

804.07 EXCESSIVE FORCE IN MAKING ARREST - SECTION 1983 CLAIM -  
ISSUE OF USE OF FORCE.

*NOTE WELL: This series of instructions is designed to be used with 804.12 ("Excessive Force in Making Arrest - Section 1983 Claim - Sample Verdict Sheet").*

The (*state number*) issue reads:

"Did the defendant use force to arrest the plaintiff?"

If you have answered the first issue "Yes," then you will consider the second issue. If, on the other hand, you have answered the first issue "No," then you will not consider the remaining issues.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant used force to arrest the plaintiff. An arrest occurs when an individual submits to a law enforcement officer's assertion of authority and intent to arrest the individual, or when physical force is applied to an individual by an officer who is attempting to arrest the individual.<sup>1</sup> Any application of physical force by the defendant to arrest the plaintiff would be sufficient.<sup>2</sup>

As to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant used force to arrest the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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<sup>1</sup> *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

<sup>2</sup> *Id.* at 624, 696 (cited with approval by *Glenn-Robinson v. Acker*, 140 N.C. App. 606, 615, 538 S.E.2d 601, 609 (2000)).