



Self-Defense as a Legal Defense Under California Criminal Law Found Online at Shouse California Law Group

The legal defense of self-defense in California law means that you can't be found guilty of a violent crime that you committed in order to protect yourself, as long as your conduct was reasonable under the circumstances. ¹



For purposes of the self-defense legal defense, “reasonable under the circumstances” means that you need to have:

1. Reasonably believed that you were in imminent danger of being killed, injured, or touched unlawfully,
2. Reasonably believed that you needed to use force to prevent that from happening, and
3. Used no more force than was necessary to prevent that from happening.²

Moreover, thanks to California's so-called “stand your ground laws,” you are under no obligation to “retreat” – that is, to run away or try to escape – before you use self-defense to protect yourself. ³

Self-defense can be a useful legal defense to a number of California crimes, including:

- Murder,
- Assault with a deadly weapon,
- Aggravated battery, and
- Battery on a peace officer.

Examples Here are some examples of criminal defendants who may be able to plead self-defense:

- Bill is walking home at night when he is approached by a man holding a knife. The man demands that Bill hand over his wallet. Bill pulls out a small handgun that he carries everywhere. He shoots and kills the man. Self-defense may mean that Bill is not guilty of Penal Code 187 PC murder.
- When searching for a woman accused of killing a police officer, the police accidentally arrest Mary, who is not the suspect but looks like her. One of the arresting officers, who is outraged over the killing, chokes and hits Mary. Mary fights back, hitting and kicking the officer.

Because she was acting in self-defense, Mary may be able to avoid a conviction for battery on a peace/police officer.

- At a party, Tracy is approached by a very drunk man who grabs her arm aggressively and tells her he is going to rape her. Tracy pushes him down a flight of stairs, which leads to him breaking his

leg. But Tracy may be able to escape a conviction for aggravated battery causing serious bodily injury by using the legal defense of self-defense.

In order to help you better understand California self-defense laws, our California criminal defense attorneys will address the following topics:

1. Legal Definition of California Self-Defense

1.1. Imminent danger

1.2. Of being killed, seriously injured, or unlawfully touched

1.3. Reasonable belief in threat

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1. Legal Definition of California Self-Defense: If you are accused of a crime for something you did to protect yourself, you may be able to take advantage of the California legal defense of self-defense.

California self-defense law requires the following "elements" of the defense to be true:

1. When you committed your crime, you *reasonably* believed that you were in *imminent* danger of being killed, seriously injured, or unlawfully touched;
2. You reasonably believed that immediate force was necessary to prevent that danger; and
3. You used no more force than was necessary to defend against that danger. ⁴

On all of these requirements, the prosecutor is the one who bears the burden of proof. In other words, if the evidence could support a self-defense legal defense, the prosecutor must prove beyond a reasonable doubt that self-defense does *not* apply. ⁵

Let's take a closer look at some of the key terms in this legal definition of self-defense in order to better understand how a self-defense argument would work.

1.1. Imminent danger: To assert the legal defense of self-defense, you must successfully show that someone else was about to kill, injure, rape, or unlawfully touch you *imminently* – that is, immediately or right away.⁶

In other words, you may not argue self-defense if you acted only because of a threat of *future* harm – no matter how credible the threat or how severe the harm.⁷

Example: Mike regularly beats his wife, Louise. Mike threatens to burn Louise if she doesn't confess to sleeping with Mike's brother. When Louise denies the accusation, Mike takes his lit cigarette and starts to walk toward Louise.

To defend herself, Louise grabs a frying pan and hits Mike over the head with it so that she can escape to call the police.

Louise was facing an immediate threat of being injured with the cigarette. Under these circumstances, Louise's conduct would likely be excused as self-defense.

BUT Example: Let's say that, instead of threatening to burn Louise with a lit cigarette he is holding in his hand, Mike threatens to burn Louise if he ever catches her sleeping with his brother. Louise then decides to hit him with a frying pan to avoid being burned at a later time.

Given these facts, Louise's actions would not be justified as self-defense since there was no immediate threat of harm – only a future threat.

