self-defense, practicing the fundamentals of marksmanship, or basic gun handling.

## II. Body

### A. Legal Issues

#### 1. North Carolina common law

##### a) Use of force to protect a person

##### (1) Justified self-defense

A citizen is legally justified in using deadly force against another if and only if:

(a) The citizen actually believes deadly force is necessary to prevent an imminent threat of death, great bodily harm, or sexual assault and

(b) 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

- (c) The citizen using deadly force was not an instigator or aggressor who voluntarily provoked, entered, or continued the conflict leading to deadly force, and
- (d) The force used was not excessive - greater than reasonably needed to overcome the threat posed by a hostile aggressor.
- (e) Retreat

A citizen faced with an imminent threat of death or great bodily injury generally does not have a duty to retreat prior to using deadly force, when all the other elements of self- defense are satisfied. Regardless, it may be advisable for a citizen to retreat to safety if feasible, as this may not only avoid the use of deadly force, but may also remove the citizen from a situation that could result in loss of his own life. However, a duty to retreat exists where the citizen was the initial aggressor or instigator in the incident that caused him to eventually use deadly force in self- defense. If the aggressor completely withdraws from this confrontation, and clearly communicates this to his adversary, the right to use deadly force in self- defense is restored if all the requirements for the use of deadly force in self- defense are still met. (John Rubin, *The Law of Self Defense in North Carolina*. UNC-Chapel Hill, 1996.)

- (f) Explanation of Terms:

Imminent harm means “immediate danger,” or is “about to” happen.

Great bodily harm is not defined; however the statutory definition of “serious bodily injury” contained in the North Carolina criminal law provides guidance as to the type of injuries that may qualify as great bodily harm. “Serious bodily injury” includes injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged

hospitalization.

A “sexual assault” would include rape, sexual offense, or forcible crime against nature or attempts to do any such act. (NCPI Crim. 308.70, FN 1)

\*Not all sexual assaults justify the use of deadly force. Much of the law on justified self defense in North Carolina was written before the Legislature redefined sexual offenses in this state. Basically, there are two categories of sexual offenses: 1) “rape,” and 2) “sexual assaults.” Therefore, if it is not rape it is sexual assault. Many sexual assault offenses do not meet the standard for inclusion in the justified self-defense formula. ONLY sexual assaults that have a risk of death or great bodily harm should be included.

Excessive Force:

A citizen has the right in self defense to use only such force as reasonably appeared necessary under the circumstances to protect himself from death or great bodily harm. In determining the amount of force necessary, and in order to avoid excessive force, the citizen should consider the size, age and strength of the citizen as compared to the attacker, the fierceness of the assault, if any, upon the citizen, whether the attacker possessed a weapon, and the reputation of the attacker for danger and violence, and any other circumstances relevant to this issue. (NCPI Crim. 308.45A)

Where an assault being made upon a citizen is insufficient to give rise to a reasonable apprehension of death or great bodily harm, then the use of deadly force by the citizen to protect himself from bodily injury or offensive physical contact is excessive force. (State v Clay, 297 N.C. 555 (1979.)

Aggressor: A citizen who is found to be an aggressor voluntarily provoking the conflict, or who used excessive force, can be convicted of voluntary manslaughter even though the use of deadly force complied with the other requirements of self-defense. An instigator, or person using

excessive force, is not excused from all criminal liability but may be guilty of a lesser degree of homicide.

A citizen who is an aggressor voluntarily provoking a conflict leading to deadly force can avoid criminal responsibility for deadly force only if the aggressor attempts to withdraw from the conflict before using deadly force and gives notice of withdrawal to the adversary. "One enters a fight voluntarily if one uses toward one's opponent abusive language which, considering all of the circumstances, is calculated and intended to bring on a fight." (From NCPI Crim. 206.310) A citizen who provokes a fight through an unlawful assault would likewise be considered an aggressor. (John Ruben, *The Law of Self Defense in North Carolina.*)

(2) Deadly force in defense of others

A citizen may intervene and use deadly force in defense of another person when, under the facts and circumstances, it reasonably appeared necessary to save the other person from an imminent threat of death, great bodily harm, or sexual assault but only to the extent the other person was entitled to use deadly force in self-defense. Excessive force in defense of others is not allowed, and neither the intervener nor the person threatened can be an instigator voluntarily provoking the conflict for deadly force to be used. If you are not sure of the circumstances that initiated the action, would it not be more prudent to contact a law enforcement agency or attempt to assist using less lethal means rather than immediately imposing the threat of deadly force?

