Indiana Public Defender Council

GUIDE TO SELF DEFENSE IN INDIANA

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I. GENERALLY

"The law is well settled, that a person thus assaulted may use as much force as is necessary for his defen[s]e, but may not kill, wound, or maim his antagonist, unless it be necessary to save his life, or protect himself from great bodily harm." Hayden v. State, 1838 Ind. LEXIS 83 (Ind. 1838).

A. Legislative Intent

Pursuant to Ind. Code § 35-41-3-2(a), "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. Constitutionality

The Indiana statute does not create a substantive right to self-defense. Rowe v. DeBruyn, 17 F.3d 1047 (7th Cir. 1994). The lack of a legislative definition of "reasonable force" does not render Ind. Code § 35-41-3-2 unconstitutional. Smith v. State, 403 N.E.2d 869 (Ind. Ct. App. 1980).

Prisoners do not have a fundamental right to assert self-defense in the context of disciplinary proceedings. Rowe v. DeBruyn, 17 F.3d 1047 (7th Cir. 1994) (even if a prisoner did have a constitutional right to raise self-defense, the IDOC policy to deny a prisoner the right to raise it as a complete defense is reasonably related to legitimate penological interests).

C. Bar to Prosecution

The self-defense statute neither creates a new remedy nor does it alter criminal procedure in any respect but is simply a legislative declaration of the public policy of Indiana. Loza v. State, 325 N.E.2d 173 (Ind. 1975) (holding that statute does not operate as a bar to prosecution even where, considering all the pleadings and affidavits before the trial court, there is no material issue of fact; reasonableness of D's acts and state of mind are virtually always issues of material facts to be determined by the jury).

D. Jury Role

The question of self-defense is a question of fact to be determined by the jury. Weekly v. State, 496 N.E.2d 29 (Ind. 1986). See also Stock v. State, 245 N.E.2d 335 (Ind. 1969); Shields v. State, 699 N.E.2d 636 (Ind. 1998); and Hooks v. State, 409 N.E.2d 618 (Ind. 1980).

Further, whether reasonable force has been used is a question of fact to be determined by the jury. Dayhuff v. State, 545 N.E.2d 1100 (Ind. Ct. App. 1989). See also Smith v. State, 403 N.E.2d

869 (Ind. Ct. App. 1980); Brooks v. State, 434 N.E.2d 878 (Ind. 1982); and Shepard v. State, 451 N.E.2d 1188 (Ind. Ct. App. 1983).

The jury must consider evidence from the defendant's perspective to ascertain whether he faced such apparent danger as caused him in good faith to fear death or bodily harm; jury is not required to believe the defendant but may reject his version of the events entirely. See Davis v. State, 456 N.E.2d 405 (Ind. 1983) and Walsh v. State, 456 N.E.2d 1009 (Ind. 1983).

> Harrison v. State, 699 N.E.2d 645 (Ind. 1998) (jury gave more weight to evidence that the unarmed victim was shot in the heart as he lay on the ground; this evidence was sufficient to rebut D's testimony that the victim was a larger man with a reputation for violence who had threatened D and was the initial aggressor).

A defendant must be allowed to question prospective jurors during voir dire regarding the law of self-defense. Black v. State, 829 N.E.2d 607 (Ind. Ct. App. 2005) (denying D to question jurors on law of self-defense denied D right to a fair and impartial jury under Ind. Const., Art. 1, § 13).

E. Trial Court Role; Pretrial notice not required

Because the self-defense statute does not create a bar to prosecution, and the jury is to determine the question of self-defense, the statute does not require a pre-trial hearing to determine the validity of the self-defense claim. Loza v. State, 325 N.E.2d 173 (Ind. 1975). Nor does the statute require the defendant to file a notice of self-defense claim, unless the defendant is proceeding under the "Effects of Battery" statute. See Ind. Code § 35-41-3-11 and Marley v. State, 747 N.E.2d 1123 (Ind. 2001).