1.2. Of being killed, seriously injured, or unlawfully touched: You may only use self-defense as a legal defense to the crime of *murder* if you were defending yourself against what is known as a “forcible and atrocious crime.”⁸ Forcible and atrocious crimes include:

- Murder or manslaughter,
- Being attacked in a way that would cause great bodily injury,
- Rape,
- Mayhem (that is, the act of maiming someone else), and
- Robbery.⁹

In other words, you may only *kill* another person in self-defense if you are trying to protect yourself against one of those forcible and atrocious crimes.¹⁰

However, you are permitted to use non-deadly force – that is, to commit crimes other than murder – to defend yourself from less extreme threats.¹¹

For instance, self-defense applies as a legal defense to charges of Penal Code 240 PC assault if you were defending yourself against *any* bodily injury (even if it was not serious) or any unlawful touching.¹²

Example: Christine is accosted in a mall parking lot by a man who threatens to fondle her breasts without her consent. (This would be the crime of sexual battery.) There is no reason for Christine to believe that he is going to rape or otherwise injure her.

Christine would probably not be able to use self-defense as a legal defense if she pulled out a gun and killed the man, because sexual battery is not a forcible and atrocious crime.

However, she would be able to use self-defense as a legal defense against charges of assault if she used martial arts moves to injure the man.

1.3. Reasonable belief in threat: In order to plead self-defense successfully, you must have had an honest and *reasonable* belief that you faced imminent harm and needed to use force to defend yourself.¹³ It does not matter whether that belief was correct or not, as long as it was reasonable.¹⁴ In deciding whether or not your belief was reasonable, the jury is supposed to use what is called an *objective* standard. This means that they are supposed to ask themselves whether a reasonable person in your shoes would have believed they were in danger – not whether you personally believed you were in danger.¹⁵

So a person with a mental illness, phobia, or other psychological disorder may have trouble claiming self-defense – if s/he acted in a way that a person without that disorder would not have acted.¹⁶

Example: Steve is in prison. He has a mental illness that causes him to hear voices telling him that the guards are planning to kill him. So he kills a guard, believing that he has no choice if he wants to save himself. Steve genuinely believed that he needed to kill the guard in self-defense, but this belief wasn't reasonable. A reasonable person who didn't hear voices because of mental illness would not have believed the same thing. So he cannot escape a murder conviction based on self-defense.¹⁷



Battered Woman's Syndrome: But there *is* one exception to the rule that a defendant's mental illness or psychological problems won't be considered in determining whether s/he acted reasonably. That is the condition known as “battered woman's syndrome,” which is attributed to women (and men) involved in relationships characterized by domestic violence.¹⁸

In California, juries *are* allowed to consider the effects of domestic abuse on a defendant in deciding whether or not s/he acted reasonably in self-defense.¹⁹

Example: Evelyn is married to Albert. Albert has been beating Evelyn for years, and lately he has been threatening to kill her. One day, he gets drunk and shoots a gun at her, but misses. A bit later, Albert begins hitting her again. Evelyn finds the gun where Albert left it and uses it to shoot and kill him.

Evelyn may be able to argue self-defense. A normal person who had been subjected to regular beatings and death threats by their spouse might reasonably have believed that Albert was about to inflict severe harm on her at that moment.²⁰

Presumption of reasonable threat from home invasion: California self-defense law creates a presumption that you reasonably feared death or great bodily harm if someone broke into your house “unlawfully and forcibly” — provided that person was not a member of your household or family.²¹

In other words, if you are the victim of Penal Code 459 PC burglary, and you use force against the burglar, a prosecutor would bear the burden of trying to prove that you should be convicted of a crime for your use of force – rather than being excused based on self-defense.²²

1.4. Reasonable response: The general rule under California self-defense law is that you are only allowed to use as much force as is necessary to combat the force being used against you.²³

However, if you have previously been threatened by your attacker, you are entitled to act more quickly and with more force than someone who has not been threatened.²⁴

2. California's "Stand Your Ground" Laws

So-called "stand your ground" laws became a significant topic of national debate in 2013, following the trial of Florida man George Zimmerman for the killing of a teenager named Trayvon Martin.²⁵

"Stand your ground" laws are actually just a variation on the legal defense of self-defense. If a state's self-defense law says that the defendant has no duty to *retreat* before using force to defend him- or herself, then that state has a "stand your ground" law.²⁶

California self-defense law is a "stand your ground" law. In California, you may use reasonable force to defend yourself even if you also had the option of escaping the threat by running away.²⁷ You may even pursue your attacker until the danger has passed.²⁸

Example: One night at a bar, Bruce exchanges some hostile words with Tommy. Later, when Bruce has left the bar and is just about to get into his car, he sees Tommy coming after him. It looks as if Tommy has a knife.

