Third Edition

THE LAW OF SELF DEFENSE

The Indispensable Guide for the Armed Citizen

By Attorney
Andrew F. Branca

Foreword by
Massad Ayoob

THE LAW OF SELF DEFENSE

3rd EDITION

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The Law of Self Defense, 3rd Edition

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Massad Ayoob

Foreword

It may seem odd that the first guy to write books about the laws of self-defense for the legally armed private citizen would write a foreword for a competitor's book on the same topic. The reader deserves an explanation.

I wrote "In the Gravest Extreme: the Role of the Firearm in Self-Protection" in 1980. It has been a best-seller ever since and remains so, not because the writer was that great, but simply because the topic is one of the most mature bodies of law in American jurisprudence. I wrote its follow-up, "Deadly Force: Understanding Your Right to Self-Defense" in 2014, with 34 more years as an expert witness in weapons/deadly force cases under my belt. Andrew's book competes directly with mine. I'm here to promote the competition?

Well, yes…simply because the competition is very, very good. Like me, Andrew makes much of his living teaching the judicious use of lethal force, and we both offer instructor classes in the subject, and teach it to trial lawyers for CLE (bar-certified Continuing Legal Education professional credit). Andrew Branca is honest, open, and above all extremely knowledgeable about his topic. He was kind enough to mention from his first book on that taking my first level class was what

inspired him on this particular course. He is one of my most high-achieving graduates. I am enormously proud of him. As I wrote in "Deadly Force" and have said in multiple other venues, I think his analysis of the classic case of Florida v. George Zimmerman during the trial was the Gold Standard of such reportage. I regularly follow his commentary on other breaking cases at Andrew's blog at lawofselfdefense.com, and at legalinsurrection.com. So do most other professionals I know who go to court on these matters, and see how "the rubber meets the road."

One thing Andrew did that I didn't was to go state by state on the subtleties of case law and jury instructions. That is very important, and by itself is

worth far more than the price of the book you are now about to read.

Andrew and I get a lot of each other's students, partly because we recommend each other's training to our own people, and partly because anyone smart enough to study this material before they need to put it to use train with multiple instructors … sort of like a health-conscious person "getting a second opinion."

We use different terms for some of the same principles, but any astute person can figure out that it's not about the terminology; it's about the underlying reality. If you posit the same question to two (or three, or ten, or whatever) mathematics professors, you'll get the same answer to the same problem. Confirmation is good. Double-blind testing is reliable. And if those two or ten math profs each used a different formula to get to the same conclusion, the conclusion is validated all the more, and the student who understands each methodology ends up learning more.

Same here. If there is anything that Andrew and I are seen to disagree with, it's whether under the affirmative defense principle the burden of proof lies with the State. Andrew wrote, correctly, in his first and second editions of "Law of Self-Defense" and in this third edition, which I consider his best yet, that the "black letter law" says that once self-defense is raised as an issue, it is the burden of the State to prove that the defendant in a criminal case did not act in self-defense, if the

prosecution hopes to win a conviction. Andrew has noted that the only exceptions are Ohio in its black letter state law, and the Florida statute which allows a judge to dismiss a case if the so-called "Stand Your Ground Law hearing" convinces that judge to a preponderance of evidence that the incident was indeed an act of self-defense.

I've stated – in print, and in class – that I go with the definition found in "Black's Law Dictionary" that the affirmative defense shifts the burden of proof onto the defendant. When your defense is "Yeah, I shot him, but I was right to do so," that's an affirmative defense. You are stipulating that you did the act, but maintaining that you should be held harmless for doing so.

Who is right? The great legal scholar Henry Campbell Black, or Andrew Branca, whom I consider to be a great legal scholar of modern self-defense law?

The answer is, they're both right.

The "black letter law" of the statutes quite aside, jury psychology and trial tactics are such that those of us who've lost count of our trials know that we have to show that, more likely than not, it was indeed self-defense, and "reasonable doubt" just won't cut it to win a defense verdict once your own lawyer has told the jury, "Yeah, my client killed him." In a world where altogether too many people in the jury pool can't tell "homicide" from "murder" – in a world where I've seen a lawyer scream into a TV camera "There is no such thing as justifiable homicide!" – nature tells us that yes, we will have to prove to those who judge us that more likely than not, to that greater than 50% certainty, we did indeed act in self-defense.

And if you carefully read what Andrew Branca wrote in the book you are reading now – the part where a self-defense element has to be established through testimony and/or evidence before the jury will even be allowed to hear the term "self-defense" – you'll realize that we're both speaking of the same reality of the trial courts.

You were wise to buy this book. I hope you read it, internalize it, and keep it to the forefront whenever you even think of reaching for a gun. You would be similarly wise to take Andrew's training.

Thank you for caring enough about the future of your family – who, I assure you, will go through the post-incident ordeal with you – to do so.

-Massad Ayoob

About Massad Ayoob

An instructor in deadly force and firearms for police since 1972 and a full-time instructor in the field since 1982, an expert witness in weapons and homicide cases since 1979 and a certified police department prosecutor since 1988, Massad Ayoob has written twenty books on this and related topics and thousands of articles. He served two years as co-vice chair of the Forensic Evidence Committee of the National Association of Criminal Defense Lawyers, nineteen years as chair of the Firearms/Deadly Force Training Committee of the American Society of Law Enforcement Trainers, thirteen years on the Advisory Board of the International Law Enforcement Educators and Trainers Association, and several years on the Advisory Board of the Armed Citizens Legal Defense Network and on the Board of Trustees of the Second Amendment Foundation.

Introduction

Suddenly that fearful moment you prayed would never happen has arrived.

There's a threat to your life.

It could be in any of a hundred different forms. Some are starkly unmistakable: the muzzle of a gun, a knife directing you into an alley, your front door smashing open.

Others are more ambiguous: the odd stranger stopping you to "ask for the time," a man following a little too close in a parking lot, a group of young people taking excessive interest in you.

In whatever form the threat presents, your mind responds the same way: DANGER!!!! In an instant your body floods with adrenaline, the sensation unmistakable. You last felt it when that neighborhood kid ran out in front of your car and you braked just in time. Your body is preparing itself for an event that's not supposed to happen in a civilized society: violence.

The next few moments will be a turning point in your life. Minutes from now you might be dead, raped, maimed … or alive, unhurt, and safe. Months from now you might be facing years in prison … or enjoying the freedom that comes with exoneration.

The good news is that to a large extent you determine the outcome. While the physical and legal risks of violence can never be zero, those risks can be enormously lessened with the right preparation.

Some people think that this kind of danger is rare, perhaps one-in-a-million. Like losing the lottery. They wonder why anyone would bother preparing for such an unlikelihood. But consider this: There were 5.4 *million* murders, rapes, robberies, assaults, and sexual assaults in the US in 2014. There were another 10.9 *million* burglaries and thefts. That's a crime for every 20 people, and a violent crime for every 60. In one year alone. That's a far cry from one-in-a-million. Given average classroom sizes, that's about one

person in every classroom you spent time in during high school. EVERY YEAR.

This is why preparation is so important. It lies at the core of what it means to be free. Protecting our futures and our families against evil people is a fundamental human right. If you are anything like me, the alternative—to live at the mercy of evil—is simply unacceptable. I will not.

And no one is better positioned than you to take responsibility for your personal protection, and that of your family.

We've all heard the phrase, "When *seconds* count the police are only *minutes* away." This is not a knock against the police. Many officers are good friends of mine, and no police force can be everywhere—nor, in a free country, would we want them to be.

But calling the police almost never helps. Criminals, like predators in nature, do not attack when conditions favor the prey, when the sheepdog is alert beside the sheep. Predators attack when the prey is vulnerable and unprotected. In other words, when the cops can't respond fast enough.

When an attack comes you probably won't be standing in front of the police station. You'll be alone, or multi-tasking a busy life, or burdened (tactically speaking) with small children. You could even be sound asleep. Your attacker will choose that moment precisely because he thinks he can get away with it.

The mere thought of this is frightening. And that's a good thing. Properly applied, a little bit of fear keeps us alert. It is OK for children to live without fear. Indeed, that is a top priority of every parent. Adults, though, must see the world for what it is, both very good and very bad, and prepare for the worst so they can safely enjoy the best.

This book is about winning the legal battle, and leaves tactical training to others. In no way does this imply, though, that your first priority shouldn't be survival. If you are in a fight for your life, for the life of your spouse or your children or your parents, you MUST win. Period. If you don't win the physical fight, everything else becomes rather less pressing.

The good news is that because we know how evil people target their prey we can use this knowledge against them. Avoid looking weak and the bad guy will seek easier prey. Stay alert and aware of your surroundings. Project confidence. Avoid places where you can get cornered, and make yourself look like more work than you're worth. Criminals are sometimes too stupid to know better, but that's the exception. They largely know the difference between easy and difficult victims. There's more than enough easy prey for them. If you look difficult they'll move on.

Of course, sometimes nothing works. The predator decides that you're the special of the day, and you can't prevent his attack. Fortunately, most Americans may carry a weapon that will stop the most vicious predators, even if they are themselves small, weak, or handicapped. I speak of the modern handgun, aptly identified by Samuel Colt as "the Great Equalizer."

Handguns are relatively inexpensive, common, easy to conceal, and increasingly accessible at moments of crisis, thanks to widespread improvements in concealed carry laws. Now law-abiding adults never have to be vulnerable. Should a bad guy pick them as a target, the armed person can meet the attack with fangs of his (or her) own.[1]

But winning the physical contest is far from the end of the matter. Not hardly. Because now begins the legal battle.

It's surprising, shocking even, just how much power self-defense laws grant us. Before the government can execute even the most heinous murderer imaginable that killer must have his Miranda rights read to him, receive free legal counsel, be tried before a jury, found guilty beyond a reasonable doubt, receive an appeal, another appeal, yet another appeal, and so on. It takes years to overcome the hurdles before our system approves violent action against the worst in our society.

Yet you can accomplish the same end, lawfully, with a single, small movement of your trigger finger. In an instant you can take the life of another human being, with no need for prior authorization or due process of law. So long as you can show that what you did was justified self-defense you can walk away, free of criminal sanction.

But there's the rub. All that freedom to pull the trigger built into the front end of our system is balanced by a massive and unforgiving reckoning at the back end. Beginning before the smoke has even cleared, the justice system kicks into gear like a massive steam-era machine, with monstrous gears and pistons, to evaluate your actions under a microscope and crush you for a misstep.

This criminal justice system views self-defense like a simple light switch: either on or off. Either your actions fall within the law and you have zero criminal liability . . . or it falls outside the law and you are totally liable. There is no middle ground.

If you pass the criminal justice "machine's" examination, you go free. If not . . . well, you're probably going to miss some time at work. Maybe your kid's wedding. Maybe everything. Welcome to the end of your life as you know it. Best, then, to stay well within lawful boundaries. But what are those boundaries? How do you get the support you need to ensure your legal "survival"? Where can you go to get help both before and after a self-defense encounter?

The first step is knowledge and you've come to the right place. I wrote the first edition of this book in 1998 because there was no good guide available to non-attorneys. In fact, there wasn't a good guide available even for attorneys. I had to conduct a great deal of primary research to produce that first edition, and again in 2013 to produce the second edition, and now this volume.

I am sure many of you have heard stories where people defend themselves and have few difficulties afterwards, legal or otherwise. There was that old lady who shot the late-night intruder, or the young woman who killed the rapist dragging her from her car. These might lead you to think, "What do I have to worry about? As far as I can tell, when good people use guns for protection, they're not even arrested. Isn't a good shoot a good shoot? I'm fine."

When good people use guns to defend themselves in the right way and face no legal consequences no one is happier than me. In truth, though, those

people avoided a grueling legal fate because someone chose not to prosecute . . . not because they couldn't have done so. Indeed, in many such cases a trained eye can see where their actions were not lawful self-defense at all. Fortunately for these well intentioned but mistaken defenders, the authorities didn't choose to prosecute.

But authorities usually do bring serious charges against the well intentioned, but dangerously mistaken, "defender." Our office gets calls from folks like this all the time. Without exception they are genuinely shocked that they are in trouble. I can practically predict the call. At some point they'll say, "I can't believe I was arrested for self-defense!"

One could, of course, go through life willfully ignorant of the law and hope for the best. You could cross your fingers that everyone will see your actions for what they were, even if you failed to jump through all the right hoops. After all, you're one of the good guys, right? Surely they'll know that.

And you might, indeed, get lucky. But you are putting your future in other people's hands. If there is ever a conflict between their interests and yours, they get to choose who wins. Don't be surprised when their choice favors their agenda over yours.

To make matters worse, none of the people who will be in control of your fate will understand what it was like at that desperate moment. Adrenaline was surging through your bloodstream. Your hands were cold and clammy. Your vision was tunneling. Your hearing was shutting down, and you terrifyingly realized that these might be your last moments. In contrast, those judging you will enjoy the perfect safety of a prosecutor's office or a courtroom with armed bailiffs at each door.

So far as the police and prosecutors are concerned, you're just another mug shot and case file, not all that different from the rapist they arrested yesterday or the burglar they'll get tomorrow. Both who, by the way, will proclaim their innocence just as loudly as you. Based on their professional experience, your story is just like all the other self-defense claims. Hollow lies made by career criminals to try to escape justice.

Given that you've always thought of yourself as one of the "good guys" it can come as a shock to find yourself disarmed, handcuffed, and dumped in the back of a cruiser. Your new title is now "suspect." Congratulations. That guy you stopped when he tried to take your life? In the eyes of the law he's the "victim".

The officers responding to the scene are not there to be your friend and provide solace after a harrowing experience. They are there to determine if what happened was a crime, and find the bad guy. Unless you live in a very small town, or are prone to get into trouble, these officers will be strangers. To them, you're just another face among the often unpleasant, and sometimes murderous people they are obliged to deal with every day.

In many jurisdictions, just firing a shot automatically wins you handcuffs and a free ride to the police station for booking. This doesn't make the police good guys or bad. They're just people doing their jobs.

The people tasked with prosecuting you also don't know you. Your file is just one of many hundreds that come across their desk. They will not consider what is in your best interest. They will prosecute you if they think your case is vulnerable. Period. That's their job.

The judge knows nothing of you personally either. If the prosecution successfully indicts (and, as the author Tom Wolfe so famously put it, a decent prosecutor can get a ham sandwich indicted), then expect to go to trial, spend several hundred thousand dollars in the process, and burn through months to years of your life. All the while with a possible murder conviction hanging over your head and your entire future in doubt.

And then there's the jury. The jurors will know less about your case, even at the trial's conclusion, than nearly everybody else involved. The process carefully controls what facts are presented to them. There is a great deal of information known to you, and to the lawyers, and the judge, and the general public for that matter, that the jury will never hear before they render a verdict.

Even if the jury of your peers was given all the evidence favorable to you, that doesn't mean they'll see it that way. If you ever have the misfortune to

be present during a jury selection process, you'll get a keen sense that some of your purported "peers" don't have the collective IQ of a household thermometer. They also are shockingly susceptible to a prosecutor's tale of wrongdoing. You do not want to place your life in the hands of such people if you can avoid it.

Now, all those treacherous legal waters I just described still assume that everyone is fair and impartial. That is not always the case. A "good bust" can get a cop a promotion; a large investigation can make a detective the Chief. Prosecutors routinely use their position to advance to political office, and those that are elected are politicians already. What better way is there to get favorable press coverage, and lots of it, than to take a big case involving violence? So what if the evidence is a bit wishy-washy around the edges? Even the judge, accustomed to dealing only with local matters, may enjoy that sweet, sweet, 15-minutes of national attention more than you find comfortable.

And it could get even worse than just unfair. Much worse. What if your case raises these people's political returns beyond anything they could have imagined? What if it provides them with a once-in-a-lifetime opportunity for career advancement? What if, for example, your attacker was someone of a different race than your own? The entire criminal justice process could become racially energized, to the considerable detriment of your due process rights. Indeed, this seems to be the norm now when a defender is of one race and an attacker of another.

The bottom line is that we shouldn't prepare ourselves for what the criminal justice system might do if favorably disposed to us. We owe it to ourselves and our families to prepare for the worst.

I just painted a very scary portrait of the criminal justice system. Indeed, that was my purpose. The good news is that you can do something to greatly minimize your legal risk. Don't look vulnerable.

If an arrest isn't worth the paperwork it won't happen.

Once the investigation is done, if your case looks fruitless, resources will be assigned to more promising targets. After all, many prosecutors have a

conviction rate well above 90% because they don't pursue cases they don't think they'll win.

To avoid being picked as a prosecutor's pet case you want to look as legally invulnerable to successful prosecution as possible. Even one red flag of weakness in your case will attract prosecution like blood in the water will attract a shark.

So how does one avoid the "red flags?" Obey the law and be prepared with a compelling story of innocence. Sounds simple, right? And yet it's not actually that simple. The challenge is knowing what the laws you need to follow say, and then how to make your story of innocence match those laws.

I've designed this book to help you do just that. I start by describing what the criminal justice system looks like to a defendant at each step. I then deeply analyze the five fundamental, and essential, elements of a self-defense claim. As I go along I give lots of examples where people found themselves in trouble with the law and show you what went wrong. I'll also talk about the differences between self-defense and defending other people or property.

Then I get REALLY practical. I step you through each and every interaction you will have with the police, and give advice about want to say, and not say, to the various types of law enforcement.

Finally, I bring it all together in Chapter 10: Building a Defense Strategy. I help you position yourself so you can effectively and quickly apply what you learned in this book during the stress of the fight. You'll end the chapter with a personalized strategy that, to the greatest extent possible, improves your odds of winning both physically and legally.

Perhaps just as useful as the text, if not more, I've provided a series of tables at the end of the book that help you understand YOUR state's laws as they relate to the issues discussed. So, after reading this book, you will have a self-defense strategy that is based on the laws in YOUR state, and that maximizes your odds of enjoying both life and liberty.

Of equal importance, though, is what this book will *not* do. It will not teach you how to hurt or kill someone and then hide behind a false facade of self-

defense. If you are looking for a way to "game" the legal system for such purposes please return the book for a refund because you will be sorely disappointed.

This book will also not turn you into a lawyer. After reading it you will almost certainly know far more about self-defense law than most lawyers you run into. Genuine self-defense cases are too far and few between to accumulate real-world experience (although any criminal defense attorney will have lots of experience arguing bad self-defense cases). So this book will give you far more exposure than most lawyers experience over their entire careers.

That said, preparing and presenting an effective legal defense requires a diversity of skills that we won't even touch on here. The laws governing evidence and criminal procedure alone take intense study and years of practice. Equally important are the particular facts of your case and the personalities of the prosecutor, judge, and jury. All these are part of the legal arts that only a skilled and experienced criminal defense lawyer has mastered. When the time comes to fight the legal battle that you must get exactly such counsel.

Of course, laws change. I have expended tremendous effort to ensure that the statutes, case law, and jury instructions in this book are up to date. Any one of them, though, could change at any time. To get the most current understanding of the law in your state I strongly encourage you to use this book to establish a solid foundation and then build on that foundation by regularly visiting **lawofselfdefense.com**, which is regularly updated with breaking news about the law of self-defense, including newly passed laws and decided cases in your area.

Perhaps the best way to stay informed is to sign up for my email newsletter on the site (your email is never, ever shared), subscribe to our Facebook page, or follow me on Twitter at @LawSelfDefense. All are a convenient way to keep up to date.

One last note: It should go without saying that nothing in this book constitutes legal advice, but we live in a madly litigious society so I'll say it

anyway: nothing in this book constitutes legal advice. Self-defense claims depend heavily on the facts of a case, and it is impossible for any general guide to replace the counsel a good lawyer can provide. To paraphrase the medical profession, should this be an emergency, hang up and dial a competent lawyer in the relevant jurisdiction. But it may be useful to bring this book with you to his/her office.

Chapter 1

Legal Principles and Processes

Before we dive into the deep end of the pool we need a working knowledge of the criminal justice system. The “machine” that will consume you with ruthless inefficiency should you make a misstep. I like to think of our system like a sports field, where the highest stake game of your life will be played. The game is unwinnable unless you know where the goal posts are, how goals (convictions) are scored, and how they’re blocked.

Competing Narratives

The startling truth about our system, which takes innocent people by surprise every day, is that it doesn't base its decisions on what actually happened. The quicker you realize your actions won't be judged on absolute reality, the quicker you can get ahead in the game. This isn't a knock on the system. It's impossible for the people who will judge you to know what really happened, because they weren't there when it happened. Absent absolute knowledge, they're forced to base their conclusions on what the evidence suggests *might* have happened.

This means the game is actually a competition between two stories, built around the available evidence. The prosecution will tell a story of guilt. They will paint a picture of you and your actions in the worst possible light to convince the jury that you broke the law. They will say your claim to innocence is flawed, and you should be held criminally liable.

Your defense counsel, on the other hand, will tell a story of innocence. They'll work to convince the jury that your actions were lawful. Your claim to innocence is true, and that your actions should be found justified.

These two stories—the narrative of guilt and the narrative of innocence—are all that a jury will have to go on.

Even long before the trial, the prosecutors and the defense counsel will pave the way to tell these stories. They will search for evidence that will hurt or help them. They will develop a sense for how strong or weak their narrative is likely to be relative to the other side's story. This process will start the moment the prosecutor gets your file and the moment your lawyer's phone rings with your call.

So what is it that both sides are looking for? They need evidence that strengthens their stories in five fundamental ways. They are: Innocence, Imminence, Proportionality, Avoidance, and Reasonableness.

Those five elements define all self-defense claims, and are cumulative. All five elements must be present for you to win. You can think of them as five links in a chain from which your liberty is hanging—if even one of those links breaks, the chain breaks, and your claim fails. Period.

We will discuss each of the five elements of a self-defense claim in great detail in the next five chapters. For the purposes of this chapter, simply know that the loss of any one required element dooms your case.

With that in mind, it's time to understand how these elements are proven in a court of law, and who proves them.

Standards of Proof

A “standard of proof” is the amount of evidence needed for a jury to make a decision in a given direction. There are different standards of proof used for different purposes. For our purpose there are two relevant standards: proof by a preponderance of the evidence, and proof beyond a reasonable doubt.

Preponderance of the Evidence

Proof by a preponderance of the evidence means that it is more likely than not that a certain fact is true. I like to think of this as 50%+ the slightest smidgeon. This standard of proof applies to civil court cases, where one party is suing another. Whichever side has the slightest majority of the evidence on their side is deemed the “winner.”

What you might not know is that “by a preponderance of the evidence” also plays a role in self-defense law. Many states say juries may presume that a defendant’s fear when facing a deadly intruder in their home is reasonable. Such presumptions, though, can be overcome by a preponderance of the evidence. If the prosecution can convince the jury that the defendant staged the “break in” by a preponderance of the evidence, this presumption is lost.

Preponderance of the evidence also shows up in the context of self-defense immunity laws. These are laws that protect you from arrest, prosecution, and civil suits if you were lawfully defending yourself. But how does the system know your actions were innocent before the trial? Answer: they hold a pre-trial immunity hearing. Whoever convinces the judge that they have a preponderance of the evidence on their side will win the argument. If the defense wins you are granted immunity and go free. If the prosecution wins, immunity is denied and the parties prepare for trial.

If you live in Ohio “by a preponderance of the evidence” becomes very

important. It is the required proof for a guilty verdict in self-defense cases. If a sheer majority of the evidence supports a claim of self-defense in Ohio, the jury is instructed to acquit. If a sheer majority of the evidence is counter to self-defense the jury is instructed to convict. This is different from all 49 other states, which use the other standard of proof, "Beyond a reasonable doubt."

Beyond a Reasonable Doubt

The standard of proof relevant in self-defense cases outside Ohio is proof beyond a reasonable doubt. Surely all Americans have heard the phrase "beyond a reasonable doubt" repeated thousands of times in courtroom dramas on TV.

No jury can ever arrive at a verdict with 100% confidence. After all, they weren't actually there. They are relying on the carefully screened evidence of the case presented to them to inform them about what happened. But witnesses can lie and evidence can mislead.

Because no juror can be 100% certain, society accepts a lower level of confidence. In American criminal courts this lower but acceptable degree of certainty is called "beyond a reasonable doubt." If a juror, after listening to all the evidence and arguments in court, still reasonably doubts that the defendant committed the crime, then they must acquit (which means find the defendant "not guilty").

You might wonder what "beyond a reasonable doubt" really means. Ninety-nine percent confidence? Eighty percent? For better or worse, we've never come up with any more specific explanation than the phrase itself: "beyond a reasonable doubt." It's up to each juror to decide for themselves what this means.

I will say, though, that the words "reasonable doubt" provide some useful guidance all on their own. The US Supreme Court made a good illustration of their facets:

> "A reasonable doubt [is] one based on *reason* which arises from the *evidence* or lack of evidence."
>
> *Jackson v. Virginia*, 443 US 307 (US Supreme Court 1979)

Note the italicized terms: reason and evidence. A juror must apply his or her powers of reason to the evidence presented at trial, in accordance with the instructions they receive from the judge.

Reasonable doubt, then, cannot be based on mere speculation or imagination. There must be evidence to make reasoned inferences from.

Let's say two people are discussing what they would do in a self-defense situation. Suddenly one of them justifies some defensive action by saying, "Well, for all I know he could have a gun, or he could have a knife."

If there is evidence from which one can reasonably infer the guy has a gun or a knife—he tells you that he does, or he makes a motion as if for a weapon, or he has a reputation for being armed at all times—that is a valid argument to make at court.

The phrase "for all I know," though, makes the gun or knife hypothetical. Speculative. Imaginary. And no legally valid conclusion can be based on the hypothetical, speculative, or imaginary.

OK, now that we know the two important standards of proof in a self-defense case—by a preponderance of the evidence and beyond a reasonable doubt—let's take a look at who must prove (or disprove) what.

Burdens of Proof

While standards of proof define how much evidence is needed, burdens of proof decide which side must produce and argue the evidence of a particular issue.

Just as we've all heard the phrase "beyond a reasonable doubt" since our days watching Perry Mason (or NCIS, depending on your age), we've also heard the phrase "burden of proof." But what you may not know is that the burden of proof consists of two distinct facets: the "burden of production," and the "burden of persuasion." We'll discuss each of them in turn.

Burden of Production

You do not have an automatic right to tell the jury you acted in self-defense. Yes, you read that correctly.

If you want to be able to utter the words "self-defense" before the jury there must be some evidence that you were defending yourself. And the responsibility for introducing that evidence into the courtroom, called the burden of production, falls squarely on you. If you fail to meet this burden the jury will learn all about a body and the gun in your hand, but not hear a single word about self-defense. Needless to say getting this into court is imperative to your acquittal.

Fortunately, the burden of production is usually very low. If there is any evidence, however contested it might be, you can argue self-defense. In most "good" self-defense cases there is little difficulty in meeting the burden of production.

Where people get into trouble is when they undeniably violate one of the five elements of self-defense required by law. Say, for example, that you started

the fight, and you admit it to the judge. If your state says that you can't start a fight then claim self defense, then you won't meet your burden of production on Innocence, and thus on self-defense entirely.

The prosecution also has a burden of production. They are required to present evidence that you committed the crime you're charged with, or the judge won't allow them to take you to trial at all. This is not difficult at all in a self-defense case, because you've already admitted that you used force against the guy to defend yourself.

Assuming all the burdens of production have been adequately met, it is time to proceed to the burden of persuasion.

Burden of Persuasion

For every issue in a trial one side or the other is responsible to prove (or disprove) that issue to some standard of evidence.

On the matter of the criminal charge, you are innocent until the prosecution persuades the jury otherwise. The prosecution bears the burden of proving you committed the crime beyond a reasonable doubt (except Ohio). If the prosecution fails to meet this burden the jury must acquit the defendant.

Self-defense cases are no different from generic criminal cases in this respect. After all, if you're claiming self-defense, it's because you are charged with wrongdoing (e.g. murder, assault, etc.). The prosecution must first prove you did that wrongdoing, or they lose before self-defense is even relevant. If they fail there's no need for the jury to even think about self-defense, as you're simply not guilty of the crime charged.

Again, this is not a difficult task for a prosecution in a self-defense case. You already admitted to using force to defend yourself. You've already said, "Yes I shot that person, and yes they died as a result—but I did so in lawful self-defense." Once you say that, there's no doubt that the prosecution will easily meet the conditions for conviction... unless that conviction is stopped by a successful claim of self-defense.

So, on the criminal charge the prosecution bears both the burden of production to get the charge (and you) into court in the first place, as well as the burden of persuasion to convince the jury beyond a reasonable doubt that the elements of the charge have been proven.

What about on the legal defense of self-defense? We've already seen that for the legal defense it is the defendant (you) who bears the burden of production. Assuming that's been accomplished, do you also bear the burden of persuasion?

The answer, in 49 states, is no. With one exception, every state imposes the burden of persuasion on self-defense on the prosecution, and to the legal standard of beyond a reasonable doubt. That is, the prosecution must disprove you acted in self-defense beyond a reasonable doubt. If they do not the jury will be required to acquit.

It is hard to over emphasize how huge this is for the defendant in a self-defense case.

The prosecution could easily convince the jury that it's more likely than not that you did not act in self-defense. But that's not enough to overcome a claim of self-defense.

The prosecution could convince the jury that it's highly likely that you did not act in self-defense. But that's still not enough to overcome a claim of self-defense.

Unless the prosecution can convince the jury that you did not act in self-defense beyond a reasonable doubt, you must be acquitted.

To put it another way, so long as your defense counsel can maintain at least a reasonable doubt in the minds of the jury, an acquittal is yours.

Now, this sounds like a very heavy burden on the state, to disprove self-defense beyond a reasonable doubt. And it is. Yet prosecutors manage to defeat self-defense claims all the time. How is this possible? There are two factors that help.

First, they don't need to disprove every element. They only need to disprove ONE element. This means it is usually the decision making and conduct of the defendant—that's you—that makes it possible for the prosecution to meet its burden of persuasion. Through ignorance or mistake, it is the defendant that almost always provides the prosecutor with that vulnerable element.

That's on us. It is our responsibility to ensure that our use-of-force stays well within the rules, so that we do not appear vulnerable targets of prosecution. A key mission of this book is to teach you how to avoid doing this in order to minimize your legal vulnerability as close to zero as possible.

I mentioned the prosecution has to disprove self-defense beyond a reasonable doubt in 49 states. The exception is, once again, Ohio. In Ohio you bear the burden of production to get self-defense into court in the first place, just like other state. But then you *also* bear the burden of persuasion, to prove self-defense to the legal standard of a preponderance of the evidence. This means you must convince the jury that it is more likely than not—50 percent of the evidence, and a bit more—that you that defended yourself lawfully. If you fail to meet this burden, the jury will be instructed to reject your claim of self-defense. And if they do that, a conviction is pretty much a foregone conclusion.

Because the defendant retains the burden of persuasion on self-defense in Ohio, a claim of self-defense in that state is far more difficult to sustain than elsewhere.

The Criminal Justice Pipeline

At this point I want to take a few moments to describe the criminal justice "pipeline" from the first 911 calls to conviction and beyond. I will describe a representative process, but it is common for many steps to be skipped. Plea bargains are a good example of this.

There are also many places where you can get "kicked out" of the pipeline under the proper circumstances. In the last chapter of this book, "Developing a Legally Sound Self-defense Strategy," we will discuss a variety of steps you can take to greatly increase your chances of getting "kicked out" early.

Report of the Crime

To get the ball rolling someone must report a crime. You might have called the police, your attacker or witness could have, or a police officer could have observed the encounter directly. If it is possible to report it yourself first, please do so, for reasons we will explain in chapter 9.

Pre-Arrest Investigation

The police will (eventually) respond to the report of a crime and begin a preliminary investigation. This can be as simple as asking you and the other fellow a few questions to figure out what happened. Or, teams of detectives and forensic scientists may descend on the area and drape "crime scene" tape everywhere.

Arrest

If probable cause of a serious crime is found, congratulations—you are now a "suspect" and will be arrested. For less serious crimes, like simple assault, you'll be issued a summons to appear in court at a future date and released.

In cases of homicide an arrest is nearly certain if there are no immunity provisions against it, so be prepared. It doesn't necessarily mean they'll keep you on ice long. It may be that they just want to keep an eye on you while they are gathering up the first round of information.

The legal definition of an arrest is that the police will "seize you" and "take you into custody." If you are not certain if you are under arrest ask the police if you may go. If you may, you are not under arrest. If you may not, well, they'll be reading you your rights any minute now.

If arrested you will be handcuffed and put in a secure location, such as the back of a patrol car. You'll also be read your Miranda rights, and asked to acknowledge that you have been read and understand them.

As an interesting historical aside, the term "Miranda rights" comes from the Supreme Court case Miranda v. Arizona. Miranda had been convicted at trial of killing someone in a knife fight. The Supreme Court decision overturned his conviction because he had not been told of his due process rights, and he was released as a free man. Given how few cases reach the Supreme Court, obtaining this reversal was like winning the lottery. Not long after being released, though, Mr. Miranda ended up in another knife fight. This time he was the one that died. Upon arrest, Mr. Miranda's killer was—you guessed it—read his Miranda rights.

Booking

Once arrested you will be transported to a police station to be "booked." This is literally police bookkeeping. They will photograph and fingerprint you, and perhaps take a cheek-swab DNA sample. They will confiscate and inventory your possessions. You may receive a more detailed description of the charges against you than what you were told at the scene. And, of course,

you get your one phone call.

People sometimes ask me for my business card so that they have a lawyer they can call after being arrested. Frankly, I think the benefit of having some lawyer's card in your wallet is overstated. Lawyers generally work 9-5 Monday through Friday, and are often in court. They probably won't answer the phone. Also, when was the last time you even spoke to that lawyer whose card you're carrying? When he did your house closing 10 years ago?

Instead, call someone who keeps their cell on them, will take your call, and will work hard on your behalf once you hang up. Do you have elderly parents who don't go out much? They're a good choice. A wife you know is home? A business partner? Your next-door neighbor? Any of those people can call your lawyer and others on your behalf while you're making new and interesting friends in your cell.

Post-Arrest Investigation

Although your arrest means there's enough evidence for probable cause, they need "beyond a reasonable doubt" to convict you. Police conduct a post-arrest investigation to find just that. It could be very brief. A few conversations with witnesses while you are being driven to the police station are often enough, though some investigations can last for months. If successful the evidence they compile is put in a file and sent to the state prosecutor's office.

Decision to Charge

When your folder hits the prosecutor's desk he'll have to decide whether there's enough evidence for a conviction. Prosecutors are "graded" on their win-loss record so they won't bother with a losing case. Bad cases are not a good use of the taxpayer's money, when many other, potentially more promising, cases await attention.

If they don't have enough evidence to convict they may still pretend that they do and use the threat of trial to get you to agree to a plea bargain. If you refuse they'll kick you loose. Keep in mind, though, that if they find more evidence later they can pick you back up.

The Complaint

If they decide to try you, the prosecutor will file a criminal complaint in the lowest level court, called the magistrate court. For lower level offenses the magistrate will deal with the whole matter. Felony offenses begin here but are then brought to the next higher-level court, the trial court.

The criminal complaint is a description of the crime charged and a sworn statement from police describing the evidence against you. The magistrate will review the complaint, usually a rubber stamp process.

Arraignment

Once the magistrate accepts the complaint you officially graduate from being a "suspect" to a "defendant." The magistrate will tell you the official charge against you, ask you if you understand the charge, and ask for a plea. By now you should definitely have a lawyer, but if you don't under no circumstances are you to say anything else but "not guilty." That means No. Matter. What.

Nothing bad can come from pleading not guilty, and it maximizes your options moving forward. Also, do not argue your case to the magistrate; it's not their job to judge the case, and anything you say can and will be used against you. Be polite and say "yes, your Honor," "no, your Honor," and "not guilty, your Honor." That's it.

Next they'll decide bail. Depending on the circumstances they might release you with just a promise you'll return. This is called "on your own

recognizance." They could also set a bail amount, varying from a few hundred to a few million dollars. The bail serves as an incentive to get you to come back. If you don't show the court will keep your money. If the crime you're charged with is very severe, or if they think you are a high flight risk, they may simply deny bail and make you wait for trial in jail.

Grand Jury (or equivalent) & Indictment

After the arraignment the prosecutors will have to "qualify" you for criminal trial, usually with a grand jury (states differ on this step). In this stage only the prosecution introduces evidence. The defense may question the evidence produced, but may not introduce any of their own.

A grand jury's purpose is to answers the question, "Absent a defense would you be convicted?" In other words, if the prosecution cannot win without an opposing argument, then there's no chance they'll win with one. In practice, though, this is another "rubber stamp" step, and a formal indictment is returned.

Pretrial Motions

The last step before trial is the pretrial period, including pretrial motions. This may all sound preliminary, administrative, and unimportant, but make no mistake. This is where the stage and rules of the trial are set. This period will last months and you'll wish you had more of it.

Modern legal battles have unique rules. Some of these are fixed and identical for every trial, but may vary based on the facts of the case. Your future can easily be decided on whether these rules are set in your favor. In short, the trial is often effectively won or lost before it even starts.

During this period your defense team will scour the evidence for weaknesses in the prosecutor's case, and identify areas where they can develop their own

evidence. They may get expert witnesses and begin to flesh out the theory of the case they'll present at trial.

This is also the phase where the judge decides what evidence he will permit into trial and what he will exclude, and whether you may argue self-defense at all. That is to say, this is the stage where your lawyer must meet your burden of production to argue self-defense.

Around this time you'll really start to appreciate the creativity, expertise, and experience of your lawyer, or deeply regret the lack of the same. Good lawyers are expensive. You might some day regret paying a good lawyer tons of money, but you'll almost certainly regret paying little for a bad one.

Once the judge allows or denies all the pretrial motions, and the shape of the battlefield has been set, it is time for the last step before opening statements: jury selection.

Jury Selection

Jury selection is the ultimate wildcard. Trials are tightly controlled affairs, with the judge wielding great power to allow or restrain lawyers for each side.

But the jury is something else. They sit there completely silent, listening and thinking, and ultimately deciding your fate. But who are these people? Your peers? Do they share your worldview, your cultural view, and your particular life experiences?

Of course not. They are only your "peers" in the sense that they are subject to being called for jury service, just like you. In all other respects they are a black box. Unknown.

So your lawyer (and the state's lawyers) will question the jurors in a process called *voir dire*. They'll try to identify and exclude people who have already formed an opinion of the case. The theoretical goal is to get a jury of people who can all be fair and impartial, and who will consider only the evidence

presented at trial and not “facts” they may have heard from friends, family, or media sources outside the courtroom. Naturally, if either side believes they have an opportunity to tilt the makeup of the jury in their favor they are sure to try to take advantage of it.

As with the pre-trial hearings, jury selection can decide the trial’s outcome before it starts. Unlike the pre-trial hearings, picking the right juror over the wrong one is an uncertain effort. That’s why competent jury consultants get paid the big bucks.

Trial

The trial consists of six major components: opening statements, the prosecution’s presentation of the case, the defendant’s presentation of the case, closing arguments, jury instructions, and deliberation.

In opening statements each side outlines their story, and explains that over the course of the trial they will tell that story in detail, supported by facts in evidence.

Both the prosecution and the defense become storytellers, using the evidence as raw material to construct those stories. They are each free to choose or ignore evidence, or interpret them differently, but they must both draw from the same pool of evidence.

Both sides know all the evidence before the trial starts because of what’s called “mandatory mutual discovery”. Unlike in courtroom dramas, there are no evidence “ambushes” in real trials.

The prosecution is the first to speak. This is a powerful advantage, because they get to paint the first picture in the jurors’ heads. Only then will the defense outline their “story” for the jury.

After opening statements the prosecution presents its case. They will show the jury evidence and witness testimony through what is called “direct” questioning. After the prosecution has finished with each witness the defense

can ask him or her questions in “cross-examination.” Once they’re done, if the prosecution wishes, it can come back and re-direct, the defense can re-cross, and so on. This cycle continues until both sides are finished.

When the prosecution is done presenting all its evidence, it will “rest” its case. Now it is the defense team’s turn. This is the mirror image of the prosecution’s side of things, with an important difference. The prosecution needs to argue effectively enough to prove its case beyond a reasonable doubt on each aspect of the charge. But the defense only needs to create a reasonable doubt. For this reason your team may ignore many points argued by the prosecution, instead focusing on the single chink that can unravel the criminal charge.

The defense can even elect to present no defense whatever, and let the matter go straight to the jury. (Of course, this is rarely done, as it tends to make defendants think they paid too much for their lawyer.)

Regardless of how long it takes, when the defense rests its case it is time to proceed to closing arguments.

Each side once again tells their story in closing, this time emphasizing the particular bits and pieces of evidence that strengthens them and undermines their adversary. And once again the prosecutors get the better slot. While they spoke first in opening statements, they speak last in closing arguments. So the first and last thing the jury hears is the prosecutor’s story. Once closing arguments are done, it is time for jury instruction and deliberation.

Jury Instruction and Deliberation

The jurors are not legal experts. To help them with their job, the court gives them both oral and written instructions. Although many states now have a set of standard jury instructions, each side may suggest modifications that will, naturally, favor their desired outcome. Just as pretrial rulings defined the battlefield of the trial, motions from both sides on the jury instructions can define the battlefield in the jury room.

Once the jury has their instructions they are sent into isolation for their deliberations. Most states use 12 person juries for felonies, some use 6, but in either case the jury must unanimously agree before they can return a verdict. If a unanimous verdict cannot be reached, the jury is "hung" and a mistrial declared.

Sentencing

If the jury decides the defendant is guilty, the next stage is sentencing. Here the judge considers a great deal of evidence that wasn't available to the jury, such as the defendant's prior criminal convictions. The judge may also consider mitigating factors. Most often, though, the law determines the sentence and the judge has very little ability to modify it.

Appeals

After the trial the defendant may appeal his conviction to an intermediate "appellate" court of usually 3 judges. Those judges may spend only a few minutes on your case before rejecting the appeal because of the enormous number of cases coming across their desk.

If they do accept the appeal, though, they will carefully judge how the laws, but not the facts, were applied at trial. They avoid reconsidering facts because they were not there to see the testimony and evidence directly. Instead they ensure that the law was applied properly and fairly. The appellate court can affirm a conviction, reverse a conviction, or just about anything between (e.g., reduce a murder conviction to manslaughter).

If the appellate court affirms the verdict you may appeal to your state's Supreme Court. This court, though, takes on only very few cases that they pick themselves. It is the rare criminal defendant whose case is heard before their state's Supreme Court. As with the appellate court, the Supreme Court can affirm, reverse, or just about anything between.

The Crime Charged

Now that we better know the process, we should spend a few minutes on what you'll be charged with if you have to defend yourself. The charges you face define what the prosecution will have to prove and the consequences if you are found guilty.

The statutes and jury instructions for these crimes in all 50 states can be found at the Law of Self Defense web site: **lawofselfdefense.com**.

Murder

Murder is the unlawful, deliberate, and pre-meditated killing of a human with what some jurisdictions call a "depraved mind."

Murder has degrees, the most serious being murder in the first degree. Usually it involves some serious aggravating factor, such as killing a police officer, a child, or some other protected person. One can also qualify because of the "heinous" nature of the murder, such as torture. 1st degree murder is usually punishable by life imprisonment or even death (in capital punishment states).

Murder in the second degree is what most of us think of as common murder —murder for insurance money or to dispatch a hated business competitor. "Murder 2" is usually sentenced with 20 years to life.

Murder needs to be distinguished from "homicide," which is the taking of another human life. Such taking may be legal, such as in lawful self-defense. Only if the taking of life was illegal does it qualify as murder.

Manslaughter

Manslaughter comes in two forms: voluntary and involuntary. Voluntary manslaughter happens when you meant to harm someone but didn't deliberately plan to take their life, or act against them with a "depraved mind." The classic example is a husband who finds his wife in bed with another man, and kills one or both of them.

Involuntary manslaughter happens when you don't mean to cause harm but death still happened because of criminal negligence. Killing someone while drunk driving is a classic example. Involuntary manslaughter is not relevant to self-defense, because self-defense always involves a deliberate decision to act.

Manslaughter calls for about 15 years of jail, but the sentence can be much lower or much higher depending on the circumstances and aggravating factors (e.g. use of a deadly weapon). It is often a lesser-included offense of murder, meaning a murder trial jury can still convict on manslaughter even if the state fails to prove the higher threshold of murder.

Assault

Assault is the first of the non-homicide charges. You commit assault when you put someone in fear of immediate physical harm. The type of threat determines whether it is simple assault—you put someone in fear of your bare hands—or aggravated assault—you put someone in fear of your handgun. Simple assault carries a sentence of a few months or a few years, but aggravated assault can be very serious with sentences as great as 15 years.