II. DEFENSE OF SELF; OTHERS

"The law is well settled, that a person thus assaulted may use as much force as is necessary for his defen[s]e, but may not kill, wound, or maim his antagonist, unless it be necessary to save his life, or protect himself from great bodily harm." Hayden v. State, 1838 Ind. LEXIS 83 (Ind. 1838).

A. Generally

Pursuant to Ind. Code § 35-41-3-2(c), a person is justified in using reasonable force against any 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 is (1) justified in using deadly force; and (2) does not have a duty to retreat if the person reasonably believes that the force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. Ind. Code § 35-41-3-2(c).

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. Ind. Code § 35-41-3-2(c).

B. Prevent Hijacking

Pursuant to Ind. Code § 35-41-3-2(f), a person is justified in using reasonable force, including deadly force, against any other person and does not have a duty to retreat if the person reasonably believes that the force is necessary to prevent or stop the other person from hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.

For purposes of Ind. Code § 35-41-3-2(f), an aircraft is considered to be in flight while the aircraft is:

(1) on the ground in Indiana: (A) after the doors of the aircraft are closed for takeoff; and (B) until the aircraft takes off;

(2) in the airspace above Indiana; or

(3) on the ground in Indiana: (A) after the aircraft lands; and (B) before the doors of the aircraft are opened after landing.

III. DEFENSE OF PROPERTY

The right to defend one's property or premises is generally recognized as an extension of the right to defend one's person; thus, the legal principles applicable in cases of self-defense are for the most part applicable to cases of defense of the dwelling. Smith v. State, 403 N.E.2d 869, n. 8 (Ind. Ct. App. 1980) (*citing* 6 Am. Jur. 2d Assault and Battery § 86 (1963) and 3 I.L.E. Assault and Battery § 13 (1978)).

A. Dwelling, Curtilage, or Occupied Motor Vehicle

Pursuant to Ind. Code § 35-41-3-2(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.

B. Other Property

Pursuant to Ind. Code § 35-41-3-2(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 Ind. Code § 35-41-3-2(c) (defense of self; others to prevent bodily injury). Ind. Code § 35-41-3-2(e).

IV. PUBLIC SERVANT

For the purposes of Ind. Code § 35-41-3-2, "public servant" means either a Federal Enforcement Officer (Ind. Code § 35-31.5-2-129) or a Law Enforcement Officer (Ind. Code § 35-31.5-2-185). Ind. Code § 35-41-3-2(b).

Brown v. State, 830 N.E.2d 956 (Ind. Ct. App. 2005) (trial court did not err in refusing to allow D to present evidence in support of his claim that police officers used excessive force when he was arrested).

A. When Use of Force is Justified

Pursuant to Ind. Code § 35-41-3-2, a person is justified in using reasonable force against a public servant if the person reasonably believes the force is necessary to:

(1) protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force;

(2) prevent or terminate the public servant's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle; or

(3) prevent or terminate the public servant's unlawful 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.

B. When Use of Force is Not Justified

Pursuant to Ind. Code § 35-41-3-2(j), a person is not justified in using reasonable force against a public servant if:

(1) the person is committing or is escaping after the commission of a crime;

(2) the person provokes action by the public servant with intent to cause bodily injury to the public servant;

(3) the person entered into combat with the public servant or is the initial aggressor, unless the person withdraws from the encounter and communicates to the public servant the intent to do so and the public servant nevertheless continues or threatens to continue unlawful action; or

(4) the person reasonably believes the public servant is: (A) acting lawfully; or (B) engaged in the lawful execution of the public servant's official duties.

Pursuant to Ind. Code § 35-41-3-2(k), a person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless:

(1) the person reasonably believes that the public servant is: (A) acting unlawfully; or (B) not engaged in the execution of the public servant's official duties; and

(2) the force is reasonably necessary to prevent serious bodily injury to the person or a third person.

C. Lawful Execution of Duties

When a police officer is attempting to effect an arrest without probable cause or a warrant, the officer is not lawfully engaged in the execution of his duties. Jean-Baptiste v. State, 71 N.E.3d 406 (Ind. Ct. App. 2017), *sum. aff'd in part and vacated in part on other grounds*, 82 N.E.3d 878 (Ind. 2017). Thus, whenever an arrest is attempted by means of a forceful and unlawful entry into a citizen's home, such an entry represents the use of excessive force. Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App. 1985).

