

## *Private Protective Services*

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Title: Legal Issues for Security Officers

Lesson Purpose: To provide the security guard with a working knowledge of pertinent legalities applicable to security guards in the State of North Carolina.

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

1. Demonstrate knowledge of basic legal terms and definitions applicable to the role of a security guard in North Carolina.
2. Describe how a security guard should respond to a crime in progress.
3. Describe the "Use of Force Continuum."
4. Describe the circumstances under which a security guard may conduct searches.

Hours: Three (3)

Instructional Method: Lecture/Conference

Materials Required: Lesson Outline  
Pen/Pencil/ Paper

Training Aids: Chalkboard/Dry Erase Board  
LCD Projector/Computer  
PP Presentation

References: Farb, Robert L., North Carolina Crimes Fifth Edition.  
Chapel Hill, NC: Institute of Government, 2000.

Johnson, Steve and Trimmer, Reece, Concealed Carry Handgun Training. Salemburg, NC: North Carolina Justice Academy, 1995.

North Carolina Criminal and Traffic Law Manual,  
Charlottesville, VA: Matthew Bender & Co., 2000.

Prepared by: Don Parnell / John Greco

Date Prepared: November 1999

## *Private Protective Services*

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### I. Introduction

#### A. Opening Statement

As a security guard it is imperative that the guard have a clear understanding of legal terminology and the legal issues that may face a guard in the performance of their duties.

#### B. Training Objectives

#### C. Reasons

There will be times when in the performance of their duties, the security guard may have to determine if a crime has been committed in their presence and what are their rights in detaining an individual who has committed this crime.

### II. Body

#### A. Legal Terminology

The following terms are basic to understanding legal matters associated with your role as a contract security guard. You should understand them in order to fully grasp this material:

1. Civil Action - Action brought to enforce, redress or protect private rights. In general, these are all types of actions other than criminal proceedings.
2. Civil Liability - The amenability to civil action as distinguished from amenability to criminal prosecution. (Note: "Amenability," in this case, means "answerable under the law.")
3. Legal Rights - Natural rights, rights existing as a result of contract, and rights created or recognized by law.
4. Offense - A general term to indicate all violations of the law.
5. Crime - An offense against society which is forbidden by law, or not doing something required by law.

6. Felony - A crime which was a felony at common law, is or may be punishable by death; is or may be punishable by imprisonment in the State's prison or is denominated as a felony by statute.
7. Misdemeanor - All other crimes other than felonies.
8. Infractions - A noncriminal violation of law not punishable by imprisonment but prosecuted in criminal court.
9. Confession versus Admission - A *confession* is a statement admitting or acknowledging all facts necessary for conviction of the crime. An *admission*, on the other hand, is an acknowledgment of a fact or facts tending to prove guilt which falls short of an acknowledgment of all the essential elements of a crime.

B. Crimes<sup>i</sup>

As a professional security guard, one should have a general knowledge of the more frequent types of crimes.

1. Arson - The intentional damaging of property by fire or explosion.
2. Assault and Battery - An overt act or attempt, or the appearance of attempt, with force and violence, to immediately physically injure another person. The actual unlawful physical touching of another person is battery.
3. Breaking and Entering - This refers to breaking and entering a building without permission.
4. Breach of Peace - Violation or disturbance of the public tranquility and order.
5. Burglary - Entering a dwelling house at night with intent to commit any felony or larceny.
6. Disorderly Conduct - A public disturbance intentionally caused.
7. Homicide - The killing of another human being.
  - a. Manslaughter - The killing of another human being without malice (with anger or intent).
  - b. Murder - The killing of another human being with malice.

8. Larceny - Taking and carrying away personal property belonging to another without the consent of the owner and with the intent to deprive the owner of its use permanently, knowing that the taker is not entitled to it. In other words, stealing.
    - a. Stealing - Commonly used term for larceny which also means “theft,” that is, taking away the property of another. Concealment of merchandise falls under this category of crime. And to be convicted of concealment the offender doesn’t even have to leave the premises. Anyone who willfully conceals goods or merchandise (not purchased) while on the premises of a store has committed a crime.
    - b. Robbery - Is stealing from the person or the person’s presence by violence or intimidation.
  9. Rape - Unlawful sexual intercourse by force.
  10. Resisting a Law Enforcement Officer - Obstructing, opposing, and trying to prevent (with or without actual force) a public officer from performing an official duty.
  11. Trespassing - To enter or stay unlawfully on the land or premises of another without authorization.
- C. Detention by a security guard
1. Arrest Authority

In North Carolina, a security guard may not arrest another person except when requested to do so by a law enforcement officer. (N.C.G.S. 15A-405)
  2. Detention Permitted

A security guard may detain a person when the security guard has reason to believe that the person committed in the guard’s presence any of the following:

    - 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.