(3) Deadly force **MAY NOT** be used:

(a) To stop a simple assault

While a simple assault can be truly terrifying, the law only allows the victim to resist force with equivalent force. Force used to resist a simple assault must be proportionate to the assault. Even a real and legitimate fear of greater injury, standing alone, does not justify use of deadly force. When does a simple assault become an imminent threat of

death? When can a victim use deadly force to repel an unarmed attacker? The exact point in time a simple assault becomes aggravated or deadly in nature is often unclear. Repeated blows to vital body areas, choking, continued beating on a helpless or weakened victim, are some indicators.

Because the law requires retreat from a simple assault but does not require retreat from a murderous or felonious assault, an assault victim is once again faced with a decision: when does a simple assault become a murderous assault? No clear answer exists for the multitude of circumstances constituting an assault.

- (b) Because of the use of violent language

Violent language often leads to violent acts, but language alone does not justify deadly force

- (c) Because you are a victim of past violence and fear future violence.

The law requires that there be an imminent threat of death or great bodily harm. The threat must be an immediate danger of death, not remote and uncertain in time and place. If the facts and circumstances are not reasonably apprehended as an immediate danger of death here and now, deadly force in self-defense is not allowed as a justified excuse for homicide.

- (d) Because a trespasser refuses to leave

Trespassers may be in violation of the law but the law does not allow deadly force to end the trespass. While non-lethal force is allowed against a trespasser, deadly force is not. Old court cases establish a sequence for using force to eject trespassers: first, words must be used; second, if words do not work, then gentle hands may be laid on the trespasser; if gentle hands do not work, the owner may use whatever force is necessary to remove the trespasser but may not use force likely to kill or cause great bodily harm. The prohibition against using deadly force to expel a trespasser does

not apply to a trespasser who is immediately threatening death, serious injury, or sexual assault.

- (e) To arrest a criminal or prevent a criminal's escape

North Carolina law does not give a citizen the right to make a citizen's arrest. Since the power to make a citizen's arrest does not exist, the right to use deadly force to effect an arrest or prevent escape is not given to citizens. No matter how serious the crime, a citizen cannot shoot to stop a fleeing criminal. Citizens have limited power to detain under North Carolina General Statute 15A-404(c).

- b) Use of force to protect property

The law does not permit the use of deadly force solely to protect property, or to prevent theft, or to regain stolen property. An owner can defend his or her property using reasonable and necessary force but not deadly force. Non-deadly force to regain possession of stolen property is lawful, if it is both reasonable and necessary under the circumstances. An owner **CANNOT** shoot at a thief; before, during, or after a theft. The same rule prohibits deadly force to prevent injury or vandalism to property.

A different rule applies if life is imminently threatened at the same time the property is taken. For example, an armed robbery is theft through use or threatened use of a deadly weapon. The victim is allowed to respond to the imminent threat to life of an armed robbery by using deadly force. Deadly force to prevent an armed robbery is force used to protect life, not to protect property. If only property is threatened, deadly force cannot be used.

North Carolina does allow the use of "defensive force" up to and including deadly force against an individual who has unlawfully entered or is attempting to unlawfully enter a home, motor vehicle, or workplace (N.C.G.S. 14-51.2), as discussed below.

## 2. North Carolina statutory law

- a) Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm. (N.C.G.S. 14-51.2 and 14-51.4)

The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or

serious bodily harm to himself, or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

- (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home motor vehicle, or workplace.
- (2) The person who uses the defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring, or had occurred.

The citizen using deadly force under this statute does not have a duty to retreat prior to using defensive force.

b) The presumption set forth in the ABOVE section shall be rebuttable and does not apply in any of the following circumstances:

- (1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.
- (2) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.
- (3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.
- (4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself in

accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

- (5) The person against whom the defensive force is used
  - (a) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and
  - (b) has exited the home, motor vehicle, or workplace.

- c) Self- defense and defense of others.

N.C.G.S. § 14-51.3 provides that a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

A citizen who lawfully uses defensive force in compliance with these statutes are immune from civil and criminal liability.

§ 14-51.4. Justification for defensive force not available.