Jean-Baptiste v. State, 71 N.E.3d 406 (Ind. Ct. App. 2017), *sum. aff'd in part and vacated in part on other grounds*, 82 N.E.3d 878 (Ind. 2017) (State failed to present sufficient evidence to support D's conviction for resisting law enforcement; deputy was not lawfully engaged in the exercise of his duties when he reached across the threshold of D's residence without permission or other legal justification and grabbed him; D had the right to reasonably resist the deputy).

Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App. 1985) ("writ of body attachment" or "civil arrest warrant" is not a criminal warrant; thus, during confrontation at D's doorstep, D had the right to close the door; D engaged in no resistance, obstruction, or interference other than to attempt to assert that right; scuffle arose only after officer unlawfully entered D's doorway to prevent D from closing the door).

Cupello v. State, 27 N.E.3d (Ind. Ct. App. 2015) (officer not lawfully engaged in the execution of his duties as he had no lawful justification for breaching the threshold of D's apartment; D entitled to use force to terminate the officer's unlawful entry and to prevent further entry into his home).

Brown v. State, 62 N.E.3d 1232 (Ind. Ct. App. 2016) (where officer was engaged in lawful execution of his duties when he entered the D's home, D was not justified in using force against officer).

V. EFFECT ARREST OR PREVENT ESCAPE

A. Person other than Law Enforcement – Citizen's arrest

Pursuant to Ind. Code § 35-41-3-3(a), a person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if: (1) a felony has been committed; and (2) there is probable cause to believe the other person committed that felony.

However, such a person is not justified in using deadly force unless that force is justified under Ind. Code § 35-41-3-2. Ind. Code § 35-41-3-3(a). A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer. Ind. Code 35-33-1-4(b). The officer may then process the arrested person as if the officer had arrested him. Ind. Code 35-33-1-4(c).

A private citizen has the right to arrest one who has committed a felony in his presence and may even arrest one he reasonably believes to have committed a felony, so long as the felony was in fact committed. Fitzgerald v. State, 26 N.E.3d 105 (Ind. Ct. App. 2015) (*quoting* U.S. v. Hillsman, 522 F.2d 454, 460-61 (7th Cir. 1975)). However, a mistaken belief that the victim had committed a crime does not amount to a lawful citizen's arrest because no crime had in fact been committed. Id. The private citizen's right to make an arrest is limited by the fact that he acts at his own peril; unlike a police officer, who may arrest without a warrant where he reasonably believes that a felony has been committed even if no felony had occurred, a private citizen may only arrest when he has reasonable grounds for believing the guilt of the person arrested and a felony has in fact been committed. Id.

Fitzgerald v. State, 26 N.E.3d 105 (Ind. Ct. App. 2015) (victim's detention of D based on mistaken belief that he had committed a robbery did not amount to a lawful citizen's arrest because no robbery had in fact been committed; however, as to intimidation charge, State presented sufficient evidence to disprove D's self-defense claim for other reasons).

Thrash v. State, 690 N.E.2d 355 (Ind. Ct. App. 1998) (trial court properly denied D's instruction regarding use of force to effect arrest or prevent escape where victim willingly got into D's car and handed him cocaine in exchange for money; after determining substance was not cocaine, D demanded money back; in this situation D was simply availing himself of self-help debt collection, which is not attempting to arrest victim; further, as matter of public policy, courts will not allow individuals who find themselves at the bad end of a drug deal to avail themselves of such self-help methods of arrest).

Mishler v. State, 660 N.E.2d 343 (Ind. Ct. App. 1996) (Ind. Code 35-33-1-4 does not authorize bondsman to forcibly enter private dwelling of third party to arrest principal). See also Dewald v. State, 898 N.E.2d 488 (Ind. Ct. App. 2008) (bail bondsman may not stop and detain third parties).