Battery

Battery is the unwanted and deliberate touching of another person. As with assault, it can be either simple battery—you hit somebody with non-deadly force—or aggravated battery—you hit him or her with deadly force. The

prospective punishments are the same as for assault; a few months or years for simple battery, and up to 15 years for aggravated battery.

Assault and battery may stand alone, or may be combined, depending on the circumstances. If you wave your fist in someone's face but do not touch him or her, you committed assault but not battery. If you strike someone's backside but they were never aware of the attack coming, you have committed battery but not assault, because they can't be afraid of what they didn't know was coming. Of course, if your oncoming attack makes them afraid AND you make contact, you have committed classic assault and battery.

Brandishing

When you show a dangerous weapon in a rude, angry, or threatening way you have committed brandishing. This charge can be expected when you pull your gun in self-defense, even if you don't use it. Given the court's increasing tendency to describe pepper spray or Tasers as dangerous weapons, though, showing them might also be brandishing.

Brandishing is typically a misdemeanor punished with a fine of several hundred dollars and a few weeks jail time. In some jurisdictions, though, brandishing is a felony when it's done in certain locations (e.g., near schools) or towards certain individuals (e.g., police officers).

Disorderly Conduct

Disorderly conduct is a "catch all" charge for a wide variety of annoying behavior. Formally, conduct is disorderly if it causes an inconvenience, annoyance, or alarm. Expect this charge if you were publicly fighting, using grossly abusive language against someone (the 'n' word for instance), getting in the way of someone's walking, insulting someone, or taunting them. Disorderly conduct results in a fine on the order of several hundred dollars

and a month or two in jail.

The real danger of a disorderly conduct charge is when it's combined with something more serious, like murder. If you get both, disorderly conduct will make you look bad, perhaps overly aggressive, and could prevent you from even arguing self-defense.

Illegal Possession of a Concealed Weapon

There are thousands of laws, rules, and regulations at the local, state and federal levels about what gun you can possess and where. These laws vary by state and within states.

Most jurisdictions require you get a formal license to carry a concealed gun, but even with such a permit there are places you still may not bring it. It is your responsibility to know the laws anywhere you may be and to follow them. Ignorance is not a defense.

The failure to adhere to these laws can fatally damage your self-defense claim. As with the disorderly conduct, illegally possessing a weapon can strip you of the required mantle of innocence you need to argue self-defense.

The Legal Defense of Self-Defense

To all these criminal charges you can use the legal defense that you were defending yourself. If the jury believes you they must acquit. So not only must the prosecution first prove you "guilty" of the crime itself, they must also prove that you did NOT act in self-defense (except in Ohio, as we mentioned earlier). Self-defense is, of course, what this book is all about, and we'll cover that in great detail. Before we do, however, I want to distinguish self-defense from accidental killings.

Accidental Killing

Accidental death, unlike involuntary manslaughter, happens when you did something legal that you didn't believe would cause harm, but someone still died. Accidental killings are also an absolute defense.

An example of a genuine accident might be as follows. While traveling you rent a car. Having only a small carry-on bag, you toss it on the passenger seat and drive away. Unknown to you, local gangsters have earlier tossed an unconscious bound-and-gagged competitor in the trunk of the car. While you're driving carbon monoxide fills the trunk, asphyxiating the competitor. The following day you have the shocking experience of discovering the deceased in the trunk and notify the police.

Your actions were lawful, and your conduct would not raise any significant red flags. That's an accident in the legal sense, and a legal defense of accident should hold you free of criminal liability.

Self-defense is the opposite of an accident. You do not intend an accident to happen. Self-defense is deliberate and intentional. You perceived a threat, you purposely threatened or used force against that threat.

Self-defense and accident, then, are logically inconsistent. If your conduct was one, it cannot be the other.

I mention this because you must be careful not to confuse a self-defense narrative by saying the gun “just went off” or “I didn’t mean for it to happen” or even explicitly “it was an accident” when really your use of force was genuine self-defense.

If you claim your use of force was an accident, or use words that can be interpreted as meaning it was an accident, you can seriously undermine your case. Indeed, you could eliminate any hope of meeting your burden of production in the first place. So, if you acted in self-defense, make sure you don’t contradict yourself.

On the other hand, if your use-of-force was genuinely an accident, then you might need to raise the legal defense of accident in place of self-defense. The defense of accident, though, is rarely effective when applied to firearms cases because firearms are inherently dangerous instruments, and the standard of care for handling them is very high. If you have a firearm and it discharges and injures someone, it is almost certain that the discharge and injury was the result of negligent handling. In the context of an inherently dangerous instrument, simple negligence can quickly become criminal negligence. And, as we said earlier, criminal negligence that results in death is the definition of involuntary manslaughter.

Wrap-Up

None of the people who are judging the lawfulness (or not) of your actions were actually present when it happened. They are basing their conclusion on what the available evidence suggests might have happened.

From this evidence two narratives, or stories, are built: a compelling narrative of guilt and a compelling narrative of innocence. These two narratives are all that the jury will have to go on in deciding your fate.

Both narratives will focus on the five essential elements of a self-defense claim: Innocence, Imminence, Proportionality, Avoidance, and Reasonableness. All required elements must be present, or a claim of self-defense fails.

A standard of evidence is the amount of evidence needed for a jury to make a decision. A “preponderance of the evidence” simply means a majority of the evidence. A criminal trial requires the jury believe the defendant committed the crime "beyond a reasonable doubt" before they may convict. That is, the prosecution’s case must have removed all reasonable doubt of guilt from the jurors’ minds.

Importantly, a reasonable doubt—and every conclusion arrived at in a trial—cannot be based on mere speculation or imagination. It must be the result of the jurors’ powers of reason applied to actual evidence in the case. Speculation and imagination are no basis for argument or conclusion at trial.

For those states that have immunity statutes, if there isn't at least a preponderance of the evidence that you behaved criminally you’ll be "kicked loose" from the system early, as well as perhaps enjoy protection from civil suit.

Whereas standards of proof define how much evidence must be presented to win on an issue, burdens of proof define which side is required to show and

argue that evidence. There are two parts to the burden of proof: burden of production and burden of persuasion.

The burden of production defines who must provide the evidence to the court needed to raise the issue at trial in the first place. The State has the burden of production on the criminal charge. You have the burden to produce evidence of self-defense.

In most “good” self-defense cases the burden of production on self-defense is not hard to meet. If it is not met, however, the consequences are disastrous—the jury will never hear the words “self-defense” said at trial. This leads to an easy conviction, because you already conceded to your use of force when you raised self-defense in the first place.

The burden of persuasion defines who has the responsibility of proving (or disproving) an issue to the jury, once the burden of production has been met. In 49 states, the prosecution bears the burden to both prove the crime and disprove self-defense, beyond a reasonable doubt.

This is a very heavy burden on the prosecution in a self-defense case, but two things make their job of overcoming self-defense easier. First, they do not need to disprove all the required elements of self-defense beyond a reasonable doubt, but only any one of them. Second, it is usually the defendant’s poor decision making and conduct that makes it possible for the prosecution to meet its burden of persuasion.

In Ohio, however, the defendant must prove self-defense by a preponderance of the evidence. So while in every other state you need only create "reasonable doubt," in the jurors' minds, in Ohio you must show them that your self-defense story is "more likely than not." This is a huge difference, and makes a successful claim of self-defense much more difficult in Ohio than in any other state.

The criminal justice system's "pipeline" begins with a report of the crime, and a pre-arrest investigation. If the police think there is enough evidence, the "suspect" is arrested and booked. More investigation is conducted and then the culmination of that effort is delivered to the district attorney's office where they decide whether or not to prosecute. If they decide 'yes,' they will

file a complaint accusing you of a crime and you will be arraigned. That is where you can plead "not guilty" and have bail set.

From here a Grand jury (or equivalent process) will decide whether the state's case, standing alone, would return a guilty verdict. If so, an indictment is handed down and preparations begin in earnest for trial. Pretrial motions establish the ground rules of the trial and what evidence the jurors will be allowed to hear.

A jury will be selected in voir dire, and a trial conducted. If the result of juror deliberations is "guilty" you are sentenced and go to jail, though you may appeal the judgment to a higher circuit court. They will not reverse your trial decision by reconsidering the facts of your case, though. They will only decide whether what happened at trial was legally sound.

You could be charged with any of a variety of crimes if you use defensive force. The most likely charges are murder, manslaughter, aggravated assault and battery, or simple assault and battery.

Even if you didn’t actually hurt someone you could still be charged with brandishing, disorderly conduct, or illegal possession of a concealed weapon. These secondary charges, when added to a defensive force charge, can seriously undermine your self-defense claim.

There is also a legal defense of accident, and a genuine accident should carry no legal liability. In the context of firearms, however, accident is a difficult legal defense. Guns are inherently dangerous instruments, and the legal standard of care is very high. Unintentional injuries or deaths involving guns are almost always the result of negligence, and in the context of a firearm that usually constitutes criminal negligence.

Self-defense, if believed by the jury, is an absolute defense to all these charges and demands acquittal.

Chapter 2

Element 1: Innocence

A guy comes out of the darkness suddenly. You don't know him but you had to have done *something* to tick him off, because he's barreling at you like an enraged bull yelling that he's going to kill you.

Just as he gets close enough for a punch you swing to the side and trip him. He's on the ground for just a moment before he's back up and coming at you again.

You swing and hit but it's only a graze. He swings and misses as you knee him in the groin. He doubles over and you know you're the victor already.

Here's the problem. Later he says that you hit him first. Look back – he's right. Now he says that all the punches *he* threw were to defend himself against *your* attack. Which could very well be at least partly true.

But surely *he* is the guilty party, not you. Right?

Right. Society accepts that there are situations where it's appropriate to defend yourself, even to kill someone if necessary. This legal privilege, though, is only for those who are "innocent." This isn't the "innocent" as opposed to "not guilty" at trial, but innocent as in you didn't start the conflict.

In our example the angry guy's behavior was clearly aggressive and he has only himself to blame for your response. In legal language he is called the "aggressor," and cannot claim self-defense to justify his actions. The person against whom he aggresses (you), is the innocent person who can justify their actions as self-defense.

So how do you ensure you are not perceived as an "aggressor" who is ineligible to claim self-defense? Don't start, forcibly sustain or escalate a fight.

You may have read this and thought, "Don't start the fight. What a no

brainer. This isn't something that I need to worry about—I don't go around initiating fights."

If only life were so straightforward.

Who *really* started the fight is often not as clear-cut to the rest of the world as it is to you. The people deciding whether you started it will only have second-hand information. As a result, their conclusion will be based *solely* on the evidence available to them, and they will have to *infer* what might have happened.

Actually, in the case of the jurors it is even worse than that. Their conclusion will be based on just the portion of the evidence that the court *allows* them to see, colored by the prosecution and defense's spin, and applied only in ways permitted by the judge.

Whether the jurors think what happened was anything like what really happened is subject to factors not always in your control, at least not after the evidence is gathered. What matters is if the prosecution can *convince* the jury that you provoked the conflict, not whether you *actually* provoked it.

So how might there be evidence that makes it look like you started, sustained, or escalated the conflict, even if you did not?

Well, there may be false eye-witness testimony. The penalties for lying under oath doesn't always stop bad people, and your attacker's friends could decide to testify that it was you, not he, who "started it".

Or, you could have done something, seemingly harmless at the time, which the prosecutor will magnify out of all proportion to make you look like the bad guy. Let's say you accidentally bumped into a guy and he turned and attacked you. Could a prosecutor transform "accidentally bumped" into "aggressively shoved"? Don't put it past him.

Alternatively, you could have escalated the conflict's level of danger in a moment of panic. Even though you didn't start the fight, adding a knife to a fistfight is dangerous legal ground.

Finally, you could have a reputation in the community for being a "hothead",

whether you are one or not. That doesn’t mean you started this fight but many juries are allowed to consider your reputation in the context of a self-defense case.

How Innocence is Lost

The question then is, “How can I better conduct myself so everyone will perceive that I was not the aggressive person?”

The answer to this begins with the definition of “provocation.” In order to be considered the “aggressive” party in a conflict your actions must be “sufficiently provocative.” But what kinds of behaviors qualify?

The answer varies considerably from state to state. Luckily, the Federal courts have an elegant general rule. They define provocation as:

> “An *affirmative, unlawful* act reasonably *calculated to produce an affray* foreboding *injurious or fatal consequences*.”

That’s a mouthful, but it combines a number of very useful elements, which I have emphasized. Let take a closer look at each one.

First, the act must be “affirmative.” So an accident, say unintentionally bumping into somebody, is not provocation. Second, the behavior must be “unlawful.” Using force to prevent someone from entering your home, then, is not aggressive behavior. Third, it must be “calculated to produce an affray.” so you must have a premeditated desire to create a physical conflict. And fourth, the act must have the potential for “injurious or fatal consequences.” The act must be intrinsically dangerous.

Unfortunately, self-defense cases are rarely in Federal court, and the fifty states don’t all agree with the Federal definition, let alone each other. So let’s go through a few various ways states approach the problem. (**See Table 2-1** in the appendix for more details on which approach your state takes and the exact wording they use.)

Thresholds

Words Alone

In some states words alone are sufficient to qualify as provocative and saying anything threatening risks your case.

EXAMPLE CASE: *State v. Effler*
698 S.E.2d 547 (NC Ct. App. 2010)

James Effler, the defendant, lived with his girlfriend. He allowed an unemployed friend, Dan Brown, to temporarily stay with them, but after a time got frustrated with Brown for not getting a job and finding his own place.

On a November morning in 2007 Effler left a note for Brown saying that he would have to make other living arrangements, and then left for his job site with his boss, Thomas Thompson. Brown found the note, got irritated, and yelled at Effler's girlfriend until she was in tears. She phoned her boyfriend, told him about Brown's behavior, and said she was not comfortable staying in the trailer alone with him. She asked Effler to come home, and he agreed. Others in the vehicle with him testified that Effler was worried and upset.

Effler got home and threw Brown's tools from the truck, shouting "here's your … tools if that's what you want." In response, Brown ran at the vehicle with a baseball bat, struck the vehicle's windshield and poked the bat through the open driver's side window at Effler. It was obvious Brown and Effler were going to fight, so Thompson asked Brown to give him the bat, and Brown did. Brown and Effler then started in with their fists. At some point during the fistfight Effler grabbed the bat and struck Brown in

the legs with it, putting Brown on the ground. Witnesses testified that throughout the fight Effler was shouting at Brown, "you should have just went—I told you to go the 'F' home. You should have just went home," and standing over Brown's now prone body, he said that "if [Brown] didn't stop he would double or triple his skull with [the bat]". Eventually one of the witnesses shouted to Effler that Brown had had enough, and pulled Effler away. The fight ended with Brown lying on the ground, grievously injured. Effler's girlfriend called law enforcement and emergency personnel to assist Brown, who was declared dead after being transported to the hospital.

Surprisingly, the autopsy revealed that Brown had been stabbed in the chest and back, including a stab that deeply penetrated the heart. Effler claimed self-defense. The court instructed the jury that "the defendant would not be guilty … if he acted in self-defense and was not the aggressor," that "if the defendant voluntarily … entered the fight, he would be considered the aggressor," and that "one enters the fight voluntarily if he uses . . . abusive language which . . . [is] intended to bring on a fight." The jury found the defendant guilty of voluntary manslaughter and the court sentenced him to 92 to 120 months of prison. He appealed.

The appellate court noted "[A]n individual is the aggressor if he aggressively and willingly enters into a fight without legal excuse or provocation. A person is considered to be an aggressor when he has provoked a present difficulty by language or conduct towards another that is calculated and intended to bring it about." They affirmed his conviction. Effler, then, stands as an example where words alone were sufficiently provocative.

Requirement of an Overt Act

In general, words *alone* are *not* enough to cost you your self-defense claim.

In combination with even the slightest physical conduct, though, they just might. The courts call this physical conduct an *overt act*.

Even the slightest overt act, in combination with aggressive words, can qualify as provocative. Acts that alone would not be aggressively perceived can suddenly become aggressive when accompanied by threatening words.

Indeed, in *Commonwealth v. Mouzon* the Pennsylvania Supreme Court found that just following someone around constitutes aggression if you are following them and using threatening words. This was held true even though the defendant in the case wasn't the first to use physical force.

EXAMPLE CASE: *Commonwealth v. Mouzon*
2012 Pa. LEXIS 1889 (PA Supreme Court 2012)

Darrin Mouzon, the defendant, spent several hours drinking in a Philadelphia bar. Shortly after midnight he approached and tried to speak with two women who had just arrived with some friends. When the women turned down his advances and moved away from him he pursued them through the bar, calling them rude names and threatening that he would "kill those bitches." The women and their companions decided to leave. As they were walking out Mr. Mouzon angrily confronted them, and a man named King intervened.

King, a large man, punched Mouzon several times. Mouzon pulled a loaded gun from his waistband and King threw his hands in the air and backed away. Mouzon fired twice. The first round hit a bystander in the leg, and the second struck King in the head, killing him. The trial court decided that Mouzon could not claim self-defense because he provoked the conflict (e.g. failed the element of innocence). Mouzon was convicted of murder and sentenced to life imprisonment. He appealed his conviction.

On appeal Mouzon's lawyer argued that his "insulting and scandalous words" did not constitute provocation. Rather, he says King was the aggressor because King used physical force first. The defendant argued that the encounter "changed radically" when King accosted him over what

had up to then been a “trivial matter” of non-physical harassment. He should therefore have been permitted to argue self-defense at trial.

The Pennsylvania Supreme Court rejected the defendant’s arguments noting:

“In arguing self-defense, appellee would have his physical fight with the victim viewed in isolation, with the victim initiating the difficulty as the sole physical aggressor, and appellee acting in responsive self-defense. But, this is an incomplete and inaccurate view of the circumstances for self-defense purposes. The altercation between appellee and King did not occur spontaneously, or in isolation; it was the culmination of an ongoing confrontation in the bar initiated by appellee alone and continued and escalated by appellee alone. “

Specifically addressing Mouzon’s argument that King was the first to use physical force and therefore was the aggressor, the Pennsylvania Supreme Court held that:

“Appellee is correct that there is decisional law suggesting that merely insulting or scandalous words of a light or trivial kind do not suffice to establish the requisite provocation to negate a claim of self-defense. But, the uncontested evidence here shows that appellee's words and actions were substantially more provocative than a mere verbal insult. Appellee did not simply utter rude or crass comments to the women; he closely followed the women down a flight of stairs, verbally haranguing them the entire time. Moreover, he threatened to kill them, in no uncertain terms. Not all words are the same; and words combined with conduct can be extremely provocative. Threats to kill, moreover, invite response or even interference, including from those with a sense of chivalry, and even from those of a mind to go further and punish the provocateur.”

The Pennsylvania Supreme Court upheld the guilty verdict. Mouzon is a good example of where threatening words and unpleasant, if not illegal behavior qualified him as the aggressor, even when he did not start the physical fight.

Physical Force Alone

Absent any words, the aggressive party is the first to use physical force to start the fight in every jurisdiction.

This is not necessarily who fired the first shot or who struck the first blow. You do not have to let your attacker "go first." All that is required is that as their hit was *about* to happen (we'll discuss this element of *imminence* in greater detail in the next chapter). Keep in mind, though, that police, prosecutors, judges, and jurors will all tend to see the person who got the first blow in as the one who provoked the conflict unless you can convince them otherwise. If you strike first you will need to have a well-articulated explanation for why it was necessary to do so.

Pursuit / Sustaining a Fight

Please don't sustain or "re-kindling" a fight. Even if the other person started the first round, if the fight ends but you start in again, you will be blamed for starting a second conflict. One of the most common ways in which the element of innocence is lost is when a "defender" pursues an attacker, or leaves and then returns.

EXAMPLE CASE: *State v. Makidon*
2008 Minn. App. Unpub. LEXIS 357 (MN Ct. App. 2008)

Charles Makidon was annoyed with a neighbor's barking dog and walked next door to complain. He found the neighbor's children playing outside, and gave them an earful. Their parents, later hearing of this, came by Makidon's house to discuss the matter, meeting Makidon at his front door.

Makidon later testified that his neighbors threatened him. In response, he went into his house and returned with a revolver. The neighbors, seeing the gun, prudently retreated and called the police.

Makidon was tried and convicted of the reckless use of a dangerous weapon and attempted discharge of a firearm. He appealed his conviction on the basis that it was his neighbor, not him, that had provoked the conflict. The appellate court noted that regardless of who was the aggressor in the initial argument, "when Makidon retreated into his home, rather than simply closing and locking the door, he returned with a revolver, an act of aggression." Essentially, any provocation by the neighbors in the conflict had been—or should have been—resolved when Makidon retreated safely into his home. Returning armed to confront his neighbors was provoking a second conflict. Makidon's conviction was affirmed.

Mutual Combat

Another area of risk for the armed citizen is mutual combat. In mutual combat, the parties agree to fight ahead of time, either explicitly or implicitly. The classic example is the "let's take this outside and settle it like men." comment. When this happens *both* are seen as initial aggressors and *neither* behaved legally. Genuine self-defense only happens when one party starts the fight *against the wishes* of the other.

We are all most vulnerable to being considered a mutual combatant when we have a long-standing grievance with our attacker. A bad neighbor, an argumentative coworker, or the girlfriend's ex-con boy friend who can't let her go are all good examples of this. These are the types of fights a prosecutor, armed with some ambivalent facts, will gleefully try to sell to the jury as mutual combat.

It is important, then, to keep a level head with such frustrating people. Argumentative or even threatening words can later be recounted to your detriment. On the flip side, staying cool and objective when the other guy is obviously not can contribute tremendously to the strength of your claim of self-defense.

Escalation

Escalation occurs when someone in the fight escalates what was a non-deadly force fight into a deadly force fight. There are two ways that escalation can affect the element of innocence. The first is if it is *you* who escalates the fight. This can cause you to lose the element of innocence, and lose self-defense. The second is if the *other* guy escalates the fight. This can cause you to regain your innocence, if you've somehow managed to lose it.

Let's talk about the first scenario, in which you escalate. (We'll discuss regaining innocence in a few pages.) If your attacker merely slaps you, but you respond with your gun, the law sees two separate and distinct conflicts. The first is considered non-deadly and the *other* guy was the aggressor. The second is a deadly force fight and *you* were the aggressor. The courts do not like seeing what ought to have been "just" a fistfight escalate into a deadly force confrontation.

Let's pretend that even though his slaps weren't deadly you drew your gun anyway. The law permits him to now draw his own gun and shoot you in self-defense, even though he "started the whole thing." In this circumstance, he can still be convicted for the slap that started the first non-deadly fight, but not for your death.

Conversely, if you win the fight you shouldn't be held liable for the first non-deadly fight but may still be found guilty of killing him because you lacked legal justification for escalating the dispute into a deadly force fight.

Regaining Innocence

What happens if you could be made to look as if you were the aggressor? Perhaps you had to defend yourself against someone, and now that person's friends are telling police that you started the fight.

Even worse, imagine that you momentarily lost your mind and actually were the aggressor. There are times for all of us when we are not quite at our best. The daily pressures of life, work, and family may lead even the most amiable person to respond forcefully to insulting behavior. You snapped, shoved someone, and now you are in trouble.

As the apparent or real aggressor you've lost the ability to claim self-defense. But does that mean you've lost that ability for the duration of that conflict, no matter what you do?

Whether you made the mistake of provoking the conflict, or are being made to look as if you did, there still may be a way to argue self-defense at trial. There is a way to *regain your innocence* for the purposes of self-defense law. Withdraw from the fight and communicate your withdrawal.

Table 2-2 in the Appendix lists the laws governing regaining innocence, by state.

Withdrawal/Communication

In every state, the initial aggressor in a fight can regain their innocence by doing both of the following: (1) *withdraw* from the fight and (2) effectively *communicate* their withdrawal to the other person. If that other person then continues to fight even after you do these things, then *they* become the aggressor in a *new* conflict, and *you* may lawfully act in self-defense against his attack.

A good representation of most state statutes on regaining innocence by withdrawal and communication can be found in Louisiana:

Louisiana

> Revised Statute §14:22
> A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

Let's analyze what this is really saying. First, the withdrawal must be made in "good faith." You must really mean to abandon the fight. This isn't a tactical withdrawal—that is, a withdrawal intended to allow you to improve your ability to fight, such as to reload or to obtain cover, then re-engage.

Second, you need to communicate your withdrawal. For practical purposes when people run away they are *constructively* communicating to the other person that they are withdrawing from the fight as fast as their feet will take them. That's usually sufficient to meet the communication requirement.

That's not the *best* way to communicate your withdrawal, though. The *best* way is verbally, and loud. You want others to hear your communicate withdrawal. Hopefully those people will later testify, so that there's no question that you met this second condition. It wouldn't hurt to run away while you yell, too, so you have both explicit and constructive communication.

Here's a real danger to watch out for: *it's not just you* who can regain your innocence. So can that other guy, the one who was the aggressor in the first fight.

Imagine you are punched, but it turns out to be case of mistaken identity—your attacker thought you were somebody else. Realizing his mistake, your attacker backs off. You, being understandably angry, decide to return the attacker's favor and give him a punch of your own.

What's just happened? By backing off, the original attacker has regained his

innocence, and now you are the aggressor in a second fight. In that second fight *he* can claim self-defense but *you cannot*.

Now, there is an important potential catch in many states. Some jurisdictions distinguish between an *initial aggressor* in a fight and a *provoker* of a fight.

I know what you're thinking: aren't the aggressor and the provoker the same thing? Don't they both mean the person who started the fight?

In many states that is exactly correct. No distinction is drawn between an aggressor and a provoker: *either* can regain their innocence by withdrawing from the fight and communicating their withdrawal.

But many states *do* draw a distinction between an aggressor and a provoker. So what's a provoker then? It is someone who *provokes the other guy* to be the first to act, with the intent of using that other guy's force as an excuse to justify his or her own response.

We've all seen this in movies if not in real life: some tough guy goads another person into being the first to throw a punch (or go for their gun, in Westerns), so that the tough guy now has an apparent legal justification to use force against that other person.

In states that distinguish between the initial aggressor and the provoker, the initial aggressor *is* allowed to regain their innocence by withdrawal and communication.

The provoker, however, *is not*. The provoker owns that fight, period.

Escalation

Earlier we discussed what happens to the element of innocence if *you* escalate a non-deadly fight to a deadly force fight. Now let's consider what can happen if it's the *other guy* who escalates the fight.

Another way innocence can be regained is not within *your* control. It is a consequence of the *other person's* actions. If you start a non-deadly force

fight and the other person responds with merely non-deadly force, then he's acting in lawful self-defense. You as the unlawful aggressor cannot claim self-defense, but the other person can. But, if he responds to your non-deadly force with a *deadly force*, in the eyes of the law he has started a *second* fight where *he* is the aggressor and *you* are innocent. Now *you* can respond to his counterattack with legal defensive action.

This principle is well-described in the authoritative legal treatise, *Criminal Law*, by W. LaFave and A. Scott, which states:

> It is generally said that one who is the aggressor in an encounter with another — i.e., one who brings about the difficulty with the other — may not avail himself of the defense of self-defense. Ordinarily, this is certainly a correct statement, since the aggressor's victim, defending himself against the aggressor, is using lawful, not unlawful, force; and the force defended against must be unlawful force, for self-defense. Nevertheless, there are two situations in which an aggressor may justifiably defend himself. (1) A non-deadly aggressor (i.e., one who begins an encounter, using only his fists or some non-deadly weapon) who is met with deadly force in defense may justifiably defend himself against the deadly attack. This is so because the aggressor's victim, by using deadly force against non-deadly aggression, uses unlawful force.
>
> Criminal Law, 2d Ed. (1986)

A recent California appellate case made essentially the same point:

California

> If you decide that the defendant started the fight using non-deadly force and the opponent responded with such sudden and deadly force that the defendant could not withdraw from the fight, then the defendant had the right to defend himself with deadly force and was not required to stop fighting.
>
> *People v. Carillo*, 2011 Cal. App. Unpub. LEXIS 5182 (CA Ct. App. 2011)

This approach can also be found in Kentucky, which denies self-defense to aggressors, and then provides exceptions to this denial. It reads in relevant

part:

Kentucky

> Revised Statute §503.060
> Notwithstanding the provisions of [Kentucky self-defense law], the use of physical force by a defendant upon another person is not justifiable when:
>
> …
>
> (3) The defendant was the initial aggressor, except that his use of physical force upon the other person under this circumstance is justifiable when:
>
> (a) His initial physical force was nondeadly and the force returned by the other is such that he believes himself to be in imminent danger of death or serious physical injury; …

Wrap-Up

Without the required element of innocence, there simply is no self-defense. Given that you've had to concede to your underlying use of force in order to claim self-defense in the first place, if you lose self-defense you've handed the prosecutor an easy conviction.

The first element of the law of self-defense is Innocence. Legitimate self-defense is available only if you are an innocent party to the confrontation. If you initiate or sustain a confrontation, your actions cannot be justified as self-defense.

You may accurately see yourself as someone unlikely to start, continue, or escalate a confrontation. Even so, fights often begin at the low end of the force continuum but then unexpectedly escalate. Actions or language on your part that initially seemed innocuous may later be portrayed as provoking the confrontation. Also, there may be few if any witnesses to the encounter, or the witnesses may be hostile to you.

In a few jurisdictions words alone may be sufficient to qualify you as an aggressor. In the majority of states, though, some aggressive action must also have occurred. See the tables below to determine how your state views the threshold for aggressive conduct in the context of self-defense.

In cases of mutual combat, the blows of you and your "attacker" do not cancel each other out. Instead, both of you are deemed aggressors and both lose the right to claim self-defense. Merely being in a fight does not constitute mutual combat, however. There must be a pre-existing agreement, explicit or implicit, for the parties to fight. Again, be careful. Perceptions and witnesses may not be in your favor.

Similarly, having thrown the first blow does not necessarily make you the aggressor, if the blow was needed to protect yourself. There is, however, a strong tendency among law enforcement and the courts to perceive the

striking of a first blow as indicative of aggressor behavior, short of any evidence to the contrary. A compelling narrative will be needed to overcome this perception.

If you do start a fight, and have lost the required element of innocence, and therefore lost self-defense, there are two ways you may be able to regain your innocence.

One way is to withdraw from the fight and to effectively communicate your withdrawal from the fight. All states allow this for an aggressor, a person who was the first to use and threaten force. Many also allow this for a provoker, a person who provokes another to be the first to threaten or use force. Some states, however, deny provokers the ability to regain their innocence by withdrawal and communication.

Keep in mind, it's not just you who can regain your innocence—so can your attacker. If he does, and you pursue, now you're the aggressor in a second fight.

The second way to regain innocence occurs if you've started a mere non-deadly fight and the other person responds with deadly force. You are still the aggressor for the first non-deadly force fight, but they have become the aggressor for the second, deadly force fight in which you are the innocent because they escalated.

In short, if the criminal justice system perceives you as the bad guy, it will treat you as the bad guy, suitable for, and legally vulnerable, to successful prosecution. Any suggestion that you were wearing the "black hat" in the conflict enormously increases the likelihood you will be vigorously pursued by the criminal justice system.

Fortunately, the converse is also true. To the extent your actions appear innocent, you will appear difficult to prosecute, and the system is less likely to pursue you. The prosecutor's "guilty story" will be substantially more difficult to craft and far less compelling.

Bottom line, it pays to keep your nose clean, especially if you're really explicit and obvious about it. Play the role of the innocent, live the role of

the innocent, and you'll receive enormous dividends should you ever have to argue self-defense.

Chapter 3

Element 2: Imminence

The second fundamental element of the law of self-defense is *imminence*. An excellent definition of imminent danger is found in Black's Law Dictionary:

> Immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law . . . such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense.
>
> Black's Law Dictionary, 5th Edition (1979)

In other words, if an attack is imminent it is about to occur *right now,* and must be responded to promptly. So where do people get into trouble with imminence? When they use force either *too early* or *too late* (or can be made to look as if they did).

If an attack is too far in the future, then you are not allowed to respond with violence. Someone who threatens to go home, get a gun, come back, and kill you does not represent imminent danger. In such circumstances you must do something *other* than fight, like leave the area and call the cops.

If force has already been used against you, and ended—you've been punched, but the attacker has now fled—then that attack is in the past and no longer imminent. The law does not permit you to retaliate to hand out your own justice. That's what the police and the courts are for.

Of course, if a second incoming blow is imminent you may protect yourself from that ongoing attack, just not for an attack that is over and done. Obviously, then, it is important to accurately judge when a threat has become imminent.

The AOJ Triad

A great tool for evaluating imminence in real-time while facing a threat is called the AOJ Triad. It's also good for explaining to others what happened in a way that clearly shows imminence. I first learned of the AOJ Triad as a student in Massad Ayoob's LFI-1 course (now MAG-40) way back in 1996, and have yet to find something better suited to the purpose. The AOJ stands for "ability," "opportunity," and "jeopardy." Let's take a look at each of those in turn.

By the way, I cannot let a mention of Mas' name pass without saying that virtually everyone who teaches self-defense law stands on his shoulders. It was his LFI-1 course that first led me to specialize in self-defense law. Nothing I've done since on the subject would have happened otherwise.

As I write this we are fortunate that Mas is still teaching, and hopefully will for many decades to come. But nobody works forever. If you haven't taken the opportunity to attend one of Mas' classes I urge you to do so post haste, at www.massadayoobgroup.com. Students who have attended both Mas' classes and my own seminars tell me they're very complementary—Mas' from the perspective of a career in law enforcement, and my own from the perspective of a criminal attorney.

OK, that said, let's get to the AOJ triad.

Ability

This first leg of the AOJ triad addresses the question, "Is my attacker able to hurt me?" Almost anyone, of course, could push. So what we're talking about in the context of "ability" is not whether the other can use force but what kind of force they can use. (We'll discuss this more specifically when we cover the element of Proportionality in Chapter 4.)

Opportunity

This second leg of the AOJ triad addresses the question, “can their attack get to me?”

If your attacker has a gun, unless you’re behind a bulletproof wall they can use it against you. So opportunity is rarely a question when the threat is armed with a firearm. But what about an impact weapon—such as a knife, a club, or fists? In this case, the two factors you must consider are obstacles and distance.

Obstacles

Obstacles are barriers between you and the aggressor that gets in the way of their ability to harm you. Such barriers may not be initially present, but you can with complete safety place them between you and your attacker.

Imagine, for example, that you are in a parking lot and someone threatens you with a knife. If you can, with complete safety, put a car between yourself and the guy you he can’t bring that knife to bear against you. (I suppose he can throw the knife at you, but then it’s your knife.)

If you can take away the attacker’s ability, you strip him of opportunity. Then the conditions of the AOJ triad are not met, and the threat you are facing is not yet an imminent threat.

Now, if the guy chases you around the car, and manages to catch up, the situation has changed. He now has opportunity as well as ability, and assuming there is jeopardy (which we will discuss in a moment), then an imminent threat exists.

By the way, if you have the opportunity to place an obstacle between you and an impact weapon attacker, and can do so with complete safety, please take advantage of your good fortune. Why? For several reasons.

First, none of us should be eager to get into a deadly-force fight. Just because we’re the good guys doesn’t mean we’re going to win. What’s at stake is your life. Don’t put it in jeopardy unless truly necessary.

Second, if you have the option to remove opportunity, and you choose not to do so, how might a prosecutor characterize that choice? After all, you had the option to not fight (by placing an obstacle between you and the guy) and instead you chose to fight. That can be made to look a lot like mutual combat. And if the jury believes it was mutual combat, you lose on the element of Innocence, and there goes your claim of self-defense.

Distance

Just like with obstacles, if your attacker has a gun then distance isn't helpful. That's due to the inherent nature of a firearm: able to throw hot pieces of lead over long distances very quickly. Again, distance tends to only be an issue with an impact weapon.

Clearly, at some close distance, a guy can get to you with in impact weapon. If he is standing beside you and armed with a knife, he has the opportunity to stab you with that knife.

Conversely, at some greater distance the guy becomes "too far away." One hundred yards is too far for a guy with a tire iron to hurt you (unless he throws it, in which case it is now your tire iron).

The question, then, is at what distance is an impact weapon an imminent threat? Five feet? Or is 10 feet close enough? 15 feet?

Dennis Tueller, a Salt Lake City police officer and firearms instructor (since retired), asked just this question. Uniformed officers are routinely faced with impact weapon bearing suspects. So it's natural for Tueller to wonder how far away a suspect can be and still use an impact weapon against an officer before he could defend himself.

To answer his question, Tueller ran a bunch of empirical studies. Which is just a fancy way of saying he ran a bunch of students through the exercise that would later become the Tueller Drill.

Tueller learned that most officers can get a service pistol out of a holster and engage a threat with center-mass hits within 1.5 seconds. So the question then becomes, how much distance can a bad guy cross in 1.5 seconds?

Timing a great many students running from a standing start, Tueller learned that someone can go about 21 feet in 1.5 seconds. So 21 feet became the "Tueller distance," or the maximum distance from a police officer a person can use an impact weapon against the officer before the officer can shoot them.

The Tueller Drill is often referred to as the "21 foot rule," or the "7 yard rule." This really obscures the real take-home message of the Tueller Drill. The value is not some particular distance. What matters is your "Tueller distance." People's draw speeds vary. Your Tueller distance will be greater or less than 21 feet depending on your ability to get the gun unholstered and pointed center-mass.

The real lesson of the Tueller Drill is that someone armed with an impact weapon has the opportunity to use it at a far greater distance than most think —and certainly much greater distances than a juror might have otherwise thought. If you imagine the length of typical American parking space, and add another three paces, you'll be right about at 21 feet.

If you shoot someone 15 feet away, a prosecutor might well try to convince the jury that 15 feet is too far for the guy to use the knife against you. He was not yet an imminent threat, the prosecutor will argue, and so the jury should deny your claim of self-defense.

If you know the Tueller Drill, of course, you know that 15 feet is more than close enough. And since you know the Tueller Drill, you have the opportunity to tell the jury about the Tueller Drill. Now the jury understands that the prosecutor's argument is false and his story gets cut off at the knees.

Defensive Display

Of course, real life is not as binary as the Tueller Drill might suggest. In the real world we don't just sit back and watch a guy approach from 40 feet away with a raised machete, patiently twiddling our thumbs until he gets to 21 feet, then suddenly whip out our gun and shoot him. We will want to take incremental steps to defend ourselves.

Most defensive uses of a gun do not result in a shot being fired. Merely

pulling it out solves the problem. (Of course, you can't count on this happening, so you must be prepared to shoot under the appropriate circumstances.)

Unfortunately, displaying a gun unnecessarily is aggravated assault unless, of course, it is justified as self-defense.

In some cases this is easy to prove—someone a mere six feet away with a knife clearly has the opportunity to hurt you, and the defensive display of a weapon would be appropriate. Indeed, firing the weapon might well be appropriate, and any time firing is permitted showing it is permitted.

On the other hand, if that same person with a knife is 40 feet away, shooting him is probably not justified. Yet, if firing is not justified, can you at least pull your gun? Can the gun be displayed, if not fired, in situations where opportunity has not yet been reached?

States deal with the matter of defensive display in massively different ways. The cases are also extraordinarily fact-sensitive, meaning that very small changes in the facts lead to big changes in legal outcomes.

On one extreme we have states like Montana, where defensive display is explicitly permitted by statute:

Montana

> *§45-3-111. Openly carrying weapon -- display -- exemption.*
> (2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

On the other extreme we have Massachusetts, where you may only display a gun—even by just holding open your jacket to show the holstered pistol—if the circumstances justify firing it:

Massachusetts

> "Permitting the threatening of deadly force without holding the user responsible as having actually used deadly force [would] provide a safe harbor to encourage the escalation of violence."
>
> *Commonwealth v. Cataldo*, 668 N.E.2d 762 (MA Supreme Court 1996)

The large majority of states fall in between those two extremes. All states, though, are concerned about making laws that encourage escalation from what should be a non-deadly force fight into a gunfight.

The worry for us is that if we face a real threat, and defensively display our gun, will the authorities decide that the defensive display was inappropriate, and therefore unlawful?

If they decide the display was unlawful, the legal consequences can be severe. Displaying a gun in order to make another person fear death or grave bodily harm constitutes aggravated assault, and can result in 10 years or more of jail. Yet that's exactly what we are doing when we show our guns. We make an attacker fear what we can do to them with the handgun in an effort to deter an expected attack.

So how do we know when the authorities will decide drawing our gun was appropriate, and unlikely to lead to prosecution, as opposed to when they will find it inappropriate and subject to prosecution? Obviously, if firing it would have been OK, then the display is OK. But what about circumstances where it would not have been appropriate to shoot? When is display OK in those situations?

Unfortunately there's no way to know for certain which defensive displays will meet with official approval and which will not. After all, the justice system is a creature with humans making the decisions, and those humans have intents that may or may not line up with your best interests. There's always going to be at least some risk of prosecution for a defensive display. As a result, no defensive display should even be considered if there exists any safe alternative.

Nevertheless there are some scenarios that are much more likely to be seen as an appropriate defensive display than others. So let's discuss two model

scenarios.

In both of these model scenarios, you reasonably perceive a threat. At the moment, the threat is sufficiently far away that the attacker does not yet have opportunity. But, they mean business, and if nothing is done to deter them they will inevitably get close enough to be an imminent threat.

Pretend a guy has a machete raised over his head. He is looking directly at you, calling you out by name, screaming he is going to kill you. He is deliberately closing in on you, and if nothing is done he will inevitably attack you with deadly force.

In that kind of scenario I believe you have a very compelling argument why defensive display was justified, even before the threat became imminent. Indeed, you can argue that pulling your gun was in your attacker's best interest. It delayed the time when you would need to actually use the gun. If you un-holster the gun in advance of needing it, you cut down the 1.5 seconds needed to shoot to far less, so you can afford to wait longer than if you'd kept the gun concealed.

Now let's adjust the scenario just described a little bit. Your attacker is still obviously focused on you. He is still too far away to be an imminent threat but he is deliberately closing the distance. But one thing is different from the previous scenario—the lack of a machete. There is no evidence of the guy is going to use deadly force. No weapon, no great disparity in size or strength, etc.

In that case, in most states you can't legally display your gun even *after* he's close enough to be an imminent threat, because he isn't using deadly force.

It is in this latter scenario that prosecutors most often decide your actions were unjustified and criminal. You just made yourself very vulnerable to successful prosecution.

So, what's the answer? Obviously you don't just want to sit there and "take it," even if the threat is "merely" non-deadly in nature. You want to protect yourself. You have the right to not be harmed, even slightly. The answer is pretty simple, actually: have an effective *non-deadly* means of self-defense in

addition to your *deadly* means of self-defense. We'll talk more about a non-deadly means of self-defense in greater detail later in this book.

Jeopardy

Even assuming we have spotted (and can articulate) ability and opportunity, a threat is not imminent unless there is also jeopardy.

Jeopardy exists when a person with ability and opportunity intends to use them. A classic example where there is ability and opportunity, but not jeopardy, is an armed security guard at a bank. While you're waiting for a teller the bank guard is only feet away, loaded sidearm on his hip. Clearly he's able to hurt you. Just as clearly there's an opportunity for him to do so. But absent the third element of reasonable jeopardy, you can't shoot him because he's not an imminent threat.

What if that armed person was not a guard, but a bank robber? He's the same distance and has the same gun. But unlike the guard, he's threatening.

Jeopardy doesn't have to be announced. The guy doesn't have to say, "give me all your money or I'll kill you!" It also covers implicit threats, like someone following you through a dark parking garage with a knife held up menacingly.

The jeopardy element is probably the hardest one to be confident about. Sometimes the situation is clear. The guy is spraying bullets everywhere. But what about more subtle situations? What if a young man gives you a "bad feeling" but there's no weapon in sight? Telling the police "you just had to be there" is not going to cut it.

Fortunately, there are things you can do to clarify the situation. If possible, take actions that force the person to act in one way if they are a threat, but in another if they're not.

Here's a good example. You see a menacing person approaching on your side of the street, so you cross to the other side to avoid him. He crosses too

and continues to close. That's a fact you can tell police later to corroborate your fear. Similarly, in a parking garage you can put a vehicle between you and the guy. If they follow you around it that's a good indication you're in jeopardy.

Another great way is to shout at them. "Stay back!", "Don't come closer!", "You're scaring me!", "Stop following me!", "Don't make me defend myself!", "What do you want?!", or even simply "Help! Police!" If he still goes after you after all that, there's no question that he represents jeopardy. If you were wrong about him you may be a little embarrassed about your misinterpretation, but I'd rather be embarrassed than kill an innocent person.

The AOJ triad is not a formal legal doctrine, and I've yet to see it cited in a court decision. But it is a useful tool to help you both identify and articulate a compelling narrative of a reasonably perceived imminent threat.

