

Lesson Title: PL Article 35- Use of Force	Course: DCJS Basic Peace Officer Course	
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Method of Presentation: Lecture / Handouts	Instructor:	
Course Description: This block of instruction shall, at minimum, contain the following objectives and expand upon the law of Penal Law Article 35-Use of Force.		
Student Training Objective(s): At the completion of this module, each student, without reference to notes (from memory), unless otherwise stated, will be able to orally or in writing: <ul style="list-style-type: none"> • Demonstrate a complete understanding of Penal Law Article 35-Use of Force, focusing on the objective: • <u>“IS THE FORCE I AM ABOUT TO USE NECESSARY TO ACCOMPLISH A LAWFUL GOAL?”</u> 		
Instructor Reference(s): NYPD Academy Guide Police Patrol Guide		

INTRODUCTION:

The use of force against another person represents the most serious intrusion possible on his/her liberty and person. You are required to know and be able to apply the contents of this block of instruction in order to pass this class. As with arrests, you must be 100 percent of what you have and what you are doing. **Unjustified use of force, or excessive force, can have serious consequences, such as arrest, and civil liabilities, which will not be indemnified by your agency.**

Justification is a defense to an offense. A defense is a set of circumstances in which a person admits he has committed an offense, but at the same time states he committed it under circumstances which justified his actions.

The Penal Law provides justifications actions for civilians, Police officers and Peace Officers. Police/Peace Officers have more power in this area than civilians, but are held more accountable and to a higher standard than civilians.

DEFINITIONS:

- **Physical Force (PF):** That type of force not amounting to Deadly Physical Force.
- **Deadly Physical Force (DPF):** Physical Force which under the circumstances in which it is used is readily capable of causing death or other Serious Physical Injury (SPI)
- **Physical Injury (PI):** Impairment of physical condition or substantial pain.
- **Serious Physical Injury (SPI):** Physical injury which creates a substantial risk of death, or which causes death or serious and protracted (for an extended period of time) disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- **Building:** In addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein or an enclosed motor truck, or an enclosed motor truck trailer

Handout – PL Article 35

** Usually results in Physical Injury (PI)

** OUCH! ***

** DR. BONES **

- **Dwelling:** A building which is usually occupied by a person lodging therein at night.
- **Person licensed or privileged:** A person licensed or privileged to be in a building or upon premises includes, but is not limited to, Police Officers or Peace Officers acting in the performance of their duties.

In any situation of the law of justification. The word “NECESSARY” must remain your uppermost importance in your minds. In short, before using any force against another, you must ask yourself:

“IS THE FORCE I AM ABOUT TO USE NECESSARY TO ACCOMPLISH A LAWFUL GOAL?”

This question **MUST** be answered **YES** before you can proceed with force! If the answer is **NO**, then **physical or deadly force is NOT Justified.**

Just because the law states that Deadly Physical Force may be used doesn’t mean you HAVE to use it.

PL Article 35 provides that conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. **The conduct is required by a Judicial Decree:** Required or authorized by law or is performed by a public servant in reasonable exercise of official duties or functions.
2. **Necessary in time of emergency:** “Choice of Evils Doctrine”- Conduct is necessary in an emergency situation to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor.

SPECIAL CASES: Under the Penal Article 35, certain special groups of people have special authority under Article 35, where they are protected when they sometimes use force.

The use of **PHYSICAL FORCE** upon another person which would otherwise constitute an offense is justifiable and not a criminal act in the following special cases:

- **Parent or Guardian:** Caring for child under age of 21 may use PF to promote well-being or discipline. Must be reasonable and not excessive.
- **Warden or Jail Officer (Corrections):** May use PF to maintain discipline as allowed by Correction Law

**** REMEMBER THAT EXPANDABLE ASP BATONS ARE CONSIDERED DEADLY WEAPONS. USE AS A LAST RESORT ****

- **Person In Charge of Common Carrier:** Bus Driver, Train Operator, etc. May use PF to extent necessary to maintain order. DPF may be used only to prevent immediate threat of Death or SPI to self or another.
- **Preventing Suicide:** A person may use PF to prevent another from causing SPI, PI or death to oneself. (**DPF Not Justified in this case**)
- **Licensed Physician:** A duly licensed physician may use PF for the purpose of giving recognized form of treatment to promote the physical or mental well-being of the patient if:
 1. Consent of patient or parent or guardian
 2. Treatment is given under an emergency situation.

TIME FRAMES OF OFFENSES

- Prevent or Terminate Stage:
 1. Prevent an unlawful act being committed
 2. Stop an unlawful act while it is going on
- Arrest of Escape from Custody Stage
 1. Apprehend a suspect who has already committed an unlawful act.
 2. Prevent a suspect from escaping from custody.

USE OF PHYSICAL FORCE-GENERAL SITUATIONS

- **Defense of Real Property:** a person may use PF hen he has reasonable to believe that PF is necessary to prevent or terminate another from committing a crime involving damage to premises. The right to use PF in these cases applies to anyone, not just the owner of said property.
- **Defense of Personal Property:** A person may use PF to prevent or terminate another from committing what he reasonably believes to be a Larceny or Criminal Mischief to personal property. **DPF never justified to terminate Larceny of any kind.**
- **PF By Police/Peace Officers:** Same as civilians. However while in performance of duty, considered licensed and privileged with respect to criminal trespass and burglary.

** ARRESTS WILL BE COVERED IN LATER LESSON

[3-B PL Article 35 Lesson Plan.doc](#)

<https://www.youtube.com/watch?v=TPrm4ZOwSCM>

SUMMARY

Review the Use Of Force video at the link above.