State v. Hart, 669 N.E.2d 762 (Ind. Ct. App. 1996) (citizen may make arrest for a breach of peace, including driving while intoxicated).

Walker v. State, 503 N.E.2d 883 (Ind. 1987) (although Chicago police officers were outside their jurisdiction, they had authority to arrest Ds under citizen's arrest statute).

B. Law Enforcement Officer

A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. Ind. Code § 35-41-3-3(b).

Birtsas v. State, 297 N.E.2d 864 (Ind. Ct. App. 1973) (arresting officer has right to use such reasonable force as necessary to make arrest and to take his prisoner to jail, but he may not use unreasonable force in effectuating arrest; here, when officer attempted to place D's hands against wall, D grabbed officer's hand and bit it, drawing blood, and officer responded by striking D; Court held that officer's actions were reasonable under circumstances).

1. Invalid Warrant

A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid. Ind. Code § 35-41-3-3(c).

2. Deadly Force

Pursuant to Ind. Code § 35-41-3-3(b), an officer is justified in using deadly force only if the officer:

(1) has probable cause to believe that that deadly force is necessary:

(A) to prevent the commission of a forcible felony; or

(B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and

(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

3. Right to also claim self-defense

A law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not law enforcement to assert self-defense under Ind. Code § 35-41-3-2. Ind. Code § 35-41-3-3(f).

C. Correctional Officer or Guard

A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility. Ind. Code § 35-41-3-3(e).

VI. REQUIREMENTS

In order to prevail on a claim of self-defense, the defendant must present evidence that he: (1) was in a place he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear or apprehension of death or bodily harm. Tharpe v. State, 955 N.E.2d 836, 844 (Ind. Ct. App. 2011). See also Crisler v. State, 509 N.E.822 (Ind. 1987); Woods v. State, 319 N.E.2d 688 (Ind. Ct. App. 1974); Nuss v. State, 328 N.E.2d 747 (Ind. Ct. App. 1975); and Henson v. State, 786 N.E.2d 274 (Ind. 2003).

Self-Defense is a law of necessity; right of self-defense arises with, ends with, and may only be equal to necessity. Jennings v. State, 318 N.E.2d 358 (Ind. 1974).

A. Without Fault

1. Not Committing a Crime

A person is not justified in using force if the person is committing or is escaping after the commission of a crime. Ind. Code § 35-41-3-2(g)(1) or Ind. Code § 35-41-3-2(h)(1).

The fact that a defendant is committing a crime at the time he is allegedly defending himself is not sufficient, standing alone, to deprive the defendant of the defense of self-defense. Mayes v. State, 744 N.E.2d 390 (Ind. 2001). There must be an immediate causal connection between the crime and the confrontation. Courts do not strictly apply the statute because "[t]he legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an unjust or absurd result," Id. at 393. Instead, there must be an immediate causal connection between the crime and the confrontation. Id. at 394; Gammons v. State, 148 N.E.3d 301, 304 (Ind. 2020). The existence of an immediate causal connection is a question of fact. Id.

> Gammons v. State, 148 N.E.3d 301 (Ind. 2020) (reversible error to give instruction stating that "a person may not use force if," among other things, "he is committing a crime that is directly and immediately related to the confrontation").
>
> Jervis v. State, 916 N.E.2d 969 (Ind. Ct. App. 2009) (where D admitted he shot victim during an altercation while he was fleeing after breaking into an apartment, there is an unbroken causal chain between the break-in and the shooting; which precludes his assertion of self-defense).

A person who was actively engaged in perpetration of crime may assert self-defense if the criminal activity he was engaged in did not produce the confrontation wherein force was employed. Smith v. State, 777 N.E.2d 32 (Ind. Ct. App. 2002).

The prohibition of a felon possessing a firearm is not intended to affect a felon's right to use a concealable firearm in self-defense. Harmon v. State, 849 N.E.2d 726 (Ind. Ct. App. 2006).