The justification described in N.C.G.S. 14-51.2 and N.C.G.S. 14-51.3 is not available to a person who used defensive force and who:

- (1) Was attempting to commit, committing, or escaping after the commission of a felony.
- (2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if either of the following occur:
  - (a) The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause

death or serious bodily harm to the person who was provoked was the only way to escape the danger.

- (b) The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

d) Storage to protect minors (N.C.G.S. 14-315.1)

Any person who resides in the same premise as a minor (defined as a person under the age of 18 years), who owns or possesses a firearm, and stores or leaves the firearm in a condition that the firearm can be discharged and in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

- (1) Possesses it in violation of N.C.G.S. 14-269.2(b) [Unlawful to possess firearm on any educational property, public or private, of any kind];
- (2) Exhibits it in a public place in a careless, angry, or threatening manner;
- (3) Causes personal injury or death with it not in self defense; or
- (3) Uses it in the commission of a crime.

e) Permitting young children to use dangerous firearms (N.C.G.S.14-316)

“It shall be unlawful for any person to knowingly permit a child under 12 years of age to have access to or possession, custody or use in any manner whatever, of any gun, pistol or other dangerous firearm, whether such weapon be loaded or unloaded, unless the person has the permission of the child's parent or guardian, and the child is under the supervision of an adult. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.”

f) Concealed Carry - Handgun (N.C.G.S. 14-415.10)

(1) Definition of a handgun

A handgun is defined as a firearm that has a short stock and is designed to be held and fired by the use of a single hand.

The definition of a handgun has two characteristics in this statute. First, the firearm must have a short stock. Second, the firearm must be designed to be held and fired by the use of a single hand. Revolvers and semiautomatic pistols are treated alike. Caliber of the firearm is not specified. While length or configuration of the firearm's stock is not defined, presumably it must be shorter than a standard rifle or shotgun. A judge might reasonably conclude that a standard rifle or shotgun is not **DESIGNED** to be held and fired with one hand, even if the rifle or shotgun has been cut down so it can in fact be so held and fired. (**Federal and state firearms law prohibits possession of a "sawed-off" shotgun or rifle.**) This law applies only to handguns. No other types of weapons (i.e., knives, clubs or martial arts weapons) are within this definition.

(2) Concealment defined

The statute further requires the concealed weapon be about the person, which generally means it must be concealed either on the person or within an arm's reach or within ready access of the person.

(3) Required documentation

If qualification with the particular weapon being carried occurs from the agency the individual retired/separated from, the picture identification indicating retired or separated issued by the agency and proof of qualification within the last twelve (12) months.

If qualifying to receive the certification from the North Carolina Criminal Justice Education and Training Standards Commission, proof of retirement/separation from an agency and the card issued by the North Carolina Criminal Justice Education & Training Standards Commission indicating the individual has meet the training and qualification requirements pursuant to 12 NCAC 09H.0102. must be carried. (These requirements will be

discussed under section A 8 of this lesson plan)

- (4) Places where not authorized to carry a concealed handgun

Areas where you are not authorized to carry a concealed handgun are listed later in this lesson plan as well as other statutes that regulate the carrying of a firearm.

- (5) What to do if approached by a law enforcement officer

(a) DO NOT ATTEMPT TO DISPLAY THE HANDGUN.

(b) If in a vehicle, roll the window half-way down. At night, turn on the interior light. Place both hands on the steering wheel. Once the officer approaches the vehicle, notify the officer that you have a permit, that you are armed, and where the handgun is located.

(c) If not in a vehicle, DO NOT ATTEMPT TO DISPLAY THE HANDGUN. KEEP BOTH HANDS VISIBLE. Notify the officer that you have a concealed carry permit and are carrying a handgun.

(d) ONLY ATTEMPT TO REMOVE THE PERMIT OR THE HANDGUN ON INSTRUCTIONS FROM THE OFFICER.

3. Escalation of force

Escalation of force is merely the increase in the level of force based on that force which is being used against you. Force must be proportionate to the level of force used against you. For instance, if you are verbally assaulted you cannot use deadly force to settle the argument. If we were to look at the various levels of force, the escalation would be something like this:

Physical Presence

Verbal

Soft Hands

Hard Hands

Chemical (mace, OC spray)

Impact Weapons (stick, club)

Deadly Force

The increase in force does not strictly need to follow these various levels. Depending on the level that is used against you and the imminent threat imposed against you will determine the lawful reaction to the situation.

