

# *Bare Essentials First Responders Self-defense Training”*

## *Self-defense and the Law*



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Self-defense training in today's legal action prone environment has made knowledge of the laws governing its application a necessity. It is not that one must become a lawyer, but at the very minimum being familiar with said statutes will help the person make an educated decision should a self-defense situation or confrontation that involves the use of physical force present itself.

The first step in understanding civil and criminal liabilities one may have to confront is to know and fully understand what self-defense really means. There are as many definitions for self-defense as there are people; however, a magistrate or higher court judge will only be concern or adhere to its legal definition.

## Self-Defense



Art work from [transgriot.blogspot.com/2008\\_08\\_01\\_archive.html](http://transgriot.blogspot.com/2008_08_01_archive.html)

Self defense is the legally justified use of force to protect oneself against an attempted injury; the "self defense" justification may also be used in the protection of another person or of property. Under self defense, the defendant has the right to repel force with force. In order to prove a self defense claim, the defendant must have honestly and reasonably believed that protection required force. Other self defense factors include the restriction of amount and type of force used. Defendants plead self defense must also demonstrate that they did not bring on the assault. Depending upon the state, self defense must either be proved by the defense or disproven by the prosecution (eJustice, 2009).

A person that has been involved in a confrontation may be found liable for injuries he or she may have inflicted on the assailant or attacker. An example is the case of a high school student in the United States. While attending a high school football game, the student was cornered by a group of thugs. One of the assailants reached underneath his coat for what looked like a gun. Without hesitation the young man anticipated the danger and reacted with a preempted attack that left the assailant on the ground with a broken arm and a cut above the left eye. As some of the police officers that were providing security for the event arrived at the scene, one of the thugs picked up the gun and passed it to another person, whom in turn ran away. Although other students explained the situation, the presence of a fire arm to the police, and despite that the fact the police found a full magazine from a pistol during their search of the area, the student/victim was arrested and charged with terrorizing the community by engaging in a physical altercation and using physical violence in school grounds, while the bad guy was taken to the hospital. The case went to court, however, it was dismissed mainly because the presence of the pistol magazine met the criterion for self-defense; using force which was proportional to the threat.

As demonstrated by the aforementioned incident, the assumption of innocence in a self-defense case is not watertight. The fact of the matter is that in court cases involving violent confrontations, lawyers and judges may advise the jury to bear in mind a person's martial arts, boxing, or military combat training when evaluating the facts of the case. Another example, is the Matter of the Welfare of D.S.F., 416 N.W.2d 772 (Minn. App. 1988), the Minnesota Court of Appeals concluded that the defendant, who had "substantial experience in karate," was aware enough of the potential of his blows to deliberately break the plaintiff's jaw (Maberry, 2009).

There are two different types of liability, criminal liability and civil liability, and both



carry penalties of different types that might include imprisonment. Although the 50 states of the union and US Territories have their own statutes regarding the use of force and self-defense, the biggest discriminator in the subject is that the *level of response* must not exceed the threat or be so disproportional to the attack that would be considered excessive force. In lame mans' terms, force becomes excessive when it exceeds that which is needed to assure one's own safety. In other words, when the bad guy says, "*I give up!*", one has to stop hitting him, or the victim then becomes the

aggressor—this is the way most self defense laws are written. The following excerpts of *Peter Hobart's article "Self Defense Law and the Person"* explicate each one of the aforementioned liabilities and what reasonable amount of force is, the following information is provided;

## CRIMINAL LIABILITY

### *Self-defense, non-lethal force:*

Criminal liability is distinguished from civil liability in that it is the state which brings charges against the defendant, as opposed to the victim or his estate. The general criminal law **allows for the use of necessary and proportionate, non-deadly force in self-defense anytime the victim reasonably believes that unlawful force is about to be used on him.** The critical language under this standard is 'reasonable belief', 'unlawful', 'about to' and 'necessary and proportionate' (Hobart, 2009).

### *Self-defense, lethal force:*

The standard for use of deadly force is, predictably, higher. The general criminal law allows for the use of deadly force anytime a faultless victim reasonably believes that unlawful force which will cause death or grievous bodily harm is about to be used on him (Hobart, 2009). This doesn't take away the right of self-defense; however, what it does mean is that words, insults, or offensive language are not enough to require a deadly response, with exceptions of course; a hypothetical can be the verbal communication of a deadly threat. This can possibly constitute enough provocation to grant a deadly response.