EXAMPLE CASE: *State v. Berriel*, 262 P.3d 1212 (UT Ct. App. 2011)

Darren Berriel's friend Rachel had recently told him that her boyfriend, Luis, was abusive. One day, while in the car with his friends, Berriel got an hysterical phone call from Rachel, screaming and crying that Luis was beating her. Berriel immediately turned the car around and raced to Rachel and Luis' house, only to find no one was home. Obviously still worried, Berriel decided to wait there until they returned.

It turns out Luis and Rachel had gone to pick up Rachel's younger brother, a trip of 15 to 20 minutes. When they arrived back there was no indication of an ongoing argument, nor did anyone appear upset.

Berriel immediately ran at Luis with a knife and a brief fight ensued, all while Rachel was between 15 feet and 15 yards away. It ended when Berriel cut Luis, requiring stitches on his left forearm. Berriel was arrested and charged with aggravated assault.

At trial Berriel argued that his actions were justified since he was

defending both himself and Rachel. He asked the trial judge to instruct the jury about both self-defense and defense of others.

The judge agreed on self-defense, but refused to give the defense of others instruction. Berriel was convicted of third degree aggravated assault and weapons charges.

On appeal, Berriel argued that the trial judge should have given a defense of others instruction. There are three problems with this. First, the 15-minute time lapse between the phone call and when he finally saw Luis was sufficient time for an argument between Luis and Rachel to end. Second, Luis was not threatening, touching, or even approaching Rachel menacingly when they got home. Finally, during the encounter Rachel was between 15 feet and 15 yards away, and out of the path of the fight.

While Berriel had evidence that Luis was violent to Rachel in the very recent past, by the time the fight started Luis was not an imminent threat to Rachel. The appellate court emphasized that, "it is the imminence of harm to another that is central to the legal justification of violence to prevent it; otherwise, this humane law of justification could be extended to countenance retribution or vigilantism." As a result, the three-judge appellate court, in a two-to-one decision, affirmed Berriel's felony conviction.

What is particularly interesting about Berriel's case, though, is the starkly different view of the third judge. First he noted that the relevant Utah statute gives the jury the responsibility to decide imminence, not the judge. Second, the statute includes patterns of abuse or violence in the relationship as a factor to consider. Finally, Utah law gives a low threshold, namely "if there is any reasonable basis on the evidence to justify it."

The passengers in Berriel's car had testified to the phone call, including overhearing Rachel crying and screaming. Clearly, there was imminent danger at the moment of the call. The question, then, is whether such a belief continued to be reasonable during the time that lapsed between the phone call and the fight. In the dissenting judge's view, "once Berriel had

a reasonable basis to believe that Rachel was in imminent danger … his actions in her defense were potentially justifiable…[until] Berriel had reason to believe that the danger to Rachel had passed."

The rapidity of events once Berriel encountered Luis may have "deprived Berriel of any meaningful opportunity to revise his assessment of the ongoing danger to Rachel…. and was therefore entitled to act in the continued belief that Rachel remained in danger."

On this basis, the dissenting judge believed that the trial court denied Berriel a fair trail. Unfortunately for Berriel, the majority decision decided his fate against him.

Battered Spouse Syndrome

In general, "imminent" is time-based. That is, the attack will occur within the next few moments. This is not, though, the only way to think of imminence. Some courts have interpreted to mean that an attack is inevitable, if not defended against, even if it is not immediately going to happen.

One legal scholar explored this "inevitable" aspect of the imminence principle with the following thought experiment:

> Suppose A kidnaps and confines D with the announced intention of killing him one week later. D has an opportunity to kill A and escape each morning as A brings him his daily ration. Taken literally, the imminence requirement would prevent D from using deadly force in self-defense until A is standing over him with a knife, but that outcome seems inappropriate. If a threatened harm is such that it cannot be avoided if the intended victim waits until the last moment the principle of self-defense must permit him to act earlier--as early as required to defend himself effectively.
>
> 2 P. Robinson, Criminal Law Defenses 131(c)(1) (1984)

Right around the time that Robinson published this, legislators across the country started viewing prolonged spousal abuse similarly. In most of these cases the abused wife killed her abusive husband while he was asleep or passed out. Under the traditional view of imminence, this doesn't qualify. After all, the woman could have left her abuser, called the police, and so on, rather than shoot him. (Or stab him, or set him on fire—some of these abused wives prove very pragmatic.)

Forcing a long-abused wife to spend the rest of her life in prison because she killed her monstrous husband struck many as unjust, During the 1980s and 1990s considerable momentum built to change the law for such situations. The clinical concept of Battered Spouse Syndrome (BSS) quickly garnered scientific and legal acceptance, and many legislatures and courts incorporated

it into their self-defense frameworks.

Today, all states have changed their rules to account for Battered Spouse Syndrome. At a minimum, all states allow expert testimony on BSS to explain how the syndrome occurs and its effect on an abused person's perceptions. Some states allow experts to decide whether the defendant actually suffered from Battered Spouse Syndrome while others leave the decision to the jury.

If the jury is satisfied that the defendant suffered from BSS, the principle of imminence may be redefined as inevitable, and the certainty of the abused spouse suffering future beatings and abuse could be sufficient to meet the imminence requirement.

Wrap-Up

The 2nd fundamental element of the Law of Self-defense is Imminence.

An imminent threat is one about to happen right now. Force used too soon or too late is not lawful. A threat of future harm is not an imminent threat against which defensive force can be used. Using force against another after the threat has passed is retaliation, not self-defense.

If a prosecutor successfully attacks your claim of self-defense on the principle of imminence your legal defense could suffer terminal damage. It is therefore essential to have a robust narrative that shows the imminent nature of the threat you faced.

A very useful tool in the context of the element of imminence is the AOJ triad. The AOJ triad stands for Ability, Opportunity, and Jeopardy. This tool is very helpful in two ways. First, it helps you evaluate whether a threat is imminent in real-time, as you are facing the threat, so you know whether you are lawfully permitted to use force in self-defense. Second, it helps you to articulate, in a compelling and evidence-based way, why your perception of an imminent threat was a reasonable perception.

Almost everyone possesses some ability to cause harm, so ability is almost always present to some degree. There are limits, though. Small children without a weapon are not able to harm a grown man that boxes as a hobby.

Whether your attacker has the opportunity to bring that ability to bear against you depends in part on the nature of the threat. If he is armed with a gun and can see you they have the opportunity to bring the firearm to bear against you. On the other hand, if they are armed with merely an impact weapon, whether they have opportunity depends on obstacles and distance.

Jeopardy assesses whether your attacker's conduct indicates he intends you harm. A bank guard is able to harm you and has the opportunity, but is not

causing you jeopardy. Bank robbers are.

Whether it's lawful to defensively display your deadly weapon depends on the totality of the circumstances. Some states explicitly allow for defensive display (but not use) when facing a threat, even if the threat is non-deadly in nature. Others allow defensive display only when the actual use of deadly force would also have been permitted.

In the majority of states defensive display of a firearm can be justified legally if that threat is deadly. Unfortunately, many people make a defensive display of deadly force when the threat they were facing was merely non-deadly in nature. These people have made themselves extremely vulnerable to successful prosecution. The best solution for a non-deadly threat is displaying and/or using non-deadly defensive force.

Battered Spouse Syndrome is legally recognized in all states and relaxes the normally stringent imminence requirement.

Chapter 4

Element 3: Proportionality

In self-defense the concept of proportionality is like weight classes in wrestling. It wouldn't be a fair fight to ask a 110-pound person to go up against someone who is 250 pounds. For self-defense purposes, you can't pull your "250 pound" gun against a "110 pound" slap. Unlike wrestling, though, there are only two self-defense classes: deadly and non-deadly.

To put it another way, the force you use cannot be greater than the force your attacker uses. So if your attacker is only using non-deadly force you can't use deadly force.

For the armed person, this means that you must make two separate decisions fast. Is the attack against me deadly or non-deadly? And, what legal means at my disposal can I use against that force?

If my attacker is using deadly force, I may respond with pretty much anything. But if he is using non-deadly force, I may not use my gun or other dangerous weapon. If he pokes at my chest, a smashing punch to his face with brass knuckles may well be disproportionate and thus not lawful.

A conflict can begin at a non-deadly level and quickly escalate to deadly. This happens when your attacker's force increases or when your ability to defend yourself decreases. If he switches from bare hands to a weapon, or huge thug friends join him the situation obviously crossed the threshold. Or, if you're beaten to the ground nearly senseless and he continues to pound on you, his punches may now significantly harm you.

Of course, the reverse is also true. What begins as a deadly confrontation can de-escalate. If it does you must step down your defensive force so that it remains proportional to the attacking force.

Deadly Force

One would think that the difference between deadly and non-deadly force was self-apparent. One results in death while the other doesn't. But in practice things are a bit more complicated. Legally speaking deadly force is any force that can cause death *or* grave bodily harm. Grave bodily harm includes permanent disfigurement, long-term damage to a part of the body (such as a broken bone), rape, and even kidnapping.

Non-deadly force, in contrast, is any force less than that capable of causing death or grave bodily harm.

How do you determine whether a particular force is deadly? Obviously, if you end up dead, it was deadly. But that's not very helpful. Courts usually determine the deadly nature of the force based on what weapon is used. Dangerous projectile weapons are always deemed deadly. This includes all guns, as well as bows or crossbows. Use them and you are legally on deadly force grounds.

Then there are weapons that are dangerous only within contact distance. This includes knives, clubs, and pretty much anything that humans can wield. Even a pencil or a couple of feet of fishing line could meet this definition if used to harm someone.

Ordinary items that were not designed to be weapons become deadly only if they used in a deadly way. Pushing someone in the chest with the tip of a baseball bat may be offensive, but it's not likely to cause serious harm. Taking a home run swing at their head will. Swinging a bathroom robe belt at someone in a whip-like fashion is non-deadly. Using it as a garrote is deadly.

Then, to muddy the water even more, there is the fistfight. We all know that bare hands can cause death. Human beings have been strangling each other for as long as there have been human beings. Unfortunately, (or fortunately,

as the case may be), the courts consider bare hands to be non-deadly weapons by default. Police, prosecutors, judges, and juries view using a gun to prevent being punched skeptically. This is because people only very rarely die or suffer serious physical harm from a punch.

On the other hand, if an attacker uses his hands in a deadly force way (by wrapping them around your throat and squeezing, for example), then his hands are now deadly, and justify a deadly force response.

The courts could decide a punch is deadly, but only if the other guy is much bigger or better at fighting, if there are multiple attackers, or if the attacker keeps punching you after you are no longer able to defend yourself. In such cases the fight would be far more devastating than normal.

EXAMPLE CASE: *State v. George Zimmerman*
Florida trial court 2013

One night George Zimmerman, the head of his Neighborhood Watch Program, observed Trayvon Martin, a 17-year-old football player, walking aimlessly through his neighborhood in the rain. Martin fit the description of burglars that had recently plagued the neighborhood.

Zimmerman phoned the police and reported the suspicious activity. Martin, noticing Zimmerman observe him, fled from sight around a corner. Zimmerman told the police dispatcher that Martin had run, and the dispatcher asked Zimmerman where Martin was going.

Because Martin ran, Zimmerman followed Martin to try to regain sight of him, all while still on the phone with the dispatcher. When the dispatcher realized what Zimmerman was doing he told Zimmerman that he didn't need him to do that. Zimmerman responded "OK," asked for police response, arranged for a meeting, and hung up.

Moments later Martin emerged from the shadows, verbally challenged

Zimmerman, knocked him to the ground with a single punch, mounted him, and viciously beat him. Martin smashed Zimmerman's head against the sidewalk in what was described by an eyewitness as an "MMA-style pound-and-ground".

When Zimmerman screamed for help, to no avail, Martin put his hands over Zimmerman's mouth and nose, cutting off his breathing. In the struggle Zimmerman's jacket fell open, revealing his licensed pistol. Martin's hands moved to the side of Zimmerman's body near his gun, and Martin told Zimmerman that he was going to die. Unable to escape, believing that Martin was trying to take his firearm, and fearing unconsciousness and death, Zimmerman drew and fired a single, fatal shot into Martin's heart.

If Zimmerman had shot Martin while they were upright and fighting with fists, he would have violated proportionality. But after Martin knocked him to the ground, straddled his body, and beat him to near unconsciousness, Martin's barehanded attack transformed into deadly force. Zimmerman's gun became proportionate to the deadly force against him, and therefore lawful.

Despite his open-and-shut case, Zimmerman was enmeshed in a battle that played itself out as much in the limelight as the courtroom. Prosecutors, politicians, media personalities, and lawyers behaved both unethically and illegally as they worked to condemn him for life to further their self-interests. Luckily Zimmerman had world-class legal representation in the defense team of Mark O'Mara and Don West, who executed a flawless defense. Zimmerman was also lucky to have had a fair jury that wanted true justice. They acquitted him after only a few hours of deliberations. Unfortunately, despite now being free, his life is forever changed and continues to be in danger of vigilante "justice."

Another great case that addresses the use of deadly force against a bare hands

attack is *State v. Fish*.

EXAMPLE CASE: *State v. Fish*
213 P.3d 258 (AZ Ct. App. 2009)

In May 2004, Harold Fish was hiking alone in a national forest when he came across a stranger with unleashed dogs. As Fish waved to the man, the dogs began running down the trail towards him, barking and growling aggressively. Fish yelled to the stranger to control his dogs, but concluded that the stranger either would not or could not do so. In fear for his safety, Fish took out his Kimber 10mm pistol and fired a shot into the ground, dispersing the dogs to the sides of the trail.

Fish then noticed the stranger was running down the trail at him. Fish "yelled to the victim that he had not hurt the dogs, but the Victim continued to come at him with his eyes crossed and looking crazy and enraged, cursing at the Defendant and yelling that he was going to hurt [him]."

Fish kept his handgun lowered in front of him, clearly visible to the stranger, and yelled to "get back and leave [him] alone . . . at one point [he] yelled at the Victim to stop or he would shoot."

Fish believed that the stranger was going to kill him, and that he had nowhere to run because the dogs were at either side of the trail. The stranger continued to advance on Fish, making a "weird kind of punching thing" until he was about 5 feet from Fish. At that point Fish shot the stranger three times in the chest.

Fish covered the stranger with a tarp, placed his own backpack under his head, walked to a nearby highway, and flagged a passing car to call 911. Responding paramedics determined that the stranger was dead. Fish gave statements at the scene to various law enforcement agents who responded, and he testified at the grand jury but not at the trial itself. At the conclusion of the trial the jury found Fish guilty of second-degree murder and sentenced him to 10 years. He began serving that sentence while

appealing his verdict.

Fortunately for Fish, the Arizona appellate court overturned his conviction. Fish was released from prison the following month, having served three years of his sentence. Finally, Fish was a free man.

So, albeit after three harrowing years in prison, how did shoot a single, unarmed attacker three times in the chest and still be found not guilty?

Although the judge instructed the jury on self-defense, he refused to tell the jury what acts constitute unlawful force. This refusal, the appellate court decided, unfairly undermined Fish's sole legal defense.

Fish had wanted the judge to articulate three aspects of Arizona law. First, that he could use deadly physical force against another person if it was necessary to prevent aggravated assault. Second, an assault happens when someone intentionally places someone else in reasonable fear of imminent harm. Note that there need be no actual touching for an assault to occur, so long as Fish feared it. Finally, that assault becomes aggravated if the assaulter restrains the victim.

Given this context, Fish argued that he was restrained because the aggressive dogs on either side of the trail prevented retreat. This made the attacker guilty of aggravated assault, which in turn made deadly force a justified response. The appellate court agreed, reversing the verdict.

It's sad to see the tremendous costs suffered by a law abiding, loving father before his was victorious. The authorities investigated Fish, indicted him for murder, and convicted him at trial. He served three years in a serious prison before his appeal was successfully heard. And then he spent another two years waiting to find out if the prosecution's appeal to the Arizona Supreme Court would send him back to prison. The financial costs must have been absolutely staggering.

Non-Deadly Force

The police are trained to respond to an altercation with a variety of tools and strategies that range from harmless to deadly. Together these tools and strategies form what is called the "continuum of force." It begins with verbal commands and escalates all the way to lethal force. A police officer escalates or de-escalates along this continuum, as the situation requires.

Private citizens should do the same thing. In fact, sometimes threatening to use something as harmless as pepper spray is sufficient to stop a more violent conflict. Carrying a gun without also carrying something less forceful is a lot like having a jackhammer as your only tool. It limits your options and is much more than warranted.

The force continuum does not necessarily require you to take each sequential step up and down that continuum. If you start with a commanding voice to stop, and your attacker pulls out a knife, you don't have to use pepper spray before jumping to your gun. All the continuum suggests is that your defensive force must be proportionate to the degree of the threat.

According to the Department of Justice, we are five times more likely to face a simple assault or battery than an aggravated assault or battery. And this statistic is conservative. The number is probably far greater because many simple assaults are never reported to the police. So non-deadly simple assaults are far and away more common than deadlier aggravated assaults.

A non-deadly defense, when effective, is preferable in many ways to a deadly force defense. First, before you can use deadly force you must fear deadly force. But non-deadly force is allowed if you fear even minimal physical contact, a far easier hurdle.

So even when you are legally allowed to use, say, a gun, if you can use non-deadly force instead the results will be better for everyone. Assuming, of course, that making use of the non-deadly option does not increase your

jeopardy.

So what type of non-deadly force weapon should you carry? One popular option is the kubotan. It's a rod six inches or so in length, often found with a key ring on one end. The kubotan is a surprisingly effective contact weapon in skilled hands, but requires expertise, dexterity, and speed.

Perhaps the most common choice is pepper spray. When first brought to market, pepper spray was always seen as a non-deadly weapon. Their rapid adoption by police was specifically so to provide a less dangerous option than a nightstick or flashlight.

Never ones to pass up an opportunity, criminals are now committing more crimes using pepper spray. Prosecutors naturally want to charge these criminals with as serious an offense as the facts support. So they have pushed the argument that pepper spray is a dangerous weapon. The idea is that the discomfort, pain, and incapacity caused by pepper spray constitutes "serious bodily harm" or "loss of function."

So, if a robber uses pepper spray in his crime spree the charge becomes armed robbery, with a much more serious sentence than simple robbery. If pepper spray is used to commit an assault, the charge becomes aggravated assault, just as if a gun had been used.

You can see the problem, though. Now if you or I use pepper spray to defend ourselves we could be facing aggravated assault charges, rather than just simple assault. The following is a recent example of the evolving status of pepper spray:

EXAMPLE CASE: *State v. Ovechka*
975 A.2d 1 (2009)

Ovechka, the defendant, had a long simmering dispute with his neighbor, a Bridgeport police officer. The dispute culminated in the summer of 2003 when Ovechka sprayed his neighbor with pepper spray, resulting in transient conjunctivitis (literally, reddening and inflammation of the eyes)

and dermatitis (literally, reddening and inflammation of the skin).

Ovechka was charged with, and convicted of, assault in the second degree. Second-degree assault in Connecticut is aggravated and must involve a "dangerous instrument."

The defendant appealed, saying the state didn't prove pepper spray was a dangerous weapon. The appellate court agreed, and reversed the second-degree charge.

The prosecution then appealed, arguing that the evidence didn't prove pepper spray wasn't dangerous. In fact, just the opposite. The victim was blinded, and had burns on his face, neck and chest that remained painful for several days.

The Connecticut Supreme Court ultimately supported the guilty second-degree assault verdict. In the Court's lengthy explanation, they noted that the majority of jurisdictions have recently decided mace or pepper spray is a dangerous or deadly weapons capable of inflicting great bodily harm.

The decision was a closely divided one, four to three. Those opposed were concerned that their ruling would have bad unintended consequences. In particular, they worried people would stop using pepper spray in legitimate defense. This point is quite pertinent. After all, we are considering what form of non-deadly force is best right now, and taking into account this very case.

The majority of justices respond to this concern by noting that their ruling does not always mean the courts should consider pepper spray dangerous. Rather, it means pepper spray won't always be considered non-deadly, and permits the jury to decide if it was dangerous in each case.

Today the majority of states think pepper spray is at least potentially dangerous and capable of causing "serious bodily harm," even if only temporarily. Most states, though, only categorize it this way when the user is

committing a crime, like bank robbery, rather than in self-defense. Still, it cannot now be said that pepper spray is never a dangerous weapon.

Even with all the downsides I just listed, I have decided to continue to carry pepper spray. I do so, though, with the full knowledge that I may face aggravated assault charges if I use it. I also know I can counter this by, at the proper time, that I used the spray as an alternative to deadlier means, aka my handgun.

Another tool increasingly available to civilians is the Taser, which comes in both contact and projectile varieties. I've not yet come across much case law on the use of these for self-defense, but my expectation is that they will be treated much like OC. When used for genuinely defensive purposes they are non-deadly force. If used for unlawful offensive purposes, they could be deemed deadly force.

Duration of Force

Just as using deadly force against a non-deadly attack breaks the proportionality element, so can how long you apply that force.

Let's say you were in the most egregious of circumstances – a psychopathic killer was shooting at you, intent on your demise. You were in a corner and had no choice but to shoot back. Your first shot hit the gunman square in the chest. He drops his gun and falls face first to the floor, either unconscious or dead. You walk up to him but he is unresponsive. You kick him and he doesn't react. Were this a movie, Bruce Willis would deliver an "insurance" shot to the cranium just to be prudent. But this isn't a movie.

Despite all the adrenaline in your system and fear you may still have lingering, you may not "shoot him one more time just to be safe." This is breaking the duration of force rule. If you know that he is no longer capable of further harm, you must stop.

Now, people get into trouble with this happens when there is a pause in the fight and two things happen. (1) The threat was neutralized, and (2) a reasonable defender would have seen that the threat was neutralized. Still, they chose to use force again. A good example of this violation of the duration principle occurred in the 2013 shooting of teenager Jordan Davis by Michael Dunn.

EXAMPLE CASE: *State v. Dunn*
Florida trial court 2014

Michael Dunn was visiting Jacksonville, FL, for his son's wedding. The wedding now over, Dunn and his fiancée stopped at a local convenience store to purchase some wine and chips for the evening. But while his fiancée was in the store, remarkable events would unfold outside, just a

few feet away.

Jordan Davis, a teenager, and four friends of similar age, were driving around in a red SUV to “meet girls.” They stopped at the same convenience store, and parked their red SUV in the spot immediately to Dunn’s left.

The red SUV was playing rap music very, very loud. Dunn would testify that he asked the teenagers to turn down the music. According to Dunn, Jordan Davis pointed a shotgun-like object at him and threatened to kill him. Dunn retrieved his 9mm Taurus pistol from his glove compartment, and fired at the SUV.

There were no cameras on the exterior of the convenience store, so there is no video of the shooting. There was, though, a video inside the convenience store that recorded audio, so we can hear the shots as they were fired. In combination with other CSI tactics we know which series of shots had which impact on the SUV, and the passengers inside the SUV.

It’s clear by the recording there were three distinct sets of shots fired with the first two sets very close together. The first burst of three rounds struck the rear passenger door, mortally striking Davis. The SUV driver reversed out of the parking space as Dunn fired a second burst of four rounds. These penetrated only the exterior half of the car door.

After this, the recording clearly has a full six-second pause before more gunshots are heard. During these six seconds the SUV driver pulled out of the spot and raced away as Dunn got out of his car, stepped out into the parking lot, took a knee, and fired three more rounds at the departing SUV. Two of these rounds struck the rear bumper. The fourth traversed the SUV at head height. It was a miracle that this round struck none of the teenagers. As the SUV raced away Dunn’s fiancée exited the convenience store and they fled the scene.

The boys quickly realized that Jordan Davis was badly hurt, and immediately drove back to the convenience store to call 911 for help. Tragically, Davis was beyond saving.

The police found Dunn (an interesting story in its own right), and charged him with numerous crimes, including both murder and three counts of attempted murder. Dunn would raise the legal defense of self-defense.

The trial was held, and the jury was put in deliberations. A few hours later, they returned with their verdict.

The first three rounds fired were the basis of the murder charge, because those are the rounds that killed Jordan Davis. The last three rounds were the basis of the three counts of attempted murder.

On the charge of murder, the jury was hung—that is, they could not come to a unanimous verdict. At least one juror still had a reasonable doubt that the first three rounds fired could have been lawful self-defense.

On the three charges of attempted murder, though, Dunn was declared guilty. So every single juror didn't even have a reasonable doubt that Dunn's last three shots could have been self-defense. Dunn was sentenced to life in prison … plus 90 years.

What was the difference between the first and the last three rounds? The last three came after that lengthy six-second pause during which the SUV tore out of the parking lot as fast possible. That makes the last three rounds excessive, unlawful, and not justifiable as self-defense.

While it is important to ensure your safety, and I wouldn't hesitate to continue shooting until my attacker was no longer an imminent deadly threat, the more bullet holes you put in your attacker the more it will be seen as a duration of force problem. No one looks at a body with 30 bullet holes or 45 knife slashes and says, "classic case of self-defense." If you did need to use that much force you will also need a compelling explanation for it in your self-defense narrative that doesn't include any gaps in time where the threat disappeared.

Mere Threat v. Use of Force

Some jurisdictions differentiate between threatening deadly force and actually using deadly force. Those states allow you to threaten deadly force against an imminent non-deadly force threat, but not use it.

One example of a state taking such an approach is Montana:

Montana

> *§45-3-111. Openly carrying weapon -- display -- exemption.*
> (2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

The opposite approach is taken by Massachusetts, which prohibits the displaying a gun unless the fight was so imminent you could legally use that gun:

Massachusetts

> "Permitting the threatening of deadly force without holding the user responsible as having actually used deadly force [would] provide a safe harbor to encourage the escalation of violence."
>
> *Commonwealth v. Cataldo*, 668 N.E.2d 762 (MA Supreme Court 1996)

Wrap-Up

The third fundamental element of the law of self-defense is *proportionality*. The degree of force you use to defend yourself must be proportionate to the degree of force used by your attacker(s). Any degree beyond that is excessive and unlawful.

Force used in self-defense may be excessively intense or long. Excessive intensity occurs when you counter a non-deadly force threat with a deadly force defense. Excessive duration happens when you continue to use force after the threat is neutralized, and a reasonable person would have perceived the threat to be neutralized.

Deadly force includes force likely to cause death or serious bodily harm. Serious bodily harm includes a debilitating injury, the loss of function of a part of the body, rape, and kidnapping. Deadly attacks may be defended against with either deadly force or non-deadly force.

Non-deadly force is any physical force that doesn't meet the 'death or serious bodily harm' threshold. Any unwanted touching, however slight, is sufficient to justify a proportional use of defensive non-deadly force.

A conflict that starts as non-deadly can easily transition to a deadly force encounter, and vice versa. The armed citizen must be able to adjust their response to changing circumstances. For this reason it is prudent to arm yourself with both deadly and non-deadly weapons. Having only a firearm as an option for self-defense leaves no good way to respond to a non-deadly attack, other than to resort to excessive force. This is particularly relevant given that you are far more likely to be the victim of a non-deadly attack than of a deadly attack.

Guns are always considered deadly force, but most other common objects may also become deadly even if not specifically designed for that purpose. For example, baseball bats and hammers are designed as sporting equipment

and hand tools, respectively, yet they could easily cause deadly harm. Even bare hands, usually deemed non-deadly force, can be used in a deadly fashion to, say, asphyxiate another person. Bare hands can also be deadly if the attack continues after one person is incapacitated or defenseless.

The general principle, then, is that you may resort to deadly force in self-defense when there exists such a disparity of force between you and your attacker that deadly force is necessary to stop an imminent threat of death or grave bodily harm.

Non-deadly contact weapons—such as one's bare hands or a kubotan--cannot be used effectively until the attacker has closed the distance. Projectile weapons, such as pepper spray, can be used while the attacker remains at some distance. Pepper spray, however, is increasingly considered a dangerous weapon under the law. This raises the risk that its use could be deemed excessive force.

A non-deadly defense is preferred, if effective because the threshold for the use of non-deadly force is quite low. All you need fear is any unwanted touching. Compare this to the threshold required for deadly force, which is fear of death or grave harm.

Force can also be excessive in duration. This is where, after the attacking force has stopped being a danger, you continue to use force against them. While it is important to ensure your safety, do not respond with any more force than is necessary to stop the attack.

Some jurisdictions allow for the mere threat, but not actual use, of a deadly force defense when facing even a non-deadly force threat. This should be approached with great caution, though. In most circumstances, a display of deadly force defense against a non-deadly force threat will be seen as an unwarranted escalation.

Chapter 5

Element 4: Avoidance

As with all the elements of the law of self-defense, on the surface avoidance is about common sense. It makes sense to not shoot someone if you can get away and call the police instead. A simple enough concept, but handling it from a legal perspective is more challenging than you think.

These days the phrase “Stand-Your-Ground” is a political lightning rod, and a subject worthy of an entire book. To keep this one smaller than a phonebook, I will focus solely on the legal effects of stand-your-ground, and will ignore the political dynamics.

The debate over laws requiring retreat isn’t about the benefits of retreat (you should always do it, if safely possible), but about practical problems that arise by requiring it.

Duty to Retreat

In sixteen “Duty to Retreat” states you must retreat, if safely possible, rather than use force. In twelve of these states retreat is required before using deadly force, but not non-deadly force. In the remaining four states retreat is required for both types, deadly or not.

No state requires unsafe retreat. You do not have to flee if doing so makes things more dangerous. You don’t, for example, need to try to run across a busy freeway to escape. There are actually lots of circumstances the courts recognize where you couldn’t possibly retreat. The attack might be too sudden or the nature of the threatened force prevented retreat. If the bad guy’s armed with a gun, you can’t outrun a bullet. If he is in a car and you are on foot, avoidance might be difficult, to say the least.

There are other, more subjective reasons, why retreat may not be safely possible. Let’s say we are in a state that does not require retreat when you’re defending yourself with a non-deadly weapon. In such a state, as long as you are only engaging in fisticuffs you don’t need to worry about whether you could have retreated. But what if your attacker escalates to deadly force? If a safe avenue of retreat is available to you, you must use it before you respond back with deadly force.

Now what if during the non-deadly portion of the attack you suffered an injury that prevented retreat? What would have been a safe avenue when you were still healthy is no longer safe now that you are injured. You are now under no duty to try to make the attempt injured.

The need to protect a third party can also limit your retreat options. Say, for example, that you were walking with an elderly grandfather. If there’s a safe path for you to get away, but not for Grandpa, you aren’t required to leave him behind.

There are also some scenarios where you almost certainly must retreat.

When you are in your car and can simply drive away, or when you are standing within a securable doorway. If you can close and lock that door to avoid the danger, not doing so is a failure to retreat.

But what about the scenario where you retreat and your attacker pursues you? Is it enough that you've retreated once? Have you now "checked that box"? Unfortunately, no. You must continue to fall back until it isn't safely possible. Once your safe path to refuge ends or becomes an unsafe path, your duty to avail yourself of it also ends.

A case out of Ohio illustrates what can happen if you retreat, but not quite far enough.

EXAMPLE CASE: *State v. Barnes*
2000 Ohio App. LEXIS 3294 (OH Ct. App. 2000)

One night Marcus Barnes and his girlfriend, Rebecca Vanaman, attended a party together. While there, Marcus came into a room to find a man named Thomas Jenior restraining another man. He intervened and a verbal exchange ensued between him, Thomas, and a few others. Marcus, trying to avoid further conflict, walked away from the conversation and went looking for his girlfriend to go. He couldn't find her so he decided to go to their parked car to wait for her to come out. While there he armed himself with a knife, in fear that the confrontational men at the party would attack him.

In fact, two of the men, Christopher DeAngelis and Christopher Warren, did seek him out and attacked him at his car. Marcus killed one of his attackers with the knife and wounded the other.

At court the jury determined that although he had retreated, he had not retreated far enough. He could have left the area entirely, and thereby avoided the need to defend himself. They said that by arming himself he was choosing to "stand his ground." He was convicted of manslaughter and felonious assault and sentenced to 15 years. He lost his appeal. The

one dissenting appellate judge's point that driving off required leaving his girlfriend behind with hostile men did not convince the rest of the court.

Castle Doctrine

Every state with a duty to retreat has at least one exception to that duty. You do not have to retreat when you are in your home. This principle is commonly known as the *Castle Doctrine*. This means even though you could escape up your stairs into your bathroom, or out your back door, you do not have to do so. At least not from genuine intruders, most of the time.

The term "Castle Doctrine" derives from William Blackstone's *Commentaries on the Laws of England*, where he wrote, "the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity."

Curtilage

Every state defines what makes up your *castle* a little differently. Massachusetts has the most restrictive definition. They only include the space "within the four walls of your dwelling." Place even *one foot* outside your front door and you lose your Castle Doctrine privileges and once again bear a duty to retreat.

Most other states include an area around your home, known as the *curtilage*, as part of your "castle." Curtilage is a loosely defined area immediately around your home that is part of the normal day-to-day use of your home. It typically includes your front porch, your yard, a detached garage, and so forth, depending on the state.

Place of Business & Occupied Vehicles

More than half of the "Duty to Retreat" states have expanded the concept of the Castle Doctrine to also include one's place of business. Three states have expanded the Castle Doctrine to include your own occupied vehicle.

Exceptions to the Castle Doctrine

This being the law, some states have made exceptions to the Castle Doctrine, which is itself an exception to the duty to retreat. So these are exceptions to the exception. The Castle Doctrine lists locations where you do not have to retreat. Exceptions to the Castle Doctrine make you once again have to retreat, even within a "castle" area.

One exception applies if you don't have a right to be in your home. If you are in the middle of a divorce, and your soon-to-be ex-wife gets a restraining order against you, you are no longer allowed into your former home even though your name is still on the deed. If you show up one day and have to fight off her new boyfriend's attack, you can't use the Castle Doctrine in your defense.

The Castle Doctrine also does not apply if you were the aggressor. Of course, Chapter 3, on Innocence, taught us that being the aggressor is enough on it's own to strip you of your right to claim self-defense. Let's say, though, that you started a non-deadly fight that the other guy escalated to deadly force. Even though you are not the aggressor in the second deadly fight, starting the non-deadly fight will still strip you of Castle Doctrine privileges.

Even if you are in your own home, have a right to be there, and didn't start the fight, in some states you must still retreat if your attacker *also* lives there. This is called the co-habitation exception, and it can even apply to invited guests. Fortunately, it is simple enough to convert a guest to a trespasser: order them to leave. If they do not, they're no longer guests but trespassers, and the co-habitation exception no longer applies.

Stand Your Ground

Today a large majority of states, thirty-four, don't require you retreat even when it's safe to do so. Instead they allow innocent people who are in a place they are allowed to be to defend themselves, subject only to the other four elements of the law.

States that have had this "no retreat" rule for many decades call them "True Man" laws while those that adopted them more recently call them "Stand Your Ground" laws. Both are essentially the same.

Stand-Your-Ground is often confused by the media as an weird, alternative way claim to self-defense. This is not true. Stand-Your-Ground merely relieves you of the element of Avoidance. You must still qualify under every other element of Self-Defense: Innocence, Imminence, Proportionality, and Reasonableness.

If you were (1) attacked by an aggressor; (2) the attack was imminent and about to happen right now; (3) you used no more force than necessary; and (4) your perceptions, decisions, and actions were those of a reasonable person —then stand-your-ground says you won't go to jail for the rest of your life because you failed to take advantage of some allegedly safe avenue of retreat.

But if you fail on any of those other elements—for example, if you used disproportionate force—Stand Your Ground is irrelevant. You were not, under the conditions set by law, acting in self-defense at all.

In recent years Stand Your Ground has drawn considerable criticism from some prosecutors and social activists, who argue that it permits criminals to walk free. Despite some claims, however, Stand-Your-Ground is not some odd, alternative means of arguing self-defense. It merely relieves you of a legal duty to retreat before using force in self-defense. You must still qualify under every other element of Self-Defense: Innocence, Imminence, Proportionality, and Reasonableness.

The greatest value of Stand Your Ground from my perspective is that it limits the power of overreaching prosecutors. The jurors and the judge were not present at the time of the attack. They didn't experience the fear and adrenaline, the literal fight for their life. A prosecutor can show them a sketch of the scene and ask, "Why didn't the defendant just escape this way, or that way, or this third way? He didn't have to kill that man, he could have just been the bigger person and walked away." This whole speech was given, of course, in the guarded safety of an air-conditioned courtroom.

The defense, then, has to counter this narrative with a far more complicated story. You didn't know of that avenue of retreat because at the time there was a truck blocking your view of it. Of course, no one took note of the truck at the time, it didn't seem important.

You couldn't take advantage of that second avenue because you'd hurt you leg at work last week and couldn't run fast enough to safely access it. Of course, the injury wasn't bad enough to go to a doctor, so there's no medical record of it.

And that third route of retreat, well, you simply didn't see it in the stress of the moment. Obviously there can be no record of this kind of understandable oversight.

On one hand the prosecutor made up a very nice, glossy, easy-to-understand, sketch of these several routes of safe escape. On the other you have your own rather vague, unsupported, self-serving "excuses" why you didn't take advantage of any of them. It's not hard to see how easily how this severely damages an otherwise open-and-shut self-defense claim.

The adoption of a Stand Your Ground statute takes that particular "weapon" out of the prosecutor's hands. He can't destroy your right to argue self-defense just because adrenaline got in the way of seeing escape.

Be careful here, though. In some Stand Your Ground states, even though retreat isn't required, not doing so can still fail the 5th element of reasonableness (which we will address in the next chapter). In those states a prosecutor can't argue that you had a duty to retreat, but they can argue that retreat was so apparent that not doing so was unreasonable.

Louisiana

> [W]hile there is no unqualified duty to retreat from an altercation, the possibility of escape is a recognized factor in determining whether or not a defendant had a reasonable belief that deadly force was necessary to avoid the danger.
>
> *State v. Wells*, 2015 La. LEXIS 2531 (LA Supreme Court 2015)

In contrast, other Stand Your Ground states do not allow retreat to be mentioned at all, nor considered in any way by the jury. These "hard" Stand-Your-Ground states include Kansas, Louisiana, Mississippi, Texas, Washington, and Wisconsin.

Mississippi

> *§ 97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat.*
>
> (4) A person who is not the initial aggressor and is not engaged in unlawful activity shall have no duty to retreat before using deadly force [in self-defense] if the person is in a place where the person has a right to be, and no finder of fact shall be permitted to consider the person's failure to retreat as evidence that the person's use of force was unnecessary, excessive or unreasonable.

Texas

> A person is not required to retreat before using force if he has a right to be present at that location, has not provoked the person against whom the force is used, and is not engaged in criminal activity at the time the force is used; a factfinder may not consider whether the actor failed to retreat for purposes of determining whether he reasonably believed that the use of force was necessary.
>
> *Turner v. State*, 2015 Tex. App. LEXIS 8559 (TC Ct. App. 2015)

Wisconsin

> *§939.48 Self-defense and defense of others.*
>
> (1)(m)(ar) If an actor intentionally used force that was intended or

> likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force …

Some states place odd requirements before you qualify for Stand Your Ground. In Kentucky, Oklahoma, and Pennsylvania, for example, you must not have been engaged in illegal activity *of any kind*.

Kentucky

> [T]he evidence irrefutably established that Appellant was engaged in an unlawful activity at the time of his altercation with [the Victim]. He was concluding an illegal drug deal. Because he was engaged in an unlawful activity, Appellant was not entitled to the "no duty to retreat" instruction.
>
> *Jackson v. Commonwealth*, 2016 Ky. LEXIS 10 (KY Supreme Court 2016)

Oklahoma

> A person may use deadly force with no duty to retreat when he has the lawful right to be where he is, and when he reasonably believes the use of deadly force is necessary. [However, here the defendant] was engaged in illegal activity and not entitled to benefit from the provisions of the Stand Your Ground law.
>
> *Dawkins v. State*, 252 P.3d 214 (OK Ct. App. 2011)

Pennsylvania

> On June 28, 2011, the legislature amended the self-defense statute to include a Stand Your Ground law. This law abolishes the common law duty to retreat for an actor who is not engaged in illegal activity, and is not in illegal possession of a firearm.
>
> *Commonwealth v. Williams*, 2012 PA Super 99 (PA Superior Court 2012)

In such states ANY unlawful activity can undermine your Stand Your Ground privileges. For example, in some jurisdictions you can't carry

concealed if you are intoxicated. A failed breathalyzer is a big problem.

Table 5-1 in the Appendix provides a compilation of the major retreat requirements of each of the fifty states. The table distinguishes, of course, between states with a general duty to retreat and those with Stand Your Ground laws. It also addresses several of the more common variations of the retreat rules, such as the Castle Doctrine. For each relevant cell in the table we provide the specific statute or case law, all of which are available in full text at the Law of Self-defense web site, **lawofselfdefense.com**.

Wrap-Up

The fourth fundamental element of the law of self-defense is *avoidance*.

In practical application, avoidance refers to taking advantage of a safe avenue of retreat before resorting to the use of force against an attacker.

Today the majority of jurisdictions—thirty-four—do not have an explicit duty to retreat, but a sizeable minority—sixteen—are "Duty to Retreat" states that require you to take advantage of any safe avenue before using force in self-defense. In "Duty to Retreat" jurisdictions the failure to retreat when it is safe is fatal to your self-defense claim.

Any evidence that you did not retreat where safely possible will make you appear an attractive and vulnerable subject of arrest, indictment, prosecution, and conviction. Expect prosecutors in "Duty to Retreat" states to attack this element aggressively. Courtroom analysis, done in the absence of adrenaline and fear, is rich territory for the prosecution to craft a narrative of avoidable conflict. Overzealous prosecutorial attack using the duty to retreat has been a primary driver behind the widespread adoption of Stand Your Ground laws.

States that have Stand Your Ground laws do not have a duty to retreat, subject to certain conditions. For example, in Kentucky you may "stand your ground" only when you are in a place you have a right to be, not engaged in unlawful activity, and not the aggressor in the conflict. If you do not meet these requirements you once again must retreat, if safely possible, before using deadly force to defend yourself.

All Duty to Retreat states exclude your home under the Castle Doctrine, relieving you of the duty to retreat while in your *castle*, with important exceptions. Some define your dwelling as merely the space within the four walls of your home; others include your dwelling's curtilage, occupied vehicles, or place of work.

Stand-Your-Ground is not some odd, alternative means of arguing self-defense. It merely relieves you of a legal duty to retreat before using force in self-defense. You must still qualify under every other element of Self-Defense: Innocence, Imminence, Proportionality, and Reasonableness.

Chapter 6

Element 5: Reasonableness

The fifth and final fundamental element of the Law of Self Defense is *reasonableness*.

Reasonableness can be thought of as an umbrella that covers each of the other four elements. Everything you do in self-defense—your perceptions, your decisions, and your actions—must be reasonable.

- *1st Element: Innocence*: Was your belief that you were defending an innocent person a reasonable belief?
- *2nd Element: Imminence*: When you assessed the danger as imminent was that a reasonable assessment?
- *3rd Element: Proportionality*: Were your estimates of the degree of force threatening you, and the degree of force you used in response, reasonable?
- *4th Element: Avoidance*: Was your decision that there was no safe way to retreat a reasonable decision?

If you answer any of these questions in the negative you actions will not be considered "reasonable" and thus not lawfully justified.

But what does it mean to be reasonable, and how does a jury decide if you reasonably? The term begs a poet to wax philosophical, but that's hardly how our justice system works. The criminal justice system, seeking to be practical, applies a two-part test to see if a defendant acted reasonably. The first test is called "objective reasonableness" and the second, "subjective reasonableness."

Objective Reasonableness

Objective reasonableness uses a notional person called "the reasonable and prudent person." A figment of the legal imagination, the reasonable and prudent person has the rather annoying tendency to do everything the right way. Let's call him Reasonable Ralph. Your actions will be judged in comparison to Reasonable Ralph. If he would do no differently, were he in your shoes, your actions are "reasonable."

So what would Reasonable Ralph do? Ralph's actions have a few standard characteristics common to all responsible adults. He is ordinary, cautious, responsible, sober, and slow to anger. He knows the basic facts of the world, but has no great education beyond that, and possesses no particular specialized knowledge. He knows that guns are dangerous, but not the difference between "ballistics" and "terminal ballistics." He knows fire is hot, but not the exact temperature where iron melts. He knows blood loss is bad but not how much is lethal.

Reasonable Ralph is also cautious. He looks both ways when he crosses the street, obeys the speed limit, cuts away from himself when he uses a knife, and adheres strictly to the four rules of gun safety. He does not undertake unnecessary risk, and abides by safety guidelines.

Ralph is responsible. He doesn't leave his car running while he runs into the store for a loaf of bread, he doesn't leave small children unattended for a "couple of minutes," and when he borrows a tool he returns it promptly and in as good or better condition than when he received it.