4. Prohibited carry areas

There are a number of areas where the carrying of a concealed handgun is prohibited either by state or federal law regardless of the issuance of a concealed carry handgun permit, or the carrying of a concealed carry handgun under the auspices of LEOSA.

- a) With the exceptions reference below, generally the possession of firearms is prohibited on any educational property, public or private, of any kind. (N.C.G.S.14-269.2)

This prohibition applies in/on any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school.

A person with a valid concealed carry permit MAY possess a handgun in a closed compartment or container within the person's locked vehicle or a locked container securely affixed to the person's vehicle. The person may unlock the vehicle to enter or exit the vehicle, provided the handgun remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit

It should be noted that it is a defense to a prosecution if the handgun were removed from the vehicle in response to a threatening situation in which deadly force was justified.

As it relates to retired law enforcement officers, here are the guidelines as they apply to educational property.

1. A retired law enforcement officer who has NOT qualified under the LEOSA requirements and who DOES NOT have a valid concealed carry permit can neither carry or possess as described above on educational property.

2. A retired law enforcement officer who has NOT qualified under the LEOSA requirements and HAS a valid concealed carry permit may possess on educational property in a vehicle only as described above.
3. A qualified retired law enforcement officer who has met all of the requirements of LEOSA to include qualifying with the agency he/she retired from within the last twelve months, or having met the training and qualification requirements of the North Carolina Criminal Justice Education and Training Standards Commission may carry and/or possess a handgun on educational property.

**Should LEOSA qualified individuals wish to also serve as security guards on educational property, these retired officers must be registered by the North Carolina Private Protective Services Board after having completed the required training and qualifications, as well as satisfy the Board's requirements for the possession of handguns.**

Private educational facilities may still prohibit the possession and carrying of a firearm on school grounds in accordance with N.C.G.S. 14-415.11 (c)(8) irrespective of a concealed carry permit or authorization to carry under the provisions of LEOSA.

- b) Certain state property and courthouses. (N.C.G.S. 14-269.4)

It is also generally unlawful under State law, for any person to possess or carry a weapon not used for instructional or officially sanctioned ceremonial purposes, in the State Capitol Building, Executive Mansion, Western Residence of the Governor, or on the grounds of these buildings, including any building used to house any court of the General Court of Justice.

**NOTE:** Weapons may be carried at State-owned rest areas, rest stops along highways, and State-owned hunting and fishing reservations.

**NOTE:** Any person who has a concealed handgun permit or who is LEOSA qualified may carry a concealed handgun on the grounds or waters of a park within the State Parks System as defined in N.C.G.S. 113-44.9.

**NOTE:** Weapons may be secured in vehicles on State property.

“A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under N.C.G.S. 14-415.24 who has a firearm in a closed compartment or container within the person’s locked vehicle or in a locked container securely affixed to the person’s vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.”

c) Pursuant to N.C.G.S. 106-503.2, the Commissioner of Agriculture is authorized to prohibit the carrying of firearms on the State Fairgrounds during the State Fair. Permittees who are LEOSA qualified may however secure the weapon in their vehicle in the parking lot. Individuals that are listed in N.C.G.S. 14-269(b)(1)(2)(3)(4) & (5) may carry on these grounds during the State Fair.

d) Picket lines or demonstrations at private health care facilities. (N.C.G.S. 14-277.2)

North Carolina law further makes it unlawful for any person participating in, affiliated with, or present as a spectator at any 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 to willfully or intentionally possess, or have immediate access to any dangerous weapon, regardless of whether he possesses a concealed carry permit.

e) Areas of Emergency and Riot

Pursuant to the North Carolina Emergency Management Act, N.C.G.S. 166A-19.31(b)(4), local governments may impose restrictions on dangerous weapons such as explosives, incendiary devices, and radioactive materials and devices when a state of emergency is declared but may not impose restrictions on lawfully possessed firearms or ammunition.

f) Any federal property including building, land, as prohibited by 18 U.S.C § 922 or any other federal law. For detailed information on this federal law, persons are urged to contact the Bureau of Alcohol, Tobacco, and Firearms, or their local U.S. Attorney’s Office.