Tommy is obese and is very drunk that night, so he moves slowly. Bruce would have had plenty of time to get into his car and drive away before Tommy reached him. But instead Bruce reaches into his car, pulls out a gun he keeps in the glove compartment, and shoots Tommy.

Under California's "stand your ground" laws, Bruce may be able to argue successfully that he acted in self-defense, even though he probably could have escaped from Tommy instead of confronting him.

BUT even under California's "stand your ground" law, you still can't claim the self-defense privilege once the person you are defending yourself against is no longer a threat.²⁹

Example: Let's go back to the example of Bruce and Tommy. While Bruce is reaching for the gun in his glove compartment, the bouncer at the bar grabs Tommy and removes the knife from his hand. Bruce would not then be justified in walking up to Tommy and shooting him – since Tommy wouldn't pose a threat to him any longer.

3. California Self-defense and Special Situations

3.1. Defense of others/defense of property

Defense of others : California self-defense law doesn't just allow you to act to defend yourself from harm. You can also use self-defense as a legal defense when you acted to defend *someone else*.³⁰

The requirements for defending others are the same as for defending yourself. You must:

1. Reasonably believe that the other person is in imminent danger of being killed, injured, or touched unlawfully,
2. Reasonably believe that you need to use force to prevent this, and
3. Use no more force than necessary.³¹



Defense of Property

California self-defense law also encompasses the right to use force to defend your *property* from harm. This right covers both real property (like a house or land) and personal property (money, cars, jewelry, etc.).³² In order to use the “defense of property” version of self-defense as a legal defense, you must be able to show that:

1. The threat of harm to your property was *imminent* (that is, immediate), and
2. You used only reasonable force to defend your property.³³

Example: Toby spots his angry ex-girlfriend Carrie approaching his car with a sledgehammer. It is clear that Carrie is about to commit California vandalism on Toby's car. So Toby uses physical force to restrain Carrie. She fights back, and he is forced to punch and kick her a few times.

Toby is probably not guilty of assault for punching and kicking Carrie, because of the extension of self-defense to the defense of property.

California self-defense law also provides that you have the right to use reasonable force to make someone who is trespassing on your property leave.³⁴

But for this version of self-defense to apply, you need to:

1. first request that the trespasser leave the property, and
2. reasonably believe that s/he poses a threat either to the property or to the people occupying it.³⁵

3.2. Self-defense and third parties: Previous threats from a third party are one factor that a jury can consider in determining whether or not you acted in self-defense – as long as the third party is someone you reasonably associated with the person against whom you defended yourself.³⁶

This is true even if you were mistaken in associating the person who threatened you with the person against whom you defended yourself.³⁷

Example: Todd is dating a woman who left her husband (John) for Todd. John has sent emails to Todd threatening to “get him back” and “make him sorry.”

One night outside a bar, Todd sees John's brother Mike coming toward him. Mike has a threatening look on his face and has several friends with him. Convinced that Mike is about to attack him on John's behalf, Todd pulls out a gun and shoots Mike.

Todd may be able to use self-defense as a legal defense even if it turns out that Mike meant him no harm...because he reasonably associated Mike with John, and John *had* made threats against him.

3.3. Self-defense and the initial aggressor: You may be surprised to learn that you can plead self-defense even if you were the one who started a fight—at least in some situations.³⁸ Self-defense is available to you as a legal defense even if you were the aggressor in a fight, as long as one of the following two things occurred:

1. You made a good-faith effort to stop fighting and *clearly* indicated to the other person that you were trying to do so (but s/he didn't stop fighting), OR
2. You initially attacked with non-deadly force but the other person responded with deadly force.³⁹

Example: At a Dodgers-Giants baseball game, Steve, a Dodgers fan, exchanges some aggressive words with Juan, a Giants fan. Steve then punches Juan in the face. Juan pulls out a knife and moves to stab Steve with it.

In this situation, Steve might be justified in pulling out a gun and shooting Juan in self-defense. This is because, even though Steve started the fight, Juan was the one who “upgraded” the fight to deadly force. Also, you may still use the self-defense legal defense even if you knowingly went to a place where you were likely to face an attack...and then were forced to use force to defend yourself.⁴⁰

3.4. Imperfect self-defense As we discussed in Section 1 above, California self-defense law will only completely excuse your actions if you *reasonably* believed that you faced an imminent threat.⁴¹

But if you honestly but *unreasonably* believed in the threat, you are not entirely out of luck.