Self-defense is not available as an affirmative defense when one is engaged in the commission of a robbery. Rastafari v. Anderson, 117 F.Supp.2d 788 (N.D. Ind. 2000). See also Gage v. State, 505 N.E.2d 430 (Ind. 1987); Debose v. State, 450 N.E.2d 71 (Ind. 1983);

Rouster v. State, 705 N.E.2d 999 (Ind. 1999); and Exum v. State, 812 N.E.2d 204 (Ind. Ct. App. 2004).

Jervis v. State, 916 N.E.2d 969 (Ind. Ct. App. 2009) (self-defense claim barred as D was committing or escaping after the commission of residential entry).

A person who is not in his home or fixed place of business and carrying a handgun without a license is not a sufficient casual connection, standing alone, to deny a defendant a self-defense claim when the defendant was otherwise in a place where they had a right to be, not at fault, and was in fear of death or severe bodily injury. Harvey. v. State, 652 N.E.2d 876 (Ind. Ct. App. 1995) (trial court committed reversible error in instructing jury that D may not claim self-defense if he was carrying a handgun without a license at the time of the fatal shooting).

Self-defense instruction not available for persons resisting or escaping after committing theft. Chambliss v. State, 746 N.E.2d 73 (Ind. 2001) (D committed a crime by taking lunch meat from store, and any actions that he took to escape may not be considered under the self-defense statute).

2. Initial Aggressor

A person is not justified in using force if the person has entered into combat with another person or is the initial aggressor unless the person 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. Ind. Code § 35-41-3-2(g)(3) or Ind. Code § 35-41-3-2(h)(3).

The State may rebut a defendant's self-defense claim by showing that the defendant was the aggressor and had no sufficient basis to believe he was in danger of death or bodily harm. Bixler v. State, 4711 N.E.2d 1093 (Ind. 1984). See also Harris v. State, 382 N.E.2d 913 (Ind. 1978). Firing multiple shots undercuts a claim of self-defense "once a defendant disables the purported aggressor." Gammons v. State, 148 N.E.3d 301, 305 (Ind. 2020).

Miller v. State, 720 N.E.2d 696 (Ind. 1999) (considering D's aggressive behavior and fact he fired multiple shots at victim, there was sufficient evidence to disprove self-defense claim).

Bell v. State, 486 N.E.2d 1001 (Ind. 1985) (evidence warranted finding that D provoked victim's unlawful action and was aggressor; D threatened supervisor of bootleg casino and bar and took money from him; owner/victim got hatchet and questioned people about missing money and looked at D in accusatory manner; D told victim not to draw hatchet on him; D then hit 2 men on head with gun, threatened to kill victim and hit him on the head with a gun; victim followed D with hatchet raised and D shot him).

Wolf v. State, 76 N.E.3d 911 (Ind. Ct. App. 2017) (court properly rejected D's claim of self-defense where evidence established D was willing participant and initial aggressor).

Driver v. State, 760 N.E.2d 611 (Ind. 2002) (where D was part of a group that went to the victim's house intending to cause the victim bodily harm, his actions were not without fault, and D was there to willingly participate in violence).

3. Retreat/Withdraw

A person is not justified in using force if the person has entered into combat with another person or is the initial aggressor unless the person 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. Ind. Code § 35-41-3-2(g)(3) or Ind. Code § 35-41-3-2(h)(3).

A mutual combatant, whether or not initial aggressor, must declare an armistice before he or she may claim self-defense. Wooley v. State, 716 N.E.2d 919 (Ind. 1999). Where a defendant has entered into combat with another person or is the initial aggressor, there is a duty to withdraw from the altercation, if possible, and the defense of self-defense is not available to one who does not so withdraw. Hoemig v. State, 522 N.E.2d 392 (Ind. Ct. App. 1988). See also Montague v. State, 360 N.E.2d 181 (Ind. 1977).

Simpson v. State, 915 N.E.2d 511 (Ind. Ct. App. 2009) (evidence most favorable to verdict showed that D shot victim in retaliation for beating another person, rather than to defend that person from victim's blows; victim had stopped the beating before D shot him).