**NOTE:** Concealed handguns are allowed in Federal Parks in states in which the concealed carry permit is recognized.

- g) On any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. (N.C.G.S. 14-415.11)
- h) Any law enforcement or correctional facility, to include state, county, municipality, university police, or company police. (N.C.G.S. 14-415.11)
- i) In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government. (N.C.G.S. 14-415.11)
- j) Anywhere while consuming alcohol or at any time while any alcohol or any controlled substance is in the blood (N.C.G.S. 14-415.11), including improper use of prescription drugs.

5. Statewide Uniformity (N.C.G.S. 14-415.23)

“It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun in accordance with G.S. 14-415.11(c), on local government buildings and their appurtenant premises. A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term “recreational facilities” includes the following

- a) An athletic field, including any appurtenant facilities such as restrooms, during an organized athletic event if the field has been scheduled for use with the municipality or county office responsible for operation of the park or recreational area.

- b) A swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses relating to the swimming pool.
- c) A facility used for athletic events, including, but not limited to, a gymnasium.
- d) For purposes of this section, the term, "recreational facilities" does not include any greenway, designated biking or walking path, an area that is customarily used as a walkway or bike path although not specifically designated for such use, open areas or fields where athletic events may occur unless the area qualifies as an "athletic field as noted in "a" above, and any other area that is not specifically described this section..

#### 6. Detention by a Private Citizen

Private citizens are given authority to "detain" another person pursuant to N.C.G.S. §15A-404. Private citizens do not possess the power of arrest in North Carolina. A person may detain another person when he/she has probable cause to believe that the person detained has committed in his/her presence:

- a. A felony;
- b. A breach of the peace;
- c. A crime involving physical injury to another person; or
- d. A crime involving theft or destruction of property.

Any detention must be in a reasonable manner considering the offense involved and the circumstances of the detention. The detention can be no longer than the time period required either to:

- 1) determine that no offense was committed, or
- 2) surrender the person to a law enforcement officer.

A private citizen who detains another must immediately notify a law enforcement officer and, unless it is determined that no offense has been committed the person is released, must surrender the person to the law enforcement officer. Therefore, "detain" means "to hold or keep in or as if in custody," and a private citizen is not allowed to employ any greater force than an officer could employ to effect an arrest under similar circumstances. (See State v. Wall, 304 N.C. 609 (1982)).

#### 7. Assistance to Law Enforcement Officers

Private citizens may assist law enforcement officers in effecting an arrest and preventing escapes from custody when requested to do so by a law enforcement officer. Pursuant to N.C.G.S. § 15A-405, a person has the same authority to effect an arrest or prevent escape from custody as the officer making the request. However, such private citizens are not excused from the use of unreasonable or excessive force or for willful, malicious or criminally negligent conduct. Nor would they be excused from an incident where the officer was wrong; the officer's actions can be imputed to the citizen. North Carolina General Statute § 15A-405(b) does, however, provide certain protections against civil and criminal liability for acts done at the request of an officer, unless he knows the arrest is invalid.

While there is no mandate to assist a law enforcement officer, in the case of *State v. Ditmore*, 177 N.C. 592 99 SE 368, the courts ruled that: “It is the duty as a good citizen, and in obedience to the authority of the state as represented by a lawful officer, to aid in the arrest.”

## 8. LEOSA Requirements

### a. Identification Requirements:

Picture identification indicates retired or separated, and proof of qualification within the last twelve (12) months

### b. Qualification Requirements:

Two options –

1. Return to the agency that you retired/separated from and qualify meeting the agency standards obtaining proof of qualification.
2. Meet the standards of the state in which you reside. In North Carolina the mandates are below and must be conducted by a certified “Specialized Firearms Instructor”, certified by the North Carolina Criminal Justice Education and Training Standards Commission

If an officer is unable to qualify with the agency from which they retired/separated the following rules would apply to those individuals who seek the certification from the North Carolina Criminal Justice Education & Training Standards Commission

### **12 NCAC 09H .0102 MINIMUM TRAINING SPECIFICATIONS**

(a) Each qualified retired law enforcement officer shall qualify with each handgun he or she will carry in accordance with the standards outlined in 12 NCAC 09E .0105(a)(1) and 12 NCAC 09E .0106(a), (c), (e), (f) and (g), which shall incorporate in classroom

instruction and firearms qualification on the firing range utilizing the course of fire from the "Specialized Firearms Instructor Training Manual."

(b) In addition to the standards set out 12 NCAC 09E .0105 and .0106, each qualified retired law enforcement officer shall also receive a minimum of two hours of instruction on the North Carolina laws of self- defense and the use of force by private citizens, detention of persons by private persons, and assistance to law enforcement officers by private persons.