Ralph is sober. While he may drink socially, he does not do so to excess, and he always avoids public intoxication. He certainly does not drink and drive or handle dangerous equipment.

Ralph is slow to anger. He's a "sticks and stones may break my bones, but words will never hurt me" kind of guy. If there is any way to avoid a

physical conflict, Ralph will take it, even at the cost of some personal embarrassment.

Customizing the Reasonable and Prudent Person

Reasonable Ralph, then, begins as an ideally reasonable and prudent person. Before we can apply him to your case, though, he needs to be "customized" to be a bit more like you. He needs to be given some of your particular mental and physical attributes, and be put in the situation you faced when you defended yourself.

Circumstances

In terms of the circumstances, virtually everything is taken into account. Was it a bright and clear afternoon, or a dark and stormy night? Did the conflict take place in the middle of a raging riot, or were you awoken from bed in the middle of the night by the sound of breaking glass? Was the other person quietly going on about his business, or was he repeatedly threatening you? These and many other aspects of that fateful point in time can all be considered. So the question isn't merely *WWRD*—"what would Ralph do?"—but rather, *WWRDITSOSC*—"what would Ralph do in the same or similar circumstances?" A mouthful, for sure, but more accurate.

Characteristics

Like the circumstances, Reasonable Ralph's physical characteristics are also adjusted to match your own. Are you young and fit, or old and feeble? Did Mr. Miyagi himself train you to street fight? Do you have a handicap that would limit your ability to effectively respond? Reasonable Ralph takes on these and all other physical characteristics you had at the time of the attack.

Specialized Knowledge

As I previously mentioned, Reasonable Ralph has basic common knowledge. But can he also have any "specialized" knowledge that you possessed at the time of the encounter and that impacted your decisions? Absolutely.

Indeed, such knowledge is probably essential to your story. As such, the amount of knowledge you can give to Reasonable Ralph is huge.

You may be wondering what kind of specialized knowledge might be important to add. After all, you may know the average wingspan of an African swallow, but that probably doesn't matter. One example of a very useful piece of specialized knowledge that may have been highly relevant to your use-of-force decision making is something we discussed back in Chapter 3, on Imminence: the Tueller Drill.

You will recall from the Tueller Drill that the attacker can be as far as 21 feet away and still represent an imminent threat. To someone not informed about the Tueller Drill, though, it may appear that 18 feet is far too distant. Indeed, a prosecutor might later argue precisely that to the jury.

"That poor victim," the prosecutor will argue, "couldn't possibly hurt this defendant with a knife from 18 feet away." The prosecutor will pace off 18 feet from the jury box , holding a pen in place of a knife, to illustrate his point. You see the jurors nodding in agreement. You can tell they're thinking Reasonable Ralph would not yet have felt the need to use deadly force at that distance. He tells the jury they should find you, the trigger-happy killer, guilty. For the protection of society.

When your lawyer gets his turn, however, the jury hears another perspective entirely. He brings in an expert witness on the Tueller Drill, like a professional firearms trainer or police trainer. That expert explains to the jury what the Tueller Drill is and its implications in your case. He says the Tueller Drill is taught to every law enforcement officer in the country. All those police officers know that a suspect is an imminent threat at 18 feet, and that defensive action is objectively reasonable. That, he explains, makes your actions under the same circumstances also objectively reasonable.

After hearing that expert witness testify the jury now possesses the specialized knowledge of the Tueller Drill. They can decide whether Reasonable Ralph would act as you had done if he knew about it too.

Knowledge of Attacker's Reputation or Past Acts

There is another type of specialized knowledge that's really useful to your case: what you knew about your attacker. Was he a hothead thug with a long rap sheet? Did you know he was?

That your attacker's reputation and history might be admissible at all is an oddity of self-defense law. Generally speaking, reputation evidence is not admissible in court. At trial the jury is supposed to make decisions based what happened in the case before them, not unrelated acts.

Self-defense cases, however, provide for certain exceptions to these rules. Why do the courts allow this exception? An attacker's reputation or past acts of violence are uniquely relevant to a claim of self-defense.

If you know that the person menacing you is a vicious street fighter, you might reasonably use force sooner, or use a higher degree of force, than you would have done otherwise.

Similarly, if you had previously witnessed him savagely beat someone, that would almost certainly affect your take on the situation. Knowing the attacker's propensity for sudden violence likely drove your decision to respond with force when you did, and with the degree of force you did, and so the jury should account for that information when they consider you actions. Reasonable Ralph, then, will possess similar knowledge of his attacker.

Non-Prior Specialized Knowledge

What if you can't prove you knew the Tueller Drill at the time? Then the jury will never hear about it. There will be no uniformed expert witness speaking on your behalf. Your lawyer will fumble around trying to convince the jury of the real danger you experienced without evidence to prove it.

This makes sense. You can't very well make a decision based on knowledge you only learned at a later date. So you must prove you had that knowledge at the time you acted in self-defense.

For this reason I recommend you document any training that you possess on self-defense. Underline or circle the passage on the Tueller drill in this book

and put the date in the margin. Hold onto the dated receipt for your purchase. Now you possess solid documentation to prove you knew the Tueller Drill.

There are other approaches to this, as well. When I took Massad Ayoob's Lethal Force Institute, Level I course about 20 years ago all of us in the class took extensive notes. Mas suggested that we make a copy of those notes, place the originals in a sealed envelope, and mail them to ourselves. The USPS-dated envelope can be unsealed in court later to prove what we had learned. To this day I have that envelope, still sealed, in a secure location.

And so you must prove you knew any specialized knowledge before the attack if it is to be presented in court. There is one fairly common exception to this rule, though, which comes up in only in a very limited way.

The prosecution might argue that you, not the other guy, were the aggressor in the fight (see Chapter 2 for more details on the element of Innocence). If and only if they make this point, many states will allow you to show the jury evidence of the other guy's reputation for violence or history of violence, even if you did not learn of this reputation or history until after you acted in self-defense.

Why is this permitted? The courts see this information as evidence that it was more likely the other guy, rather than you, started the fight. It counters the prosecutor's claim that you were the aggressor.

Of course, prosecutors are well aware that they might open this door. They may therefore decide to attack on some other element, instead. If they don't attack Innocence, then it's very unlikely you will get the other guy's reputation into court. Unless you can show you knew of it at the time.

Mental Characteristics

Like physical characteristics, Reasonable Ralph can also adopt your mental state at the time. Mental characteristics include normal emotions that one would expect a reasonable person to experience. Apprehension and fear is normal if armed assailants are chasing you down a dark alley. The jury should consider whether your actions were those of a reasonable person

experiencing apprehension and fear. As famously put by the United States Supreme Court:

> "Detached reflection cannot be demanded in the presence of an uplifted knife."
>
> *Brown v. United States*, 256 U.S. 335 (1921)

Not all mental characteristics will be considered, though. Extreme emotions aren't admissible for the simple reason that they're not reasonable. An easily frightened person may become terrified when someone points a finger at them. But such excessive fear is unreasonable and will not be considered by the jury. The same applies to a clinically diagnosed mental condition, such as schizophrenia. As put by a recent Texas decision:

Texas

> A "reasonable belief" is one that would be held by an ordinary and prudent person, not by a paranoid psychotic. Appellant's repeated claim that "his paranoid ideations and active psychosis" raise a "reasonable belief" that his actions were justified is supported neither by law nor common sense.
>
> *Mays v. State*, 318 S.W.3d 368 (TX Ct. App. 2010)

Similarly, Reasonable Ralph will never be drunk. The jury will not be asked to judge whether your conduct was that of a "reasonable drunk person." If you behaved unreasonably because you were drinking, then you were unreasonable. Period. The jury will ignore that you were intoxicated and only consider if your actions were reasonable for a sober person. Getting drunk is your problem and not an excuse to use force.

Massachusetts

> The defendant's belief cannot be deemed reasonable on the ground that, due to intoxication, he misapprehended the situation. A determination as to whether a defendant's belief concerning his exposure to danger was reasonable may not take into account his intoxication.
>
> *Commonwealth v. Barros*, 425 Mass. 572 (MA Supreme Court 1997)

Texas

> That he also claims he was drinking and unable to perceive the risk similarly does not, in light of the record, constitute evidence appellant was unable to perceive the risk created by his conduct. Voluntary intoxication is a not a defense.
>
> *Hart v. Texas*, 2011 Tex. App. LEXIS 3996 (2011)

Although you are not allowed to argue that your conduct was reasonable because it was that of a "reasonable drunk" person, voluntary intoxication could mitigate your criminal offense. Murder, for example, requires a specific intent to kill. It's possible to be so drunk to form intent. In that case the killing was not intentional, but the product of criminal negligence. So, what would have been a murder conviction becomes an involuntary manslaughter conviction. That's not exactly a "win."

Battered Spouse Syndrome (BSS) is one area in which perceptions, decisions, and actions that would otherwise be well outside the bounds of reasonableness are nevertheless deemed to be those of a reasonable person who has been subject to many years of abuse. The reasons for this are discussed in Chapter 3 on Imminence.

In essence, the courts apply the standard of the reasonable and prudent person to your case by asking what Reasonable Ralph would do in similar circumstances, while possessing your physical and (reasonable) mental characteristics and knowledge.

So, where do law-abiding people run into trouble with objective reasonableness? It's the simple fact that even the best of us can have a bad day. If you allow yourself to be goaded by jerks into acting unreasonably, don't be surprised when the system compares you unfavorably to Reasonable Ralph.

Alternatively, perhaps you acted reasonably but the prosecutor makes a convincing argument that you did not. Or perhaps you acted reasonably on that particular occasion but you have a reputation in the community for acting unreasonably.

If your actions are perceived as unreasonable, your use of force against another cannot be justified as self-defense. We'll come back to the vital importance of this point when we discuss your legally sound self-defense strategy in Chapter 10.

Subjective Reasonableness

Where objective reasonableness decides whether you did what Reasonable Ralph would have done, subjective reasonableness looks at whether you actually believed what you were doing was legitimate.

Let's pretend that you defended your life, and are now a defendant at trial. Let's also say your actions were exactly what Reasonable Ralph would do if he had been in your shoes. So objective reasonableness is not a problem.

If you were not actually in fear, though, then you fail on subjective reasonableness. More accurately, if the prosecution can convince the jury that you did not believe the threat was imminent, deadly, and so on for each of the other four elements, then the jury will find your actions unreasonable. After all, just because Reasonable Ralph would have believed it doesn't mean *you* did.

You might wonder how anyone could know what you were thinking. They can't. Unless you tell them. You'll blow this one all on your own. If you say that you were not afraid, that it would have taken the guy 10 minutes to crawl toward you, or that you didn't think he could really harm you that bad —those statements fail the subjective reasonableness test.

Usually, though, actions undermine your reasonableness more than words. Please don't ever flee the scene, hide from the police, or destroy evidence. If you do the jury could conclude that you thought you did something wrong. In fact the judge will tell the jury to consider this exact possibility, by giving them what's called a consciousness of guilt jury instruction. Such an instruction tells the jury that not only does the prosecution believe you to be guilty, but that your own conduct suggests that *you* believe you're guilty. It's difficult to overstate how damaging this can be.

Even if you didn't do anything to suggest guilt, you still may do something that goes against the very idea of self-defense. For example, if you followed

someone as they backed away during an argument it suggests that you didn't think they would hurt you. A reasonable person does not pursue pain.

Again, the prosecution needs to convince the jury that you didn't possess a good faith belief in any of the four other elements. If he can undercut just one of them he will destroy your self-defense case.

One good way to avoid this problem is to tell the cops about your fear early on. We'll discuss what you might want to say, or not say, to the police in Chapter 9. Interacting with the Police

Reasonable Mistakes

What about if you perceive a threat mistakenly? Let's say you are being robbed at gunpoint. You manage to get out your own gun, and shoot and kill your attacker.

Then it turns out that the attacker's apparent gun wasn't real at all—it was just a very realistic looking toy. You truly believed you were facing a threat of death or grave bodily harm, but in fact you were not. You were hoodwinked.

Fortunately, the law does not require us to conduct ourselves perfectly, only reasonably. Mistakes are acceptable, so long as they are reasonable mistakes.

If you believed the gun was real, and Reasonable Ralph would have too, then the fact that the gun is fake is simply not relevant. The law allows you to rely on that reasonable perception and act in self-defense exactly as if the gun actually were real. This is the law in all 50 states.

A good example where the law recognizes this element can be found in California's jury instructions:

California

> *CALJIC No. 5.51, Self-Defense—Actual Danger Not Necessary, as given:*

> Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an actual belief and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if that individual so confronted acts in self-defense upon these appearances and from that fear and actual beliefs, the person's right of self-defense is the same whether the danger is real or merely apparent.

Texas provides another useful example in its jury instructions:

Texas

> *§3:1730 Limitations on Self-Defense a. Apparent Danger Instruction*
> Because the reasonableness of the actor's belief that force or deadly force was immediately necessary is judged from the standpoint of an ordinary person in the same circumstances as the actor, a person has a right to defend from apparent danger to the same extent as he would had the danger been real; provided he acted upon a reasonable apprehension of danger as it appeared to him at the time.

Presumptions Of Reasonableness

You may recall that all defendants are presumed innocent until proven guilty. In the same way, a presumption of reasonableness establishes that your actions were reasonable until proven unreasonable.

At least twenty-three states provide you with a "presumption of reasonableness" in some scenarios. Usually those happening in your home, place of business, or occupied vehicle.

In these states, the judge instructs the jury on both your presumed innocence and presumed reasonableness. Now the jury considers you an innocent and reasonable person, until proven otherwise. This will reinforce to the jury that the prosecution's threshold is a high one, indeed. It also reminds prosecutors just how hard it will be to undermine you on this principle.

Table 6-1 in the Appendix lists the reasonableness of presumption statutes, by state. We will discuss presumptions of reasonableness in greater detail in Chapter 8, Defense of Property.

Wrap-Up

The 5th fundamental element of the law of self-defense is Reasonableness, which has both objective and subjective parts.

Objectively, the law requires that your actions be the same as a reasonable and prudent person, in the same or similar circumstances, who possesses the same physical characteristics, specialized knowledge, and (some) mental characteristics, as you did at the time you used defensive force.

You must have known any specialized knowledge that you wish to use at trial to justify reasonableness at the time of the encounter, not later. There are limited exceptions to this condition, in the context of your attacker's reputation for or history of violence.

Typical human emotion can be applied to the reasonable and prudent person. Aberrant mental states, such as psychiatric conditions and drunkenness, are not. The one exception is Battered Spouse Syndrome.

Subjectively, the law requires that you genuinely believed your actions were reasonable, on each of the elements.

Reasonable mistakes do not doom your case. If you reasonably think your attacker's fake gun was real, you are allowed to treat it as if it were real.

Nearly half the states have presumptions of reasonableness in the context of your home, place of business, or occupied vehicle.

Chapter 7

Defense of Others

The last several chapters describe how the law works in the context of self-defense. In this chapter we'll learn how the same five elements work when you're defending *someone else*. **Table 7-1** in the Appendix lists the relevant defense of others laws, by state.

The vast majority of states treat self-defense and defense of others the same. Indeed, they usually write just one law that covers both situations, with a third person pronoun added to the statute to cover other people. An example of this approach can be found in the Colorado Revised Statutes. A single statute *(§18-1-704. Use of physical force in defense of a person*) addresses both self-defense and defense of others, using the phrase, "a person is justified in using physical force upon another person in order to defend himself or a third person."

Other states will have separate self-defense and defense of others statutes. Arizona Revised Statutes, for example, has a statute that governs self-defense *(§13-404. Justification; self-defense*) and a separate statute that governs defense of others *(§13-406. Justification; defense of a third person*).

In either case, defending another person generally has the same conditions as defending yourself.

Generally.

Unfortunately, the states with different rules for defending others change the game substantively. Knowing the difference will mean the difference between being liberty and jail.

So where do people get in legal trouble when defending others? There are two ways. One involves the framework that is applied to the case. The other is the inherently greater uncertainty often present when defending others. These are the reasonable perception framework and the alter ego framework.

Reasonable Perception Framework

Under the reasonable perception framework, your actions are judged using Reasonable Ralph. If you see a need to defend a third person, and it later turns out you were mistaken, so long as your mistake was reasonable your actions were still lawful.

Here's the classic example of such a scenario. You turn a corner and come upon two men struggling with a woman. They have her by the arms as she pulls and twists against them, screaming that she's being abducted. Kidnapping qualifies as a deadly force threat, so you whip out your handgun to bring deadly force to bear in her defense. You're the hero! Right?

Unfortunately, no. What you really stumbled upon was two plain-clothes police officers making a lawful drug arrest.

Will you go to jail? Not necessarily. If Reasonable Ralph would have thought the woman was being kidnapped, then you believing the same is a reasonable mistake.

(As an aside, we were just thinking about the legal issues of this scenario. There are also very serious and arguably more immediately relevant problems to consider. What do you expect those two police officers will do when they see you pointing a gun at them? Yeah.)

Alter Ego Framework

The alter ego framework is far more hazardous than the reasonable perception framework. Reasonable perception doesn't matter at all when Alter Ego is applied. All that matters is whether the person you were defending could have lawfully used the same degree of force that you used in their own defense.

To put it another way, your right to use force on that other person's behalf extends no further than their right to use force on their own behalf. For legal purposes, you are stepping into their shoes, and acting as their "alter ego."

In the earlier scenario where the woman was fighting arrest, could she legally use force? Nope. So what legal justification did you have to use force on her behalf? Right, none.

When you pointed your gun at those cops you committed two counts of aggravated assault against police officers in the course of their duties. Period. Your perception of a kidnapping is entirely irrelevant to the analysis.

Rationale for the Alter Ego Framework

Decades ago many states applied the alter ego framework to defense of others situations, at least when the other person was not family. Examples of such statutory language can still be found. For example, in the Idaho Code:

Idaho

> *§18-4009. Justifiable Homicide by Any Person.*
> Homicide is also justifiable when committed by any person in either of the following cases:
> …

> 3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress or servant of such person, …

The alter ego framework exists because courts don't want people to take the law into their own hands and act as vigilantes. Especially when they are inserting themselves into uncertain situations involving strangers.

Let's consider the arrested woman's scenario again. You really couldn't have any idea of what was going on, at least no idea based on real evidence. All you saw were three strangers.

But what if they weren't strangers? What if the woman being grabbed by the two men is your wife? Then it's far less likely that she's being arrested for drugs (at least, I would hope it's highly unlikely).

Modern Application of Alter Ego

Today, no state applies the alter ego framework in every case, and most states don't apply it under any circumstances.

There are, however, a few states that do still apply the alter ego framework in particular situations.

In Virginia, if you come to the defense of another person you are given the reasonable perception framework, but only if you saw the start of the fight. If you did not see the start, but stumbled upon it when it was already in progress, the courts will apply the alter ego framework.

Strange? Not if you think about it from the standpoint of the court, and its concerns about people intervening in other's fights.

If you saw the start of the fight, you'll now if the person you defended was the aggressor. You'll have knowledge and evidence, from which you can come to a better reasoned conclusion.

But if you stumbled on a fight already in progress, you can't know who started it. You can't possibly come to an evidence-based conclusion about

who the victim is. In that scenario, then, you assume the risk that you will turn out to be mistaken and fall under the alter ego framework.

Another state that takes an interesting approach is in Kentucky. They apply a different framework depending on whether you used non-deadly or deadly force.

The first paragraph of their statute governs the use of *non-deadly force* in defense of another:

Kentucky

> *§503.070 Protection of another.*
> (1) The use of physical force by a defendant upon another person is justifiable when:
>
> (a) The defendant believes that such force is necessary to protect a third person against the use or imminent use of unlawful physical force by the other person; and
>
> (b) Under the circumstances *as the defendant believes them to be*, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

Note the phrase in (b): "Under the circumstances *as the defendant believes them to be* …" That's the reasonable perception framework.

The use of *deadly force* in defense of another is governed by the *second* paragraph of that same statute, however, which reads:

> *§503.070 Protection of another.*
> (2) The use of deadly physical force by a defendant upon another person is justifiable when:
>
> (a) The defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055; and

(b) Under the circumstances *as they actually exist*, the person whom he seeks to protect would himself have been justified under KRS 503.050 and 503.060 in using such protection.

Note the very different language in this paragraph (b): "Under the circumstances *as they actually exist* …" That's the alter ego framework—reasonable perceptions are irrelevant where deadly force has been used, all that matters is the circumstances as they *actually* exist.

Why the distinction? If you intervene but limit yourself to non-deadly force, you didn't make the stakes as high. They'll allow you the benefit of the reasonable perception framework to lessen your stakes as well.

We can see, then, that although the alter ego framework is rarely applied, it's application it shows its ugly head on occasion. If you don't know for certain whether the courts will use the reasonable perception framework or the alter ego framework, the only prudent assumption to make is that they will use the alter ego framework.

The Inherent Uncertainties of Someone Else's Fight

In addition to having to worry about the legal framework, there are also other practical problems that can arise. The person you "rescued" may not see the situation the same way you did—at least, not by the time they have to testify at trial, weeks or months later.

If you know and trust the person you are rescuing, like a family member or reliable friend, then you probably don't need to worry about this. But what if you don't know the person? Let's pretend you turn a corner and see a man strangling a woman. His hands are firmly around her neck, his face filled with rage, and her face is turning blue as she desperately struggles to pull away. You think, "He's going to kill her!" You step in and shoot him in the head at close range. After taking a moment to recover, you call the police and recount your story (with a lawyer present of course).

The woman, though, tells a very different story. In her mind her long abusive boyfriend is no longer a danger to her, and she did love him after all, so her affection for him comes to dominate her memory. He was only playing around, she tells the police, the two of them played this game all the time. There was never any real danger.

In fact, she tells the jury that the only time she was ever really afraid was when this nut (and she points at you sitting at the defense table) showed up with a gun!

If the person you claim to have rescued is herself saying there was no danger, other than you, who is the jury supposed to believe? After all, you're the "suspect" and the man you shot is the "victim."

Unfortunately, altered recollections are common. Just ask any patrol officer who has had to deal with a domestic dispute. (Meaning, you can ask any patrol officer.)

Additional Rules to Defending Others

The situation is even worse if the state you live in adopted additional rules for defense of others. In these states not only must you meet all five elements of self-defense, but also all the additional factors they've piled on.

In Delaware, for example, if the person you rescued could have retreated, then you must try to get them to do so before you can defend them. I struggle to imagine how that can easily be done in a high stakes situation. And even if the required attempt is made, what evidence will remain of that attempt?

Hawai'i has the same obligation to urge retreat as Delaware, but adds even more conditions. If the attacker was demanding the person you defended do something that isn't illegal, and doing so would end the altercation, then you have to urge them to comply before helping them. So if a mugger tells a woman, "give me that purse or I'll hurt you." You have to urge her to give it before you can help her.

Idaho and South Dakota draw an interesting distinction between self-defense and defense of others. They allow you to defend yourself with lethal force against any felony done against you. This includes rape, kidnapping, robbery, etc. When it comes to defense of others, though, you can only do this if that person is your spouse, parent, child, master, mistress, or servant, for reasons already discussed.

Coming to the Defense of Strangers is Extremely Dangerous!

For these legal reasons I advise extreme caution when defending strangers. Especially with lethal force. Even in jurisdictions that don't distinguish between self-defense and defense of others. Unless the person you're defending is someone you know very well there's a risk that you don't know the whole story.

That's not even considering the very real physical risks we assume any time we decided to threaten or use force against another person. Just because we're the good guy doesn't mean we will win the fight.

I often hear, in informal settings, gun owners state proudly that, "I know what I would do" if they saw a stranger under attack. They would bravely step in and defend the stranger regardless of the physical peril involved.

This is noble, but in my opinion naive. Stepping into a fight in progress is extremely dangerous, not just legally. No one knows better than street cops that stopping a domestic dispute can get them attacked by both sides. Well-trained police officers wear ballistic armor, carry lethal and less-than-lethal weapons, and can ask for backup instantly. The typical armed citizen possesses none of these and so "helps" at great peril.

In addition, the police officer has chosen a career where it's his duty to stop violence, and the jury expects this of them. Police officers benefit from qualified immunity, which makes it almost impossible to sue a police officer for his actions while on the job. A civilian doesn't have any of these benefits. Why, the jury might wonder, didn't you just mind your own business? If you had not intervened maybe that "victim" wouldn't be dead.

If you do kill someone, your criminal and legal expenses could easily run into the hundred of thousand of dollars, even if you win. Lose the case and you go to jail for a long time.

Is a stranger worth this risk? And what if the person you protected turns out to be a violent criminal who preys on families just like your own? Now you're serving a decade in prison for shooting his victim when he unexpectedly got the upper hand.

In short, *use extreme caution when coming to the defense of strangers*.

There are, of course, some limited situations where helping a stranger comes with little, if any, legal peril. The classic example is a mass shooting. There's no difficulty differentiating between the "active shooter" and innocent victims in those scenarios. I have read many thousands of self-defense cases from across the country and have yet to find a case where

someone who hurt a mass shooter was prosecuted. In such situations you won't have to wonder about what to do. God willing, you'll just do it.

If you're about to defend someone else, but find yourself hesitating, listen to that little warning voice carefully. It could save you from a whole world of unfortunate consequences.

Wrap-Up

The laws governing defense of others closely parallels self-defense generally. There are, however, some important differences.

Two legal frameworks can be applied to a defense of others analysis: the reasonable perception framework and the alter ego framework.

Under the reasonable perception framework, when you come to the defense of another person you are allowed to rely upon your reasonable perception of events. If it later turns out that you were mistaken about the need to come to that person's defense, your use of force can still be justified, so long as your mistake was a reasonable mistake.

Under the alter ego framework, however, your right to use force in another person's defense is no greater than their right to use force in their own defense. If it turns out that they would not have been justified to use force—say that, unknown to you, they were the initial aggressor in the fight—then your use of force is also without legal justification. In other words, it's a crime.

Historically many states applied the alter ego framework to defense of others situations. Today, this is far less common. Some states still do apply the alter ego framework in certain circumstances, though. It is advisable to either know what circumstances these are for whatever state you might be in, or simply assume that you are at risk of being subject to alter ego if you come to someone else's defense.

Another risk in coming to the defense of others is the inherent uncertainty of the situation, and whether the person you rescued will recall events the way they really happened.

If that woman you saved from a beating by her abusive spouse suddenly realizes he'll be locked up over Christmas if she supports your side of the

story, might she suddenly decided that it was you, and not her husband, who was the dangerous person in the fight? If the person you "rescued" is telling the jury that it was you who was the aggressor, what's the jury supposed to believe? And do you have any control over whether she does so?

Some states also attach additional conditions to coming to the defense of another person, such as requiring that you first plead with that person to try to retreat from the fight if safely possible. Others allows for the defense of others under certain circumstances only for others who are special relations, such as immediate family members.

Coming to the defense of someone you have a duty to protect--such as a family member--has a much lower legal risk than coming to the defense of a stranger, because you will have some sense of how likely your family member might be to have undermined their own right to self-defense. With a stranger, though, can you ever know for certain?

There are also, of course, real physical risks in coming to the defense of others, as there are any time we decided to use force against another person. Just because we're the good guy doesn't mean we're going to win the fight.

Finally it should be noted that there are some limited situations in which there is little question about the lawfulness of coming to the defense of another. The classic example is that of a mass-shooting event, where there may be little or no difficulty in differentiating between the "active shooter" and the innocent victims. In such a scenario, follow your conscience, be careful, and shot placement.

Chapter 8

Defense of Property

In this chapter, we talk about perhaps the single most complex area of use-of-force law: defending property. Defense of property has wildly inconsistent rules across the 50 states. We can't cover every state's variation in one chapter, so instead we'll highlight some of the more interesting approaches and include a table for you to read your own state's particular flavor.

I do, however, suggest you adopt a general rule for defending property that will keep you well within the boundaries of the law in all 50 states:

Just don't do it. Unless you have a *very* good reason.

That's right, I'm suggesting that in almost all property situations the most prudent course of action is to decline entirely.

Unless you have a *very* good reason.

What might constitute a very good reason? To my mind, the only exception to the general rule is "highly defensible" property. The law typically defines "highly defensible" property, as an occupied home, an occupied place of business, an occupied vehicle, and so forth. And *even then*, only when there's an articulable threat to human life.

When you protect "highly defensible" property with deadly force, the law sees that property as a surrogate for the people inside them. Although phrased as *defending property*, you're legally defending human life.

If property isn't "highly defensible" property it is "simple tangible" property, sometimes called "personal" property, "possessions" or "modestly defensible" property. Simple tanglible property does not protect or shelter human life. Only one state allows for deadly force to defend personal property (Texas, naturally).

I think using even non-deadly force to defend tangible property is a fool's game. It risks far more in human life and legal risk than the value of the

property (especially insured property).

Again, to be crystal clear: I urge you to not defend property, unless there is an some threat to human life.

With that caution made, let’s look at defense of property in more detail.

Highly Defensible Property

As I already said, the most protected class of property is occupied shelter. If the purpose of the property is to protect people from the elements, especially if it is their primary home, then an attack on that property is seen by the courts as an attack on the person in that shelter.

The more the property is a source of shelter, the more the law allows you to protect it, so long as the building is occupied. The last point is the most important. When the building is occupied it is an extension of the person, and an attack on the structure is an attack on that person (because, in a sense, it is). On the other hand, if no one is in the building, heightened legal protection no longer applies.

A person's home, which the law calls his "dwelling", receives the greatest degree of protection. Further down on the continuum but still highly protected is your place of work and other places you routinely occupy. Such a property is legally called a "habitat" (a place where one could live), as opposed to a "dwelling" (where one actually lives) to distinguish the two.

Temporary shelter, such as a rented hotel room or a camping tent, may be either dwellings or habitats, depending on the jurisdiction. Indeed, even your car can fall into this category if someone is in it.

Curtilage is commonly included as part of your home. This includes your yard, a detached garage, a tool shed, a barn, and so forth. We already discussed these types of ancillary areas and structures as part of the Castle Doctrine (Chapter 5, Avoidance).

You may recall that there's a wide degree of variation in how narrowly or expansively a state defines curtilage. It also depends on the facts of a particular case. It's quite possible for a toolshed to qualify as curtilage in one case, and not in another, because the shed was used differently in each case.

At one extreme, Massachusetts does not protect curtilage at all. If you have one foot outside the four walls of your home your right to use force is exactly as it would be if you were ten miles from your home. Tennessee says in *§39-11-611. Self-defense* that curtilage includes "the area surrounding a dwelling that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of a person's home."

Similarly, Virginia case law defines curtilage as the "space necessary and convenient, habitually used for family purposes and the carrying on of domestic employment; the yard, garden or field which is near to and used in connection with the dwelling." *Wellford v. Commonwealth, 315 S.E.2d 235(1984).*

Least Defensible Property

Possessions are more difficult to justify defending than shelter. We call this group “modestly defensible” property. It includes all non-shelter property, like a TV, jewelry, or a wallet.

In all states you are permitted some strict leeway to defend personal property, but often not much. Indeed, in a half-dozen states, if a robber demands your wallet but doesn’t threaten you personally, you may not use deadly force to prevent him from taking it.

The danger lies in how quickly a non-deadly force confrontation can escalate, all over an object with far less value than life.

Table 8-1 provides the laws for the relevant use of non-deadly force in defense of property for all 50 states.

When the Law Allows for Greater Force

Let's say you are defending your home, a "highly protected" type of property. How do states make your actions "legal" when you're only indirectly defending life?

One way is that they set aside one or more of the five elements. We've already seen an example of this with the Castle Doctrine, where you don't have to retreat inside your "castle." Another is that they give you a presumption of reasonableness, so you don't have to produce evidence your actions were reasonable.

An example of such a "presumption of reasonableness" law can be found in Wyoming

Wyoming

§6-2-602. Use of force in self-defense:

(a) A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if:

(i) The intruder against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, another's home or habitation or, if that intruder had removed or was attempting to remove another against his will from his home or habitation; and

(ii) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring.

But this presumption isn't guaranteed. Prosecutors can erase the presumption of reasonableness with a preponderance of the evidence to the contrary. The

prosecution could, for example, convince the jury that you faked a business partner's trespass in order to kill him off.

Legislators often exclude scenarios from reasonableness presumptions that are particularly vulnerable to abuse. Wyoming's statute mentioned above, for example, does not allow for it if the victim also resided in the home or was a law enforcement officer.

Some states remove the Proportionality rule. Colorado Revised Statute *§18-1-704.5. Use of deadly physical force against an intruder* (better known as the "Make My Day" law) permits any level of force if four conditions are met:

(1) You are occupying the dwelling.

(2) The other person has trespassed.

(3) You reasonably believe that the other person has committed or will commit a crime in that dwelling against person or property (besides the unlawful entry). And

(4) You reasonably believe that the other person might use force, no matter how slight, against an occupant.

Note that *none of this requires that the potential attack be deadly*, yet it entitles you to use deadly force. Indeed, your attacker could give you nothing more than the slightest push, if the other three conditions are met.

Although Colorado was made famous (or, in some circles, infamous) for its "Make My Day" law, most states have some provision like it. Some of them are broadly worded, like Colorado's. Others are much more narrowly defined, such as Alabama's, which loosens the requirements only in cases of arson.

Only four states lack an adequate law of this type altogether. Iowa's statute restricts force to what is "reasonable," a vague term that in practice leaves all these decisions to the jury. Massachusetts, Vermont, and Virginia don't mention the topic at all.

Arizona has a particularly interesting law. There you may threaten deadly force against trespassers, but you can't use it unless the trespasser becomes a deadly threat. So, you can wave your gun at the guy, but you're not allowed to shoot him if he is only a threat to the property (of course, he probably doesn't know that).

Perhaps realizing the sticky situation this creates, the Arizona legislature filled some gaps with another statute. It allows you to shoot the intruder, but only to prevent arson of an occupied building, or armed burglary.

Another outlier state is Texas Penal Code *Sec. §9.42. Deadly Force to Protect Property.* There you may use deadly force to defend any kind of property if three conditions are met:

(1) You were allowed to use non-deadly force (you weren't the aggressor, etc.);

(2) You were preventing theft in the night, criminal mischief in the night, arson or burglary, OR you were preventing a thief from escaping; and

(3) The property could not be protected or recovered by any other means OR anything less than deadly force would risk death or serious bodily injury.

What this really says is, under the right circumstances, you may lawfully shoot and kill in defense of mere property. This would be very hard to justify in any other state. Given the many ways Texas' *§9.42* could be attacked by a motivated prosecutor, though, I wouldn't risk a long jail sentence just to get some stuff back. Even if this statute says it's ok. Simple theft is why I have insurance.

To understand what you're allowed to do and not allowed to do in each state, further information is provided for each state in **tables 8-1** and **8-2**. (Please keep in mind that not all states have defense of property statutes or case law. If your state is not listed we were unable to find controlling law.)

Wrap-Up

This book's focus is defense of human life, both your own and those you have a duty to protect (and, perhaps, strangers).

The laws also make provisions for defending property. Every state struggles to find the optimal balance between the value of human life (even the human life of a thief) and the value of wrongfully taken property. The result is a highly varied patchwork of laws across the 50 states, with shockingly little consistency.

I urge you to consider adopting a general rule: Don't do it. Unless you have a very good reason. And, to my mind, the only very good reason is a threat to innocent human life.

The law allows you to defend "highly defensible" property with greater force. Highly defensible property shelters and protects people: occupied homes, occupied places of business, and occupied vehicles.

This is different from "least defensible" property, or possessions. You may only defend this property with non-deadly force at most (with the notable exception of Texas Penal Code *§9.42*).

The laws relieve you of one or more of the five elements of self-defense that would normally apply to defending people.

The most common approach is to relieve the avoidance requirement. Such laws are called the "Castle Doctrine."

Another common approach is to provide a presumption of reasonableness. Certain specific scenarios—such as using force against a co-dweller or law enforcement officer—are excluded from such presumptions, though.

Yet another approach is to exclude the Proportionality element. In these states there need not be evidence of a threat of deadly force before the

defender can use deadly force against the intruder.

Texas, of course, is the only state to allow deadly force to defend personal property, under certain limited circumstances.

Chapter 9

Interacting with the Police

So, it's happened: You defended yourself against an imminent threat. The good news: you won the physical fight. The bad news: now you've got a legal fight to win. You've exposed yourself to charges, possibly assault, aggravated battery, or even murder.

What do you do?

Well, you're about to enjoy an encounter with the criminal justice system, most immediately the pointy end of that system: the police. This naturally prompts two questions among defenders. Do I *have* to? If I *do* have to, then *how* do I do it?

Reporting the Incident

Calling 911 is pretty likely to mess up your whole day, on par with having to spend a few hours at the emergency room. Who needs that hassle, right? Maybe *you* do. There is a very serious downside to not calling 911, just ask Michael Dunn.

As you might recall from Chapter 4, Mr. Dunn shot Jordan Davis, allegedly because Davis pointed a shotgun at Dunn through the window of his SUV and threatened to kill him. Dunn would end up firing 10 shots, and the SUV would flee the scene at speed.

About 100 yards away, the teenagers in the SUV realized that Jordan Davis had been shot, and raced back for help.

In the meantime, Dunn and his fiancée also left the scene.

You might be wondering: Did Dunn, who would later claim self-defense to justify his shooting of Davis, call 911 as he sped back to the hotel where he was staying?

He did not.

Did he call when he reached the safety of his hotel?

He did not.

He did, however, call for a *pizza*. He took his dog for a walk. He and his fiancée watched a movie. They saw on the evening news that Davis had died. They went to sleep.

Did Dunn call 911 the following morning?

He did not.

He drove two hours back to his home.

Did Dunn call 911 to report his defensive gun use when he arrived home?

He did not.

Instead, he received a call *from* the Jacksonville police detectives investigating the previous night's shooting,.

Care to guess what he told those detectives? "I was just about to call you."

Sure he was.

Following his arrest Dunn spoke with police, and for the first time they heard his story about Davis' shotgun. Had the police found the shotgun, Dunn asked? It wasn't in the SUV? Huh. Did the police look for the shotgun at the place where the SUV had briefly stopped? They didn't?

Of course the didn't. The police would have had no reason to look for a shotgun *anywhere*. Why? Because they'd never even *heard* about a shotgun until after Dunn's arrest.

You know who *did* call 911? The teenagers in the red SUV, after returning to the convenience store with the mortally wounded Davis.

Here's the lesson: the police have a strong tendency, built on decades of institutional and personal experience, to place the people involved in a 911 call into one of two buckets.

The person who calls 911 is officially the "complainant," because they're the person who called to make a complaint. There is a good bet that the complainant is the innocent victim of a crime, so the police often presume that to be the case.

The person who the complainant is complaining *about* , in contrast, is the "respondent", as they must respond to the complaint. There is an initial presumption that the respondent did something wrong.

These presumptions don't carry all the way to trial. At trial, after all, the respondent (then the defendant) is presumed innocent until proven guilty. These presumptions do, however, strongly influence how police initially

investigate a case.

In the context of the shooting death of Jordan Davis, it was Davis' friends who called 911. When the police arrived, it was natural for them to treat Davis' friends as crime victims, and they did so.

Dunn, in contrast, never called 911. Thus the police saw Dunn as the criminal. Flight from the scene to escape identification and capture is traditional consciousness of guilt evidence, suggesting that Dunn himself believed he was guilty.

An important note: it is always permissible to flee the scene for purposes of safety. Once safety has been achieved, however, the normal expectations apply.

As we discussed in Chapter 1, nobody who judged Dunn at his trial was there when it happened. We will therefore never know, for certain, if Jordan Davis really pointed a shotgun at Michael Dunn or not.

What we do know for certain is that even assuming a shotgun existed, it is Michael Dunn's fault that the police never recovered it. He failed to call 911 in a timely fashion and proof of his innocence was forever lost. Had he done so, the police would have known to look for a shotgun and (who knows) may have found one.

Now, you may be thinking: Well, of course I would call 911 if I shot somebody. But what if I fired a shot and nobody was hurt? What if I pointed the gun and never fired? What if I merely put my hand on my gun, so my attacker would know I was armed? And in any of these situations what if the attacker had just run away? Do I still need to call 911?

Remember, when you make another person believe you might kill them, you commit aggravated assault, good for 10 years or more in prison. And when you put your hand on your gun to deter an attacker you are non-verbally telling them exactly that: I'm deadly. Run away. That exact threat is what deterred them.

But, you're thinking, if the bad guy runs away, who's to know it ever

happened? After all, it's not like the bad guy is going to call 911, right?

Wrong. Believe it or not, bad guys *do* call 911. Indeed, many bad guys are personally outraged when a person they are attempting to rob has the nerve to point a gun at them. In their minds, they're just doing their job—robbery. No reason to point a gun at them. Just hand over your stuff.

Of course, they don't call 911 and say, "Hey, some guy I just tried to rob pointed a gun at me." You'll be shocked to learn that they tend to leave out their criminal aggression. Instead they say they were minding their own business when some guy who looks just like you, with a gun that looks just like yours, driving a car with your license plate, pointed a gun at them for no good reason at all.

This call is being made while you drive home, having decided that you don't want to be bothered with calling 911 yourself. What's happened, of course, is that your robber has, in the eyes of the police, qualified as the complainant, and you as the respondent. A few hours later, in the middle of your dinner, the doorbell rings and the police are there to arrest you. Oops.

“Never Talk to the Police”

Let’s say that one way or another you find yourself talking to the police after using force. What do you say? Nothing? A little bit? Everything?

One school of thought is that if you are facing criminal liability—as you certainly will be if you’ve used or threatened to use force—that you should say nothing to the police except “I want a lawyer.” I call this the “say nothing” approach. “Say nothing” advocates rather reasonably fear accidental self-incrimination. If you say nothing, then you won’t say anything incriminating. And in that, they are absolutely correct.

But there are also downsides to the “say nothing” strategy, downsides that the level-headed and well-informed can avoid with an alternative strategy.

Here’s an example of one such downside: I’m sure you are aware that you have a 5th Amendment right to silence and refusing to talk cannot be used against you as evidence of guilt. Many people understand this to mean that if you remain silent at the scene of the crime your silence cannot be used against you. I’m afraid this is only partly correct.

Once you have been read your Miranda rights, or after you have clearly stated your right to remain silent, your silence after that point cannot be used against you. But your silence prior to that point, your *pre-custody* silence *can* be used against you.

Lets imagine that the police show up on the scene, and you’re standing near a shot body. An officer asks you what happened, and you say literally nothing. That officer will be permitted to testify in court about that silence, and the jury will be permitted to consider whether a person who had acted in lawful self-defense would have said something rather than remained silent.

This is not even a controversial area of 5th Amendment law, having been affirmed by the Supreme Court as recently as 2013 (Texas v. Salinas, 133 US

2174, US Supreme Court 2013).

It comes down to this. If you prepare yourself for the worst—and reading this book is a strong indicator that you are so prepared—you leave a lot of value on the table by adopting the “say nothing” approach.

Instead, consider what I refer to as the “say little” approach. Only say a few very specific things to the police, for very specific reasons. Then no more.

I want to make clear that under no circumstances do I advocate talking all about what happened in detail without legal counsel present. Without your lawyer, details are to be avoided at all cost. What you say to the police must be focused and brief.

But if you feel you can exert enough self-control to not talk beyond what I describe, I offer for your consideration the “say little” approach.

The Say Little Approach

There are three distinct interactions that you are going to have with the police, each of which has important differences and require different responses. They are:

(1) the 911 call

(2) the responding officers

(3) the investigative officers

Let's discuss each of these in turn.

The 911 Call

We're all familiar with how a 911 call goes from TV and the movies. 911 is dialed, the phone rings, and then a dispatcher on the other end says something like "911, what's your emergency?"

As an aside, I have never really understood what the "say nothing" advocates suggest you do at this point. Their logic sounds absurd. "911, what's your emergency?" "I want my lawyer." Why even bother calling?

Instead, say a few very specific things for very specific reasons. Most of the "say little" items are things you will have to say eventually anyway, so saying them to 911 is hardly harmful.

(1) Your name.

There's no reason to refuse 911 your name, and you risk considerable harm if you do. Unless you plan to flee the scene to avoid identification (remember Michael Dunn and consciousness of guilt

evidence?), the police are going to learn your identity anyway. By not giving your name upon request (and they will request it) you create the impression that you seek to avoid identification. That is not conduct consistent with someone who behaved lawfully.

(2) Your location and the location of the event, if different.

The only reason to call 911 is to have them direct resources somewhere. If you're not willing to provide your location, I have no idea why you're calling them at all.

(3) Three specific sentences about what happened and why.

(a) "I was attacked."

This sentence turns the 911 recording into evidence that you were the victim of a crime, not the aggressor, and reinforces your complainant role.