Hobson v. State, 795 N.E.2d 1118 (Ind. Ct. App. 2003) (although victim was initial aggressor and there was evidence of previous harassment, D chose to fight back and escalated fight by getting gun and shooting victim several times).

Wilson v. State, 770 N.E.2d 799 (Ind. 2002) (where D was willing participant in shooting and continued shooting after victim had ceased firing and was attempting to leave area, evidence was sufficient to rebut D's self-defense claim).

Jackson v. State, 371 N.E.2d 698 (Ind. 1978) (where victim slapped and choked D while they were still in car, victim and D left car, and victim was actually attempting to flee from D as D chased victim around car firing gun at him, jury was justified in finding there was no self-defense and D had become the aggressor in the altercation).

Sudberry v. State, 982 N.E.2d 475 (Ind. Ct. App. 2013) (State presented sufficient evidence to rebut D's self-defense claim where D was a mutual combatant and did not communicate an intent to withdraw from fight with his brother, that he escalated the fight and used more force than was reasonably necessary).

Where a victim is felled by the first shot, even where that shot may be justified, a second shot cannot be justified as self-defense. Hill v. State, 532 N.E.2d 1153 (Ind. 1989). See also Schlegel v. State, 150 N.E.2d 563 (Ind. 1958).

Wade v. State, 482 N.E.2d 704 (Ind. 1985) (where medical testimony showed that victim was no longer a threat after the first show, D reloaded and fired again, force used was not reasonable anymore).

Fuentes v. State, 952 N.E.2d 275 (Ind. Ct. App. 2011) (jury could not have properly found that D acted in self-defense when he shot victim a second time; after first shot, victim fell to his knees and put his arms and hands up in a defenseless position; D's right to self-defense therefore ceased).

B. Place Where Defendant Had a Right to Be

If a defendant is in violation of a no-contact order, then he/she is not in a place where he or she has a right to be. Creager v. State, 737 N.E.2d 771 (Ind. Ct. App. 2000).

In Ervin v. State, 114 N.E.3d 888 (Ind. Ct. App. 2018), defendant arrived at an intersection where his App informed him his missing iPad was to be located. He blocked the intersection with his vehicle and approached a truck, pointing a gun at the driver and then shot at the truck as it backed up and made a U-turn and drove away. The trial court properly refused to instruct the jury regarding defense of property and defense of others, because as a matter of law, Defendant could not have been acting in defense of his property or others as he was not in a place he was allowed to be—blocking an intersection—and as he instigated and provoked the situation.

C. In Real Danger

In determining the issue of self-defense, the jury must consider the evidence from appellant's perspective to ascertain whether he faced such apparent danger as caused him in good faith to fear death or great bodily harm. McCraney v. State, 447 N.E.2d 589 (Ind. 1983). Self-defense is a law of necessity; right of self-defense arises with, ends with, and may only be equal to necessity. Jennings v. State, 318 N.E.2d 358 (Ind. 1974).

One who is in no apparent danger and who has no reasonable ground for such apprehension cannot kill or harm another and successfully interpose the defense of self-defense. Tinsley v. State, 358 N.E.2d 743 (Ind. 1977). See also Brown v. State, 265 N.E.2d 699 (Ind. 1971).

1. Reasonable Belief (can be mistaken)

Reasonable belief requires both a subjective belief that force was necessary to prevent serious bodily injury and that such actual belief was one that a reasonable person would have under the circumstances. Littler v. State, 871 N.E.2d 276 (Ind. 2007).

The defendant's belief of apparent danger does not require that the danger be actual, but only that the belief be in good faith. Shepard v. State, 451 N.E.2d 1118, 1120 (Ind. Ct. App. 1983). Stated differently, the danger of harm need not be real, but the defendant must reasonably believe that it exists. Heglin v. State, 140 N.E.2d 98, 99 (Ind. 1956). See also Leming v. State, 487 N.E.2d 405 (Ind. Ct. App. 1986) and Banks v. State, 276 N.E.2d 155, 159 (Ind. 1971). Ultimately, the jury has a right to weigh and consider the evidence, reach its own conclusion and determine whether the defendant had a premeditated intention to kill the victim or acted in self-defense. Wardlaw v. State, 286 N.E.2d 649 (Ind. 1972).