(c) Qualified retired law enforcement officers meeting the requirements of Paragraphs (a) and (b) of this Rule, and have met the requirements of Rule .0105 of this Subchapter, shall be certified for a period of 12 months from the date the application is approved by the Commission. Upon application for renewal, the certification may be renewed by the Commission for 12 month periods, provided the qualified retired law enforcement officer meets the rules specified in this Subchapter.

(d) Qualified retired law enforcement officers shall qualify each certification period with each handgun that will be carried concealed.

*History Note: Authority G.S. 14-415.10; 14-415.25; 14.415.26; 17C-6; Eff. May 1, 2009; Amended Eff. April 1, 2017.*

#### **12 NCAC 09H .0105 FILING AND FEES**

Each applicant for firearms qualification certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program shall submit the following to the Commission:

(1) a Commission application form (Form F-9R) containing the applicant's notarized signature which attests that the applicant meets the definition of qualified retired law enforcement officer set forth in G.S. 14-415.10 and is eligible to receive or possess firearms under federal and state law. The Form F-9R, available on the agency's website at <http://www.ncdoj.gov/getdoc/23af3614-2aa2-4416-bbae-25cbe9441e06/1F-9R-8-09.aspx>, shall include the signature of a Commission certified Specialized Firearms Instructor attesting that the applicant has met the training and qualification standards as specified in Rule 09H .0102 and lists the handguns with which the qualified retired officer qualified;

(2) a copy of the qualified retired officer's photographic identification indicating retirement status issued by the law enforcement agency from which the applicant retired; and

(3) a fee of fifty dollars (\$50.00) for the initial one-year qualification and a fee of twenty-five dollars (\$25.00) for the annual renewal thereafter. Applications and fees shall be submitted to:

Criminal Justice Standards Division  
North Carolina Department of Justice  
Post Office Drawer 149  
Raleigh, NC 27602.

All fees shall be paid by certified check or money order made payable to the North Carolina Department of Justice.

*History Note: Authority G.S. 14-415.10; 14-415.25; 14-415.26; 17C-6; Eff. April 1, 2009; Amended Eff. April 1, 2017.*

The requirements for an individual to receive certification from the North Carolina Criminal Justice Education & Training Standards Commission are as follows:

a. Course must have a legal block of instruction on the laws of self -

defense and the use of force by private citizens, detention of persons by private persons, and assistance to law enforcement officers by private persons. The legal block of instruction must be a minimum of two hours in length.

- b. A shooting qualification is required and must meet the standards of a North Carolina active law enforcement officer. The current mandates are listed below.

**Qualify both day and night with each particular handgun to be carried.**

**Minimum of 30 Rounds for each course of fire.**

**Day course** includes fire from 3 yds. to 25 yds. and must have similar ration of shots fired from each yard line as the BLET Day Qualification course. Must have standing, kneeling, prone, barricade. All first rounds per stage are from the holster.

**Night course** includes fire from 3 yds. to 15 yds. with light conditions of total darkness to all available light. Must have similar ration of shots fired from each yard line as the BLET Night Qualification course. Must have standing and kneeling positions of fire. All first rounds per stage are from the holster.

**Day and night Combat Courses are required.**

**Physical Requirements:** Individuals must be able to get in and out of each position unassisted.

B. Handgun Safety

1. Four cardinal rules of safe gun handling
  - a) TREAT ALL GUNS AS LOADED – until you have personally inspected the weapon.
  - b) Point the muzzle in a safe direction at all times.
  - c) Keep your finger outside the trigger guard and on the frame until you are ON TARGET and HAVE A LEGAL RIGHT TO FIRE, and ARE GOING TO FIRE.
  - d) Be sure of your target and what’s around and beyond it.

These four basic rules should be applied to every aspect of gun handling. When storing a weapon, when handing the weapon to

someone, or when loading or unloading, be sure of muzzle direction and trigger finger position. Handguns must be operational and the operator must have an understanding of this operation. The handgun owner should read the owner's manual carefully in order to completely understand the operational characteristics of a specific make, model, or type of handgun. Always, always **THINK SAFETY**. The handgun can be used for self-protection; it should not be used for self-destruction.