The key words are, “in the security guard’s presence,” meaning they actually saw it happen. It is important that each guard understand that detention means the person is “detained” and while he or she may not leave, the person cannot be moved without their consent. (N.C.G.S. 15A-404)

3. Manner of Detention

- a. Surrender to Officer - A security guard who detains a person must immediately notify a law enforcement officer and, unless he releases the person, surrender the detained person to the law enforcement officer.
- b. Manner of Detention - The detention must be in a reasonable manner considering the offense involved and the circumstances of the detention.
- c. Period of Detention - The detention may be no longer than the time required for the earliest of the following:
  - (1) The determination that no offense has been committed.
  - (2) Surrender of the detained person to a law enforcement officer.

4. Detention of Minors Under Age of 18

A special rule for detention applies to minors under age 18.

*For example, if a shopkeeper in a mall or security guard in the same mall detains a person under the age of 18, they must make a reasonable effort to call or notify the parent or guardian of the minor to avoid civil liability. (N.C.G.S. 14-72)*

5. Assistance to a Law Enforcement Officer by a security guard to effect arrest

A security guard in North Carolina may assist law enforcement officers in effecting arrests and preventing escapes from custody when requested to do so by the law enforcement officer. A security guard does not incur civil or criminal liability for an invalid arrest unless the security guard knows the arrest is invalid.

There is no justification for willful, malicious or criminally negligent conduct by a security guard who injures or endangers any person or property, nor is there any excuse or justification for the use of unreasonable or excessive force (N.C.G.S. 15A-405).

In North Carolina, a security guard has no power of arrest unless requested to do so by a law enforcement officer.

D. Response to Crime

In the event that the security guard must respond to a crime or a crime in progress, the following are steps that should be taken.

1. Call law enforcement when possible! If you come upon the scene of a crime in progress, call law enforcement or 911. If there is not time to call the police, take action based upon your judgment of the situation. Consider the consequence of your actions before you act. You could be held personally liable for a bad decision.
2. Cooperate with law enforcement. If a suspect has been detained, turn the person over to law enforcement as soon as possible. Remember, your detention powers end when law enforcement becomes involved.
3. Use of Force

If at all possible, AVOID THE USE OF FORCE. In the event that force is deemed necessary in order to protect the guard or a third party, consideration should be made as to the level of force that can or cannot be used. The amount of force used depends on the seriousness of the crime being committed. When detaining an individual, force is contingent on the crime committed and the actions taken by the detainee. Under no circumstances can a security guard use greater force than the circumstances would justify a law enforcement officer in using. There are accepted standards in guard safety when using force. The most notable standard is reasonableness. You will be judged by the reasonableness of your actions. An alert guard that portrays himself or herself in a positive manner will go a long way in helping to avoid confrontation.

Use of force is often portrayed in a continuum. The “Use of Force Continuum” defines levels of force from minimum to maximum. The continuum is as follows:<sup>ii</sup>

- a. **Presence:** Psychological force established through the guard's arrival or presence and the symbols of authority often represented by a uniform, badge, etc. Guard positioning, stance, posture and demeanor often serve to prevent problems.
- b. **Verbal:** Conversation, advice, commands, or instructions utilized by the guard to control or de-escalate a confrontation. **Do Not Use Profanity!**
- c. **Soft Hand Control:** Techniques that have a low probability of injury such as joint locks and pressure points.
- d. **Hard Hand Control:** Techniques that have a higher probability of injury such as punches, kicks or stuns.
- e. **Chemical:** Use of aerosols such as Mace, CN, OC, etc.
- f. **Impact Weapons:** Use of such items as batons, ASP, etc.
- g. **Deadly Force:** CANNOT BE USED FOR DETENTION unless the person presents an imminent threat of death or serious physical injury to the guard or others.

In order to use techniques beyond Presence and Verbal, the guard should receive additional training in defensive techniques, use of impact weapons or the use of aerosols such as OC, etc.