(b) "I was in fear for my life (my family, etc.)."

Remember, you need subjective fear in order to meet the conditions of the element of Reasonableness. If you fail on Reasonableness, you fail on self-defense entirely. So put evidence of your fear on the recording.

(c) "I had to defend myself."

Does this statement concede that you used force? Absolutely. But remember, if you intend to claim self-defense as justification, you're going to have to make this concession anyway. You can't simultaneously claim self-defense and deny that you used force.

The vast majority of self-defense claims are bad claims made by criminals seeking to escape liability. (If there's a criminal who was rightly charged with assault or battery and who did not claim self-defense, I've yet to meet him.) Prosecutors and judges know that most self-defense claims are fabricated after the fact. You help mark yourself as an exception to this norm by establishing

your self-defense claim right from the start.

Those are the only three sentences about what happened. As mentioned above, details are to be avoided until you actually have legal counsel present.

(4) Request police and an ambulance.

Requesting police is obvious, that's why you're calling. But why an explicit request for an ambulance? Why not just let the police radio for an ambulance when they get on the scene?

Prosecutors love to argue, "not only did the defendant shoot that poor kid, he didn't even bother to help him as he was dying on the street." The "defendant," of course, being you, and the "poor kid" being the thug who tried to kill you.

Prosecutors say this because for the more serious murder charges there is a malice requirement. Failing to provide needed medical care to treat injuries that you caused might show malice.

If I had to shoot you, it was because you were trying to kill me. Otherwise I would not have. If you were trying to kill me, I'm going to be strongly disinclined to get closer to you to provide medical care.

Indeed, even EMTs who show up on the scene do not approach a prospectively violent suspect to treat their injuries until the scene is secured by police officers. If the pros are going to wait until the scene is secured, that's good enough for me.

Does this make me vulnerable to that prosecutor's argument that not only did I shoot that "poor kid," I didn't even help him? Sure it does.

I mitigate that vulnerability, though, by requesting that ambulance right on the 911 call. Now my attorney can argue that I sought to get that "poor kid" professional medical care as soon as humanly possible.

So here's a nice summary of what you might say on the 911 call: "My name is [Michael]. I'm at [49 Main St]. I was attacked. I was in fear for my life. I

had to defend myself. Please send an police and an ambulance as quick as possible."

That's it.

The Responding Officers

Your next police interaction is with the responding officers, the uniformed cops who arrive at the scene in response to the 911 call. Please tell them exactly what you told 911, with one additional bit of information we'll get to in a moment:

(1) Your name

Now they'll know you're the person who called 911, the *complainant*, as opposed to the *respondent*.

(2) Your location

Well, of course, they have that from 911, and they're physically at your location.

(3) Three specific sentences about what happened and why.

(a) "I was attacked."

(b) "I was in fear for my life (my family, etc.)."

(c) "I had to defend myself."

And the additional step that wasn't part of interacting with 911? This one gets added because while 911 obviously wasn't physically *on the scene*, the responding officers *are*.

(4) Identify exculpatory evidence & witnesses.

This is the step we didn't have when talking with 911, but should address with the responding officers who are actually on the scene.

Remember, the jury is only allowed to arrive at their verdict based on the evidence. If a piece of evidence goes missing, it does not exist for legal purposes. It becomes speculation—like Michael Dunn's claim that Jordan Davis had a shotgun.

Good cases of self-defense, the kind we would be making, do not suffer from too much evidence. They suffer when there is too little evidence, and some of the elements of self-defense begin to look speculative. More evidence is good for the good guys.

One strong argument in favor of George Zimmerman's account was his response to a lie he was told by Detective Serino, the lead investigator in the case. (Lying to a suspect is a permissible interrogation technique.)

Trying to get George to discard his claim of self-defense Det. Serino falsely told him that they'd discovered a surveillance camera that had recorded the whole event. Now, Serino said gravely, they knew exactly what had *really* happened.

George's response? "Thank God."

Again, more evidence is good for the good guys. Where good claims of self-defense go bad is not when there is too much evidence, but too little. Then some of the required elements look like speculation. Remember, speculation is of zero value in a courtroom.

So, what kind of evidence should you make when you interact with responding officers? Evidence that will help your narrative. What the law refers to as exculpatory evidence. And for the most part this evidence comes in the form of objects and witnesses. And you *need* that exculpatory evidence secured. If it isn't, parts of your story become speculation, which doesn't exist for legal purposes.

If a thug attacks you with a knife, and as you shoot him that knife goes flying into a bush, tell the responding officers to go look in that bush. If you don't, and the knife is not recovered, it doesn't exist for legal purposes. Given that the knife justifies your actions, failing to recover

it would be devastating to your legal defense.

Similarly, there may have been a couple walking their dog who saw the whole thing. Once there are a half-dozen patrol cars with flashing lights on scene, though, a considerable crowd will gather. The police are never going to work their way through everyone in that crowd before it disperses to the winds. Point them out to the officers and urge them to collect statements.

If all you say is "I want my lawyer," you let that exculpatory evidence disappear. I can assure you that your lawyer is not going to think you are a legal genius for following the advice of a Youtube video to "never talk to the police."

(5) Request medical attention.

There are some highly respected defensive trainers who I'm told disagree with me on this suggestion. Those who disagree, as I understand it, have two related objections.

Their first point: lying about the need for medical attention will make you look like, well, a liar. Juries convict liars all the time. If you falsely claim that you're having a heart attack, for example, and the lie is exposed, that's really bad. If the jury perceives that' you're lying, your self-defense claim is finished.

Their second point: you could be taking an ambulance away from someone who is genuinely injured and in need of it.

On both of those related points I fully agree: do not fake an injury to get medical attention. On the other hand, after the tremendous stress of having survived a life-or-death fight, you're probably in no position to evaluate your own physical, mental, or emotional condition. You need a professional to make that evaluation.

You could have been seriously injured, but your body's "fight-or-flight" response and adrenaline dump has made you unaware of the injury. I've personally been cut down the length of the forearm so deep

I could see the white of the bone. Despite the serious nature of the injury, I had no idea I'd been cut until somebody told me. There was not a drop of blood because my body withdrew blood from my extremities to my core as part of the "fight-or-flight" response. Like me, it's possible you were hurt, bleeding out right there. You may not even know it until your blood pressure collapses and you fall to the ground, too late to save. You won't know until you've been examined.

If you're a bit older (like me) and not in the greatest of shape (like me), it's not unusual to survive the explosive release of energy and adrenaline needed to win a physical fight for your life, only to suffer a heart attack a few hours later. If you're going to have a heart attack, have it at an emergency room, not a police station holding cell.

Note again, I'm not suggesting that you *fake* a need for medical attention. I'm telling you that anyone who has survived a fight for their life almost certainly *genuinely needs* medical attention. I urge you to request it.

Going to the emergency room won't keep you from being arrested, if the officers believe an arrest is appropriate. If you're on a gurney, they'll handcuff you to the gurney. When you're at the emergency room, there'll be a cop standing outside the door to your room.

But you'll be in a nice, clean hospital bed instead of a holding cell. In most cases of self-defense, as the adrenaline dissipates from your body, you will find yourself exhausted. Go ahead and take a nap in that nice clean bed in the ER, instead of while sitting on a cold steel chair handcuffed to a steel table at the police station.

(6) The Magic Words

At this point, there's nothing more that ought to be said to the responding officers except the "magic words":

> ***"I assert my right to silence."***
>
> ***"I assert my right to counsel."***

Period.

No, don't say "period." You'll sound like a jerk.

I put period in there for a reason, though.

Once you assert your right to silence, the police aren't supposed to ask you any further questions about what happened without your lawyer present.

Unless, that is, you waive your right to silence. How do you waive your right to silence? By talking to the police about the case.

Of course, you could realize your mistake and re-assert your right to silence, but why do the circus. Just assert your right to silence, and stay silent. (About the substance of the case, that is; if you need to use the bathroom or something, that's fine.)

The Investigative Officers

The final encounter you'll have with the police will be with the investigative officers—the detectives. What do you say to them?

NOTHING.

There is *no upside* to talking with the investigative officers, without your lawyer present, and *plenty of downside*.

You've already shared with the police the essential information described above, and in particular you've secured important exculpatory evidence and witnesses. That's all the upside you can reasonably hope for, and you've already got it. The downside is pretty steep.

The investigative officers, the detectives, are legitimately referred to by another name: professional interrogators. This is not a criticism of investigative officers. It's what we hire them to do: interrogate criminal suspects to determine if there exists probable cause to bring criminal charges.

They are trained and experienced. They know exactly what words need to come out of your mouth to qualify as probable cause, and they're likely to be fresh on their shift (if it was coming to an end, they'd hand you over to the incoming guys). In contrast, you know little or nothing about interrogation, have only a vague idea of what could get you in trouble, and are exhausted after your "fight-or-flight" adrenaline rush.

Do not engage professional interrogators. Say the magic words:

"I assert my right to silence."

"I assert my right to counsel."

Period.

Wrap-Up

Many advise that in the aftermath of a defensive encounter, nothing should be said to the police except “I want my lawyer.” This approach has certain advantages, especially for the uninformed and the actual criminals. I suggest, however, that it leaves considerable value on the table for those who take a professional approach to self-defense and the laws governing use-of-force.

The police initially view the person who calls 911 as the complainant, and the person who the police have to talk to because of the call as the respondent, the person who presumptively caused that unlawful harm. This can profoundly shape how they approach and investigate an event. Your self-defense claim can be seriously undermined if you allow your attacker to be the complainant. Bad guys do sometimes call 911.

Your silence and your refusal to answer questions that an innocent person might reasonably answer can be used against you in court, until you have either been Mirandized or you have unequivocally asserted your right to silence.

There are three distinct police interactions you are likely to have in the aftermath of a use-of-force event, and each requires a different response from you. These include the initial 911 call, the responding officers, and the investigative officers.

There are specific bits of information that you can tell the 911 operator to greatly strengthen your claim of self-defense while raising little risk of legal harm. Those same brief bits of information can also be shared with the responding officers, and you can help identify on-scene exculpatory evidence and witnesses to them. Evidence and witnesses that are not secured simply don’t exist for purposes of a criminal trial.

Finally, do not engage with investigative officers without your lawyer present. With these professional interrogators, just say the magic words:

"I assert my right to silence."

"I assert my right to counsel."

Period.

Chapter 10

A Legally-Sound Defense Strategy

OK, here it is: the chapter where we bring it all together. It has taken hard work to get here, and I'm sure you could use a break. (Go ahead, it's OK—I'll be here when you get back.)

Enjoy that break? Good. Now that you're back let's keep focused, because this is unquestionably the single most important chapter of the entire book. Each of the previous chapters was a building block for what we seek to accomplish in this chapter: crafting a legally sound self-defense strategy.

Here we learn defensive tactics and strategies that win the physical fight (our top priority) *and* the legal fight.

Out in the real world, of course, there are a nearly infinite number of self-defense strategies people recommend. Some are better than others. If you are considering adopting any, I urge you to evaluate them in the context of the five elements of the law of self-defense, as we've covered them in this book. Does a given strategy weaken or strengthen any of the elements of self defense your lawyer will argue? If it weakens an argument, is increasing your legal vulnerability counter-balanced by a survival benefit?

It should go without saying that something that increases your likelihood of jail and doesn't help your survival is a bad idea.

For example: If you inscribe "Thug Killer" on your pistol's slide, will that turn a clean self-defense shoot into a murder conviction? Maybe not. But could it turn a marginal self-defense shoot into manslaughter? Quite possibly. And even if the legal risk is only minimal, is it offset by a higher likelihood of survival? I doubt it. This is a very poor tradeoff.

Avoidance

The first thing I recommend you incorporate into your self-defense strategy is avoidance. I use this term tactically, not just legally. Avoidance from a tactical perspective prevents involvement entirely, perhaps long before the encounter.

From my perspective, avoidance is the highest form of fighting. If successful, it mitigates your physical and legal risk to zero. Every option after avoidance has some risk of death, a lifetime in jail, and financial ruin. As the famed military strategist Sun Tzu put it:

> "The supreme art of war is to subdue the enemy without fighting."

In our context, you are "subduing the enemy" when you deny your attacker the opportunity to attack you in the first place.

To quote the excellent Rory Miller from his book *Facing Violence*:

> "It is better to avoid than to run, better to run than to de-escalate, better to de-escalate than to fight, better to fight than to die."[2]

The key to avoidance is situational awareness. If you're not aware of your environment, well, you're just prey waiting to be taken. Now I don't mean situational awareness in a superficial immediate surroundings kind of way. That kind of awareness is essential to avoidance, but it is not sufficient. Rather, I mean a forecasting kind of awareness.

The environment around you is constantly changing. In the same way, you might be moving around. These combine to contribute a significant fluidity to your environment. You need to be aware not just of your current situation but also of the coming situation. You need to predict the future. But isn't that impossible?

Well, yes and no. While you can't know exactly what is going to happen, it

is possible to develop a keen sense of what will likely happen. I refer to this as “maturity of foresight.”

All experienced drivers do this automatically. We’re not just aware of the roadway immediately in front of our car. Our eyes scan further ahead. We see the brake lights on the car a quarter-mile down the road so we lift our foot off the gas, laying it weightlessly above the brake. We don’t yet know if we’ll need to slow or stop, but we know we might. Novice drivers have higher rates of accidents in part because they have yet to develop this ability.

Any of us who are parents have seen our kids struggle with this. They take a glass full of bright red juice and place it on a table so that 49% of the glass is over the edge. This kind of thing leaves a parent flabbergasted. As adults, we know what’s going to happen—a permanent red stain on our carpet. We apply our maturity of foresight routinely, perhaps 95% of the time. Children, however, lack this maturity of foresight. They’re genuinely surprised when the spill happens.

As people who carry arms, we have contemplated the possibility of taking a human life in necessary self-defense, and are prepared to do so. But taking life is the last option and so we must should apply maturity of foresight to our surroundings. Always, 100% of the time, zero down time.

I don’t know that the Bible is always the go-to source for self-defense strategies, legal or otherwise, but there’s a quote from Corinthians that I find fitting in this context:

> “When I was a child, I spoke as a child, I understood as a child, I thought as a child. But when I became a man, I put away childish things.”
>
> 1 Corinthians 13:11

When I became a man, I put away childish things . . . as must we all, if we intend to replace those “childish things” with a concealed firearm.

Part of this requires learning how to be aware of your environment in a more forward-looking manner than you might be used to. You need to learn how to recognize bad terrain—like ambush zones—before you suddenly find

yourself in the midst of that terrain.

In the wild predators know prey must come to watering holes regularly. All life needs water. So the predators set up to ambush the prey while there. Watering holes also exist in modern human societies. A great example is the gas station. Cars need to drink too, after all. While you're fueling up, you're distracted. You have your wallet or purse out, you've brought a multi-thousand dollar automobile with you complete with the keys, and there are gas pumps and other cars that obscure your view of the immediate environment.

What more could a predator ask for? Many predators don't—that's plenty, and that's when they attack their prey.

Of course, anyone with a car must from time to time go to a gas station. It's unavoidable. While you're there, know that you're at a watering hole. You have enough distractions just gassing up, don't add more by checking your smartphone for emails. Keep your eyes up and look around. Don't get surprised.

Also, not all gas stations are equal. I travel many times a year to teach my Law of Self Defense Seminars. The rental car I get needs to be refueled before I return it to the airport, so I'm obliged to go to a watering hole.

That does not mean, though, that I need to go to the gas station/watering hole that's nearest to the airport. In my experience, those are among the most likely to be thick with predators. Instead, I top off 5 or 10 minutes from the airport, in a safer environment.

Where else are there environmental dangers? John Farnham's oft-repeated warning about "the three don'ts" nicely summarizes how to avoid the vast majority of bad situations:

> Don't do stupid things.
>
> Don't go to stupid places.
>
> Don't hang out with stupid people.

If you can abide by those three rules, I expect you'd avoid 99% of the trouble that life can throw at you. That said, this is really more of an aspiration than a mandate. After all, where does much of the joy in life come from? So I'm not telling you to never do any of these three things. But if you are doing one of them, be aware that you are, in fact, in a higher risk environment than would otherwise be the case. Conduct yourself accordingly.

Escape/Retreat

Sometimes circumstances require a fight. As we've already discussed, though, fighting is what you do when there is no better option. If safely possible, cut your physical and legal vulnerability by escaping from an engagement.

In a nutshell, if it is safely possible to retreat, for Pete's sake, retreat.

Retreat provides tactical advantages, even above and beyond escape. If you end up having to fight despite your efforts to retreat, those efforts still increased your distance from the attacker. And greater distance is greater reaction time. That's a tremendous tactical advantage.

Remember the Tueller Drill. If you'd have 1.5 seconds to react to a threat 21 feet away, each additional foot of distance gives you even more time to react. Time gives us options, which gives us freedom of action, which is always a good thing.

Retreating also minimizes your legal vulnerability. Remember, the jury doesn't actually know what happened in any absolute sense. They can only come to a verdict based on what the evidence suggests happened. From the prosecutor's perspective, he would love to spin the evidence into a story where you were the aggressor. But if surveillance video shows you backing up, hands at chest level, palms out, the prosecutor's job just got much harder.

Even if the prosecutor could make a compelling narrative that you were the aggressor—or, horror or horrors, let's imagine that you momentarily lost your mind and really were the aggressor—what have you done by withdrawing from the confrontation, and communicating your withdrawal?

That's right, you've regained your innocence.

That's just the benefit of retreat from the standpoint of Chapter 2 on innocence. What about imminence, covered in Chapter 3?

If you're successfully retreating from an armed aggressor, he has to pursue you to continue the fight. If he pursues you while you're yelling at him to stay away, he now constitutes jeopardy from the AOJ triad. The fight is now certifiably imminent.

The False Security of Being Armed

Many people believe that a gun strapped to their hip means they don't have to take guff from anybody. If you're one of those people correct that perception now. The truth could not be more the opposite.

Now that you're carrying a gun, you've got to take guff from *everybody*.

Except the guy *trying to kill you*. That guy you can defend yourself against.

Why do I emphasize this? If a guy flips the bird at you after he cuts you off, even the slightest response can be spun against you. A good prosecutor will say you wanted an excuse to use your gun. And if you lose the legal battle there will almost certainly be aggravating factors created because you 'brought a gun' to what should have been at worst a verbal argument. Fumbling avoidance has far scarier legal consequences when you carry concealed.

De-Escalation

Well, this isn't good. You've failed to avoid, and you've failed to escape. Now what?

Time to de-escalate, pretty much the last ramp off the highway that will otherwise lead to a hands-on (or guns out) fight.

There are innumerable tactical approaches to de-escalation. Many require a sophisticated understanding of predators and how they differ (e.g. resource predators versus process predators). I again recommend Rory Miller's excellent work for guidance on such issues.

Verbal Defense

All of that, though, start from the most fundamental de-escalation technique. We all possess it, and it is surprisingly effective. What I'm talking about is verbal defense, or what some call "command voice."

Get loud.

Verbally engage your attacker, loudly and confidently. It yields tremendous tactical and legal benefits.

Remember when I said predators prefer easy prey? When you yell you look harder. Indeed, if you're loud enough you look like a genuine pain in the ass. If predators had a work ethic they wouldn't be thugs—yelling alone may well be enough to encourage your predator to look for easier prey.

In terms of legal benefits, yelling generates evidence. What do we all do, instinctively, if we hear someone shouting nearby? We turn and look. Well, when you get loud other people turn and look—we call those people witnesses. And good guys acting in self-defense want witnesses, and plenty

of them. Remember, good cases of self-defense don't suffer from too much evidence. They suffer from too little.

Guess what else might happen when you start attracting people's attention? Somebody might actually come to your rescue. You could even encourage this by shouting "Help!".

Now, it's also possible that everybody around has read this book's cautions so nobody is willing to help you. But can your attacker know that?

Perhaps the greatest legal value of command voice is that it strips the ambiguity out of an encounter.

Say a woman is walking alone at night through a parking garage. The garage is empty except for a handful of cars, herself, … and some guy walking 30 feet behind her.

She's scared. Is he following her? Or is his car just by happenstance parked near hers? Why is she so scared? Really scared, approaching physiological fear. Her mental alarm bells are going crazy, but the man hasn't done anything explicitly threatening.

The good news is she's got a gun and knows how to use it. If the man becomes a clear threat she is prepared. If he pulls out a knife and approaches her, she'll shoot him without hesitation.

But that's the question, isn't it? *Is* he a clear threat? He *hasn't* pulled out a knife. *Yet*. It's terrifying. What *can* she do?

She can strip away the ambiguity. Force the man to either stop what he's doing that's frightening her or expose his intent to harm.

What might that look like? She should spin around to face the man (before he gets too close), hold her palm out in the universal signal for "STOP!" and shout, "GET THE F*#K AWAY FROM ME!!!!"

If that man is a good guy how will he respond to that kind of challenge? Probably get as far from her as possible, the crazy lunatic. And what's the worst that she's done? She yelled at a stranger. Try getting charged with a

crime for *that*.

If he doesn't make himself scarce, if he continues to close despite repeated demands that he stay back, is he almost certainly a predator intent on causing harm? Yep. Does she now have a reasonable basis to perceive of an imminent threat? Absolutely.

See what she's done there? She used verbal defense to drive the ambiguity out of the scenario. Either the guy stops doing what was frightening and goes away or he continues to engage in conduct that is now, in the context of the verbal challenge, a clearly threatening way.

Defensive Display

What if yelling at an attacker doesn't work? Remember, avoidance and escape are already off the table—either they failed or there was no opportunity to try them.

The next step is defensive display of the firearm. We talked about defensive display in some detail already in Chapter 3: Imminence, and I'm not going to repeat all that here. I'll just add a few more thoughts.

First, while I don't encourage premature defensive display, when it does become tactically and legally appropriate to draw your gun you won't have time to hesitate. The scenario goes "don't display ... don't display ... don't display ... DISPLAY NOW!!!!!"

Swift defensive display, when appropriate, has both tactical and legal benefits. If you practice your draw so it's under a second, you can delay the moment you have to draw for real—and that's more time for you to try to avoid, escape, and de-escalate verbally.

On the other hand, lack of skill drives a panicked response. You'll show too much force too early, increasing your legal vulnerability.

Diversified Toolbox

We talked in Chapter 4: Proportionality about how important it is to carry a non-deadly weapon. Remember, you are five times more likely to suffer a non-deadly force attack than deadly.

I've carried a concealed firearm my entire adult life. It's the single best tool I have to defend my own and my family's life. When my gun is on my person, though, so is my pepper spray.[3] Anyone who prepares only for a deadly force threat sets themselves up for going disproportional if faced with a real, serious, non-deadly threat.

Don't paint yourself into that corner.

Cognitive Conditioning

How do you make decisions under the stress of a life-and-death encounter? The same way the police and military do it. Know the rules of the game, and train to operate within those rules automatically.

You may be thinking, holy cow, I just read this whole book—and it's loooong. How could I possibly make that much knowledge "automatic"?

If you drive a car, you've already done this on a far greater scale. If you were like me, when you were first learning there was awful lot to remember. OK, steering wheel, gas, brakes, that's not so bad. But wait, there are mirrors. A turn signal indicator. Oops, going too fast, braking too slow, am I in my lane? How do I tell?? ...Ok that other car's getting kind of close . . .

But, for most of us it wasn't long before we were driving, adjusting the radio, drinking a latte, talking on our cell phones, smoking a cigarette, putting on make up, and breaking up an argument between the kids in the back seat. All at the same time. Well, hopefully not, but you get the point. So much of the driving skill had become automatic that we had freed our mental bandwidth for other tasks.

In the context of a self-defense encounter, you do not want to be spending a lot of your mental bandwidth trying to remember the laws in your state. You want to be able to make critical, perhaps life and death tactical decisions, with a generous cognitive freedom to operate. Not just because you'll make the best decisions that way, but also because you'll need the bandwidth for situational awareness.

But how? There are mental "tricks" you can "program" into your head to make quicker, better decisions with fewer mental resources. While it seems there is an infinite variety of ways a bad guy can threaten you or your family, as a practical matter you can place these scenarios into generalized buckets, with each bucket having a limited menu of responses.

For example, some scenarios might go into the “will always retreat” bucket. Others might go into, “only non-deadly defensive force” bucket. A very few scenarios might go into the “deadly force *now*!” bucket. You’ll need to use your knowledge of self-defense law and your own ethical/moral standards to define your own personalized buckets. Once your buckets have been defined you don’t have to evaluate every real-life scenario from first principles, but can start reacting to the threat several steps down the decision path.

Using this strategy can offset the inherent tactical advantage attackers are used to enjoying because of their ability to choose the time, place, and manner of attack. A defender who responds decisively and much more quickly than the typical victim can often seize the action-reaction high ground, to good tactical effect.

I’m not encouraging you to be robotically reflexive: “If I see A then I’ll instantly do B.” Rather, I’m suggesting you reduce the number of decisions you’ll need to make while under the influence of physiological fear and the reduced mental bandwidth that goes with it.

Now that you’ve made what decisions you could in advance, stay flexible. Allow for a different course depending on the facts you find yourself facing. Making good decisions in the face of a stress-inducing threat is largely a function of how current you maintain your skills. If all you do is read this book, then shelve it, and don’t make any effort to keep the information fresh in your mind, then you won’t be able to make effective use of this knowledge when you most need it.

Any of you who shoot competitively know what I’m talking about. You may be at the very top of your game, but if you take a couple of months away from handling that firearm those skills degrade rapidly. After two months without practice, if you try to shoot a match you’ll almost certainly to do poorly compared to your skill level when you had been practicing.

So don’t just read this book and put it away. Leave it out in an accessible place, where you’ll see it on a regular basis. Occasionally pick it up, open to a random page, and read for a few minutes. A couple of pages every day would be awesome. (Some people suggest the bathroom is a good place for

this, but I leave that to your discretion.)

When you hear about a self-defense event in the news, use what you've learned in the book to conduct your own legal analysis. Where were their five elements of self-defense strong, where were they weak? How might they have been strengthened? What could they have done to mitigate their legal vulnerability, while improving their defensive posture?

In short, had you been in their place, what would you have done to ensure the strongest possible compelling narrative of lawful self-defense?

This is similar to how airplane pilots train for in-flight emergencies. They run through simulations of those scenarios, automate the responses that can reasonably be automated, and free up bandwidth needed to evaluate the details that are unique to a particular scenario.

Pilots also have highly sophisticated computer-driven simulators. Increasingly, so do defensive instructors. Even we at Law of Self Defense have incorporated a self-defense simulator into our seminars, so that students that complete the classroom experience can apply their just-acquired knowledge in a simulated (yet remarkably stressful) self-defense scenario.

Even if you don't have access to those kinds of resources, though, you can do much the same by yourself, in your head, by applying what you've learned in this book to news events.

The best part? You can do that at absolutely no cost. It's the self-defense law equivalent of dry firing, and just as useful.

Wrap-Up

The key to minimizing your legal liability to indictment, prosecution, conviction or lawsuit is to understand how your use-of-force will be judged. Understand the "rules of the game," the five elements of the law of self-defense. Know what conduct and scenarios generate evidence that make your compelling narrative of innocence stronger or weaker.

Then, adopt strategies and tactics that strengthen your narrative of innocence and avoid those that weaken it, to make the prosecutor's job a great deal harder.

To do so, *avoid* problems before they arise, *retreat* whenever safely possible, *de-escalate* by using command voice and other strategies, have a *diversified toolbo*x to work with, and *condition yourself cognitively* to be ready when the fight comes to you.

Chapter 11

Was It Worth It?

That's it. You've finished every substantive chapter of this book. Congratulations.

I'm not ready to let you leave quite yet, though. Before you go I want to encourage you to take a broader look at the ethical and moral dynamics of using force against another human being, perhaps fatal force.

Why? Because of the stakes involved. Those stakes are literally life and death—not just for your attacker, but also for you.

Once you've engaged by a potential assailant, you cannot reduce the physical risk of a fight to zero. There is also no way to reduce the risk of a lost legal fight to zero. That's why I place so much emphasize on avoidance, escape, and de-escalation. I want to get you off that use-of-force highway before any legal liability is attached.

We can, and should, mitigate risk to the greatest extent possible, and that's at the very core of everything we do at Law of Self Defense: this book, our seminars, our instructors course, our simulators, everything. Mitigating legal risk to zero, however, is simply not possible once you threaten force.

This cold reality suggests an important question you should be prepared to answer, and answer in the affirmative. *Was it worth it?*

If something goes terribly wrong in your legal defense—a key witness disappears, other witnesses lie with credibility, the case is overwhelmed by political motivations—you may find yourself on the receiving end of a guilty verdict, even if you did everything right. In the context of deadly force that could mean 20-to-life in jail.

So before you use force, pretend it's that last day of that long jail sentence. You're looking in a mirror, 20+ years of very hard life older. *Was it worth it?*

Were your actions that served to lock you up for 20+ years, destroying you

financially, keeping you from your kids, and forcing you to face criminal thugs behind bars, worth the price? If you had to do it again, would you still press that trigger, knowing what the cost to you would be?

Was it worth it?

If I think of use of force in that context, it's a very short list of scenarios that are definitely worth it to me.

We all say "yes" or "no way" to this question differently, depending on our world-view and personal ethics. Purely for encouraging your own introspection, here I'll share with you where I draw that line.

To save my own life? Yes. I'd rather be alive in prison than dead outside of prison.

To save the life of my wife, my children, my parents? Absolutely. Even if I knew with certainty that saving their lives would cost me 20 years in prison, I would still do it.

To rescue a stranger?

Well. That's a tougher question, isn't it?

When I became an adult I got a sidearm, carry permit, and both legal and tactical training. I considered it a fundamental adult responsibility to protect myself and my family from criminal predation.

That stranger? *They could have done tha*t. Why does their failure to meet that fundamental responsibility mean that I have to risk the rest of *my life* in prison? I think I'll stick to using my "police radio" (cell phone) to call for professional law enforcement, whose sworn a duty to help just such people gives them the legal backing of society.

To keep your car from being stolen? No way. That's what auto insurance is for. Of course, I don't use my vehicle to make a living like contractors often do. For them this may be different. Or maybe not.

To keep a thief from stealing my flat screen television from my home?

I live in a very traditional New England home. It is two stories, with all the bedrooms on the second floor, and one staircase. If I hear glass breaking downstairs in the middle of the night, I will arm myself, and call the police. Those bad guys can steal whatever they want from the first floor in the house. **[4]**

What they *can't* do is come up the stairs. I will shout to them that I have a gun, tell them I've called the police, and urge that they stay on the first floor or I'll be forced to defend myself and my family. If they still choose to come up, I'll know they're both interested in my family's demise and too stupid to recognize a very bad idea.

To protect a stranger's property?

Am I prepared to spend 20 years in prison for *someone else's* property? Uh, no, but thanks for the offer.

Again, answering "yes" to "Was it worth it?" after 20 years in prison will vary from person to person. I'm not trying to tell you where to draw that line, only you can do that. All I can do is give you the information you need to draw that line in an informed way, and to help you understand the legal consequences for where you draw that line.

I urge you to engage in this contemplation *now*, though, long before you're faced with the actual threat. Mid-fight is *not* the time. You should know, before the fight, to as great a degree of certainty as possible, what type of scenarios you are prepared to use force in, and what types do not qualify.

I know where my personal line is drawn. And that gives me confidence that if, God forbid, I should be forced to use my firearm, I will not hesitate when hesitating could mean death for my children, my wife, my family, or myself.

Good luck!

Learn More

And ... that's it. You've done it. You've finished reading the 3rd Edition of the Law of Self Defense. All done.

Well, not really, of course. You now have a solid foundation of how the laws work generally and, using the tables to follow, can obtain a high level of understanding about your state's laws in particular. Hopefully you are far better off than you were before you started the book.

But there is still much more you can learn. To help with this, Law of Self Defense offers opportunities for a more in-depth education on use-of-force law in several forms.

Live Seminars

Our state-specific live seminars (presented by myself) cover *YOUR* state's nuanced laws, and provide abundant opportunity for Q&A of various scenarios. We also offer an optional self-defense simulator module, where students apply the classroom knowledge just obtained in video-simulations. You can see my schedule of live seminars all over the country, or arrange to host a seminar yourself, here:

lawofselfdefense.com/seminars

Online Training

If we don’t have a live seminar coming to your area, you can get most of the same value through our state-specific online seminars. These are presented as video lectures of the live seminar material, again presented by Andrew himself. Sign up here:

lawofselfdefense.com/online-training

Instructor Program

If you are a self-defense instructor and wish you could cover use-of-force law in much greater depth, you might want to consider our Instructor Program. This is the most in-depth instruction available from any source — including law school — on use-of-force law.

You can find more information on the Instructor Program here:

lawofselfdefense.com/instructor-program

Newsletter

Easiest of all, sign up for our email newsletter to stay up-to-date on changes to your state's laws and happenings at Law of Self Defense, here:

lawofselfdefense.com/newsletter

Stay safe, and I look forward to hearing what you thought of the book.

-Andrew

About Andrew Branca

Andrew F. Branca, Esq., is the foremost expert in U.S. self defense law across all 50 states, with a legal practice specializing in use-of-force law since 1998. Through his firm, Law of Self Defense, Andrew provides extensive educational resources on the laws governing self-defense, defense of others, and defense of property to clients, law enforcement, attorneys, and judges. He does this in the form of best-selling books, as well as entertaining and informative live seminars, online courses, and a law school-level instructor program.

Andrew served for many years as a Sig Sauer Academy adjunct instructor. He is a Life Member of the NRA, an NRA Instructor, and an IDPA Master-class competitive shooter in multiple divisions. Andrew's legal expertise has been used by the Wall Street Journal, the Chicago Tribune, National Public Radio, numerous other media organizations, as well as many private, state and federal agencies.

For more information on Andrew and Law of Self Defense, please visit **www.lawofselfdefense.com**.

Appendix

State-Specific Legal Information

2-1: Provocation / Aggressor Laws

Table 2-1: Provocation/Aggressor Laws, by State	
Alabama	[A] person is not justified in using physical force if: (1) With intent to cause physical injury or death to another person, he or she provoked the use of unlawful physical force by such other person. (2) He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force. (3) The physical force involved was the product of a combat by agreement not specifically authorized by law. C.O.A. 13-A-3-23(c) "Generally, the party invoking the doctrine of self-defense must be entirely free from fault." *Jackson v. State*, 993 So.2d 45 (AL Ct. App. 2007)
Alaska	A person is justified in using non-deadly force upon another when and to the extent the person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person, unless (1) the person used the force in mutual combat not authorized by law; (2) the person claiming self-defense provoked the other's conduct with intent to cause physical injury to the other; the person claiming self-defense was the initial aggressor . . . A.S. 11.81.330 "A person who provokes a difficulty forfeits his right of self-defense." *Lindoff v. State*, 2014 Alas. App. LEXIS 84 (AK Ct. App. 2014) The law of self-defense is designed to afford protection to one who is beset by an aggressor and confronted by a necessity not of his own making. *Bangs v. State*, 608 P.2d 1 (AK Supreme Court 1980) When the [one person] directs actions or words at the [other] for the express purpose of eliciting a response, it is clear that the [other] may be said to have been "provoked" *Roark v. State*, 758 P.2d 644 (AK Ct. App. 1988)
Arizona	The threat or use of physical force against another is not justified: 1. In response to verbal provocation alone; or

	2. To resist an arrest . . . 3. If the person provoked the other's use or attempted use of unlawful physical force . . . A.R.S. 13-404(B) Arizona law does not require instruction on self-defense if the accused is at fault in provoking the confrontation. [Where] the jury found appellant guilty of burglary . . . appellant was at fault in provoking the altercation [and not entitled to claim self-defense.] *State v. Noriega*, 690 P.2d 775 (AZ Supreme Court 1984)
Arkansas	A person is not justified in using physical force upon another person if: (1) With purpose to cause physical injury or death to the other person, the person provokes the use of unlawful physical force by the other person; (A) The person is the initial aggressor. (B) . . . . (3) The physical force involved is the product of a combat by agreement not authorized by law. A.C. 5-2-606(b) [A]ppellant was not entitled to a justification defense because he, being armed, provoked the use of unlawful physical force by [victim]. The evidence demonstrated that the original altercation ended when the fight between appellant and Kevin broke up and the [victims] went into their apartment. By thereafter throwing the beer can at the apartment door and insulting [the victims], appellant provoked the subsequent attack by [the victim]. *Blackmon v. State*, 2007 Ark. App. LEXIS 911 (AR Ct. App. 2007)
California	A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force. CALCRIM 3472 An aggressor whose victim fights back in self-defense may not invoke the doctrine of self-defense against the victim's legally justified acts. CALCRIM 505 [T]here was evidence that defendant was the initial aggressor, in that he struck both [victims]s with his bicycle before either of them engaged in physically aggressive conduct toward him. *People v. Guajardo*, 2012 Cal. App. Unpub. LEXIS 5234 (CA Ct. App. 2012) [A person is] the initial aggressor by circling in front of [another's] house and threatening the occupants. *People v. Halford*, 2012 Cal. App. Unpub. LEXIS 5106 (CA Ct. App. 2012)
Colorado	[A] person is not justified in using physical force if: (a) With intent to cause bodily injury or death to another person, he provokes the use of unlawful physical force by that other person; or (b) He is the initial aggressor. . . . ; or (c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

	C.R.S. 18-1-704(3) A defendant must initiate the physical conflict to be the initial aggressor. *People v. Zukowski*, 260 P.3d 339 (CO Ct. App. 2010) It is undisputed that defendant did not strike the first blow and, therefore, was not himself the initial aggressor. That he may have uttered some insult or engaged in an argument also would not justify identifying defendant as the initial aggressor. *People v. Silva*, 987 P.2d 909 (CO Ct. App. 1999)
Connecticut	[A] a person is not justified in using physical force when: (1) with intent to cause physical injury or death to another person, he provokes the use of physical force by such other person, or (2) he is the initial aggressor . . . , or (3) the physical force involved was the product of a combat by agreement not specifically authorized by law. G.S. 53a-19(c) "[A] person is not justified in using any degree of physical force in self-defense against another . . . when he is the initial aggressor in the encounter with the other person ..." *State v. Revels*, 99 A.3d 1130 (CT Supreme Court 2014)
Delaware	The use of deadly force is not justifiable under this section if: (1) The defendant, with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter . . . D.C.D. 464(e)(1) “Self-defense is also unavailable if the defendant, "with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter …" *Spence v. State*, 129 A.3d 212 (DE Supreme Court 2015) “[O]ne who kills another, to be justified or excused on the ground of self-defense, must have been without fault in provoking the difficulty and must not have been the aggressor and must not have provoked, brought on, or encouraged the difficulty or produced the occasion which made it necessary for him to do the killing.” *State v Stevenson*, 188 A. 750 (DE Supreme Court 1936)
Florida	The justification [of self-defense] is not available to a person who: (1) . . . (2) Initially provokes the use or threatened use of force against himself or herself. . . F.S. 776.041 By not limiting provocation to the use or threat of force, the court failed to make the jury aware that the word "provoked," as used in the instruction, did not refer to mere words or conduct without force. Stated another way, the instruction given by the court eliminated the use of non-deadly force in self-defense if there was any provocation by the defendant - no matter how slight

	or subjective the provocation. By that standard, a mere insult could be [incorrectly] deemed sufficient to prohibit defending oneself from an attacker. *Gibbs v. State*, 789 So.2d 443 (FL Ct. App. 2001)
Georgia	A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he: (1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; (2) . . . (3) Was the aggressor or was engaged in a combat by agreement . . . O.C.G.A. 6-3-21(b) "[A] person is not justified in using force in self-defense if he is the initial aggressor or engages in mutual combat, …." *Boutier v. State*, 763 S.E.2d 255 (GA Ct. App. 2014)
Hawai'i	The use of deadly force is not justifiable under this section if: (a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter . . . H.R.S. 703-304(5) "[S]elf-defense is not a justification for the use of deadly force where the actor, with the intent of causing serious bodily injury, provoked the use of force against himself in the same encounter …" *State v. Silva*, 337 P.3d 53 (HI Ct. App. 2014)
Idaho	Homicide is also justifiable when committed by any person in . . . in the lawful defense of such person . . . but such person . . . , if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed . . . I.C. 18-4009(3)
Illinois	The justification [of self-defense] is not available to a person who: (a) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or (b) Initially provokes the use of force against himself, with the intent to use such force as an excuse to inflict bodily harm upon the assailant . . . I.L.C.S. 7-4 "To obtain a jury instruction of self-defense, a defendant must establish … the [defendant] is not the aggressor …" *People v. Cacini*, 45 N.E.3d 738 (IL Ct. App. 2015)
Indiana	[A] person is not justified in using force if: . . . (2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or the person has entered into combat with another person or is the initial aggressor . . . I.C. 35-41-3-2(g)

	"State rebuts defendant's claim of self-defense upon proving defendant was initial aggressor in confrontation." *Brown v. State*, 35 N.E.3d 319 (IN Ct. App. 2015)
Iowa	The defense of justification is not available to . . . 2. One who initially provokes the use of force against oneself, with the intent to use such force as an excuse to inflict injury on the assailant. 3. One who initially provokes the use of force against oneself by one's unlawful acts . . . I.C. 704.6 [The defendant's unlawful] taking of the [other's] car was unquestionably the impetus for the events that followed. However, that act, which began as a relatively nonviolent act, is not necessarily a sufficient provocation to deprive Begey of the defense [of self-defense]. *State v. Begey*, 672 N.W.2d 747 (IA Supreme Court 2003)
Kansas	[Self-defense] is not available to a person who: (b) initially provokes the use of any force against such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or (c) otherwise initially provokes the use of any force against such person or another . . . K.S.A. 21-5226 "[T]he justification of self-defense is not available to a person who . . . initially provokes the use of force against himself …" *State v. Knox*, 3347 P.3d 656 (KS Supreme Court 2015))
Kentucky	The use of physical force by a defendant upon another person is not justifiable when . . . (2) The defendant, with the intention of causing death or serious physical injury to the other person, provokes the use of physical force by such other person; or (3) The defendant was the initial aggressor . . . K.R.S. 503.060 [T]he privilege of self-defense is denied to an individual who provokes another into an assault for the purpose of using the assault as an excuse to kill or seriously injury that person. [The loss of self-defense] may apply to a defendant who is a mental or physical aggressor. *Jackson v. Commonwealth*, 2010 Ky. Unpub. LEXIS 7 (KY Supreme Court 2010)
Louisiana	A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. L.R.S. 21 "The aggressor or the person who brings on a difficulty cannot claim the right of self-defense …"

	State ex rel. C.M., 128 So. 3d 1118, (LA Supreme Court 2013)
Maine	[The use of non-deadly] force is not justifiable if: A. With a purpose to cause physical harm to another person, the person provoked the use of unlawful, non-deadly force by such other person; or B. The person was the initial aggressor . . . C. The force involved was the product of a combat by agreement not authorized by law. M.R.S. 108(1) [A] person is not justified in using deadly force . . . if: (1) With the intent to cause physical harm to another, the person provokes such other person to use unlawful deadly force against anyone; (2) The person knows that the person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force . . . M.R.S. 108(2)(C) Without more, the fact that [person] was holding a knife and screaming does not render her an aggressor. In addition, [that person's] alleged threat to stab [the other person], made earlier on the streets of Portland, does not bear on who was the initial aggressor inside the apartment an hour or, more likely, several hours later. *State v. Pabon*, 28 A.3d 1147 (ME Supreme Judicial Court 2011)
Maryland	[T]he elements necessary to justify a homicide . . . on the basis of self-defense [include] the following: (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict . . . *Wilson v. State*, 7 A.3d 197 (MD Ct. Spec. App. 2010) "The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict." *Dashiell v. State*, 78 A.3d 916 (MD Ct. Spec. App. 2013) An aggressor is not entitled to a self-defense instruction if he initiated a deadly confrontation or escalated an existing confrontation to that level. *Thornton v. State*, 876 A.2d 142 (MD Ct. Spec. App. 2005)
Massachusetts	"Self-defense is generally not available to a defendant who provokes or initiates an attack." *Commonwealth v. Armstrong*, 88 Mass. App. Ct. 1117 (MA Ct. App. 2015) "The right of self-defense ordinarily cannot be claimed by a person who provokes or initiates an assault." *Commonwealth vs. Barbosa*, 972 N.E.2d 987 (MA Supreme Judicial Court 2012) One who strikes the first blow does not necessarily forfeit all claim to self-defense The defendant could justify a first blow if he was confronted by deadly force. *Commonwealth v. Bray*, 477 N.E.2d 596 (MA App. Ct. 1985)
Michigan	Deadly force aggressor cannot claim self-defense . . .