California self-defense law offers a theory called “imperfect self-defense” to people facing murder charges.⁴² Imperfect self-defense applies when:

1. A defendant actually believed that s/he or someone else was in imminent danger of death or great bodily injury,
2. The defendant honestly believed that deadly force was necessary to defend against that threat, AND
3. One or both of those beliefs was unreasonable.⁴³

Unlike regular self-defense, imperfect self-defense won't completely excuse you from criminal liability. Instead, it may reduce your charge from Penal Code 187 PC murder to Penal Code 192 PC voluntary manslaughter...a less serious offense with significantly reduced penalties.⁴⁴

4. Self-defense applied to specific crimes

There are a variety of criminal charges that commonly invite self-defense claims. These are typically California violent crimes, generally seen in domestic violence situations (which have been addressed in examples above), battery, battery on a peace officer, resisting arrest, burglary, robbery, and, of course, murder.

4.1. Penal Code 242 battery: Penal Code 242 battery is simply defined as the unlawful touching of another. A battery can therefore range from offensive contact like spitting on someone to violent contact like a punching someone in the face. As discussed, you are permitted to respond reasonably to a threat of imminent danger causing *injury*...but what about a simple imminent *touching*?

If you are in imminent danger of being unlawfully touched, you are permitted to use force that is reasonable to sufficiently protect against the touching, even though you don't fear imminent bodily harm.⁴⁵

Incidentally, the legal doctrine of “transferred intent” applies to self-defense situations. This means that, if while you are defending yourself, you accidentally injure someone other than the person whom you are defending against, you will not be prosecuted for injuring that individual.⁴⁶

4.2. Penal Code 243 battery on a police officer: Penal Code 243 battery on a police officer prohibits exactly that – unlawfully touching an officer.⁴⁷ If an officer uses unreasonable or excessive force against you or unlawfully arrests you, you are entitled reasonably to protect yourself without being punished for this offense. California self-defense law will even protect you as a prisoner if a correctional officer uses unreasonable or excessive force against you, so long as you only use reasonable force to protect yourself.⁴⁸

4.3. Penal Code 148 resisting arrest: Penal Code 148 resisting arrest prohibits willfully resisting, delaying, or obstructing an officer while he/she is performing his/her duties. Similar to battery on a peace officer, if you physically resist an unlawful procedure or resist against excessive force, you will be acquitted of this charge if you *reasonably* protected yourself. That said, if the officer's excessive force was in response to your *unjustified* resistance, California self-defense law will not protect you.

4.4. Penal Code 211 robbery: Penal Code 211 robbery is defined as the taking of another's property from his/her possession or immediate presence accomplished by force or fear.⁴⁹ As a "forcible and atrocious crime," it will be presumed that you acted reasonably if you defended yourself while you were being robbed.

Using deadly force in self-defense will be excused if a gun or other weapon was used during the commission of the robbery.

4.5. Penal Code 261 rape: Penal Code 261 rape is defined as nonconsensual intercourse accomplished by force or fear.⁵⁰ If you reasonably believe that you are in imminent danger of being raped, your actions in defending yourself will be excused.

Depending on the situation, it is very likely that deadly force will be necessary to defend yourself under these circumstances and will be excused when it is.

4.6. Penal Code 187 murder: Penal Code 187 murder is defined as intentionally killing another with a state of mind known as malice aforethought. Malice aforethought is defined as an unlawful intention to kill or acting with a reckless disregard for human life.

If you are in imminent danger of being killed, you may take whatever measures are necessary to prevent that from happening. Deadly force is obviously expected and will be excused so long as the requirements that have been explained throughout this article are satisfied.

4.7. Penal Code 459 burglary: Penal Code 459 burglary is defined as entering a structure with the intent of stealing or committing another felony once inside.⁵¹ If, while someone is burglarizing your home or business, you attempt to defend yourself...and use reasonable force to do so...you will be entitled to an acquittal of any criminal charges (under California self-defense law).

Depending on the circumstances of the break in, burglary may be considered a forcible and atrocious crime, entitling you to a presumption that you acted reasonably when you were confronted by a burglar.⁵²