

T.P.I. -- CRIM. 40.06(b)

DEFENSE: SELF-DEFENSE

[Enacted May 22, 2007]

Included in the defendant's plea of not guilty is *[his] [her]* plea of self-defense.

If a defendant was not engaged in unlawful activity and was in a place where he or she had a right to be, he or she would have no duty to retreat before threatening or using force against the *[deceased] [alleged victim]* when and to the degree the defendant reasonably believed the force was immediately necessary to protect against the alleged victim's *[use] [attempted use]* of unlawful force.

[If a defendant was not engaged in unlawful activity and was in a place where he or she had a right to be, he or she would also have no duty to retreat before threatening or using force intended or likely to cause *[death] [serious bodily injury]* if the defendant had a reasonable belief that there was an imminent danger of death or serious bodily injury, the danger creating the belief of imminent death or serious bodily injury was real, or honestly believed to be real at the time, and the belief of danger was founded upon reasonable grounds.]

In determining whether the defendant's *[threat] [use]* of force in defending *[himself] [herself]* was reasonable, you may consider not only *[his] [her] [threat] [use]* of force but also all the facts and circumstances surrounding and leading up to it. Factors to consider in deciding whether there were reasonable grounds for the defendant to fear *[death] [serious bodily injury]* from the *[deceased] [alleged victim]* include but are not limited to any previous threats of the *[deceased] [alleged victim]* made known to the defendant; the character of the *[deceased]*

[alleged victim] for violence, when known to the defendant; the animosity of the *[deceased] [alleged victim]* for the defendant, as revealed to the defendant by previous acts and words of the *[deceased] [alleged victim]*; and the manner in which the parties were armed and their relative strengths and sizes.

[If proof was offered by the defendant of a trait of character of the *[deceased] [alleged victim]* to show that the *[deceased] [alleged victim]* was the first aggressor, and proof was then offered by the State of a trait of character of the defendant to show that the defendant was the first aggressor, such proof offered by the State for that purpose can only be considered by you for the purpose of its effect, if any, in rebutting the defense proof that the *[deceased] [alleged victim]* was the first aggressor and that therefore the defendant acted in *[self-defense] [defense of a third person]*. It cannot be considered by you as evidence of *[his] [her]* predisposition to commit the offense for which *[he] [she]* is now on trial.]

[The *[threat] [use]* of force against the *[deceased] [alleged victim]* would not have been justified if the defendant provoked the *[deceased's] [alleged victim's] [use] [attempted use]* of unlawful force, unless the defendant abandoned the encounter or clearly communicated to the *[deceased] [alleged victim]* the intent to do so, and the *[deceased] [alleged victim]* nevertheless *[continued] [attempted]* to use unlawful force against the defendant.]

[The *[threat] [use]* of force against another is not justified if the defendant consented to the exact force *[used] [attempted]* by the other individual.]

[The *[threat] [use]* of force against another is not justified to resist a(n) *[arrest] [search] [stop and frisk] [halt at a roadblock]* that the defendant knows is

being made by a law enforcement officer unless the law enforcement officer *[uses] [attempts to use]* greater force than necessary to make the *[arrest] [search] [stop and frisk] [halt]* and the defendant reasonably believes that the force is immediately necessary to protect against the law enforcement officer's *[use] [attempted use]* of greater force than necessary.]

[A defendant using force intended or likely to cause death or serious bodily injury within a *[residence] [business] [dwelling] [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] [vehicle]*, and the defendant using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.] [This presumption shall not apply if:

- (1) the *[deceased] [alleged victim]* against whom the force was used *[had the right to be in] [was a lawful resident of]* the *[residence] [business] [dwelling] [vehicle]*, such as an owner, lessee or titleholder [provided that the *[deceased] [alleged victim]* was not prohibited from entering the *[residence] [for offenses committed on or after 7/1/09: business] [dwelling] [occupied vehicle]* by *[an order of protection from domestic abuse] [a court order of no contact against the [deceased] [alleged victim]]*]; or
- (2) the *[deceased] [alleged victim]* was attempting to remove a *[child] [grandchild] [person]* in the *[deceased's] [alleged victim's]* lawful custody or guardianship; or

- (3) the defendant was engaged in an unlawful activity, or was using the *[residence] [business] [dwelling] [occupied vehicle]* to further an unlawful activity; or
- (4) the *[deceased] [alleged victim]* was a law enforcement officer who entered or attempted to enter the *[residence] [business] [dwelling] [vehicle]* in the performance of his or her official duties, and identified himself or herself in accordance with any applicable law, or the defendant knew or reasonably should have known that the *[deceased] [alleged victim]* entering or attempting to enter was a law enforcement officer.] **[The word “business” was added by the legislature to become law 7/1/08]**

“Business” means a commercial enterprise or establishment owned by a person as all or part of such person’s livelihood, or is under the owner’s control or who is an employee or agent of the owner with responsibility for protecting persons and property and shall include the interior and exterior premises of such business.

[“Dwelling” means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed for or capable of use by people.]

[“Enter” means an intrusion of any part of the body; or an intrusion of any object in physical contact with the body or any object controlled by remote control, electronic or otherwise.]

“Force” means compulsion by the use of physical power or violence.

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Violence@means evidence of physical force unlawfully exercised so as to damage, injure or abuse. Physical contact is not required to prove violence. [Unlawfully pointing a deadly weapon at an alleged victim is physical force directed toward the body of the victim.]

“Imminent” means near at hand; on the point of happening.

[“Law enforcement officer” means an officer, employee or agent of government who has a duty imposed by law to:

- (A) Maintain public order; or
- (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
- (C) Investigate the commission or suspected commission of offenses.]

[“Residence” means a dwelling in which a person resides either temporarily or permanently, or is visiting as an invited guest, or any dwelling, building or other appurtenance within the curtilage of such residence. “Curtilage” means the area surrounding a dwelling that is necessary, convenient and habitually used for the family purposes and for those activities associated with the sanctity of a person’s home.]

[“Serious bodily injury” means bodily injury that involves a substantial risk of death; protracted unconsciousness; extreme physical pain; protracted or obvious disfigurement; or protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty **[only for offenses committed on or after 7/1/09:** or a broken bone of a child who is eight (8) **[only for offenses**

committed on or after 7/1/14: twelve (12)] years of age or less].] ["Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty.]

“Vehicle” means any motorized vehicle that is self-propelled and designed for use on public highways to transport people or property.

If evidence is introduced supporting self-defense, the burden is on the state to prove beyond a reasonable doubt that the defendant did not act in self-defense.

[This defense is not available to the defendant if the victim was an innocent third person who was recklessly injured or recklessly killed by the defendant’s use of force. “Recklessly” has been previously defined in these instructions.]

If from all the facts and circumstances you find the defendant acted in self-defense, or if you have a reasonable doubt as to whether the defendant acted in self-defense, you must find *[him] [her]* not guilty.