Wardlaw v. State, 286 N.E.2d 649 (Ind. 1972) (where D and victim were not on good terms, D was carrying a gun but stated to police that he did not see any gun on victim, and no gun was found on victim, jury was entitled to disbelieve D's story that he thought the victim had something that looked like a gun; jury had right to conclude that D was not acting on an appearance of a threat to his life, but rather upon a desire to get rid of another person).

Harris v. State, 382 N.E.2d 913 (Ind. 1978) (D shot victim four times and asserted self-defense, claiming that victim was training in martial arts and posed a threat to him; jury's rejection of self-defense was affirmed where evidence was conflicting as to past confrontations between D and victim, there was some testimony that D had attacked victim in the past and victim had not returned the violence).

Hughett v. State, 557 N.E.2d 1015 (Ind. 1990) (where D injected himself into a confrontation involving unarmed men, attacked the victim from behind and stabbed him repeatedly with a knife, the D's actions clearly precluded any claim of self-defense).

In determining the reasonableness of the defendant's belief that force was necessary, the trier of fact must look at the situation from the defendant's viewpoint and in light of the circumstances known to him. Shutt v. State, 367 N.E.2d 1376, 1385 (Ind. 1977). The question of the existence of such danger, the necessity or apparent necessity, as well as the amount of force necessary to employ to resist the attack can only be determined from the standpoint of the defendant at the time and under all the then existing circumstances. French v. State, 403 N.E.2d 821, 824 (Ind. 1980) (quoting Martin v. State, 296 N.E.2d 793 (Ind. 1973)).

Tunstill v. State, 568 N.E.2d 539 (Ind. 1991) (although D testified that victim pushed him a few times and came at him again after D pulled out a knife and warned him not to do so, use of deadly force was not justified where D had not known victim to carry weapons and no weapons were found on or near victim, D did not appear to be harmed physically, and victim was very intoxicated from alcohol and cocaine).

In order to determine the reasonableness from the standpoint of the defendant: (1) the trier of fact must consider the circumstances as they appeared to the defendant, rather than to the victim or anyone else; and (2) the defendant's own account of the event, although not required to be believed, is critically relevant testimony. Hirsch v. State, 697 N.E.2d 37, 43 n.10 (Ind. 1998).

Brumfield v. State, 442 N.E.2d 973 (Ind. 1982) (D acted unreasonably in shooting victim four times where victim had no weapon and did not appear to be threatening D in any manner that would justify such force).

However, jury instructions on self-defense cannot unduly emphasize the reasonableness of deadly force from the standpoint of the accused—the jury must equally consider whether the defendant's belief was objectively reasonable under the circumstances. Washington v. State, 997 N.E.2d 342 (Ind. 2013) (pattern jury instruction on self-defense appropriately balanced

jury's duty to consider D's perception of danger against the reasonableness of his perception). See also Huls v. State, 971 N.E.2d 739 (Ind. Ct. App. 2012); Section IX, Jury Instructions.

2. Imminence or Impending

The term "imminent" is similar to the term "immediate" for self-defense purposes. Whipple v. Duckworth, 957 F.2d 418 (7th Cir. 1992). One exercising the right to self-defense is required to act upon the instant and without time to deliberate and investigate. French v. State, 403 N.E.2d 821, 824 (Ind. 1980).

> Southard v. State, 422 N.E.2d 325, 331 (Ind. Ct. App. 1981) (holding that where assailant did not have the immediate ability to carry out his threats, the D had not shown evidence that he reasonably perceived imminent danger).

Proof that a danger is sufficiently imminent or impending to excuse the use of deadly force requires evidence that defendant, based upon prior experience or abuses, reasonably perceived imminent or impending danger close in time to the use of deadly force. Whipple v. State, 523 N.E.2d 1363 (Ind. 1988). Proof that defendant was a victim of an abusive or violent ongoing relationship does not, standing alone, support the giving of self-defense instructions. Id.