	C.J.I.2d 7.18 Non-deadly force aggressor does not lose right to defend against a deadly force response. C.J.I.2d 7.19 "A person who uses excessive force or acts as the initial aggressor does not act in justifiable self-defense." *People v. Campbell*, 2015 Mich. App. LEXIS 1844 (MI Ct. App. 2015) [The defendant] ignored "an obvious and safe avenue of retreat" and became the aggressor in the situation when he decided to pursue and threaten [the victim] and his acquaintances as they walked away from [the defendant]. *People v. Smith*, 2012 Mich. App. LEXIS 445 (MI Ct. App. 2012)
Minnesota	"A claim of self-defense requires … the absence of aggression or provocation on the part of the defendant." *In re M.C.S.*, 2013 Minn. App. Unpub. LEXIS 869 (MN Ct. App. 2013)
Mississippi	"Mississippi adheres to the common law rule that an aggressor is precluded from pleading self-defense." *Davis v. State*, 130 So. 3d 1141 (MS Ct. App. 2013) "If a person provokes a difficulty, arming himself in advance, and intending, if necessary, to use his weapon and overcome his adversary, he becomes the aggressor, and deprives himself of the right of self-defense." *Parker v. State*, 401 So.2d 1282 (MS Supreme Court 1981)
Missouri	[A person may not use force in self-defense where:] (1) The actor was the initial aggressor . . . M.R.S. 563.031.1(1) [The defendant] claimed self-defense and that his opponent had used racial epithets. This court noted, however, that insults are not sufficient provocation to justify an assault or make the speaker the aggressor. *State v. Wiley*, 337 S.W.3d 41 (MO Ct. App. 2011)
Montana	The justification [of self-defense] is not available to a person who: (2) purposely or knowingly provokes the use of force against the person . . . M.C.A. 45-3-105(2) After finding his guns had been taken [the defendant] drove fifty miles with a loaded .22 caliber rifle. Before leaving he told a house guest that 'he was going to go up there and get his guns and shoot her.' While at the [victim's] residence he threatened [the victim] by stating 'you have 24 hours to live.' These facts certainly establish the defendant as an aggressor. *State v. Cartwright*, 650 P.2d 758 (MT Supreme Court 1982)
Nebraska	The use of deadly force shall not be justifiable . . . if: (a) the actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter . . .

	N.R.S. 28-1409(4) To deprive a defendant of the defense of self-defense, the defendant's provocation must be with the intent that the defendant will then cause death or serious bodily injury to the one that the defendant provoked, and it must all be in the same encounter. *State v. Butler*, 634 N.W.2d 46 (NE Ct. App. 2001)
Nevada	If a person kills another in self-defense, it must appear that: (2) The person killed was the assailant. N.R.S. 200.200 "[S]elf-defense would not be available to [the defendant] if he were the first-aggressor …" *Dunn v. State*, 2015 Nev. Unpub. LEXIS 247 (NV Supreme Court 2015)
New Hampshire	The use of non-deadly force in defense of a person] . . . is not justifiable if: (a) With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or (b) He was the initial aggressor . . . (c) The force involved was the product of a combat by agreement not authorized by law. R.S.A. 627:4 "Force is not justified, however, if the defendant … provoked the use of unlawful, non-deadly force … or was the initial aggressor." *State v. Pennock*, 127 A.3d 672 (NH Supreme Court 2015)
New Jersey	[The use of force in self-protection is not} justifiable if: (a) The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter . . . N.J.S. 2C:3-4(b)(2) "[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self-defense . . . . The right to self-defense is only available to one who is without fault." *State v. Metta*, 2013 N.J. Super. Unpub. LEXIS 2776 (NJ Ct. App. 2013)
New Mexico	Self-defense is not available to the defendant if he [started the fight] [or] [agreed to fight] . . . U.J.I. 14-5191 "Self-defense is unavailable here, where Defendant initiated the confrontation." *State v. Stanfield*, 2015 N.M. Unpub. LEXIS 8 (NM Supreme Court 2015) [A] defendant who provokes an encounter, as a result of which he finds it necessary to use deadly force to defend himself, is guilty of an unlawful homicide and cannot avail himself of the claim that he was acting in self-defense. *State v. Chavez*, 661 P.2d 887 (NM Supreme Court 1983)

New York	[The use of physical force in defense of a person is not justifiable when:] (a) The [victim's] conduct was provoked by the actor with intent to cause physical injury to another person; or (b) The actor was the initial aggressor; except that in such case the use of physical force is nevertheless justifiable if the actor has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or (c) The physical force involved is the product of a combat by agreement not specifically authorized by law. N.Y.P.C. 35.15(1) "The defense of justification is available where, inter alia, the actor is acting in self-defense and the actor was not the initial aggressor." *Matter of Mondy E.*, 121 A.D.3d 785 (NY App. Div. 2014) No provocative act, conduct, insult or word, if unaccompanied by an overt act of hostility, will justify an assault, no matter how offensive or exasperating they may be. Words, no matter how coarse and abusive, never justify a physical assault. *Decker v. Werbenec*, 232 N.Y.S.2d 260 (NY Supreme Court 1962)
North Carolina	The justification [of self-defense] is not available to a person who used defensive force and who: (2) Initially provokes the use of force against himself or herself . . . N.C.G.S. 14-51.4 "[T]o sustain a plea of self-defense, it must be made to appear to the jury that the accused was not the aggressor." *State v. Amyx*, 768 S.E.2d 201 (NC Ct. App. 2014) [Where the provocation] consisted of verbal abuse rather than assaultive behavior, the ultimate question which must be resolved in order to determine whether Defendant forfeited his right to act in self-defense was whether his language was calculated and intended to provoke the difficulty which ensued." *State v. Harper*, 718 S.E.2d 737 (NC Ct. App. 2011)
North Dakota	A person is not justified in using force [in self-defense] if: a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or b. He has entered into a mutual combat with another person or is the initial aggressor . . . N.D.C.C. 12.1-05-03(2)
Ohio	"To establish a claim of self-defense, the defendant must prove by the greater weight of the evidence, that he was not at fault in creating the situation giving rise to the injuries…" *State v. Deanda*, 17 N.E.3d 1232 (OH Ct. App. 2014) To successfully utilize the affirmative defense of self-defense in a case where

	a defendant used deadly force . . . the defendant must prove . . . he was not at fault in creating the situation giving rise to the affray . . . *State v. Ellis*, 2012 Ohio 3586 (OH Ct. App. 2012)
Oklahoma	Self-defense is not available to a person who (was the aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat), no matter how great the danger to personal security became during the altercation unless the right of self-defense is reestablished. O.U.J.I. 8-50 [To forfeit self-defense] the difficulty must be prepared, sought, and provoked for the purpose and with the intent upon the part of the accused to take the life of the deceased. *Ruth v. State*, 581 P.2d 919 (OK Ct. App. 1978)
Oregon	[A] person is not justified in using physical force upon another person if: (1) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person; or (2) The person is the initial aggressor . . . (3) The physical force involved is the product of a combat by agreement not specifically authorized by law. O.R.S. 161.215
Pennsylvania	The use of deadly force is not justifiable under this section . . . if: (i) the actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; . . . Pa.C.S. 505(b)(2) [A defendant's] self-defense claim relies on well-settled law that proscribes the following conditions: … The slayer must have been free from fault in provoking or continuing the difficulty …" *Commonwealth v. Arms*, 2015 Pa. Super. Unpub. LEXIS 2917 (PA Super. Ct. 2015) [The Defendant] was the initial aggressor. He yelled through the phone at [the victim] to "come on over and take on a real man." [The Defendant] then greeted [the victim] at the front door with a gun. Correa opened the door and let [the victim] into the vestibule, despite [the victim]'s threats to kill him. The evidence supports the court's finding that [the Defendant] provoked and continued the altercation. *Commonwealth v. Correa*, 648 A.2d 1199 (PA Superior Court 1994)
Rhode Island	"[A] defendant who was the initial aggressor of the combative confrontation is generally not entitled to rely on self-defense." *State v. Van Dongen*, 2016 R.I. LEXIS 31 (RI Supreme Court 2016) "[O]ne cannot provoke a difficulty, thus creating the necessity, and then justify the resulting homicide or injury as an act of necessity and self-defense." *State v. Linde*, 876 A.2d 1115 (RI Supreme Court 2005)

South Carolina	To establish self-defense in South Carolina . . . the defendant must be without fault in bringing on the difficulty . . . *State v. Slater*, 644 S.E.2d 50 (SC Supreme Court 2007)
South Dakota	[T]he aggressor . . . is not entitled to assert self-defense. *State v. Blue Thunder*, 466 N.W.2d 613 (SD Supreme Court 1990)
Tennessee	The threat or use of force against another is not justified: (2) If the person using force provoked the other individual's use or attempted use of unlawful force . . . T.C.A. 39-11-611(e)
Texas	The use of force against another is not justified: (4) if the actor provoked the other's use or attempted use of unlawful force . . . T.P.C. 9.31(b) "[F]orce used in self-defense is not justified...if the actor provoked the other's use or attempted use of unlawful force." *Bonner v. State*, 2015 Tex. App. LEXIS 7013 (TX Ct. App. 2015)
Utah	A person is not justified in using force [in self-defense] if the person: (i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant; . . . (iii) was the aggressor or was engaged in a combat by agreement . . . U.C. 76-2-402(2)(a) "[Self-defense] s not available if the defendant was the aggressor." *Gonzalez v. State*, 345 P.3d 1168 (UT Supreme Court 2015) The ensuing "chase" during which defendant fired additional shots also supports the conclusion that the defendant was the aggressor. *State v. Starks*, 627 P.2d 88 (UT Supreme Court 1981)
Vermont	If, however, the State has proven beyond a reasonable doubt that [Defendant] was the aggressor in this confrontation, then you may not find that [Defendant] acted in lawful [self-defense] [defense of another]. VT CR07-091 [P]rovocation by mere words will not justify a physical attack. *State v. Bogie*, 217 A.2d 51 (VT Supreme Court 1966)
Virginia	"Killing in self-defense, however, may be either justifiable or excusable homicide. Justifiable homicide in self-defense occurs where a person, without

	any fault on his part in provoking or bringing on the difficulty, kills another under reasonable apprehension of death or great bodily harm to himself. Excusable homicide in self-defense occurs where the accused, although in some fault in the first instance in provoking or bringing on the difficulty, when attacked retreats as far as possible, announces his desire for peace, and kills his adversary from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm." (Note: Excusable homicide in VA requires retreat if safely possible, justifiable homicide does not.) *Buchanan v. Commonwealth*, 2015 Va. App. LEXIS 153 (VA Ct. App. 2015) [O]ne may avail himself or herself of [self] defense only where he or she reasonably believes, based on the attendant circumstances, that the person defended is without fault in provoking the fray. *Cook v. Commonwealth*, 2011 Va. App. Lexis 409 (VA Ct. App. 2011)
Washington	[If] the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense [or][defense of another] is not available as a defense. W.P.I.C. 16.04 "[O]ne who provokes another to lawfully act in self-defense is not responding to unlawful force and therefore has no right of self-defense." *State v. Bertram*, 2015 Wash. App. LEXIS 2753 (WA Ct. App. 2015) [W]ords alone do not constitute sufficient provocation [to make the speaker an aggressor]. Therefore, the giving of an aggressor instruction where words alone are the asserted provocation would be error. *State v. Riley*, 976 P.2d 624 (WA Supreme Court 1999)
West Virginia	"[A required] element under [West Virginia law] necessary to present a sufficient self-defense claim: (1) that petitioner was not the aggressor …" *State v. Young*, 2014 W. Va. LEXIS 1270 (WV Ct. App. 2014) Ordinarily, self-defense is not available to the aggressor who precipitates an affray without legal justification. *State v. Painter*, 700 S.E.2d 489 (WV Supreme Court 2010)
Wisconsin	Provocation affects the privilege of self-defense as follows: (a) A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack . . . (c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense. W.S. 939.48(2) [T]he trial court found that the [provocation] instruction was not applicable

	because [the Defendant]'s conduct was not "of a type likely to provoke others to attack him...." This finding is clearly erroneous. [The Defendant] admitted that he slapped [the Victim] in the face. Intentionally slapping or hitting someone in the face--acts that can be a battery--is certainly conduct that can provoke others to attack. Under these facts, a jury could find that Saul was the initial physical aggressor. *Root v. Saul*, 718 N.W.2d 197 (WI Ct. App. 2006)
Wyoming	"Generally, the right to use self-defense is not available to an aggressor who provokes the conflict." *Lawrence v. State*, 354 P.3d 77 (WY Supreme Court 2015)

2-2: Regaining Innocence Laws

Table 2-2: Regaining Innocence Laws, by State	
Alabama	Withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force. C.O.A. 13-A-3-23(c)(2)
Alaska	Withdraws from the encounter and effectively communicated the withdrawal to the other person, but the other person persists in continuing the incident by the use of unlawful force. A.S. 11.81.330(b)
Arizona	(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and (b) The other nevertheless continues or attempts to use unlawful physical force against the person. A.R.S. 13-404(B)(3)
Arkansas	[T]he initial aggressor's use of physical force upon another person is justifiable if: (i) The initial aggressor in good faith withdraws from the encounter and effectively communicates to the other person his or her purpose to withdraw from the encounter; and (ii) The other person continues or threatens to continue the use of unlawful physical force A.C. 5-2-606(b)(2)(B)
California	If the aggressor attempts to break off the fight and communicates this to the victim, but the victim continues to attack, the aggressor may use self- defense against the victim to the same extent as if he or she had not been the initial aggressor. In addition, if the victim responds with a sudden escalation of force, the aggressor may legally defend against the use of force. CALCRIM 505
Colorado	Withdraws from the encounter and effectively communicates to the other person his intent to do so, but the latter nevertheless continues or threatens the use of unlawful physical force. C.R.S. 18-1-704(3)
Connecticut	Withdraws from the encounter and effectively communicates to such other

	person his intent to do so, but such other person notwithstanding continues or threatens the use of physical force G.S. 53a-19(c)(2) "[A] person is not justified in using any degree of physical force in self-defense against another . . . when he is the initial aggressor in the encounter with the other person and does not both withdraw from the encounter and effectively communicate his intent to do so before using the physical force at issue in the case." *State v. Revels*, 99 A.3d 1130 (CT Supreme Court 2014)
Delaware	If the [aggressor] withdrew from the combat and retreated, with the honest intent to escape, and was pursued and unlawfully assaulted, then his assailants became the aggressors, and the prisoner had the right in self-defense to use so much force as was necessary under the circumstances to repel the attack upon him and protect himself. *State v. Miele*, 74 A. 8 (Del. O & T 1909)
Florida	(a) [Where the provoked] force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant; or (b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force. F.S. 776.041(2)
Georgia	Withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force. O.C.G.A. 6-3-21(b)(3) "[A] person is not justified in using force in self-defense if he is the initial aggressor or engages in mutual combat, unless he withdraws from the encounter and notifies the other participant that he is doing so." *Boutier v. State*, 763 S.E.2d 255 (GA Ct. App. 2014)
Hawai'i	If [a person] intends only moderate harm and receives a deadly response, the initial aggressor may respond with deadly force. Official Commentary to H.R.S.703-304 Otherwise, no explicit legal method for regaining innocence.
Idaho	Must really and in good faith have endeavored to decline any further struggle before the homicide was committed I.C. 18-4009(3)
Illinois	[Where the provocation intended to cause a non-deadly response, innocence regained when]:

	(1) [The provoked] force is so great that he reasonably believes that he is in imminent danger of death or great bodily harm, and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or (2) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force. I.L.C.S. 7-4(c)
Indiana	[Where actor is mutual combatant or initial aggressor, and the actor] withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action. I.C. 35-41-3-2(g)(3) "An initial aggressor, must withdraw from the encounter and communicate the intent to do so to the other person before he may claim self-defense." *Billeaud v. State*, 37 N.E.3d 565 (IN Ct. App. 2015)
Iowa	[[Where the actor initially and unlawfully provokes the responding force and]: a. [The provoked] force is grossly disproportionate to the provocation, and is so great that the person reasonably believes that the person is in imminent danger of death or serious injury or b. The person withdraws from physical contact with the other and indicates clearly to the other that the person desires to terminate the conflict but the other continues or resumes the use of force. I.C. 704.6(3)
Kansas	[[Where the actor initially and unlawfully provokes the responding force and]: (1) Such person has reasonable grounds to believe that such person is in imminent danger of death or great bodily harm, and has exhausted every reasonable means to escape such danger other than the use of deadly force; or (2) in good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of such force, but the assailant continues or resumes the use of such force. K.S.A. 21-5226(c) “[T]he justification of self-defense is not available to a person who . . . initially provokes the use of force against himself unless he or she has exhausted every means to escape from imminent danger or has communicated the good-faith intent to terminate the use of force.” *State v. Knox*, 3347 P.3d 656 (KS Supreme Court 2015))
Kentucky	[Where the provocation is intended to elicit a non-deadly response and]: (a) His initial physical force was non-deadly and the force returned by the other is such that he believes himself to be in imminent danger of death or serious

	physical injury; or (b) He withdraws from the encounter and effectively communicates to the other person his intent to do so and the latter nevertheless continues or threatens the use of unlawful physical force. K.R.S. 503.060(3)
Louisiana	[Aggressor] withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict. L.R.S. 21 "The aggressor or the person who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict." *State ex rel. C.M.*, 128 So. 3d 1118, (LA Supreme Court 2013)
Maine	After such [nondeady] aggression the [aggressor] withdraws from the encounter and effectively communicates to such other person the intent to do so, but the other person notwithstanding continues the use or threat of unlawful, non-deadly force. M.R.S. 108(1)(B) No explicit legal mechanism to regain innocence when provocation causes other person to use unlawful deadly force against anyone.
Maryland	The defendant who was the first combatant to employ non-deadly force is entitled to assert the defense of (perfect or imperfect) self-defense against a combatant who has responded by employing deadly force. *Wilson v. State*, 30 A.3d 955 (MD Ct. App. 2011)
Massachusetts	A person who provokes confrontation may not claim right to self-defense unless he withdraws in good faith and announces his intention to retire. *Commonwealth vs. Rodriquez*, 958 N.E.2d 518 (MA Supreme Judicial Court 2011)
Michigan	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 [he/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. C.J.I.2d 7.18 "A person who uses excessive force or acts as the initial aggressor does not act in justifiable self-defense. An aggressor may still claim self-defense if he or she withdraws from any further encounter with the victim and communicates such withdrawal to the victim." *People v. Campbell*, 2015 Mich. App. LEXIS 1844 (MI Ct. App. 2015)
Minnesota	Where the defendant is the original aggressor in an incident giving rise to his

	self-defense claim, an instruction on self-defense will be available to him only if he actually and in good faith withdraws from the conflict and communicates that withdrawal, expressly or impliedly, to his intended victim. If the circumstances are such that it is impossible for defendant to communicate the withdrawal, it is attributable to his own fault and he must abide by the consequences. *Bellcourt v. State*, 390 N.W.2d 269 (MN Supreme Court 1986)
Mississippi	If [the aggressor] abandon[s] the conflict, and is fleeing from it in good faith, and not for vantage, he may defend, himself from threatened death or great bodily harm. *Pulpus v. State*, 82 Miss. 548, 34 So. 2 (1903)
Missouri	[An aggressor's] use of force is nevertheless justifiable provided: (a) He or she has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force. M.R.S. 563.031.1(1)
Montana	(a) [The force purposely provoked:] is so great that the person reasonably believes that the person is in imminent danger of death or serious bodily harm and that the person has exhausted every reasonable means to escape the danger other than the use of force that is likely to cause death or serious bodily harm to the assailant; or (b) in good faith, the person [who provoked the use of force] withdraws from physical contact with the assailant and indicates clearly to the assailant that the person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force. M.C.A. 45-3-105
Nebraska	[A] person may actually and bona fide withdraw from a strife of his own seeking, and thereafter, if attacked, if he is without fault, resist the attack, and avail himself of the plea of necessary self-defense. *Hans v. State*, 100 N.W. 419 (NE 1904)
Nevada	[If the person killed was not the assailant,] it must appear that . . . 2. . . . the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given. N.R.S. 200.200
New Hampshire	[If the initial aggressor,] (b) . . . after such aggression . . . withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or R.S.A. 627:4
New Jersey	But, if after commencing the assault, the aggressor withdraws in good faith from the conflict and announces in some way to his adversary his intention to

	retire, he is restored to his right of self-defense. Thus, the aggressor must abandon the fight, withdraw and give notice to his adversary. *State v. Rivers*, 599 A.2d 558 (NJ. Super. App. Div. 1991)
New Mexico	[Aggressor or mutual combatant can regain self-defense where: [1. The defendant was using force which would not ordinarily create a substantial risk of death or great bodily harm; and 2. _____ (name of victim) responded with force which would ordinarily create a substantial risk of death or great bodily harm]; [OR] [1. The defendant tried to stop the fight; 2. The defendant let _____ (name of victim) know he no longer wanted to fight; and 3. _____ (name of victim) became the aggressor.] U.J.I. 14-5191
New York	[T]he use of physical force [in self-defense] is nevertheless justifiable if the [initial aggressor] has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force. N.Y.P.C. 35.15(1)(b)
North Carolina	[T]he 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. N.C.G.S. 14-51.4(2)
North Dakota	[T]he initial aggressor is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action. N.D.C.C. 12.1-05-03(2)(b)
Ohio	"The defense of self-defense is not available to the person who starts a fight unless, in good faith, he withdraws from the contest and informs the other party of his withdrawal, or by words or acts reasonably indicates that he has withdrawn and is no longer participating in the fight." *State v Ellis*, 2012 Ohio 3586 (OH Ct. App. 2012)

Oklahoma	A person who (was the original aggressor)/(provoked another with intent to cause the altercation)/(voluntarily entered into mutual combat) may regain the right to self-defense if that person withdrew or attempted to withdraw from the altercation and communicated his/her desire to withdraw to the other participant(s) in the altercation. If, thereafter, the other participant(s) continued the altercation, the other participant(s) became the aggressor(s) and the person who (was the original aggressor)/(provoked another with the intent to cause the altercation)/(voluntarily entered into mutual combat) is entitled to the defense of self-defense. O.U.J.I. 8-50
Oregon	[T]he use of physical force [by an aggressor] upon another person under such circumstances is justifiable if the [aggressor] withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force. O.R.S. 161.215(2)
Pennsylvania	No explicit legal mechanism for regaining innocence.
Rhode Island	No explicit legal mechanism for regaining innocence.
South Carolina	[If, while engaged in mutual combat, but] before the killing is committed, the defendant withdraws and tried in good faith to avoid further conflict, and either by word or act, makes that fact known to the victim, he would be without fault in bringing on the difficulty. C.J.C. Ch. 8(1)
South Dakota	[O]ne may be at fault in bringing on a difficulty, but if he withdraws from it in good faith and is departing, and the other party pursues him, and brings on the difficulty again by his own fault, the latter cannot invoke the doctrine of self-defense, but will be treated as an aggressor ab initio [from the beginning]. *State v. Shepard*, 138 N.W. 294 (SD Supreme Court 1912)
Tennessee	(A) The person using force abandons the encounter or clearly communicates to the other the intent to do so; and (B) The other person nevertheless continues or attempts to use unlawful force against the person. T.C.A. 39-11-611(e)(2)
Texas	(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the

	encounter; and (B) the other nevertheless continues or attempts to use unlawful force against the actor. T.P.C. 9.31(b)(4)
Utah	[The aggressor] withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force. U.C. 76-2-402(2)(a)(iii) "[E]ven an initial aggressor or trespasser who makes a good faith effort to flee may still engage in self-defense." *Ray v. Wal-Mart Stores, Inc.*, 359 P.3d 614 (UT Supreme Court 2015)
Vermont	[The aggressor can] regain the right of [self-defense] [defense of another] by effectively withdrawing from the confrontation. To have effectively withdrawn from the confrontation, [Defendant] must have made reasonable efforts under the circumstances to notify [victim], by word and by deed, that [he] [she] was withdrawing. VT CR07-091(2)
Virginia	"Killing in self-defense, however, may be either justifiable or excusable homicide. Justifiable homicide in self-defense occurs where a person, without any fault on his part in provoking or bringing on the difficulty, kills another under reasonable apprehension of death or great bodily harm to himself. Excusable homicide in self-defense occurs where the accused, although in some fault in the first instance in provoking or bringing on the difficulty, when attacked retreats as far as possible, announces his desire for peace, and kills his adversary from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm." (Note: Excusable homicide in VA requires retreat if safely possible, justifiable homicide does not.) *Buchanan v. Commonwealth*, 2015 Va. App. LEXIS 153 (VA Ct. App. 2015) "Excusable homicide in self-defense occurs where the accused, although in some fault in the first instance in provoking or bringing on the difficulty, when attacked retreats as far as possible, announces his desire for peace, and kills his adversary from a reasonably apparent necessity to preserve his own life or save himself from great bodily harm. [So, innocence can be regained but only at the cost of assuming a duty-to-retreat.]" *Avent v. Commonwealth*, 688 S.E.2d 244 (VA Supreme Court 2010)
Washington	[Aggressor] in good faith had first withdrawn from the combat at such a time and in such a manner as to have clearly apprised his adversary that he in good faith was desisting, or intended to desist, from further aggressive action. W.P.I.C. 16.04
West Virginia	[The aggressor] in good faith first withdraws from the combat at a time and in a manner to let the other person know that he or she is withdrawing or intends to withdraw from further aggressive action. *State v. Brooks*, 591 S.E.2d 120 (WV Supreme Court 2003)

Wisconsin	(a) . . . [w]hen the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful [provocation] is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant. (b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his or her assailant. W.S. 939.48(2)
Wyoming	"[I]f one provokes a conflict but thereafter withdraws in good faith and informs the adversary by words or actions of the desire to end the conflict and is thereafter pursued, that person then has the same right of self-defense as any other person." *Lawrence v. State*, 354 P.3d 77 (WY Supreme Court 2015)

4-1: When Deadly Force is Justified

Table 4-1: When Deadly Force is Justified, by State		
	Alabama	**Alaska**
Death or grave bodily harm	13A-3-23(a)(1)	11.81.335(a)(1),(2)
Force against occupant of dwelling	During burglary 13A-3-23(a)(2)	
Specific acts of violence	Kidnapping, assault 1st/2nd, burglary, robbery, forcible rape/sodomy 13A-3-23(a)(3)	Kidnapping, sexual assault 1st/2nd, sexual abuse of minor 1st, robbery 11.81.335(3)-(7)
Forcible entry	Dwelling, residence, occupied vehicle 13A-3-23(a)(4) Prevent criminal trespass upon premises to prevent arson 1st/2nd 13A-3-25(b)	Commission of felony of arson upon a dwelling or occupied building 11.81.350(b) Burglary in occupied dwelling or building 11.81.350(c)(2)
Forcible removal of a person	Dwelling, residence, occupied vehicle 13A-3-23(a)(4)	
Other	When authorized by LEO to affect arrest or prevent escape 13A-3-27(f)(2)	Prevent carjacking 11.81.350(e) When authorized by LEO to make arrest or prevent escape 11.81.380(a)

Table 4-1: When Deadly Force is Justified, by State		
	Arizona	**Arkansas**
Death or grave bodily harm	13-405 (self), 13-406 (third person)	5-2-607(a)(2)
Force against occupant of dwelling	Criminal trespass upon premises, in defense of person 13-407(A), (B)	
Specific acts of violence	Arson of occupied structure, burglary 1st/2nd, kidnapping, manslaughter, murder 1st/2nd, sexual assault, child molestation, armed robbery, aggravated assault 13-411(A)	Felony involving force or violence 5-2-607(a)(1) Imminent domestic violence victimization 5-2-607(a)(3)
Forcible entry	Unlawful entering and present in residence or occupied vehicle 13-	Prevent commission of arson or burglary of premises 5-2-608(b)(2)

	418(A) & 13-419(A)	
Forcible removal of a person		
Other		

Table 4-1: When Deadly Force is Justified, by State		
	California	**Colorado**
Death or grave bodily harm	197(1) (self), 197(3) (other)	18-1-704(2)(a)
Force against occupant of dwelling	Defense of habitation against a felony or to enter habitation in a violent or tumultuous manner for purposes of violence against person 197(2)	Defense of occupant of dwelling or business during burglary 18-1-704(2)(b) Unlawful entry into dwelling and commits crime, or intends to commit crime, and might use physical force against occupant 18-1-704.5(2)
Specific acts of violence	Felony against defender's spouse, child, master, mistress, servant 197(3)	Kidnapping, robbery, sexual assault, assault 18-1-704(2)(c) Arson 1st 18-1-705
Forcible entry	Defense of habitation against a felony or to enter habitation in a violent or tumultuous manner for purposes of violence against person 197(2)	
Forcible removal of a person		
Other	Apprehend any person for felony committed, or suppress riot, or preserve the peace 197(4)	Authorized by LEO to affect arrest or prevent escape 18-1-707(6)(b)

Table 4-1: When Deadly Force is Justified, by State		
	Connecticut	**Delaware**
Death or grave bodily harm	53a-19(a)(1),(2)	464(c) (self), 465(1) (other)
Force against occupant of dwelling	Criminal trespass with act of violence 53A-20(2)	Arson, burglary, robbery, or felonious theft, where deadly force threatened 466(c)(2)
Specific acts of violence	Arson 53A-20(2)	Kidnapping, forcible sexual intercourse 464(c)
Forcible entry	Forcible entry into dwelling or place of work 53a-20(3)	Attempt to dispossess defender of dwelling 466(c)(1) By occupant of dwelling against intruder where encounter was sudden and unexpected 469(1), or reasonable belief intruder to inflict personal injury (469(2), or intruder refused demand to disarm or surrender 469(3)
Forcible removal of a person		
Other	Authorized by LEO to affect arrest or prevent escape 53a-22(e)(2)	

Table 4-1: When Deadly Force is Justified, by State		
	Florida	**Georgia**
Death or grave bodily harm	776.012(1) (self), 776.031 (other)	16-3-21(a)
Force against occupant of dwelling		
Specific acts of violence	Forcible felony 776.012(2), 776.031 (other) Forcible felony means treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, burglary, arson, kidnapping, aggravated assault, aggravated battery, aggravated stalking, aircraft piracy, throwing/placing/discharging destructive device or bomb, or any felony involving use of threat of physical force or violence against person 776.08	

Forcible entry	Home-invasion robbery 776.012(2) (self), 776.031 (other) & 776.08	Forcible entry into habitation by other than member of family or household 16-3-23(2) Forcible entry into habitation for the purpose of commission of a felony 16-3-23(3) Prevent or terminate trespass or wrongful interference with real property (non-habitation) or personal property 16-3-24
Forcible removal of a person	Forcible felony (includes kidnapping) 776.012(2) (self), 776.031 (other) & 776.08	
Other		Prevent or terminate trespass or wrongful interference with real property (non-habitation) or personal property 16-3-24

Table 4-1: When Deadly Force is Justified, by State

	Hawai'i	**Idaho**
Death or grave bodily harm	703-304(2)	18-4009(1)
Force against dwelling occupant	Dispossess defender of dwelling 703-306(3)(a)	
Specific acts of violence	Kidnaping, rape, forcible sodomy 703-304(2)	
Forcible entry		Defend habitation, property, or person against one who intends by violence or surprise to commit a felony 18-4009(2) Against one who intends in a violent, riotous, or tumultuous manner to enter the habitation of another for purpose of offering violence to persons within 18-4009(2)
Forcible removal of a person		
Other	Prevent the commission of felonious property damage, burglary, robbery or felonious theft AND the use of force other than deadly force would expose defender to substantial danger of	Resisting attempt to commit a felony, or do some great bodily injury upon any person 18-4009(1) Defense of self, spouse, parent, child, master, mistress or servant when there is reasonable apprehension of a felony 18-4009(3) To apprehend any person for any felony

	serious bodily injury 703-306(3)(b)(ii)	committed, or suppressing riot, or keeping the peace 18-4009(4)

Table 4-1: When Deadly Force is Justified, by State

	Illinois (I.L.C.S.)	**Indiana**
Death or grave bodily harm	720 I.L.C.S. 5/7-1	35-41-3-2(c)(2)
Force against dwelling occupant		
Specific acts of violence		
Forcible entry	Against violent, riotous, or tumultuous entry into a dwelling where assault intended upon person within 720 I.L.C.S. 5/7-2	Prevent or terminate unlawful entry of or attack on dwelling, curtilage, occupied vehicle 35-41-3-2(d)(2)
Forcible removal of a person		
Other	Prevent commission of a forcible felony 720 I.L.C.S. 5/7-1 Prevent commission of a felony in dwelling 720 I.L.C.S. 5/7-2 Prevent commission of a forcible felony against real or personal property 720 I.L.C.S. 5/7-3	Prevent commission of a forcible felony 35-41-3-2(c)(2) Prevent or stop the hijacking of an aircraft in flight 35-41-3-2(f) Prevent a public servant from unlawfully causing serious bodily injury to a person 35-41-3-2(k)

Table 4-1: When Deadly Force is Justified, by State		
	Iowa	**Kansas**
Death or grave bodily harm	704.1 (self), 704.3 (others)	21-5222
Force against occupant of dwelling		
Specific acts of violence		
Forcible entry		Terminate unlawful entry or attack upon any dwelling, place of work, or occupied vehicle but ONLY to prevent imminent death or grave bodily harm 21-5223 (But see 21-5224 that creates a legal presumption of intruder's intent to cause death or grave bodily harm)
Forcible removal of a person		
Other	Use of reasonable force, which can include deadly force (per 704.1), to terminate criminal interference with possession or other right in property 704.4 (self), 704.e (others), Use of reasonable force, which can include deadly force (per 704.1), to resist a forcible felony 704.7 To make an arrest where person arrested cannot be captured in any other way and EITHER (1) the person has or threatened use of deadly force in committing a felony OR (2) reasonably believed that person arrested would use deadly force against another unless immediately apprehended I.C.J.I. 400.21	

	Kentucky	**Louisiana (L.R.S.)**

Table 4-1: When Deadly Force is Justified, by State		
Death or grave bodily harm	503.050(2) (self) 503.070(2) (others)	20(1), (2) (self) 22 (others)
Force against occupant of dwelling	Prevent dispossession of self from dwelling 503.080(2)(a) Prevent burglary, robbery, felony involving the use of force 503.080(2)(b)	Prevent any unlawful force against a person present in a dwelling or place of business or occupied vehicle, during commission of a burglary or robbery 20(3)
Specific acts of violence	Kidnapping, sexual intercourse by force or threat, forcible felony against self 503.050(2) (self) Kidnapping, sexual intercourse by force or threat, forcible felony against other 503.050(2) (others, if they would have been justified) Prevent arson of a dwelling or other building in defender's possession 503.080(2)(c)	
Forcible entry	Defend against the forcible entering of a dwelling, residence, or occupied vehicle (legal presumption of death or grave bodily harm) 503.055	Against person who is making or has made unlawful entry into the dwelling, place of business, or motor vehicle 20(4)(a)
Forcible removal of a person	Prevent forcible removal of a person from a dwelling, residence, or occupied vehicle (legal presumption of death or grave bodily harm) 503.055	
Other		Prevent carjacking 11.81.350(e) When authorized by LEO to make arrest or prevent escape 11.81.380(a)

Table 4-1: When Deadly Force is Justified, by State		
	Maine	**Maryland**
Death or grave bodily harm	108(2)(A) (does not reference grave bodily harm)	*Sydnor v. State*, 776 A.2d 669 (MD Ct. App. 2001)
Force against occupant of dwelling		
Specific acts of violence	Prevent arson 104(2) Prevent kidnapping, robbery , sexual intercourse by compulsion 108(2)(A)(2)	

Forcible entry	Prevent criminal trespass of dwelling by person who is likely to commit some other crime in the dwelling, ONLY where trespasser has refused to strop trespass or it would be too dangerous to make the demand 104(3)(B), (4) Against person who has entered a dwelling AND necessary to prevent infliction of bodily harm upon a person in dwelling 108(2)(B)	
Forcible removal of a person		
Other		

Table 4-1: When Deadly Force is Justified, by State		
	Massachusetts	**Michigan**
Death or grave bodily harm	C.M.J.I.9.260(I)(B)	780.972(1)(a)
Force against occupant of dwelling		
Specific acts of violence		Prevent sexual assault 780.972(1)(b)
Forcible entry		
Forcible removal of a person		
Other		

Table 4-1: When Deadly Force is Justified, by State		
	Minnesota	**Mississippi**
Death or grave bodily harm	609.065	97-3-15
Force against occupant of dwelling		
Specific acts of violence		
	Prevent commission	

Forcible entry	of a felony in a place of abode 609.065	
Forcible removal of a person		
Other	Prevent commission of a felony in a place of abode 609.065	In resisting any felony upon defender, upon or in any dwelling, in any occupied vehicle, place of business or employment, or in the immediate premises where the defender may be 97-3-15(1)(e) To defend oneself or another from a design to commit a felony or great personal injury 97-3-15(1)(f) When necessarily committed to apprehend any person for any felony committed 97-3-15(g) When necessarily committed to suppress any riot or in lawfully keeping the peace 97-3-15(h)

Table 4-1: When Deadly Force is Justified, by State

	Missouri	**Montana**
Death or grave bodily harm	563.031(2)(1)	45-1-102, 49-1-103
Force against occupant of dwelling		Prevent or terminate unlawful entry into or attack up on an occupied structure to prevent an assault on a person or the commission of a forcible felony in the structure 45-3-103
Specific acts of violence	Protect against forcible felony 563.031(2)(1)	
Forcible entry	Prevent or terminate unlawful entry into dwelling, residence, or occupied vehicle of defender 563.031(2)(2) Prevent or terminate unlawful entry onto private property owned or leased by defender 563.031(2)(3)	Prevent or terminate unlawful entry into or attack up on an occupied structure to prevent an assault on a person or the commission of a forcible felony in the structure 45-3-103
Forcible removal of a person		

Other	When authorized by an LEO, or when necessary to immediately effect arrest of person committing a class A felony or a murder or attempting to escape by use of a deadly weapon 563.051(3)	Prevent commission of a forcible felony 45-1-102, 45-3-104

Table 4-1: When Deadly Force is Justified, by State

	Nebraska	**Nevada**
Death or grave bodily harm	28-1409(4)	200.120(1)
Force against occupant of dwelling	Prevent person from being dispossessed of his dwelling, attacker is attempting arson, burglary, robbery or other felonious theft or property destruction AND has either threatened deadly force in presence of defender or the use of force other than deadly force by defender would expose innocent persons to serious bodily harm 28-1411(6)	
Specific acts of violence	Prevent kidnapping or sexual intercourse compelled by force or threat 28-1409(4)	
Forcible entry		[To prevent] any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the occupied habitation or occupied motor vehicle, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. 200.120(1)
Forcible removal of a person		
		Defense of an occupied habitation, an occupied motor vehicle or person, against one who manifestly intends or endeavors to commit a crime of violence 200.120(1) In the lawful defense of the slayer, or his or

Other		her husband, wife, parent, child, brother or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person 200.160 In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode in which the slayer is. 200.160

Table 4-1: When Deadly Force is Justified, by State

	New Hampshire	**New Jersey**
Death or grave bodily harm	627:4(II)(a)	2C:3-4(b)(2) (self), 2C:3-5 (others)
Force against occupant of dwelling	Prevent any use of force in the commission of a felony against defender in defender's dwelling or curtilage 627:4(II)(d)	To protect against an intruder in a dwelling from using force against persons in dwelling 2C:3-4(c)(1) To protect defender in his own dwelling when encounter with intruder was sudden and unexpected, compelling defender to act instantly, and EITHER the defender believed intruder would inflict personal injury on person in dwelling OR the intruder refused order to disarm, surrender, or withdraw 2C:3-4(c)(2) To prevent attacker from dispossessing defender from his dwelling 2C:3-6(b)(3)(a)
Specific acts of violence	Prevent kidnapping or a forcible sex offense 627:4(II)(c) Prevent an attempt by a trespasser to commit arson 627:07:00	To prevent arson, burglary, robbery, or other criminal theft or property destruction, ONLY where attacker has employed or threatened deadly force OR use of non-deadly force to stop attack would expose innocents to substantial danger of bodily harm 2C:3-6(b)(3)(c)
Forcible entry		Use of force or deadly force upon or toward an intruder who is unlawfully in a dwelling is justifiable when the actor reasonably believes that the force is immediately necessary for the purpose of protecting

		himself or other persons in the dwelling against the use of unlawful force by the intruder on the present occasion 2C:3-4(c)(1)
Forcible removal of a person		
Other	To prevent any unlawful force against a person while attacker is committing burglary 627:4(II)(b)	

Table 4-1: When Deadly Force is Justified, by State

	New Mexico	**New York**
Death or grave bodily harm	In defense of self and when there is exists a design by attacker to commit a felony 30-2-7(B) (Note: Case law suggests must present danger of death or grave bodily harm. 30-2-7(A)	35.15(2)(a)
Force against occupant of dwelling		
Specific acts of violence		Prevent kidnapping, forcible rape, forcible criminal sexual assault, or robbery 35.15(2)(b) Prevent arson 35.20(1), (2) Prevent burglary of occupied building 35.20(3)
Forcible entry		
Forcible removal of a person		
Other	In the necessary defense of property. 30-2-7(A) (Note: Case law applies this narrowly to defender's habitation only, but in that context defender need not fear death or grave bodily harm, the need to stop a mere felony is sufficient.) To apprehend any person for any felony committed in defender's presence, to lawfully suppress riot, to keep the peace 30-2-7(C) (Note: Person being apprehended must ACTUALLY be a felon; mistake by defender results in loss of self-defense.)	When directed by LEO 35.30(3)(b) To effect the arrest of a person who has committed murder, manslaughter in the first degree, robbery, forcible rape or forcible criminal sexual assault and who is in immediate flight therefrom 35.30(4)(b)

Table 4-1: When Deadly Force is Justified, by State		
	North Carolina	**North Dakota**
Death or grave bodily harm	14-51.3(a)	12.1-05-07(2)(b)
Force against occupant of dwelling		
Specific acts of violence		By person in dwelling, place of work, occupied motor vehicle to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, occupied motor vehicle, where the use of non-deadly defensive force would expose defender to risk of serious bodily injury 12.1-05-07(2)(c)
Forcible entry	Prevent or terminate the forcible entry of a home, motor vehicle, workplace (presumption of reasonable fear of death, grave bodily harm) 14-51.2(b)(1)	Prevent or terminate forcible entry into dwelling, place of work, occupied motor home or travel trailer (presumption of fear of death, grave bodily harm) 12.1-05-07(1)(a)
Forcible removal of a person	Prevent forcible removal of a person from home, motor vehicle or workplace (presumption of reasonable fear of death, grave bodily harm) 14-51.2(b)(1)	Prevent forcible removal of person from dwelling, place of work, or occupied motor home or travel trailer (presumption of fear of death, grave bodily harm) 12.1-05-07(1)(a)
Other		Prevent the commission of a felony involving violence 12.1-05-07(2)(b) When authorized by LEO 12.1-05-07(2)(g)

Table 4-1: When Deadly Force is Justified, by State		
	Ohio	**Oklahoma**
Death or grave bodily harm	*State v. Melendez*, 2012 Ohio 2385 (OH Ct. App. 2012)	21-733* O.U.J.I.-CR 8-45 to 8-56 (self), O.U.J.I.-CR 8-2 to 8-12 (other) (*substantially changed by case law, jury instructions reflect current law as applied in court)
Force against occupant of		

dwelling		
Specific acts of violence		
Forcible entry	To prevent or terminate the unlawful entering of the residence or occupied vehicle of the defender (presumption of reasonable fear of death, grave bodily harm) 2901.05(B)(1)	To prevent or terminate forcible entering of dwelling, residence, occupied vehicle, place of business (presumption of reasonable fear of death, grave bodily harm) 21-1289.25(B)(1) To resist attempt to either forcibly enter, or to commit a felony, upon or in any dwelling defender occupies. OUJI-CR 8.14, 8.15
Forcible removal of a person		Prevent forcible removal of a person from dwelling, residence, occupied vehicle, or place of business (presumption of reasonable fear of death, grave bodily harm) 21-1289.25(B)(1) Prevent the forcible removal of person from dwelling, residence, occupied vehicle, place of business OUJI-CR 8-15
Other		By pregnant woman (only!) to protect unborn child, where she would be justified in using force or deadly force to protect herself from that hostile force 22-73

Table 4-1: When Deadly Force is Justified, by State

	Oregon (O.R.S.)	**Pennsylvania**
Death or grave bodily harm	161.219(3)	505(b)(2)
Force against occupant of dwelling		
Specific acts of violence	Against commission of a forcible felony against a person. 161.219(1) Against commission of a burglary in a dwelling 161.219(2) To defend any building against commission of arson or a forcible felony 161.225(2)	To defend against kidnapping or sexual intercourse by force 505(b)(2)