There may be employee and client policies that may dictate the guard's options. There are several laws and statutes in North Carolina that regulate the actions of security guards. Guards should be acquainted with these laws.

A security guard, like any citizen, must witness the crime through one or more of the senses of sight, hearing, smell, touch or taste.

E. Use of Force During Detention

In every detention situation, the security guard must be firm and be prepared to protect himself or herself as well as others. Security guards must consider every detention to be dangerous. The unpredictability of human behavior makes all detentions serious business. Common sense demands that the security guard remain alert at all times. Never make a detention alone if it can be avoided. Call for help if you can when there is no imminent danger to human life.



### Examples:

1. In making your rounds of the plant you discover a person on the property without proper authority. He is trespassing. You ask him to leave and he does. No problem. You have handled the situation properly. But suppose he refuses to leave? Call law enforcement and let them handle it.
2. Now suppose when you asked him to leave he began using obscene language and threatened to punch you in the nose? Our violator is now committing a misdemeanor which constitutes a breach of the peace, and he is threatening you personally. You should protect yourself and call law enforcement. Be prepared to describe the offender when law enforcement arrives.

### F. Search and Seizure

The necessity to conduct searches for evidence in a criminal case seldom arises for the security guard. A security guard should never conduct a search under any circumstances where permission is denied or refused by the person having custody or charge over the property in dispute. It is a matter for law enforcement.

#### 1. Constitutional Rights Affecting Search and Seizure

The United States Constitution sets general standards in protecting personal liberties. The rules and procedures which have evolved from the Fourth Amendment ensure that each individual's privacy is protected. The Fourth Amendment makes one thing very clear: An individual's privacy, including both his person and his property is sacred! It allows the individual a right of concealment regarding himself and his property from the view of his government local, state and federal.

The Fourth Amendment's effect on the law of searches and seizures should be kept in mind at all times. A search is legal if the person gives his or her permission. Although a knowledge of the constitutional provisions will not solve the everyday decisions of security guards, it is the starting point from which they must determine the legality of their acts. Reasonableness and probable cause should be the principal headings for any mental checklist used in guiding methods and actions.

#### 2. Limitations Affecting a Search by a security guard

A security guard does not have general authority to conduct searches. If a security guard does have knowledge of the location of stolen property or other illegal or unlawful matters, his only course of action is to contact law enforcement and render all the assistance requested by them. Security guards, by the nature of their occupation, are expected to have a reasonable knowledge of the rules of law.

3. Requests by Client for Search

As a security guard, you may be required by your client to conduct a search which carries no force of law. In order for such a search to be conducted, the following situation must prevail:

- a. The client must have established a policy stating that regular inspections or searches will be performed at certain points and times at the facility.
- b. All employees must be made aware of this upon becoming an employee.
- c. Employees subject to search do so voluntarily, and no force whatsoever can be applied by a security guard during such a search. Should an employee reject or refuse such a search, the security guard has only the following recourse:
  - (1) Advise the employee of the policy.
  - (2) Inform the employee that he/she is violating company policy by refusing the search.
  - (3) Inform the employee that their refusal will be reported to the client/employer.
  - (4) If the employee still refuses, do not attempt to hold them, but allow them to leave. It is unlawful and a violation of the United States Constitution to detain, hold or force the employee to any action contrary to their wishes or will.

The correct action to take in this situation is to bring the matter to the attention of the client/employer and let them deal with the matter. As you have seen, the area of searches requires great attention and understanding on the part of a security guard. Knowledge and confidence in knowing when to or not to search is a must. Errors or

mistakes through carelessness will be costly and must be avoided.

III. Conclusion

A. Summary

During this block of instruction, the security guard has been introduced to the types of crimes that the guard may encounter and the legal limitation in which they work. All security guards should be familiar with all aspects of detainment and use of force. Improper decisions in these two areas can cause both criminal and civil charges to be filed against the guard and the client.

B. Questions from Class

C. Closing Statement

The security guard in North Carolina faces a multitude of challenges from dealing with the general public to determining if a crime has been committed. It is imperative that the guard be familiar with the rights of a citizen as well as the rights of the guard to protect themselves and the property they were employed to protect.

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i. Robert L. Farb, Editor, North Carolina Crimes, Fifth Edition (Chapel Hill, NC: Institute of Government, 2001).

ii. Steve Johnson and Reece Trimmer, Concealed Carry Handgun Training (Salemberg, NC: North Carolina Justice Academy, 1995), p. 11.