## 2. Storage of the handgun

### a) Use of commercial trigger locks

Various commercial trigger locks are available that cover the trigger to prevent someone from using the weapon or firing it accidentally. These devices may not allow quick access to the weapon in a personal defense atmosphere. Read the manufacturer's procedure for placing the trigger lock on the handgun. Most manufacturers of trigger locks require the weapon to be UNLOADED prior to placing the trigger lock on the handgun.

### b) Storage cases - hard and soft cases

Many different types of hard and soft cases are commercially available to store handguns. Many come with small locks to secure the weapon within the case allowing the weapon to be stored loaded. For defensive purposes this may be time consuming.

### c) Padlocks and other locking devices

For storage and safety purposes, padlocks can be used to safely secure the weapon. By locking a padlock around the top strap of a revolver, the cylinder cannot be closed. If the padlock is large enough, it can be placed behind the trigger and prohibit the rearward movement of the trigger. Some manufacturers make a cable and lock system that can be used on virtually any firearm. The cable can be passed through the magazine well and out the ejection port of the semiautomatic pistol to prohibit both loading and firing.

### d) Breech locks

Commercial breech locks are now available for the different sizes of semiautomatic pistols. These locks are placed within the

breech, then when the key is turned, extend into the chamber and cannot be removed.

e) Gun safes and cabinets

Many types of safes and cabinets are available including wall safes, picture safes or large storage weapons cabinets and safes. Access is slow as most are equipped with combination type locks.

f) Remember the statute, Storage of Firearms to Protect Minors (N.C.G.S. 14-315.1) as previously discussed.

g) Where to and where not to keep weapons in the home

When determining where to store a handgun in the home, consideration must be given to several factors. First, are there minors in the home or are there likely to be minors visiting the home? Consideration of G.S. 14-315.1 may help in determining the type of access you will have to the weapon. Second, weapons, especially loaded weapons, should be kept out of sight. If the handgun is not going to be used for personal protection, it should be secured unloaded in a safe, cabinet, or lockable box. Weapons should not be kept on bedside tables or on night stands. As a general rule, the weapon should be approximately three steps from the bed. This ensures a conscious effort on the part of the occupant to obtain the weapon, and this effort will allow the home owner the opportunity to ensure that they are awake. Several serious injuries and fatalities have occurred from homeowners hearing a noise or seeing a shadow and firing a weapon kept at bedside only to shoot themselves or a spouse. Handgun owners may consider storing the weapon with ammunition in a loading device nearby for use in personal defense.

3. Alcohol and firearms

ALCOHOL AND FIREARMS DO NOT MIX. Alcohol should not be used prior to or during the handling of a firearm. Case law reveals numerous incidents involving the discharge of a firearm where alcohol was a contributing factor.

4. Ammunition safety

Use only ammunition recommended for the weapon you have. Consult the owner's manual for information regarding the type of ammunition that may or may not be used in that specific weapon. Malfunctions can occur due to problem ammunition. The two more common problems are

misfires and squib loads. A misfire is used to describe a situation where the primer fails to ignite or to ignite the powder charge. A misfire can be caused by an ammunition problem, broken or worn firing pin, or the firing pin spring is dirty and cannot compress. A squib load is a term used to describe a cartridge or shell which produces velocity or sound much lower than normal. This is usually caused by a partially or totally missing powder charge or a charge that has been contaminated by lubricants or some other type of moisture. A squib load may result in the projectile becoming lodged in the barrel which could create a hazard if another round were to be fired. If the weapon does not sound or feel as it normally does after firing a shot, check to make sure that the weapon is safe and that the barrel is free of any obstruction.

### III. Conclusion

#### A. Summary

The “Law Enforcement Officers Safety Act granted a right to retired/separated law enforcement officers far greater than the various state laws related to concealed carry permits, as this law has no “reciprocity” in that it allows retired/separated officers to carry in any state, regardless of the lack of concealed carry permits within that state. With that privilege comes the responsibility to maintain proficiency with the firearms and understand the legal rights that the retired/separated officer now has as a civilian.

#### B. Questions from Class

#### C. Closing Statement

Proficiency with a handgun does not come from the years that a retired or separated officer carried the handgun, it comes with the practice, qualification and training that the individual obtained during their career as a law enforcement officer. That training must continue after retirement/separation in order to meet both the state and federal guidelines to carry a firearm under the provisions of the “Law Enforcement Officers Safety Act.”

## **BIBLIOGRAPHY**

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