Forcible entry	Prevent or terminate the forcible entry into a dwelling, residence, or occupied vehicle (presumption of reasonable fear of death, grave bodily harm) 505(b)(2.1)	To terminate the unlawful entry into the defender's dwelling 507(c)(4)(i) Prevent defender from being dispossessed of dwelling 507(c)(4)((ii)(A) To prevent the commission of a felony in a dwelling 507(c)(4)((ii)(B)
Forcible removal of a person	Prevent the forcible removal of a person from a dwelling, residence, or occupied vehicle (presumption of reasonable fear of death, grave bodily harm) 505(b)(2.1)	
Other	When authorized by LEO to affect arrest or prevent escape 161.249(2)(b)	

Table 4-1: When Deadly Force is Justified, by State

	Rhode Island	**South Carolina**
Death or grave bodily harm	*State v. Linde*, 876 A.2d 1115 (RI Supreme Court 2005)	16-11-440(C)
Force against occupant of dwelling		
Specific acts of violence		To prevent the commission of a violent crime, defined as such in 16-1-60 16-1-440(c)
Forcible entry		To prevent or terminate the forcible entry into a dwelling, residence, or occupied vehicle (presumption of reasonable fear of death, grave bodily harm) 16-11-440(A)(1)
Forcible removal of a person		Prevent the forcible removal of a person from a dwelling, residence, or occupied vehicle (presumption of reasonable fear of death, grave bodily harm) 16-11-440(A)(1)
Other		

Table 4-1: When Deadly Force is Justified, by State

	South Dakota	**Tennessee**
	22-16-34 (self) or 22-16-35	

Death or grave bodily harm	(spouse, parent, child, master or mistress, servant)	39-11-611(b)(2)
Force against occupant of dwelling		To prevent or terminate forcible entry into a residence, business, dwelling, or vehicle (presumption of reasonable fear of death, grave bodily harm to self, family, member of household, or guest) 39-11-611(c)
Specific acts of violence	To prevent commission of a felony upon defender, or upon or in a dwelling house defender is in 22-16-34 To prevent commission of a felony upon defender, his spouse, parent, child, master, mistress, or servant 22-16-35	
Forcible entry		To prevent or terminate forcible entry into a residence, business, dwelling, or vehicle (presumption of reasonable fear of death, grave bodily harm to self, family, member of household, or guest) 39-11-611(c)
Forcible removal of a person		
Other	At command of LEO in overcoming resistance to a legal process or duty; or to retake escaped felons or to arrest felon fleeing from justice 22-16-32 To apprehend any person for any felony committed, to suppress riot, to keep the peace 22-16-33 To prevent commission of a felony upon defender, or upon or in a dwelling house defender is in 22-16-34	

Table 4-1: When Deadly Force is Justified, by State

	Texas	**Utah**
Death or grave bodily harm	9.32(a)(2)(A) 9.33 (other)	76-2-402(2)
		To prevent or terminate the use of force against a violent and tumultuous

Force against occupant of dwelling	Prevent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery or aggravated robbery (use of defensive force presumed to be reasonable) 9.32(a)(2)(B)	trespasser on real property who intends to commit violence against any person on the property 76-2-407(1)(d)(i) Against a violent and tumultuous trespasser on real property who poses imminent peril of death or serious bodily injury to a person on the real property (and there exists a legal presumption the defender has a reasonable fear of imminent of death or serious bodily injury when a trespass is made with force or in a violent and tumultuous manner or for purposes of committing a forcible felony constitute) 76-2-407(1)(d)(ii), (2)
Specific acts of violence	When necessary to prevent arson, burglary, robbery, aggravated robbery, theft during nighttime, criminal mischief during nighttime, OR to prevent the flight of someone in possession of stolen property after they have committed burglary, robbery, aggravated robbery, or theft at nighttime, AND the property cannot be recovered by other means OR the use of lesser force would expose defender to risk of death or grave bodily harm 9.42	To prevent commission of a forcible felony, including aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, arson, robbery, burglary, other felony involving force or violence against a person creating danger of death or serious bodily injury, and burglary of a vehicle when occupied 76-2-402(4)
Forcible entry	To prevent or terminate the forcible entry of the defender's occupied habitation, vehicle, place of business or employment (use of defensive force presumed to be reasonable) 9.32(b)(1)(A)	To prevent or terminate the entry into a habitation when such entry is violent, tumultuous, surreptitious or by stealth, and entry is made for purpose of offering violence to any person, dwelling, or being in the habitation 76-2-405 (1)(a)
Forcible removal of a person	Prevent the forcible removal of a person from defender's habitation, vehicle, place of business, or employment (use of defensive force presumed to be reasonable) 9.32(b)(1)(B)	
Other		

Table 4-1: When Deadly Force is Justified, by State

	Vermont	**Virginia**
Death or grave	2305(1)	*Avent v. Commownealth*, 688 S.E.2d

bodily harm		244 (VA Supreme Court 2010)
Force against occupant of dwelling	Suppression of person attempting to commit murder, sexual assault, aggravated assault, burglary, or robbery, with force or violence 2305(2)	
Specific acts of violence		
Forcible entry		
Forcible removal of a person		
Other		

Table 4-1: When Deadly Force is Justified, by State

	Washington	**West Virginia**
Death or grave bodily harm	9A.16.050	55-7-22(c)
Force against occupant of dwelling		To prevent or terminate a forcible entry into a home or residence if reasonably fears attacker may inflict death, grave bodily harm on any occupant in the home or residence, or that attacker intends to commit a felony in the home or residence and deadly force reasonably believed necessary to prevent such felony 55-7-22(a)
Specific acts of violence	To defend self, spouse, parent, child, sibling, or any other person in defender's presence from an imminent felony or effort to do some great personal injury 9A.16.050(1) (the felony must threaten death, grave bodily harm; *State v. Nyland*, 287 P.2d 345 (1955))	To prevent or terminate a forcible entry into a home or residence if reasonably fears attacker may inflict death, grave bodily harm on any occupant in the home or residence, or that attacker intends to commit a felony in the home or residence and deadly force reasonably believed necessary to prevent such felony 55-7-22(a)
Forcible entry		
Forcible removal of a person		
Other	When acting under the command of a peace officer and in the officer's aid 9A.16.040(1)(c) In resistance of attempted felony upon defender, any person in his presence, or upon a dwelling or	

	other place of abode 9A.16.050	

Table 4-1: When Deadly Force is Justified, by State		
	Wisconsin	**Wyoming**
Death or grave bodily harm	939.48	
Force against occupant of dwelling		
Specific acts of violence		
Forcible entry	To prevent or terminate the forcible entering of the defender's dwelling, motor vehicle, or place of business, in which defender was present (legal presumption of reasonable fear of death, grave bodily harm) 939.48(1m)(ar)	To prevent or terminate the forcible entering of another's home or habitation 6-2-602(a)(i)
Forcible removal of a person		To prevent or terminate the forceful removal of a person from his home or habitation 6-2-602(a)(i)
Other		

5-1: Laws on Duty to Retreat, Deadly Force

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	Alabama	**Alaska**	**Arizona**	**Arkansas**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	No	Only before using deadly force, must be done even without complete safety except by LEO or in home/curtilage 5-2-606, 5-2-607
No Retreat in Castle (dwelling)	●		● 13-418	● 5-2-607
No Retreat in Castle+ (curtilage)	●		●	● 5-2-607
No Retreat in Castle++ (business)	●		●	
No Retreat in Castle+++ (vehicle)	●		● 13-418	
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● 13A-3-23	11.81.335(b)	● 13-405, 13-411	

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	California	**Colorado**	**Connecticut**	**Delaware**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	Only before using deadly force C.C.J.I. 2.8-3	Only before using deadly force 464(b), (e)
No Retreat in Castle (dwelling)	●	●	● 53a-19	● 464 (self) 465 (other)
No Retreat in Castle+ (curtilage)	●	●		
No Retreat in Castle++ (business)	●	●	● 53a-19	● 464 (self)

				465 (other)
No Retreat in Castle+++ (vehicle)	●	●		
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● CALCRIM 505	● *Cassels v. People*, 92 P.3d 951 (CO Supreme Court 2004)		

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	Florida	**Georgia**	**Hawai'i**	**Idaho**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	Only before using deadly force	No
No Retreat in Castle (dwelling)	●	●	● 703-304(5)(b)(i)	●
No Retreat in Castle+ (curtilage)	●	●		●
No Retreat in Castle++ (business)	●	●	● 703-304(5)(b)	●
No Retreat in Castle+++ (vehicle)	●	●		●
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● 776.012, 776.013, 776.031	● 16-3-23.1		● ICJI 1519

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	Illinois	**Indiana**	**Iowa**	**Kansas**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	Before even non-deadly force 704.1, I.C.J.I. 400.10	No
No Retreat in Castle (dwelling)	●	● 35-41-3-2(d)	● 704.1	● 21-5223
No Retreat in Castle+ (curtilage)	●	● 35-41-3-2(d)		●
No Retreat in				

Castle++ (business)	●	●	● 704.1	● 21-5223
No Retreat in Castle+++ (vehicle)	●	● 35-41-3-2(d)		● 21-5223
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● No general duty to retreat *In Re T.W.*, 888 N.E.2d 148 (IL Ct. App. 2008); IPJI-Crim 24-25.09X	● 35-41-3-2(c)		● 21-5222(c), 21-5230

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State

	Kentucky	**Louisiana**	**Maine**	**Maryland**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	● 108 Only before using deadly force	● Only before using deadly force *Sydnor v. State*, 754 A.2d 1064 (MD Ct. App. 2000)
No Retreat in Castle (dwelling)	● 503.055(3)	●	● 108.2(C)(3)(a)	● *Barton v. State*, 420 A.2d 1009 (MD Ct. App. 1980)
No Retreat in Castle+ (curtilage)	●	●		
No Retreat in Castle++ (business)	●	●		
No Retreat in Castle+++ (vehicle)	● 503.055(3)	●		
		●		

No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● 503.050(4),503.055(3),503.070(3), 503.080(3) lost if engaged in illegal activity	14-19(C), 14-19(D), 14-20(C), 14-20(D) [W]hile there is no unqualified duty to retreat, the possibility of escape from an altercation is a recognized factor in determining whether the defendant had a reasonable belief that deadly force was necessary to avoid the danger. *State v. Sinceno*, 2012 La. App. LEXIS 1010 (LA Ct. App. 2012)		

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State

	Massachusetts	**Michigan**	**Minnesota**	**Mississippi**
General duty of non-aggressor to retreat before use of force in self-defense	● Before using ANY force	No	● Before using ANY force *State v. Radke*, 821 N.W.2d 316 (MN Supreme Court 2012)	No
No Retreat in Castle (dwelling)	● 278-8a	●	● *State v. Glowacki*, 630 N.W.2d 392 (MN Supreme Court 2001)	●
No Retreat in Castle+ (curtilage)		●		●
No Retreat in Castle++ (business)		●		●
No Retreat in Castle+++ (vehicle)		●		●
No Retreat Anywhere You Have		●		●

Right to Be (Stand Your Ground)		780.972(1)		97-3-15(4)

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	Missouri	**Montana**	**Nebraska**	**Nevada**
General duty of non-aggressor to retreat before use of force in self-defense	● Vague, but MAY be required before use of ANY force 563.031	No	● Only before using deadly force 28-1409(4)(b), (5)	No
No Retreat in Castle (dwelling)	● 563.031(3)	● 45-3-110	● 28-1409(4)(b)(i)	●
No Retreat in Castle+ (curtilage)	● 563.031(3)	●		●
No Retreat in Castle++ (business)	● 563.031(3)	● 45-3-110	● 28-1409(4)(b)(i)	●
No Retreat in Castle+++ (vehicle)	● 563.031(3)	●		●
No Retreat Anywhere You Have Right to Be (Stand Your Ground)		● 45-3-110		● 200.120(2)

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	New Hampshire	**New Jersey**	**New Mexico**	**New York**
General duty of non-aggressor to retreat before use of force in self-defense	No	● Only before using deadly force 2C:3-4(b)(2)(b), (3)	No	● Only before using deadly force 35-15(2)
No Retreat in Castle (dwelling)	● 627:4(III)(a)	● 2C:3-4(b)(2)(b)(i)	●	● 35-15(2)(a)(i)
No Retreat in Castle+ (curtilage)	● 627:4(III)(a)		●	
No Retreat in Castle++ (business)	●		●	
No Retreat in Castle+++ (vehicle)	●		●	
No Retreat Anywhere You Have Right to Be	●		● UJI 14-	

(Stand Your Ground)	627:4(III)(a)		5190	

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	North Carolina	**North Dakota**	**Ohio**	**Oklahoma**
General duty of non-aggressor to retreat before use of force in self-defense	No	● Only before using deadly force 12.1-05-07(2)(b)	● Only before using deadly force *State v. Russell*, 2012 Ohio 1127 (OH Ct. App. 2012)	No
No Retreat in Castle (dwelling)	● 14-51.2(f)	● 12.1-05-07(2)(b)(2)	● 2901.09(B)	●
No Retreat in Castle+ (curtilage)	● 14-51.2(a)(1), (f)			●
No Retreat in Castle++ (business)	● 14-51.2(f)	● 12.1-05-07 (2)(b)(2)		●
No Retreat in Castle+++ (vehicle)	● 14-51.2(f)	● 12.1-05-07 (2)(b)(2)	● 2901.09(B)	●
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● 14-51.3(a)			● 1289.25(D) lost if engaged in illegal activity

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	Oregon	**Pennsylvania**	**Rhode Island**	**South Carolina**
General duty of non-aggressor to retreat before use of force in self-defense	No.	No	● Only before using deadly force *State v. Urena*, 899 A.2d 1281 (RI Supreme Court 2006)	No
No Retreat in Castle (dwelling)	●	11/8/08	● 11-8-08	● 16-11-420(A)
No Retreat in				

Castle+ (curtilage)	●	●		●
No Retreat in Castle++ (business)	●	● 505(b)(2)(ii)	● 11-8-08	● 16-11-420(A)
No Retreat in Castle+++ (vehicle)	●	●		● 16-11-420(A)
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	No general duty to retreat if threat is imminent. *State v. Sandoval*, 156 P.3d 60 (OR Supreme Court 2007)	● 505(b)(2.3) (if threatened with deadly weapon) lost if engaged in illegal activity		● 16-11-420(E), 16-11-440(C)

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State

	South Dakota	**Tennessee**	**Texas**	**Utah**
General duty of non-aggressor to retreat before use of force in self-defense	No	No	No	No
No Retreat in Castle (dwelling)	●	●	●	●
No Retreat in Castle+ (curtilage)	●	●	●	●
No Retreat in Castle++ (business)	●	●	●	●
No Retreat in Castle+++ (vehicle)	●	●	●	●
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● 22-18-4	● 39-11-611(b)	● 9.31(e), 9.32(c)	● 76-2-402(3)

	Vermont	**Virginia**	**Washington**	**West Virginia**
Table 5-1: Laws on Duty to Retreat, Deadly Force, by State				
	No, IF the use of deadly force was immediately	No, UNLESS defendant made a		

General duty of non-aggressor to retreat before use of force in self-defense	necessary to defend against imminent threat of death or bodily injury *State v. Hatcher*, 706 A.2d 429 (VT Supreme Court 1997)	contribution to the affray. *Avent v. Commonwealth*, 688 S.E.2d 244 (VA Supreme Court 2010)	No	No
No Retreat in Castle (dwelling)		●	●	● 55-7-22(b)
No Retreat in Castle+ (curtilage)		●	●	●
No Retreat in Castle++ (business)		●	●	●
No Retreat in Castle+++ (vehicle)		●	●	●
No Retreat Anywhere You Have Right to Be (Stand Your Ground)		● *Foote v. Commonwealth*, 396 S.E.2d 851 VA Ct. App.1990	● WCJI/WPIC 16.08, 17.05	● 55-7-22(c)

Table 5-1: Laws on Duty to Retreat, Deadly Force, by State

	Wisconsin	**Wyoming**
General duty of non-aggressor to retreat before use of force in self-defense	No	¤ Case-by-case
No Retreat in Castle (dwelling)	● 939.48(1m)(ar)(1)	¤ Case-by-case
No Retreat in Castle+ (curtilage)		¤ Case-by-case
No Retreat in Castle++ (business)	● 939.48(1m)(ar)(1)	¤ Case-by-case
No Retreat in Castle+++ (vehicle)	● 939.48(1m)(ar)(1)	¤ Case-by-case
No Retreat Anywhere You Have Right to Be (Stand Your Ground)	● While there is no statutory duty to retreat, whether the opportunity to retreat was available goes to whether the defendant reasonably believed the force used was necessary to prevent an interference with his or her person. *State v. Wenger*, 593 N.W.2d	¤ Case-by-case

6-1: Legal Presumption of Reasonableness

Table 6-1: Legal Presumption of Reasonableness, by State

		Application	Exceptions
Alabama	**13A-3-23**	Other person is using or about to use deadly force; or using or about to use physical force when committing a burglary of a dwelling; or committing enumerated forcible felonies; or in the process of, or has, forcible entry of dwelling/residence/occupied vehicle.	Other person a lawful resident of dwelling/residence/vehicle without an order of protection; or person using force is engaged in unlawful activity; or person against whom force is used is LEO.
Arizona(A.R.S.)	**13-411(C); 13-419**	Both physical and deadly force, where acting to prevent the imminent or actual commission of enumerated forcible felonies in person's home, residence, place of business, owned/leased land, any conveyances, or any place right to be. (13-411) Other person is in the process of, or has, forcibly entered defender's residential structure or occupied vehicle. (13-419)	Other person a lawful resident of residential structure or occupied vehicle without an order of protection; or person using force is engaged in unlawful activity; or person against whom force is used is LEO. (13-419)
Arkansas	**5-2-620**	Any force in defense of self or the life of a person or property in one's home against harm, injury, or loss, against another who is unlawfully entering or attempting to enter into the home.	No explicit statutory exceptions.
California (P.C.)	**198.5**	Deadly force used within residence against another person, not a member of family or household, who unlawfully and forcibly enters, or has entered, the residence.	Does not apply to members of family or household.
		The person against whom the	The person against whom

		defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and The person who uses or threatens to use 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 defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or (b) The person or persons sought to be removed 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 or threatened; or (c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or (d) The person against whom the defensive force is used or threatened is a law enforcement officer ... who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a
Florida	**776.013**		

			law enforcement officer.
Georgia	**16-3-22**	Presumption that a person rendering assistance to an LEO who is being hindered in the performance of his duty or whose life is being endangered is acting with good faith and reasonableness.	No explicit statutory exception.
Kansas	**21-5224**	Deadly force used against other who has unlawfully or forcefully entering, or has so entered, the dwelling, place of work, or occupied vehicle of defender; or other is attempting to forcibly remove another person from dwelling, place of work, or occupied vehicle of defender.	Other person has a right to be in, or is lawful resident of, the dwelling, place of work, or occupied vehicle of the defender, and is not subject to an order of protection; person using force is engaged in a crime, attempt to escape from a crime, or is using the defended place to further commission of a crime; or the person against whom force is used is an LEO.
Kentucky	**503.055**	Deadly force against other who is in process of unlawfully and forcibly entering, or has so entered, a dwelling, residence, or occupied vehicle; or other is attempting to remove another against their will from the dwelling, residence, or occupied vehicle. Person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to do so with the intent to commit an unlawful act involving force or violence.	Other person has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, and there is no order of protection; or the person using force is engaged in unlawful activity; or the person against whom force is used is an LEO.
Louisiana (L.R.S.)	**19, 20**	Deadly force by a person lawfully inside a dwelling, place of business, or motor vehicle to prevent unlawful entry or compel an unlawful intruder to leave, if the intruder was attempting or had unlawfully and forcibly entered the dwelling, place	No explicit statutory exceptions.

		of business, or motor vehicle.	
Michigan	**780.951**	Deadly force against other who is in the process of breaking and entering a dwelling or business or committing home invasion, or who has done those acts and is still present in dwelling or business, or is attempting to remove against their will another from a dwelling, business, or occupied vehicle.	Other person has legal right to be in dwelling, business, vehicle, and there is no order of protection; or the person using force is engaged in unlawful activity; or the person against whom force is used is an LEO; or the person against whom force is used is the spouse, former spouse, has or had a dating relationship, has a child in common, or is a resident of former resident of the person's household, and there is a history of domestic violence by the person using force.
Mississippi (M.C.A.)	**97-3-15**	Deadly force when in dwelling, occupied vehicle, business or place of employment, if other is in process of, or had, unlawfully or forcibly entering such location, or was attempting to unlawfully and forcibly remove another from such location or the immediate premises thereof.	Other person has a right to be in location or is a lawful resident or owner of the dwelling, vehicle, business, place of employment, or immediate premises thereof; or if the person against whom force is used is an LEO.
New Jersey	**2C:3-6**	A person who is within a dwelling and who uses deadly force against another who is attempting to unlawfully dispossess him of his dwelling; or the other is attempting to commit arson, burglary, robbery, or other criminal theft of property or destruction.	No explicit statutory exceptions.
		Deadly force by lawful occupant of a home, motor vehicle, or workplace against another who is in the process of, or has, unlawfully and forcibly entered a home, motor vehicle, or workplace; or other is attempting to forcibly remove someone from the	Other person has a right to be in or is a lawful resident of the home, motor vehicle, or workplace, and there is no order of protection; or the person using force is

North Carolina (N.C.G.S.)		home, motor vehicle, or workplace. Person unlawfully and forcibly enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act of force or violence.	engaged in, or attempting to escape from, use of the home, motor vehicle, or workplace, to further any crime of physical force or violence; or the person against whom force is used is an LEO or bail bondsman; or the person against whom force is used has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace, and has exited the home, motor vehicle, or workplace.
North Dakota (N.D.C.C.)	**12.1-05-07.1**	Deadly force against another who is in in process of, or has, unlawfully and forcibly entering and remains within a dwelling, place of work, occupied motor home or travel trailer; or other had removed or is attempting to forcibly remove a person from the dwelling, place of work, occupied motor home or travel trailer.	Other person has a right to be or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer, and is there is no order of protection; the person using force is engaged in the commission of a crime; or the person against whom force is used is an LEO.
Ohio (O.R.C.)	**2901.05**	Deadly force against another who is in the process of unlawfully and forcibly entering, or has so entered, the residence or vehicle occupied by the person using force.	Other person has a right to be in, or is a lawful resident of, the residence or vehicle; or person using the defensive force is unlawfully in the residence or vehicle.
Oklahoma (O.S.)	**1289.25**	Deadly force against another who is in the process of unlawfully and forcibly entering, or has so entered, a dwelling, residence, occupied vehicle, or place of business; or has, or is attempting to, forcibly remove a person from the dwelling, residence, occupied vehicle, or place of business.	Other person has a right to be in or is a lawful resident of the dwelling, residence, occupied vehicle, or place of business, and there is no order of protection; the person using defensive force is engaged in lawful

		Person who unlawfully and forcibly enters or attempts to enter the dwelling, residence, occupied vehicle, or a place of business is presumed to have intent to commit unlawful act involving force or violence.	activity.
Pennsylvania (Pa.C.S.)	**505**	Deadly force against other who is in the process of, or has, unlawfully and forcibly entered, and is present in, a dwelling, residence, or occupied vehicle; or the other is or is attempting to forcibly remove a person from the dwelling, residence, or occupied vehicle. Person who unlawfully and forcibly enters or attempts to enter a dwelling, residence, or occupied vehicle, or forcibly removes or attempts to forcibly remove a person from the defender's dwelling, residence, or occupied vehicle is presumed to do so with the intent to commit an act resulting in death or serious bodily injury, or kidnapping or sexual intercourse by force or threat.	Other person has the right to be in or is a lawful resident of the dwelling, residence, or vehicle; or the person using defensive force is engaged in a criminal activity; or the person against whom the force is used is an LEO.
Rhode Island (R.G.S.)	**11-8-8**	Deadly force by owner, tenant, or occupier of a place against a person who is engaged in the unlawful breaking and entering of a dwelling, building, business place, public building, ship, railroad car, or to steal poultry.	No explicit statutory exceptions.
South Carolina	**16-11-**	Deadly force against another who is in the process of, or has, unlawfully and forcibly entering a dwelling, residence, or occupied vehicle; or who removes or attempts to remove a person by against his will from the dwelling, residence, or occupied vehicle. Person who unlawfully and forcibly enters or attempts to enter a person's dwelling, residence, or occupied	Other person has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle; or the person using defensive force is engaged in unlawful activity; or the person against whom force is used is an LEO.

(S.C.C.A.)	**440**	vehicle is presumed to have the intent to commit an unlawful act involving force or violence. Person who by force enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection is presumed to be doing so with the intent to commit an unlawful act.	
Tennessee (T.C.A.)	**39-11-611**	Deadly force against a person who unlawfully and forcibly enters, or so attempts to enter, the residence, business, dwelling, or vehicle, by a defender within that residence, business, dwelling, or vehicle.	Other person has the right to be in or is a lawful resident of the dwelling, business, residence, or vehicle, such as an owner, lessee, or titleholder, and is not subject to an order of protection; the person using force is engaged in unlawful activity; or the person against whom the force is used is an LEO.
Texas (T.P.C.)	**9.31**	Deadly force against a person who unlawfully and forcibly enters, or was attempting to enter, the defender's occupied habitation, vehicle, or place of business or employment; or unlawfully and forcibly removed or was attempting to remove, the defender from his habitation, vehicle, or place of business or employment; or to prevent the other's commission of aggravated kidnapping, murder, sexual assault, or robbery.	Presumption does not apply person provoked the other or if the person was engaged in criminal activity greater than Class C misdemeanor or traffic ordinance.
		Deadly force in defense of habitation is presumed reasonable for both civil and criminal cases if the other entered or attempted to enter the habitation by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony. Deadly force in defense of a person is presumed reasonable when such	No explicit statutory exception.

Utah	**76-2-405**	use of force takes place on real property in the defender's lawful possession, and in the necessary prevention or termination of the other's trespass on that property, and where the trespass was made by use of force or in a violent and tumultuous manner, and the defender reasonably believes that the trespass is attempted or made to either commit an act of violence against any person on the property or commit a forcible felony that poses imminent peril of death or serious bodily injury to a person on the property.	
Wisconsin (W.S.)	**939.48**	Deadly force against another when the other was in the process of unlawfully and forcibly entering the defender's dwelling, motor vehicle, or place of business, and the defender was present in the dwelling, motor vehicle, or place of business; or the person against whom the defensive force was used was in the defender's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, and the defender was present in the dwelling, motor vehicle, or place of business.	The defender was engaged in criminal activity; or the person against whom the force was used was an LEO.
Wyoming (W.S.)	**6-2-602**	Deadly force against another when the other was in the process of unlawfully and forcibly entering, or had so entered, another's home or habitation; or if the intruder had removed or was attempting to remove another person against their will from the home or habitation. A person who unlawfully and forcibly enters or attempts to enter another's home or habitation is presumed to be doing so with the intent to commit an unlawful act of force or violence.	The person against whom the force was used has a right to be in or is a lawful resident of the home or habitation, and there is no order of protection; or the person against whom the force is used is an LEO.

7-1: Justifiable Use of Force in Defense of Others

Table 7-1: Justifiable Use of Force in Defense of Others, by State		
	Statute/Case Law/ Jury Instruction	Conditions specific to third-person defense - summarized
Alabama	13A-3-23. Use of force in defense of a person	Same as for defense of self. No explicit conditions specific to third-person defense.
Alaska	A.C.P.J.I. 11.81.340. Justification—Use of force in defense of a 3rd person	When under the circumstances as defendant reasonably believed them to be, the third person would have been justified in using that degree of force in self-defense.
Arizona	13-406. Justification; defense of a third person.	Under the circumstances as a reasonable person would believe them to be the third person would be justified in using the same degree of force in self-defense.
Arkansas	5-2-606. Use of physical force in defense of a person 5-2-607. Use of deadly physical force in defense of a person.	Same as for defense of self. No explicit conditions specific to third-person defense.
California	CALCRIM 505. Justifiable homicide: self-defense or defense of another CALCRIM 506. Justifiable homicide: defending against harm to person within home or on property	Same as for defense of self. No explicit conditions specific to third-person defense.
Colorado	18-1-704. Use of physical force in defense of a person.	Where had a reasonable belief that use of force was necessary to protect third party whom she believed was under attack. *People v. Silva*, 987 P.2d 909 (CO Ct. App. 1999)
Connecticut	53a-19. Use of physical force in defense of a person.	Same as for defense of self. No explicit conditions specific to third-person defense.

Delaware	465. Justification—Use of force for the protection of other persons.	Same conditions as self-defense, reasonable belief that third person would have been justified in using force, and belief that intervention was necessary to protect third person. If third person could safely retreat, defendant is obliged to try to cause them to retreat. Castle doctrine applies to both defendant and third person if in third person's "castle" (home, place of work).
Florida	776.012. Use of force in defense of person.	Same as for defense of self. No explicit conditions specific to third-person defense.
Georgia	16-3-21. Use of force in defense of self or others	Same as for defense of self. No explicit conditions specific to third-person defense.
Hawai'i	703-305. Use of force for the protection of other persons.	Where protector would be obliged to retreat, he need not retreat if he knows he cannot thereby secure the safety of the third person. If the third person would have been obliged to retreat, surrender possession of a thing, or comply with a demand, if by doing so he could obtain safety, the actor is obliged to try to cause the third person to do so. Castle Doctrine applies to both actor and third party when in the third party's dwelling or place of work.
Idaho	18-4009. Justifiable homicide by any person.	When resisting an attempt to murder or do great injury to any person; or to stop the commission of a felony on a wife or husband, parent, child, master, mistress or servant of the actor.
Illinois	7-1. Use of force in defense of person.	Same as for defense of self. No explicit conditions specific to third-person defense.
Indiana	35-41-3-2. Use of force to protect person or property.	Same as for defense of self. No explicit conditions specific to third-person defense.
Iowa	704.3 Defense of self or another.	Same as for defense of self. No explicit conditions specific to third-person defense.
Kansas	21-5222. Use of force; defense of a person.	Same as for defense of self. No explicit conditions specific to third-person defense.
Kentucky	503.070 Protection of another.	Under the circumstances as the defendant believes them to be, the person whom he seeks to protect would himself have been justified in using force in self-defense.
Louisiana	20. Justifiable homicide.	To prevent a violent or forcible felony involving danger to life or of great bodily harm . . . the circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he

		attempted to prevent the felony without the killing.
Maine	108. Physical force in defense of a person.	Not justified if the person knows that the third person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force; or if the person knows the third person can achieve safety by retreat (except no need to retreat from the person or third person's dwelling if not initial aggressor) or by surrendering property claimed under colorable right, or by complying with a demand or abstain from an act the person is not obliged to perform.
Maryland	*Robinson v. State*, 2012 Md. App. Lexis 162 (MD Ct. App. 2012)	Defense of another is a recognized response to a second degree assault charge if: (1) the defendant actually believed that the person defended was in immediate and imminent danger of death or serious bodily harm; (2) the defendant's belief was reasonable; (3) the defendant used no more force than was reasonably necessary to defend the person defended in light of the threatened or actual force; and (4) the defendant's purpose in using force was to aid the person defended.
Massachusetts	*Commonwealth v. Young*, 959 N.E.2d 943 (MA Supreme Judicial Court 2012)	An actor is justified in using force against another to protect a third person when (a) a reasonable person in the actor's position would believe his intervention to be necessary for the protection of the third person, and (b) in the circumstances as that reasonable person would believe them to be, the third person would be justified in using such force to protect himself.
Michigan	780.972. Use of deadly force by individual not engaged in commission of crime; conditions CJI 2d 7.21. Defense of Others	Same as for defense of self. No explicit conditions specific to third-person defense.
Minnesota	609.065. Justifiable Taking of Life	Same as for defense of self. No explicit conditions specific to third-person defense.
Mississippi	97-3-15. Homicide; justifiable homicide; use of defensive force; duty to retreat	When committed in the lawful defense of one's own person or any other human being, where there shall be reasonable ground to apprehend a design to commit a felony or to do some great

		personal injury, and there shall be imminent danger of such design being accomplished.
Missouri	563.031. Use of force in defense of persons.	Unless under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would not be justified in using such protective force.
Montana	45-3-102. Use of force in defense of person.	Same as for defense of self. No explicit conditions specific to third-person defense.
Nebraska	28-1410. Use of force for protection of other persons.	If the actor would have been justified in using the same force to protect himself if faced with the same threat as the third person; under the circumstances as he believes them to be the person he seeks to protect would have been justified in using such protective force. If the actor would have been obliged to retreat, surrender possession of a thing, or comply with a demand before using force in self-defense, he need not do so before protecting a third person unless he knows the he can thereby secure the complete safety of such person. If the third person whom the actor seeks to protect would be obliged to retreat, surrender possession of a thing, or comply with a demand if that third person were acting in self-defense, the actor is obliged to try to cause the third person to do so before the actor uses force in his defense if the actor knows that he can obtain complete safety in that way. Castle Doctrine applies to both actor and third party when in the third party's dwelling or place of work.
Nevada	200.160. Additional cases of justifiable homicide.	Homicide is also justifiable when committed: 1. In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished.
New Hampshire	627:4. Physical force in defense of a person.	A person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other if he knows that he and the third person can with complete safety surrender property to a person asserting a claim of right thereto, or comply with a demand that he

		abstain from performing an act which he is not obliged to perform.
New Jersey	2C:3-5. Use of force for the protection of other persons.	a. the use of force upon or toward the person of another is justifiable to protect a third person when: (1) The actor would be justified ... in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and (2) Under the circumstances as the actor reasonably believes them to be, the person whom he seeks to protect would be justified in using such protective force; and (3) The actor reasonably believes that his intervention is necessary for the protection of such other person. b. Notwithstanding subsection a. of this section: (1) When the actor would be obliged ... to retreat or take other action he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person, and (2) When the person whom the actor seeks to protect would be obliged ... to retreat or take similar action if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way; and (3) Neither the actor nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling to any greater extent than in his own.
New Mexico	30-2-7. Justifiable homicide by citizen. U.J.I. 14-5172. Justifiable homicide; defense of another. U.J.I. 14-5182. Defense of another; non-deadly force by defendant. U.J.I. 14-5184. Defense of another; deadly force by defendant.	Homicide is justifiable when committed in the necessary defense of his life, his family, or his property, or in necessarily defending against any lawful action directed against himself, his wife or family; or when committed in the lawful defense of himself or another and when there is a reasonable ground to believe a design exists to commit a felony or do some great person injury against such person or a third party, and the design is imminent. (30-2-7) There was an appearance of immediate danger of death or great bodily harm to the third person

		by the attacker, the defendant believed this threat to exist, and the apparent danger would have caused a reasonable person to act as the defendant did. (14-5172, 14-5184) There was an appearance of bodily harm to the third person by the attacker, the defendant believed this threat to exist, and the apparent danger would have caused a reasonable person to act as the defendant did. (14-5182)
New York	35.15. Justification; use of physical force in defense of a person.	Same as for defense of self. No explicit conditions specific to third-person defense.
North Carolina	N.C.P.I. Criminal 308.47. Assault in lawful defense of a [family member] [third person] (Defense to assaults not involving deadly force.) N.C.P.I. 308.50. Assault in lawful defense of a [family member] [third person] (Defense to assaults involving deadly force.) *State v. Jennings*, 171 S.E.2d 447 (NC Supreme Court 1970)	If the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the assault was necessary or appeared to be necessary to protect a [family member] [third person] from imminent death or great bodily harm, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, such assault would be justified by defense of a [family member] [third person]. Action in self-defense [or defense of another] need only be apparently, not actually, necessary. (State v. Jennings)
North Dakota	12.1-05.04. Defense of others.	Force is justified in defense of a third person if the person defended would be justified in defending himself and the person coming to the defense has not by provocation or otherwise forfeited the right of self-defense. An individual seeking to protect a third person must, before using deadly force, try to cause that third person to retreat if safety can be obtained thereby. Castle Doctrine applies to the person using force in self-defense in his dwelling, place of work, or occupied vehicle or travel trailer. Case law suggests that a it would be sufficient if the defendant reasonably, even if erroneously, believed that the other person would have been justified in defending himself. State v. Zottnick, 796 N.W.2d 666 (ND Supreme Court 2011)
Ohio	*State v. Hamrick*, 2012 Ohio 1214 (OH Ct. App. 2012)	One who claims the lawful right to act in defense of another must meet the criteria for the affirmative defense of self-defense. In other

		words, a defendant is legally justified in using force only where the person he is aiding would have been justified in using force to defend themselves. Thus, for appellant to be entitled to an instruction on the defense of others he must show: (1) that [the third person] was not at fault in creating the situation giving rise to the affray; (2) that she had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape from such danger was in the use of force; and (3) that she did not violate any duty to retreat or avoid the danger.
Oklahoma	O.U.J.I.-CR 8-2. Defense of another—justifiable use of deadly force. O.U.J.I.0CR 8-3. Defense of person—justifiable use of force to prevent offense. O.U.J.I.-CR 8.4. Defense of another—justifiable use of non-deadly force. O.U.J.I.-CR 8.6. Defense of another—when defense not available. O.U.J.I.-CR 8.7. Defense of another—defense reestablished. O.U.J.I.-CR 8.8. Defense of another—when defense is available.	A person is justified in using deadly force in defense of his spouse, parent, child, master, mistress, servant if that person reasonably believed that the use of deadly force was necessary to protect that such third person from death or great bodily harm, even if that perception of harm was incorrect. (8-2) A person is justified in using reasonable force in defense of another person who is about to be injured during the commission of a crime. (8-3) A person is justified in using non-deadly force in defense of a third person if that person reasonably believed the use of force was necessary to protect that third person from imminent danger of bodily harm, even if that perception of harm was incorrect. (8-4) Defense of another is a defense solely because of necessity, and is not available if the person on whose behalf the defendant intervened was the aggressor, unless the right of defense of another is reestablished. (8-6) If the third person on whose behalf the defendant intervened was the original aggressor but had withdrawn or attempted to withdraw and communicated his desire to withdraw to the other participants in the altercation, then the defendant would be entitled to come to the defense of that third person. (8-7) If the person on whose behalf the defendant intervened was not the original aggressor the defendant may act on his reasonable belief that the person is in imminent danger of death, grate bodily harm, or bodily harm. (8-8)
Oregon	161.209. Use of physical	Same as for defense of self. No explicit

	force in defense of a person. 161.215. Limitations on use of physical force in defense of a person. 161.219. Limitations on use of deadly physical force in defense of a person.	conditions specific to third-person defense.
Pennsylvania	506. Use of force for the protection of other persons.	Use of force to defend a third person is justifiable when the actor would be justified in using the same force in self-defense against the same injury he believes threatens the third person he seeks to protect, under the circumstances as the actor believes them to be, the person he is protecting would be justified in using such protective force, and the person believes the intervention is necessary for the protection of the third person.
Rhode Island	*State v. Beeley*, 653 A.2d 722 (RI Supreme Court 1995)	"It seems to this court preferable to predicate the justification on the actor's own reasonable beliefs. We are of the opinion that an intervener is justified in using reasonable force to defend another as long as the intervener reasonably believes that the other is being unlawfully attacked."
South Carolina	*State v. Jackson*, 681 S.E.2d 17 (SC Ct. App. 2009)	"Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative or bystander would likewise have the right to take the life of the assailant in self-defense. Moreover, one cannot justify a homicide on the ground of necessity in the defense of another when the other person could not have asserted self-defense by reason of having provoked the encounter."
South Dakota	22-16-35. Justifiable homicide—Defense of person—Defense of other persons in household.	Homicide is justifiable if committed by any person in the lawful defense of such person, or of his spouse, parent, child, master, mistress, or servant if there is reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and imminent danger of such design being accomplished.
Tennessee	39-11-612. Defense of third person.	A person is justified in using force to protect a third person if under the circumstances as the person reasonably believes them to be, the person would be justified in using force to protect himself against the use of unlawful force reasonably believed to be threatening the third

		person, and the person reasonably believes that the intervention is immediately necessary to protect the third person.
Texas	9.33. Defense of third person.	A person is justified in using force or deadly force to protect a third person if under the circumstances as the person reasonably believes them to be the actor would be justified in using force or deadly force to protect himself against the unlawful force reasonably believed to be threatening the third person, and the actor reasonably believes that the intervention is immediately necessary to protect the third person.
Utah	76-2-402. Force in defense of person.	A person is justified in threatening or using force against another when the person reasonably believes that force or threat of force is necessary to defend the person or a third person against imminent use of unlawful force. A person is justified in using deadly force only if the person reasonably believes that force is necessary to prevent the death or serious bodily injury to the person or a third person as a result of another's imminent use of unlawful force, or to prevent the commission of a forcible felony. A person is not justified in using force in defense of self or a third person if he provoked the confrontation, is committing or fleeing a felony, or was the aggressor unless he first withdraws.
Vermont	V.J.I. CR07-106. Defense of third persona	Defendant has a right to use a reasonable amount of force to defend a third person if he reasonably believes that (1) his acts were necessary to defend the third person, (2) that under the circumstances as a reasonable person would have believed them to be, the third person would have the right to defend himself, and (3) that the amount of force used was necessary.
Virginia	*Cook v. Commonwealth*, 2011 Va. App. LEXIS 409 (VA Ct. App. 2011)	Under the law regarding defense of others, one must reasonably apprehend death or serious bodily harm to another before he or she is privileged to use force in defense of the other person. The amount of force which may be used must be reasonable in relation to the harm threatened. Furthermore, "one may avail himself or herself of the defense only where he or she reasonably believes, based on the attendant circumstances, that the person defended is

		without fault in provoking the fray.
Washington	9A.16.050. Homicide—by other person—when justifiable	Homicide is justifiable when committed either in the lawful self-defense or defense of one's spouse, parent, child, brother, sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the attacker to commit a felony to do some great personal injury to the person or to any such person [in his company] and there is imminent danger of such design being accomplished.
West Virginia	*State v. Miller*, 476 S.E.2d 535 (WV Supreme Court 1996)	The right of self-defense may be exercised on behalf of another. What the defendant may lawfully do in defense of herself, when threatened with death or great bodily harm, she may do in behalf of another, but if the other person was at fault in provoking the assault, the other person must retreat as far as she safely can before the defendant is justified in taking the life of the assailant in defense of the other person.
Wisconsin	939.48. Self-defense and defense of others.	A person is privileged to defend a 3rd person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such that the 3rd person would be privileged to act in self-defense and that the person's intervention was necessary for the protection of the 3rd person.
Wyoming	*Duckett v. State*, 966 P.2d 941 (WY Supreme Court 1998)	One asserting the justification of defense of another steps into the position of the person defended. Defense of another takes its form and content from defense of self. The defender is not justified in using force unless he or she reasonably believes the person defended is in immediate danger of unlawful bodily harm, and that the force is reasonable and necessary to prevent that threat.