### *Third parties:*

The right to defense of others turns largely on the reasonableness of the belief that the victim deserved assistance. A minority of jurisdictions require that the rescuer be a member of

the victim's family, or the victim's superior or employee. Similarly, a minority of jurisdictions require that the rescuer's belief be correct, reasoning that the rescuer 'merely steps into the victim's shoes', while the majority requires only that it be reasonable (Hobart, 2009). This clearly illustrates how diverse criteria are from one state and even from one jurisdiction to another. This is why it is so important for all persons to conduct specific research.

### ***Defense of Property:***

A majority of jurisdictions, a victim has the right to use non-deadly force in defense of his dwelling when, and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate another's unlawful entry or attack upon his dwelling. Deadly force is authorized when violent entry is made or attempted and the victim reasonably believes that it is necessary to prevent an attack on his person. It is also authorized when the victim reasonably believes that such force is necessary to prevent entry into the dwelling by one who intends to commit a felony therein (Hobart, 2009).



However, such force cannot be used in the defense of a property that is not being occupied—uninhabited property. Many, however, confuse the right to defend ones' property with the right to defend the individual. Again, ignorance of the law is not an effective or acceptable defense in a court of law. It is the individual's responsibility to inform themselves of the local and state laws that govern the use of force.

### ***Use of force to prevent crime:***

A citizen has a privilege to use non-deadly force which reasonably appears necessary to prevent a felony, riot or other serious breach of the peace, and some states (such as California) have extended this privilege to the prevention of any crime. However, deadly force may be used only to prevent the commission of a dangerous felony, involving a risk of human life. A citizen has the same right as a police-officer to use non-deadly force to effectuate an arrest if he reasonably believes that the alleged criminal has in fact committed the crime. A private citizen may also use deadly force to affect an arrest, provided the alleged criminal is actually guilty. Here, a reasonable belief is not enough (Hobart, 2009).

This, however, is not true in all states and definitely in all countries. For example; The State of North Carolina does not recognize, nor does it allow for individuals to execute citizen's

arrest. Therefore, the individual would be liable for the use of said force. The country of Guatemala, Central America, also does not recognize it either mainly because of vigilantly like traditions of its citizens. During a trip to this country, two US Citizens—working in support of the US Drug Enforcement Administration (DEA) and the Guatemala Treasury Police Elite Drug Law Enforcement (DLE) Unit; witness an assault on a female that was stoke in traffic. They quickly decided to assist the lady and gave chase to the assailant. Once they finally caught up with the assailant a crowd tried to gain control of the suspect with the intent to lynch him. The two American, however, kept the crowd away until the authorities arrived.

### Civil Liability



In a civil case, it is the victim (or his estate) bringing the action. While there are many similarities to a criminal charge, it is important to understand that the civil plaintiff must only prove his case ‘by a preponderance of the evidence’. This is a much lighter burden than the criminal standard of ‘beyond a reasonable doubt’. The principal tort actions which a victim who defends himself might face include battery, assault and wrongful death (Hobart, 2009).

Battery and assault:

Many just do not know or even think these two are different—assault is the use of language to intimidate the individual, while battery involves the actual use of physical violence.

Art work from Brooklyn Museum [www.brooklynmuseum.org/eascfa/feminist\\_art\\_ba...](http://www.brooklynmuseum.org/eascfa/feminist_art_ba...)

In virtually every jurisdiction, to make out a case for battery, the plaintiff must show that the aggressor made **harmful or offensive contact** with the **plaintiff’s person**, that the aggressor **intended** to bring about such contact, and that the aggressor’s actions in fact **caused** the contact (Hobart, 2009).

### *Wrongful death and survivor acts:*

Although traditionally any tort action abated at the death of the victim or the perpetrator, most states have now enacted ‘survival acts’ for wrongful death (it is from this old common law rule that the concept of escaping liability by killing, rather than injuring a victim, derived). Now the estate of the deceased may bring an action against the killer for all damages which occurred between the commission of the tort, and death—e.g. pain and suffering. (Hobart, 2009).

*Self-defense in tort law:*

While the principles of self-defense at tort—civil wrongdoing—law are similar to those at criminal law, the mode of analysis, and areas of emphasis differ. In general, self-defense is valid when **a person has reasonable grounds to believe that he is about to be attacked**. Under these circumstances, he may only **use such force as is reasonably necessary to protect against the potential injury**. Since only reasonable ground is required, a genuine mistake with respect to the attack will still support the right to self-defense. Once the attack or tort has ended, so does the right to self-defense (Hobart, 2009). This is somewhat clear; however, it is important to understand that “Retaliation” is never permitted under the aforementioned.