8-1: Use of Non-Deadly Force in Defense of Property

Table 8-1. Use of Non-Deadly Force in Defense of Property, by state	
Alabama	A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief with respect to property other than premises as defined in section 13A-3-20.
Alaska	(a) A person may use non-deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services. (c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use (1) non-deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;
Arizona	13-407. A. A person or his agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises. B. A person may use deadly physical force under subsection A only in the defense of himself or third persons as described in sections 13-405 [self-defense] and 13-406 [defense of a third person]. C. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not. 13-408. A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in sections 13-405 [self-defense], 13-406 [defense of a third person] and 13-411 [use of force in crime prevention]. 13-411. Justification; use of force in crime prevention; applicability A. A person is justified in threatening or using both physical force and deadly

	physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 13-1704, burglary in the second or first degree under section 13-1507 or 13-1508; [and various specified crimes against persons].
Arkansas	5-2-609. A person is justified in using non-deadly physical force upon another person when and to the extent that the person reasonably believes the use of non-deadly physical force is necessary to prevent or terminate the other person's: (1) Commission or attempted commission of theft or criminal mischief; or (2) Subsequent flight from the commission or attempted commission of theft or criminal mischief. 5-2-620. (a) The right of an individual to defend himself or herself and the life of a person or property in the individual's home against harm, injury, or loss by a person unlawfully entering or attempting to enter or intrude into the home is reaffirmed as a fundamental right to be preserved and promoted as a public policy in this state. (b) There is a legal presumption that any force or means used to accomplish a purpose described in subsection (a) of this section was exercised in a lawful and necessary manner, unless the presumption is overcome by clear and convincing evidence to the contrary.
California	3475. The (owner/lawful occupant) of a (home/property) may request that a trespasser leave the (home/property). If the trespasser does not leave within a reasonable time and it would appear to a reasonable person that the trespasser poses a threat to (the (home/property)/ [or] the (owner/ [or] occupants), the (owner/lawful occupant) may use reasonable force to make the trespasser leave. *Reasonable force* means the amount of force that a reasonable person in the same situation would believe is necessary to make the trespasser leave. [If the trespasser resists, the (owner/lawful occupant) may increase the amount of force he or she uses in proportion to the force used by the trespasser and the threat the trespasser poses to the property.] 3476. The owner [or possessor] of (real/ [or] personal) property may use reasonable force to protect that property from imminent harm. [A person may also use reasonable force to protect the property of a (family member/guest/master/servant/ward) from immediate harm.] *Reasonable force* means the amount of force that a reasonable person in the same situation would believe is necessary to protect the property from imminent harm.
Colorado	18-1-705. A person in possession or control of any building, realty, or other premises, or a person who is licensed or privileged to be thereon, is justified in using reasonable and appropriate physical force upon another person when and to the extent that it is reasonably necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of an unlawful trespass by the other person in or upon the building, realty, or premises. 18-1-706. A person is justified in using reasonable and appropriate physical

	force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the other person to commit theft, criminal mischief, or criminal tampering involving property, but he may use deadly physical force under these circumstances only in defense of himself or another as described in **section 18-1-704** [defense of person]
Connecticut	53a-20. A person in possession or control of premises, or a person who is licensed or privileged to be in or upon such premises, is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of a criminal trespass by such other person in or upon such premises; but he may use deadly physical force under such circumstances only (1) in defense of a person as prescribed in section 53a-19 [defense of person], or (2) when he reasonably believes such to be necessary to prevent an attempt by the trespasser to commit arson or any crime of violence, or (3) to the extent that he reasonably believes such to be necessary to prevent or terminate an unlawful entry by force into his dwelling as defined in section 53a-100, or place of work, and for the sole purpose of such prevention or termination. 53a-21. A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes such to be necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes such to be necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19.
Delaware	§ 466. Justification -- Use of force for the protection of property. (a) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary: (1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or (2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or (3) To prevent theft, criminal mischief or any trespassory taking of tangible, movable property in the defendant's possession or in the possession of another person for whose protection the defendant acts. (b) The defendant may in the circumstances named in subsection (a) of this section use such force as the defendant believes is necessary to protect the threatened property, provided that the defendant first requests the person against whom force is used to desist from interference with the property, unless the defendant believes that: (1) Such a request would be useless; or

	(2) It would be dangerous to the defendant or another person to make the request; (3) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.
Florida	776.031. A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect.
Georgia	16-3-23. A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to prevent or terminate such other's unlawful entry into or attack upon a habitation . . .to prevent the commission of the felony. 16-3-24. Use of force in defense of property other than a habitation (a) A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such threat or force is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with real property other than a habitation or personal property: (1) Lawfully in his possession; (2) Lawfully in the possession of a member of his immediate family; or (3) Belonging to a person whose property he has a legal duty to protect. 16-3-24.1. As used in Code Sections 16-3-23 and 16-3-24, the term "habitation" means any dwelling, motor vehicle, or place of business, and "personal property" means personal property other than a motor vehicle.
Hawai'i	§703-306 Use of force for the protection of property. (1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary: (a) To prevent the commission of criminal trespass or burglary in a building or upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or (b) To prevent unlawful entry upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or (c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in the actor's possession or in the possession of another person for whose protection the actor acts. (2) The actor may in the circumstances specified in subsection (1) use such force as the actor believes is necessary to protect the threatened property, provided that the actor first requests the person against whom force is used to desist from the person's interference with the property, unless the actor believes that: (a) Such a request would be useless; or (b) It would be dangerous to the actor or another person to make the request;

	or (c) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made. §703-308. Use of force to prevent suicide or the commission of a crime. (1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from . . . committing or consummating the commission of a crime involving . . . damage to or loss of property . . . except that: (a) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in . . . the protection of property . . . shall apply notwithstanding the criminality of the conduct against which such force is used; and (b) The use of deadly force is not in any event justifiable under this section unless: (i) The actor believes that there is a substantial risk that the person whom the actor seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; (ii) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to disperse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.
Idaho	19-202. Resistance sufficient to prevent the offense may be made by the party about to be injured 1. To prevent an offense against his person, or his family, or some member thereof. 2. To prevent an illegal attempt by force to take or injure property in his lawful possession. 1522. When conditions are present which under the law justify a person in using force in defense of . . . property in the person's lawful possession, that person may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury. Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the defendant then saw and knew. Any use of force beyond that limit is unjustified.
Illinois	Sec. 7-2. (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if: (1) The entry is made or attempted in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or (2) He reasonably believes that such force is necessary to prevent the

	commission of a felony in the dwelling. (b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified force, unless the use of force involves willful or wanton misconduct. Sec. 7-3. (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.
Indiana	IC 35-41-3-2. (a) In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self-defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy. (b) . . . (c) A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent . . . the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary. (d) A person: (1) is justified in using reasonable force, including deadly force, against any other person; and (2) does not have a duty to retreat; if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

	(e) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; only if that force is justified under subsection (c).
Iowa	704.1 "Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat. Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a third party, or requires one to abandon or retreat from one's dwelling or place of business or employment. 704.4 A person is justified in the use of reasonable force to prevent or terminate criminal interference with the person's possession or other right in property. 704.5 A person is justified in the use of reasonable force to aid another in the lawful defense of the other person's rights in property or in any public property.
Kansas	21-5223. (a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such use of force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, place of work or occupied vehicle. 21-5225. A person who is lawfully in possession of property other than a dwelling, place of work or occupied vehicle is justified in the use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such use of force as a reasonable person would deem necessary to prevent or terminate the interference may intentionally be used.
Kentucky	503.080. (1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent: (a) The commission of criminal trespass, robbery, burglary, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, in a dwelling, building or upon real property in his possession or in the possession of another person for whose protection he acts; or (b) Theft, criminal mischief, or any trespassory taking of tangible, movable

	property in his possession or in the possession of another person for whose protection he acts.
Louisiana	§19. Use of force or violence in defense A. The use of force or violence upon the person of another is justifiable when committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession, provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this Section shall not apply where the force or violence results in a homicide. B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of force or violence was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the premises or motor vehicle, if both of the following occur: (1) The person against whom the force or violence was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle. (2) The person who used force or violence knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.
Maine	§104. 1. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other person in or upon such premises. §105. A person is justified in using a reasonable degree of non-deadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of the person's property, or criminal mischief, or to retake the person's property immediately following its taking . . .
Maryland	[No deadly force permissible in defense of personal property:] To bring the use of deadly force within the ambit of permissible self-defense, even in resistance of a robbery, burglary, or other assault or felony, there must be a reasonable fear of death or serious bodily injury at the moment the deadly force is used. Under long-standing Maryland law, deadly force may be used when the exigency demands it, to resist the imminent danger of death or serious bodily harm. Short of that, only non-deadly force may be used. *Sydnor v. State*, 776 A.2d 669 (MD Ct. App. 2001)
Massachusetts	M.J.I. III. A person may use reasonable force, but not deadly force, to defend his lawful property against someone who has no right to it. A person may also use reasonable force, but not deadly force, to regain lawful possession of his property where his (her) possession has been momentarily interrupted by someone with no right to the property. Finally, a person may also use reasonable force, but not deadly force, to remove a trespasser from his property after the trespasser has been requested

	to leave and has refused to do so.
Michigan	780.951 (1) Except as provided in subsection (2), it is a rebuttable presumption in a civil or criminal case that an individual who uses deadly force or force other than deadly force under section 2 of the self-defense act has an honest and reasonable belief that imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual will occur if both of the following apply: (a) The individual against whom deadly force or force other than deadly force is used is in the process of breaking and entering a dwelling or business premises or committing home invasion or has broken and entered a dwelling or business premises or committed home invasion and is still present in the dwelling or business premises, or is unlawfully attempting to remove another individual from a dwelling, business premises, or occupied vehicle against his or her will. (b) The individual using deadly force or force other than deadly force honestly and reasonably believes that the individual is engaging in conduct described in subdivision (a).
Minnesota	609.06 Subdivision 1. When authorized. Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:. . . (4) when used by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property. . . 609.065. The intentional taking of the life of another is not authorized by section 609.06 [Authorized use of force], except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode.
Mississippi	§ 97-3-15. (1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases: (e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be; (3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that

	person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. [T]he use of a deadly weapon in the protection of property is generally held, except in extreme cases, to be the use of more than justifiable force, and to render the owner of the property liable, both civilly and criminally for the assault. *Tate v. State*, 784 So.2d 208 (MS Supreme Court 2001)
Missouri	563.041. 1. A person may, subject to the limitations of subsection 2, use physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent what he or she reasonably believes to be the commission or attempted commission by such person of stealing, property damage or tampering in any degree. 2. A person may use deadly force under circumstances described in subsection 1 only when such use of deadly force is authorized under other sections of this chapter.
Montana	45-3-103. (1) A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the use of force is necessary to prevent or terminate the other person's unlawful entry into or attack upon an occupied structure. (2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if: (a) the entry is made or attempted and the person reasonably believes that the force is necessary to prevent an assault upon the person or another then in the occupied structure; or (b) the person reasonably believes that the force is necessary to prevent the commission of a forcible felony in the occupied structure. 45-3-104. A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary to prevent or terminate the other person's trespass on or other tortious or criminal interference with either real property, other than an occupied structure, or personal property lawfully in the person's possession or in the possession of another who is a member of the person's immediate family or household or of a person whose property the person has a legal duty to protect. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent the commission of a forcible felony.
Nebraska	28-1411. (1) Subject to the provisions of this section and of section 28-1414 [reckless use of force], the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary: (a) To prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property; Provided, that such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose

protection he acts; or
(b) To effect an entry or reentry upon land or to retake tangible movable property; Provided, that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession; and provided further, that:
(i) The force is used immediately or on fresh pursuit after such dispossession; or
(ii) The actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained. . .
(3) The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that:
(a) Such request would be useless;
(b) It would be dangerous to himself or another person to make the request; or
(c) Substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.
(4) The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm. . . .
(6) The use of deadly force is not justifiable under this section unless the actor believes that:
(a) The person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or
(b) The person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either:
(i) Has employed or threatened deadly force against or in the presence of the actor; or
(ii) The use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of serious bodily harm.. . .
(9) The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may lawfully go is justifiable if:
(a) The actor believes that the person against whom he uses force has no claim of right to obstruct the actor;
(b) The actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructor acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and
(c) The force used is not greater than would be justifiable if the person obstructing the actor were using force against him to prevent his passage.

Nevada	NRS 200.120 Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of an occupied habitation, an occupied motor vehicle or person, against one who manifestly intends or endeavors to commit a crime of violence, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the occupied habitation or occupied motor vehicle, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. As used in this section: (a) "Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony. (b) "Motor vehicle" means every vehicle which is self-propelled. NRS 200.160 Homicide is also justifiable when committed: . . . 2. In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode in which the slayer is.
New Hampshire	627:8. A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4.
New Jersey	2C:3-6. a. Use of force in defense of premises. Subject to the provisions of this section and of section 2C:3-9 [reckless/excessive force], the use of force upon or toward the person of another is justifiable when the actor is in possession or control of premises or is licensed or privileged to be thereon and he reasonably believes such force necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by such other person in or upon such premises. b. Limitations on justifiable use of force in defense of premises. (1) Request to desist. The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor reasonably believes that: (a) Such request would be useless; (b) It would be dangerous to himself or another person to make the request; or (c) Substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made. (2) Exclusion of trespasser. The use of force is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.

	(3) Use of deadly force. . . . c. Use of force in defense of personal property. Subject to the provisions of subsection d. of this section and of section 2C:3-9 [reckless/excessive force], the use of force upon or toward the person of another is justifiable when the actor reasonably believes it necessary to prevent what he reasonably believes to be an attempt by such other person to commit theft, criminal mischief or other criminal interference with personal property in his possession or in the possession of another for whose protection he acts. d. Limitations on justifiable use of force in defense of personal property. (1) Request to desist and exclusion of trespasser. The limitations of subsection b. (1) and (2) of this section apply to subsection c. of this section. (2) Use of deadly force. The use of deadly force in defense of personal property is not justified unless justified under another provision of this chapter.
New Mexico	U.J.I. 14-5180. The defendant acted in defense of property if: 1. The [property defended] was property [of the defendant][3] [in the defendant's lawful possession]; 2. It appeared to the defendant that [the victim] was about to [steal/damage] the property and that it was necessary to [use force against the victim] in order to stop [the stealing/damaging]; 3. The defendant used an amount of force that the defendant believed was reasonable and necessary to defend the property; 4. A reasonable person in the same circumstances as the defendant would have acted as the defendant did; 5. The force used by the defendant would not ordinarily create a substantial risk of death or great bodily harm.
New York	35.20 1. Any person may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force if he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson. 2. A person in possession or control of any premises, or a person licensed or privileged to be thereon or therein, may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, as prescribed in subdivision one, or in the course of a burglary or attempted burglary, as prescribed in subdivision three. 35.25 A person may use physical force, other than deadly physical force, upon

	another person when and to the extent that he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of larceny or of criminal mischief with respect to property other than premises.
North Carolina	[A] person in possession of property, either as owner, or as the agent or servant of the owner, has the legal right to defend and protect it from threatened and impending injury or destruction at the hands of an aggressor, or if it is personal property, to prevent it from being unlawfully taken, or injured, or destroyed by another, and in doing so he may use such force as is reasonably necessary, and no more than is reasonably necessary, to accomplish this end, subject to the qualification that, in the absence of a felonious use of force on the part of the aggressor, human life must not be endangered or great bodily harm inflicted. *State v. Elliott*, 528 S.E.2d 32 (SC Ct. App. 2000) (*reversed on other grounds*)
North Dakota	12.1-05-06. Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property, if the person using such force first requests the person against whom such force is to be used to desist from his interference with the premises or property, except that a request is not necessary if it would be useless or dangerous to make the request or substantial damage would be done to the property sought to be protected before the request could effectively be made.
Ohio	Appellant must present evidence that he reasonably believed that his conduct was necessary to defend his property against the imminent use of unlawful force, and the force used [in defense of his property] was not likely to cause death or great bodily harm. *State v. Pepin-McCaffrey*, 929 N.E.2d 476 (OH Ct. App. 2010) While a person has a right to protect his property from a trespass, and, after warning or notice to the trespasser, use such force as is reasonably necessary so to do, he cannot unlawfully use fire arms [sic] to expel the intruder where he has no reasonable ground to fear the trespasser will do him great bodily harm. *State v. Ludt*, 906 N.E.2d 1182 (OH Ct. App. 2009)
Oklahoma	OUJI-CR 8-16. A person is justified in using force in preventing or attempting to prevent a trespass or other unlawful interference with real or personal property in his/her lawful possession. Defense of property is a defense although the danger to the property defended may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed the danger of interference to be imminent. The amount of force used may not exceed that amount of force a reasonable person, in the circumstances and from the viewpoint of the defendant, would have used to prevent the trespass or unlawful interference.

Oregon	161.225. (1) A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises. 161.229. A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that the person reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.
Pennsylvania	507. (a) Use of force justifiable for protection of property.--The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary: (1) to prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible movable property, if such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or (2) to effect an entry or reentry upon land or to retake tangible movable property, if: (i) the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession; and (ii) (A) the force is used immediately or on fresh pursuit after such dispossession; or (B) the actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained. (b) . . . (c) Limitations on justifiable use of force.-- (1) The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that: (i) such request would be useless; (ii) it would be dangerous to himself or another person to make the request; or (iii) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made. (2) The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily injury. (3) The use of force to prevent an entry or reentry upon land or the recapture of movable property is not justifiable under this section, although

	the actor believes that such reentry or caption is unlawful, if: (i) the reentry or recapture is made by or on behalf of a person who was actually dispossessed of the property; and (ii) it is otherwise justifiable under subsection (a)(2).
South Carolina	If the defendant, or a member of the defendant's household, is attacked in the defendant's own home, the defendant may use the force which appears to be needed to protect himself (herself) or his (her) household from death or serious bodily injury. If a trespasser refuses to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. If, in the effort to eject the trespasser, the life or safety of the defendant or a member of the household is jeopardized, the defendant may take the life of the trespasser. The kind and degree of force which are justified depend on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser if the person refuses to leave when asked. [I]f, while legitimately exercising in good faith the right to eject a trespasser, the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempting to eject the victim and was assaulted in the process is a question for [the jury] to determine. *State v. Starnes*, 49 S.E.2d 209 (SC Supreme Court 1948)
South Dakota	22-18-4. Any person is justified in the use of force or violence against another person when the person reasonably believes that such conduct is necessary to prevent or terminate the other person's trespass on or other criminal interference with real property or personal property lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal right to protect. However, the person is justified in the use of deadly force only as provided in §§ 22-16-34 [resisting felony on person or in dwelling house] and 22-16-35 [defense of other members of household].
Tennessee	39-11-614. (a) A person in lawful possession of real or personal property is justified in threatening or using force against another, when and to the degree it is reasonably believed the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property. (b) A person who has been unlawfully dispossessed of real or personal property is justified in threatening or using force against the other, when and to the degree it is reasonably believed the force is immediately necessary to reenter the land or recover the property, if the person threatens or uses the force immediately or in fresh pursuit after the dispossession: (1) The person reasonably believes the other had no claim of right when the other dispossessed the person; and (2) The other accomplished the dispossession by threatening or using force

	against the person. (c) Unless a person is justified in using deadly force as otherwise provided by law, a person is not justified in using deadly force to prevent or terminate the other's trespass on real estate or unlawful interference with personal property. 39-11-615. A person is justified in threatening or using force against another to protect real or personal property of a third person, if, under the circumstances as the person reasonably believes them to be, the person would be justified under § 39-11-614 in threatening or using force to protect the person's own real or personal property.
Texas	9.41. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property. (b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and: (1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or (2) the other accomplished the dispossession by using force, threat, or fraud against the actor. 9.43. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 in using force or deadly force to protect his own land or property and: (1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or (2) the actor reasonably believes that: (A) the third person has requested his protection of the land or property; (B) he has a legal duty to protect the third person's land or property; or (C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.
Utah	76-2-405. (1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if: (a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence;

	or (b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the commission of the felony. (2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony. 76-2-406. (1) A person is justified in using force, other than deadly force, against another when and to the extent that the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property: (a) lawfully in the person's possession; (b) lawfully in the possession of a member of the person's immediate family; or (c) belonging to a person whose property the person has a legal duty to protect. (2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors: (a) the apparent or perceived extent of the damage to the property; (b) property damage previously caused by the other person; (c) threats of personal injury or damage to property that have been made previously by the other person; and (d) any patterns of abuse or violence between the person and the other person.
Vermont	CR07-131. This case presents the issue of whether [the defendant] was acting in the lawful defense of [his] [her] property, specifically [his] [her] ([property]. When a person acts in lawful defense of [his] [her] property, [his] [her] actions are excused and [he] [she] is not guilty of any crime. Once evidence raising the issue of defense of property appears in a case, as it has here, then the burden is on the State to prove, beyond a reasonable doubt, that [the defendant]'s actions were not in the lawful defense of [his] [her] property. [The defendant] had a right to use a reasonable amount of force to stop another person from interfering with or damaging [his] [her] property, if and only if the following circumstances were present: 1. [The other person] was interfering with or about to interfere with [the defendant]'s property; 2. [The other person] did not have permission or legal authority to interfere with [the defendant]'s property; 3. The defendant] first requested [the other person] to stop; 4. [The other person] disregarded [the defendant]'s request; and 5. [The defendant] reasonably believed that the use of force was necessary to avoid the interference with [his] [her] property. Even if [the defendant] was justified in defending [his] [her] property from interference by [the other person], [he] [she] was only entitled to use that amount of force which reasonably appeared to [him] [her] to be necessary to

	protect [his] [her] property from interference, under all the circumstances. Defense of property does not justify the use of excessive force. Once the issue of defense of property appears in the case, the burden is on the State to prove, beyond a reasonable doubt, that [the defendant] did not act in lawful defense of [his] [her] property, or that the force used by [the defendant] was excessive under the circumstances. ([the defendant] is not required to prove that [he] [she] acted in lawful defense of [his] [her] property.
Virginia	[A] deadly weapon may not be brandished solely in defense of personal property. *Commonwealth v. Alexander* 531 S.E.2d 567 (VA Supreme Court 2000) The common law in this state has long recognized the right of a landowner to order a trespasser to leave, and if the trespasser refuses to go, to employ proper force to expel him, provided no breach of the peace is committed in the outset. . . . Absent extreme circumstances, however, such force may not endanger human life or cause great bodily harm. *Pike v. Commonwealth*, 482 S.E.2d 839 (VA Ct. App. 1997) [T]he owner of land has no right to assault a mere trespasser with a deadly weapon. *Montgomery v. Commonwealth*, 36 S.E. 371 (VA Supreme Court 1900)
Washington	9A.16.020. The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases: (3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary; WA W.P.I.C. 17.02. It is a defense to a charge of [use of force] that the force [used][attempted][offered to be used] was lawful as defined in this instruction. [The [use of][attempt to use][offer to use] force upon or toward the person of another is lawful when [used][attempted][offered] in preventing or attempting to prevent a malicious trespass or other malicious interference with real or personal property lawfully in that person's possession, and when the force is not more than is necessary.] The person [using][or][offering to use] the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of [and prior to] the incident. In defense of property, there is no requirement to fear injury to oneself. *State v. Bland*, 116 P.3d 428 (WA Ct. App. 2005)
Wisconsin	939.49. (1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person's property. Only such degree of force or threat thereof may intentionally be used as the

	actor reasonably believes is necessary to prevent or terminate the interference. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one's property (2) A person is privileged to defend a 3rd person's property from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend his or her own property from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such as would give the 3rd person the privilege to defend his or her own property, that his or her intervention is necessary for the protection of the 3rd person's property, and that the 3rd person whose property the person is protecting is a member of his or her immediate family or household or a person whose property the person has a legal duty to protect, or is a merchant and the actor is the merchant's employee or agent. An official or adult employee or agent of a library is privileged to defend the property of the library in the manner specified in this subsection.
Wyoming	You are instructed that a person using force in defense of property may use such degree and extent of force as would appear to [**7] a reasonable person, placed in the same position, and seeing and knowing what the resisting person then sees and knows, to be reasonably necessary to prevent imminent injury threatened to the property. Any use of force beyond that limit is regarded by the law as excessive and unjustified, and a person using such excessive force is legally responsible for the consequences thereof. *Horn v. State*, 554 P.2d 1141 (WY Supreme Court 1976)

8-2: Use of Deadly Force in Defense of Property

Table 8-2. Use of deadly force in defense of property, by state	
Alabama	13A-3-26. (b) A person may use deadly physical force under the circumstances set forth in subsection (a) of this section only: (1) In defense of a person, as provided in Section 13A-3-23; or (2) When he reasonably believes it necessary to prevent the commission of arson in the first or second degree by the trespasser.
Alaska	Section 11.81.350.: Justification: Use of force in defense of property and premises. (b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building. (c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use (2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.
Arizona	13-407. A. A person or his agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises. B. A person may use deadly physical force under subsection A only in the defense of himself or third persons as described in sections 13-405 [self-defense] and 13-406 [defense of a third person]. C. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not. 13-408. A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in sections 13-405 [self-defense], 13-406 [defense of a third person] and 13-411 [use of force in crime prevention]. 13-411. Justification; use of force in crime prevention; applicability

	A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under section 13-1704, burglary in the second or first degree under section 13-1507 or 13-1508; [and various specified crimes against persons].
Arkansas	5-2-620. (a) The right of an individual to defend himself or herself and the life of a person or property in the individual's home against harm, injury, or loss by a person unlawfully entering or attempting to enter or intrude into the home is reaffirmed as a fundamental right to be preserved and promoted as a public policy in this state. (b) There is a legal presumption that any force or means used to accomplish a purpose described in subsection (a) of this section was exercised in a lawful and necessary manner, unless the presumption is overcome by clear and convincing evidence to the contrary.
California	§197. Homicide is also justifiable when committed by any person in any of the following cases: 1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or, 2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein . . .
Colorado	18-1-705. A person in possession or control of any building, realty, or other premises, or a person who is licensed or privileged to be thereon, is justified in using reasonable and appropriate physical force upon another person when and to the extent that it is reasonably necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of an unlawful trespass by the other person in or upon the building, realty, or premises. However, he may use deadly force only in defense of himself or another as described in **section 18-1-704** [defense of person] or when he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit first degree arson. 18-1-706. A person is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the other person to commit theft, criminal mischief, or criminal tampering involving property, but he may use deadly physical force under these circumstances only in defense of himself or another as described in **section 18-1-704** [defense of person]
Connecticut	53a-20. A person in possession or control of premises, or a person who is licensed or privileged to be in or upon such premises, is justified in using . . .

	deadly physical force under such circumstances only (1) in defense of a person as prescribed in section 53a-19 [defense of person], or (2) when he reasonably believes such to be necessary to prevent an attempt by the trespasser to commit arson or any crime of violence, or (3) to the extent that he reasonably believes such to be necessary to prevent or terminate an unlawful entry by force into his dwelling as defined in section 53a-100, or place of work, and for the sole purpose of such prevention or termination. 53a-21. A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes such to be necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes such to be necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19 [defense of person].
Delaware	§ 466. (c) The use of deadly force for the protection of property is justifiable only if the defendant believes that: (1) The person against whom the force is used is attempting to dispossess the defendant of the defendant's dwelling otherwise than under a claim of right to its possession; or (2) The person against whom the deadly force is used is attempting to commit arson, burglary, robbery or felonious theft or property destruction and either: a. Had employed or threatened deadly force against or in the presence of the defendant; or b. Under the circumstances existing at the time, the defendant believed the use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury. 469. In the prosecution of an occupant of a dwelling charged with killing or injuring an intruder who was unlawfully in said dwelling, it shall be a defense that the occupant was in the occupant's own dwelling at the time of the offense, and: (1) The encounter between the occupant and intruder was sudden and unexpected, compelling the occupant to act instantly; or (2) The occupant reasonably believed that the intruder would inflict personal injury upon the occupant or others in the dwelling; or (3) The occupant demanded that the intruder disarm or surrender, and the intruder refused to do so.
Florida	776.013. (1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if: (a) The person against whom the defensive force was used or threatened was

	in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and (b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. (2) The presumption set forth in subsection (1) does not apply if: (a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or (b) The person or persons sought to be removed 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 or threatened; or (c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or (d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer. (3) A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) . (4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence. 776.031. A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. 776.08. "Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.
Georgia	16-3-23. Use of force in defense of habitation A person is justified . . . in the use of force which is intended or likely to cause death or great bodily harm only if: (1) The entry is made or attempted in a violent and tumultuous manner and he or she reasonably believes that the entry is attempted or made for the purpose

	of assaulting or offering personal violence to any person dwelling or being therein and that such force is necessary to prevent the assault or offer of personal violence; (2) That force is used against another person who is not a member of the family or household and who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using such force knew or had reason to believe that an unlawful and forcible entry occurred; or (3) The person using such force reasonably believes that the entry is made or attempted for the purpose of committing a felony therein and that such force is necessary to prevent the commission of the felony. 16-3-24. (b) The use of force which is intended or likely to cause death or great bodily harm to prevent trespass on or other tortious or criminal interference with real property other than a habitation or personal property is not justified unless the person using such force reasonably believes that it is necessary to prevent the commission of a forcible felony. 16-3-24.1. As used in Code Sections 16-3-23 and 16-3-24, the term "habitation" means any dwelling, motor vehicle, or place of business, and "personal property" means personal property other than a motor vehicle.
Hawai'i	703-306. (3) The use of deadly force for the protection of property is justifiable only if: (a) The person against whom the force is used is attempting to dispossess the actor of the actor's dwelling otherwise than under a claim of right to its possession; or (b) The person against whom the deadly force is used is attempting to commit felonious property damage, burglary, robbery, or felonious theft and either: (i) Has employed or threatened deadly force against or in the presence of the actor; or (ii) The use of force other than deadly force to prevent the commission of the crime would expose the actor or another person in the actor's presence to substantial danger of serious bodily injury. §703-308. (1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from . . . committing or consummating the commission of a crime involving . . . damage to or loss of property . . . except that: (a) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in . . . the protection of property . . . shall apply notwithstanding the criminality of the conduct against which such force is used; and (b) The use of deadly force is not in any event justifiable under this section unless: (i) The actor believes that there is a substantial risk that the person whom the actor seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force

	presents no substantial risk of injury to innocent persons; or (ii) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to disperse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.
Idaho	18-4009. Homicide is also justifiable when committed by any person in either of the following cases: 2. When committed in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein . . .
Illinois	Sec. 7-2. () A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if: (1) The entry is made or attempted in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or (2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling. (b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified force, unless the use of force involves willful or wanton misconduct. Sec. 7-3. (a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.
Indiana	IC 35-41-3-2. (a) In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to

	diminish in any way the other robust self-defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy. (b) . . . (c) A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent . . . the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary. (d) A person: (1) is justified in using reasonable force, including deadly force, against any other person; and (2) does not have a duty to retreat; if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle. (e) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; only if that force is justified under subsection (c).
Kansas	21-5223. (b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or another. (c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, place of work or occupied vehicle. 21-5224. (a) [A] person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if: (1) The person against whom the force is used, at the time the force is used: (A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied

	vehicle of the person using force; or (B) has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; and (2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.
Kentucky	503.055 (1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if: (a) The person against whom the defensive force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and (b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. (3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to . . . prevent the commission of a felony involving the use of force. (4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence. 503.080. (2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that the person against whom such force is used is: (a) Attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or (b) Committing or attempting to commit a burglary, robbery, or other felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055, of such dwelling; or (c) Committing or attempting to commit arson of a dwelling or other building in his possession.

Louisiana	§20. A. A homicide is justifiable: (3) When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle. (4) (a) When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40), against a person who is attempting to make an unlawful entry into the dwelling, place of business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises or motor vehicle. (b) The provisions of this Paragraph shall not apply when the person committing the homicide is engaged, at the time of the homicide, in the acquisition of, the distribution of, or possession of, with intent to distribute a controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Law. B. For the purposes of this Section, there shall be a presumption that a person lawfully inside a dwelling, place of business, or motor vehicle held a reasonable belief that the use of deadly force was necessary to prevent unlawful entry thereto, or to compel an unlawful intruder to leave the premises or motor vehicle, if both of the following occur: (1) The person against whom deadly force was used was in the process of unlawfully and forcibly entering or had unlawfully and forcibly entered the dwelling, place of business, or motor vehicle. (2) The person who used deadly force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred.
Maine	§104. 2. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using deadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent an attempt by the other person to commit arson. 3. A person in possession or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another person: A. Under the circumstances enumerated in section 108; or B. When the person reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal trespass by such other person, who the person reasonably believes: (1) Has entered or is attempting to enter the dwelling place or has surreptitiously remained within the dwelling place without a license or privilege to do so; and (2) Is committing or is likely to commit some other crime within the dwelling place.

	4. A person may use deadly force under subsection 3, paragraph B only if the person first demands the person against whom such deadly force is to be used to terminate the criminal trespass and the trespasser fails to immediately comply with the demand, unless the person reasonably believes that it would be dangerous to the person or a 3rd person to make the demand.
Maryland	[Deadly force permissible in defense of dwelling under felonious attack]: A man is not bound to retreat from his house. He may stand his ground there and kill any person who attempts to commit a felony therein, or who attempts to enter by force for the purpose of committing a felony, or of inflicting great bodily harm upon an inmate. In such a case the owner or any member of the family, or even a lodger in the house, may meet the intruder at the threshold, and prevent him from entering by any means rendered necessary by the exigency, even to the taking of his life, and the homicide will be justifiable. *Barton v. State*, 420 A.2d 1009 (MD Ct. Sp. App. 1980)
Michigan	780.951 (1) Except as provided in subsection (2), it is a rebuttable presumption in a civil or criminal case that an individual who uses deadly force or force other than deadly force under section 2 of the self-defense act has an honest and reasonable belief that imminent death of, sexual assault of, or great bodily harm to himself or herself or another individual will occur if both of the following apply: (a) The individual against whom deadly force or force other than deadly force is used is in the process of breaking and entering a dwelling or business premises or committing home invasion or has broken and entered a dwelling or business premises or committed home invasion and is still present in the dwelling or business premises, or is unlawfully attempting to remove another individual from a dwelling, business premises, or occupied vehicle against his or her will. (b) The individual using deadly force or force other than deadly force honestly and reasonably believes that the individual is engaging in conduct described in subdivision (a).
Minnesota	609.065. The intentional taking of the life of another is not authorized by section 609.06 [Authorized use of force], except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death, or preventing the commission of a felony in the actor's place of abode.
Mississippi	§ 97-3-15. (1) The killing of a human being by the act, procurement or omission of another shall be justifiable in the following cases: (e) When committed by any person in resisting any attempt unlawfully to kill such person or to commit any felony upon him, or upon or in any dwelling, in any occupied vehicle, in any place of business, in any place of employment or in the immediate premises thereof in which such person shall be; (3) A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was

	occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof or if that person had unlawfully removed or was attempting to unlawfully remove another against the other person's will from that dwelling, occupied vehicle, business, place of employment or the immediate premises thereof and the person who used defensive force knew or had reason to believe that the forcible entry or unlawful and forcible act was occurring or had occurred. [T]he use of a deadly weapon in the protection of property is generally held, except in extreme cases, to be the use of more than justifiable force, and to render the owner of the property liable, both civilly and criminally for the assault. *Tate v. State*, 784 So.2d 208 (MS Supreme Court 2001)
Missouri	563.041. 1. A person may, subject to the limitations of subsection 2, use physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent what he or she reasonably believes to be the commission or attempted commission by such person of stealing, property damage or tampering in any degree. 2. A person may use deadly force under circumstances described in subsection 1 only when such use of deadly force is authorized under other sections of this chapter.
Montana	45-3-103. (1) A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the use of force is necessary to prevent or terminate the other person's unlawful entry into or attack upon an occupied structure. (2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if: (a) the entry is made or attempted and the person reasonably believes that the force is necessary to prevent an assault upon the person or another then in the occupied structure; or (b) the person reasonably believes that the force is necessary to prevent the commission of a forcible felony in the occupied structure. 45-3-104. A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary to prevent or terminate the other person's trespass on or other tortious or criminal interference with either real property, other than an occupied structure, or personal property lawfully in the person's possession or in the possession of another who is a member of the person's immediate family or household or of a person whose property the person has a legal duty to protect. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent the commission of a forcible felony.
Nebraska	28-1411. (1) Subject to the provisions of this section and of section 28-1414

	[reckless use of force], the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary: (a) To prevent or terminate an unlawful entry or other trespass upon land or a trespass against or the unlawful carrying away of tangible, movable property; Provided, that such land or movable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or (b) To effect an entry or reentry upon land or to retake tangible movable property; Provided, that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession; and provided further, that: (i) The force is used immediately or on fresh pursuit after such dispossession; or (ii) The actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes them to be, are of such urgency that it would be an exceptional hardship to postpone the entry or reentry until a court order is obtained.. . . (3) The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that: (a) Such request would be useless; (b) It would be dangerous to himself or another person to make the request; or (c) Substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made. (4) The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.. . (6) The use of deadly force is not justifiable under this section unless the actor believes that: (a) The person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or (b) The person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other felonious theft or property destruction and either: (i) Has employed or threatened deadly force against or in the presence of the actor; or (ii) The use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of serious bodily harm.. . . nst him to prevent his passage.
Nevada	(9) The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may lawfully go is justifiable if: (a) The actor believes that the person against whom he uses force has no

	claim of right to obstruct the actor; (b) The actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructor acts, unless the circumstances, as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and 1. (c) The force used is not greater than would be justifiable if the person obstructing the actor were using force against NRS 200.120 Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of an occupied habitation, an occupied motor vehicle or person, against one who manifestly intends or endeavors to commit a crime of violence, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, tumultuous or surreptitious manner, to enter the occupied habitation or occupied motor vehicle, of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. As used in this section: (a) "Crime of violence" means any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony. (b) "Motor vehicle" means every vehicle which is self-propelled. 2. NRS 200.160 Homicide is also justifiable when committed: . . . 2. In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode in which the slayer is.
New Hampshire	627:7. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.
New Jersey	2C:3-6. a. Use of force in defense of premises. (3) Use of deadly force. The use of deadly force is not justifiable under subsection a. of this section unless the actor reasonably believes that: (a) The person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or (b) The person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other criminal theft or property destruction; except that

	(c) Deadly force does not become justifiable under subparagraphs (a) and (b) of this subsection unless the actor reasonably believes that: (i) The person against whom it is employed has employed or threatened deadly force against or in the presence of the actor; or (ii) The use of force other than deadly force to terminate or prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of bodily harm. An actor within a dwelling shall be presumed to have a reasonable belief in the existence of the danger. The State must rebut this presumption by proof beyond a reasonable doubt.
New Mexico	14-5170. Evidence has been presented that the defendant killed [the victim] while attempting to prevent a [felony] in the defendant's [habitation]. A killing in defense of [habitation] is justified if: 1. The [habitation] was being used as the defendant's dwelling; and 2. It appeared to the defendant that the commission of [felony] was immediately at hand and that it was necessary to kill the intruder to prevent the commission of [the felony]; and 3. A reasonable person in the same circumstances as the defendant would have acted as the defendant did.
New York	35.20. 1. Any person may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force if he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson. 2. A person in possession or control of any premises, or a person licensed or privileged to be thereon or therein, may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, as prescribed in subdivision one, or in the course of a burglary or attempted burglary, as prescribed in subdivision three. 3. A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit a burglary of such dwelling or building, may use deadly physical force upon such other person when he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.

North Carolina	14-51.2. (b) 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 defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. (c) . . . (d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence. (e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force . . .
North Dakota	12.1-05-07. 2. Deadly force is justified in the following instances: c. When used by an individual in possession or control of a dwelling, place of work, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
Ohio	2901.05.. (B) (1) Subject to division (B)(2) of this section, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.
Oklahoma	§ 21-1289.25 A. The Legislature hereby recognizes that the citizens of the State of Oklahoma have a right to expect absolute safety within their own homes or places of business. B. A person or a owner, manager or employee of a business is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if: 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 dwelling, residence, occupied vehicle, or a place of business, or if that person had removed or was attempting to remove another against the will of that person from the dwelling, residence, occupied vehicle, or place of business; and 2. The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. E. A person who unlawfully and by force enters or attempts to enter the dwelling, residence, occupied vehicle of another person, or a place of business is presumed to be doing so with the intent to commit an unlawful act involving force or violence. F. A person who uses force, as permitted pursuant to the provisions of subsections B and D of this section, is justified in using such force and is immune from criminal prosecution and civil action for the use of such force. As used in this subsection, the term "criminal prosecution" includes charging or prosecuting the defendant. OUJI-CR 8-14. A person is justified in using deadly force when resisting any attempt by another to commit a felony upon or in any dwelling house in which that person is lawfully present. Defense of habitation is a defense although the danger that a felony would be committed upon or in the dwelling house may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that there was an imminent danger that such felony would occur.
Oregon	161.225. (2) A person may use deadly physical force under the circumstances set forth in subsection (1) of this section only: (a) In defense of a person as provided in ORS 161.219; or (b) When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by the trespasser. (3) As used in subsection (1) and subsection (2)(a) of this section, "premises" includes any building as defined in ORS 164.205 and any real property. As used in subsection (2)(b) of this section, "premises" includes any building.
Pennsylvania	507. (c) Limitations on justifiable use of force.-- (4) (i) The use of deadly force is justifiable under this section if: (A) there has been an entry into the actor's dwelling; (B) the actor neither believes nor has reason to believe that the entry is lawful; and (C) the actor neither believes nor has reason to believe that force less than deadly force would be adequate to terminate the entry. (ii) If the conditions of justification provided in subparagraph (i) have not been met, the use of deadly force is not justifiable under this section unless the actor believes that: (A) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or (B) such force is necessary to prevent the commission of a felony in

	the dwelling.
Rhode Island	§ 11-8-8. In the event that any person shall die or shall sustain a personal injury in any way or for any cause while in the commission of any criminal offense enumerated in §§ 11-8-2 – 11-8-6, it shall be rebuttably presumed as a matter of law in any civil or criminal proceeding that the owner, tenant, or occupier of the place where the offense was committed acted by reasonable means in self-defense and in the reasonable belief that the person engaged in the criminal offense was about to inflict great bodily harm or death upon that person or any other individual lawfully in the place where the criminal offense was committed.
South Carolina	16-11-440. (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred. (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.
South Dakota	22-16-34. Homicide is justifiable if committed by any person while resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is.
Tennessee	39-11-611. (c) Any person using force intended or likely to cause death or serious bodily injury within a residence, business, dwelling or vehicle is presumed to have held a reasonable belief of imminent death or serious bodily injury to self, family, a member of the household or a person visiting as an invited guest, when that force is used against another person, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, business, dwelling or vehicle, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.
Texas	9.42. A person is justified in using deadly force against another to protect land or tangible, movable property: (1) if he would be justified in using force against the other under Section 9.41; and (2) when and to the degree he reasonably believes the deadly force is

	immediately necessary: (A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or (B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and (3) he reasonably believes that: (A) the land or property cannot be protected or recovered by any other means; or (B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury. 9.43. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 in using force or deadly force to protect his own land or property and: (1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or (2) the actor reasonably believes that: (A) the third person has requested his protection of the land or property; (B) he has a legal duty to protect the third person's land or property; or (C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.
Utah	76-2-405. (1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if: (a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence; or (b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the commission of the felony. (2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

	76-2-407. (1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if: (a) he is in lawful possession of the real property; (b) he reasonably believes that the force is necessary to prevent or terminate the other person's trespass onto the real property; (c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and (d)(i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence; or (ii) the person reasonably believes that the trespass is made or attempted for the purpose of committing a forcible felony as defined in Section 76-2-402 [force in defense of person] that poses imminent peril of death or serious bodily injury to a person on the real property and that the force is necessary to prevent the commission of that forcible felony. (2) The person using deadly force in defense of persons on real property under Subsection (1) is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or for the purpose of committing a forcible felony.
Washington	Although the use of deadly force is not justified to expel a mere nonviolent trespasser, under certain circumstances necessary force may include putting a trespasser in fear of physical harm. .In defense of property, there is no requirement to fear injury to oneself. *State v. Bland,* 116 P.3d 428 (WA Ct. App. 2005)
West Virginia	deadly force against an unlawful intruder to the situation where the occupant is threatened with serious bodily injury or death, but he may use deadly force if the unlawful intruder threatens imminent physical violence or the commission of a felony and the occupant reasonably believes deadly force is necessary." *State v. W.J.B.*, 276 S.E.2d 550 (WV Supreme Court 1981). An instruction given by the Court was erroneous in that it failed to fully inform the jury on the law with respect to crime prevention in one's home as a justifiable defense to homicide. The Court noted one of the trial court's instructions failed to mention the alternative justification for the use of deadly force, i.e. prevention or termination of a felony in one's home. *State v. Phelps,* 310 S.E.2d 863 (WV Supreme Court 1983).
Wisconsin	939.48. ((ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor

	makes such a claim under sub. (1) and either of the following applies: 1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring. 3. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.
Wyoming	6-2-602. (a) A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if: (i) The intruder against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, another's home or habitation or, if that intruder had removed or was attempting to remove another against his will from his home or habitation; and (ii) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring. (c) A person who unlawfully and by force enters or attempts to enter another's home or habitation is presumed to be doing so with the intent to commit an unlawful act involving force or violence. (d) As used in this section: (i) "Habitation" means any structure which is designed or adapted for overnight accommodation, including, but not limited to, buildings, modular units, trailers, campers and tents; (ii) "Home" means any occupied residential dwelling place.

[1] I should note that this book analyzes the law as it relates to self-defense. That doesn't that the defensive force must always have been a gun. It could be a knife, pepper spray, or even bare hands. I strongly encourage the use of each type of defense in its proper place—not every problem is a nail, not every solution is a hammer—and I will discuss this in further detail throughout the book.

[2] Incidentally, I personally read everything that Rory Miller writes, and his books are listed on the recommended readings page on our web site.

[3] OC is my preferred non-deadly force defensive weapon, given the laws and options where I live.

[4] Frankly, I've been trying to talk my wife into getting a bigger television anyway, so I won't be shedding tears if they take the current one. Thank you homeowner's insurance.

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State-Specific Legal Information / Tables