*Third parties:*

Under tort principles, a victim who accidentally injures a third-party in the course of defending himself is also protected from suit by that third party. A majority of jurisdictions also allow the defense of victims only if the victims themselves have a right to self-defense. Thus, if the rescuer makes a mistake regarding the victim’s right to self-defense, he too will be liable. However, there is a strong modern trend toward protecting rescuers from suit if their wrongful assistance of a victim is based on a reasonable mistake. The rescuer may use as much force as the victim could have used in self-defense (Hobart, 2009). This is another explanation that may seem clear as water; however, how one does measures or explains that amount of for the victim could have used in self-defense. Although the laws are applied objectively, its ambiguity can easily work in favor of the victim as well as against him or her.

*Defense of property:*

In the defense of property, a request to desist prior to the use of force is required, unless it would be futile or dangerous (Hobart, 2009). There are numerous disadvantages regarding this stipulation. One the author considers to be the most significant is that announcing a request to desist will take away the element of surprise, which can consequently put the victim in harms way should the assailant be armed. Another disadvantage is that it can be hard to prove the fact that one did make the request.

*Prevention of crime:*

Since the right to use force is limited to the prevention of the commission of a tort in civil actions, one who subdues an attacker and then continues to use force to hold him until the police arrive must be aware that he has moved over from a tort privilege, to the privilege of arrest under criminal law (Hobart, 2009). An example is an incident involving another USSF Soldier—Mr. Varner—at the Cross Creek Mall in Fayetteville, North Carolina. He witnessed a robbery and gave chase to the suspect; however, after catching up to the individual and in an attempt to control him while waiting for the arrival of the Police; Varner used a choke-hold to restrain the suspect. This gave the bad guys grounds for presenting charges against Varner. Although the

charges were dismissed by the judge during the initial hearing, the ambiguity of the law simply did not support the victim nor Varner—the Good Samaritan.

### ***Self-defense Instructors' liability:***

Believe it or not, martial arts instructor may be found liable for the action of their students. Under the Theory of Agency, the principal is liable for unlawful acts which he causes to be done through an agent.

First, if the instructor appears to ratify or approve of unlawful conduct, he may be held liable for the commission of such acts (Hobart, 2009)—using hypothetical's, such as, "if you find yourself in a confrontation, you should go for the kill, as you can be sure the other person does not come to you with the best of intentions," or maybe things like "It is better to be judge by twelve jurors that buried by six friends" can land you in a jail cell.

Second, an instructor may be held liable for having entrusted a student with 'an extremely dangerous instrumentality'. "When an instrumentality passes from the control of a person, his responsibility for injuries inflicted by it ceases. However, when an injury is caused by an exceptionally dangerous instrumentality, or one which may be dangerous if improperly used, a former owner or possessor may ... be charged with responsibility for [its] use...." (Hobart, 2009). The reasoning behind this stipulation is that if a martial arts instructor teaches techniques such as killing blows, neck braking holds or other potentially lethal techniques, he or she can and most likely be liable for its use in the commission of a crime. Finally, an instructor may be liable for harm to the student or other parties as a result of negligent instruction.

### ***Ignorance of the law is no excuse***

The statement "*ignorance of the law is no excuse*" is an ancient legal doctrine. Ignorance of the law excuses no man; not that all men know the law; but because 'tis an excuse every man will plead, and no man can tell how to confute him. John Selden (1584-1654), posthumously published in *Table Talk*, 1689. If a defendant were allowed to escape legal responsibility for his acts, merely by saying "*I didn't know it was wrong/illegal*", the system of using law to regulate human conduct would collapse. So the doctrine is a practical necessity. This doctrine still has vitality and validity today. See, for example, *Ratzlaf v. U.S.*, 510 U.S. 135, 149 (1994); *U.S. v. Freed*, 401 U.S. 601, 612 (1971) (Brennan, J., concurring); *Minnesota v. King*, 257 N.W.2d 693, 697 (1977).

Nevertheless, it is also true that the courts have also recognized that it is impossible for everyone to know all the laws with all its complexities. For these reason a related concept in law is "*willful blindness*": the criminal defendant who should have known, and could have asked, but deliberately chose *not* to ask. The law regards "*willful blindness*" as equivalent to knowledge. *U.S. v. Jewell*, 532 F.2d 697, 700-701 (9th Cir. 1976), *cert. denied*, 426 U.S. 951 (1976). Cited with approval in *U.S. v. Lara-Velasquez*, 919 F.2d. 946, 950-951 (5th Cir. 1990).

***In lame man's terms, as first responders encountering violence situations and aggression requiring the use of self-defense is not a matter of if, but when it will happen, so is***

*the prospect of having to defend one's action in a court of law. For these reasons it is important to become familiar not only with the tactics, techniques and procedures associated with self-defense, but also with the legal statutes dealing with the use of force.*



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