> State v. Gallegos, 719 P.2d 1268 (N.M. App. 1986) (D, who had experienced repeated physical abuse by husband, was entitled to self-defense instruction in trial for killing her husband where husband, on day of killing, sexually abused D, struck child with a belt buckle, and threatened to kill the D).
>
> People v. Scott, 424 N.E.2d 70 (Ill. App. 1981) (D entitled to self-defense instruction following the killing of her husband after husband beat D with a pistol and fists and then gestured in such a manner that D, based on previous encounters, could have reasonably believed that husband was about to beat her again).
>
> Reed v. State, 479 N.E.2d 1248, 1253 (Ind. 1985) (evidence overwhelmingly shows that D shot his father and mother while both of them were sleeping; therefore, self-defense instruction was properly refused).
>
> Hill v. State, 497 N.E.2d 1061 (Ind. 1986) (affirming conviction of battered wife who continued to fire shots into her estranged husband although he was no longer a threat when he fell to the ground).
>
> Jahnke v. State, 682 P.2d 991 (Wyo. 1984) (affirming conviction of 16-year-old D for gunning down abusive father who, at time of killing, presented no danger to the son).
>
> State v. Leaphart, 673 S.W.2d 870 (Tenn. Cr. App. 1983) (affirming conviction of battered wife for hiring killers to murder her husband who, at the time of his death, posed no imminent danger to wife).

Howard v. State, 755 N.E.2d 242 (Ind. Ct. App. 2001) (D's testimony at trial failed to establish sufficient basis for self-defense instruction because there was no indication that D was in fear of bodily harm).

White v. State, 726 N.E.2d 831 (Ind. Ct. App. 2000) (no error in refusing D's self-defense instruction, where there was no evidence D reasonably believed she was in imminent danger when she stabbed ex-husband).

Right of self-defense passes when danger passes. Bryan v. State, 450 N.E.2d 53 (Ind. 1983). See also Schlegel v. State, 150 N.E.2d 563 (Ind. 1958).

A person claiming self-defense cannot reasonably base a belief that the threat is imminent on actions of another who has withdrawn from confrontation. Henson v. State, 786 N.E.2d 274 (Ind. 2003). The reasonableness of a defendant's belief that he was entitled to act in self-defense is determined from that point in time at which the defendant takes arguably defense action; the belief must be supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant. Id. Where a defendant arms himself or herself with a weapon before the imminent threat exists in a premeditated strategy to retaliate for past violence—rather than to protect against imminent use of unlawful force—a self-defense instruction is not available. Id.

Henson v. State, 786 N.E.2d 274 (Ind. 2003) (despite D's testimony that, based on prior incidents, prison guards were coming to beat him, record showed that his actions were not without fault where initial confrontation that gave rise to D's fear of retribution from the guards was provoked by his initial confrontation and violent epithet directed at guards; nothing in record supported D's contention that he was reasonable in his belief of imminent bodily harm; D armed himself for premeditated attack on corrections officers before officers arrived).

Where a victim is felled by the first shot, even where that shot may be justified, a second shot cannot be justified as self-defense. Hill v. State, 532 N.E.2d 1153 (Ind. 1989). See also Schlegel v. State, 150 N.E.2d 563 (Ind. 1958).

Wade v. State, 482 N.E.2d 704 (Ind. 1985) (where medical testimony showed that victim was no longer a threat after the first shot, D reloaded and fired again, force used was not reasonable anymore).

Fuentes v. State, 952 N.E.2d 275 (Ind. Ct. App. 2011) (jury could not have properly found that D acted in self-defense when he shot victim a second time; after first shot, victim fell to his knees and put his arms and hands up in a defenseless position; D's right to self-defense therefore ceased).

Hill v. State, 497 N.E.2d 1061 (Ind. 1986) (affirming conviction of battered wife who continued to fire shots into her estranged husband although he was no longer a threat when he fell to the ground).

3. Duty to retreat

Where a defendant has entered into combat with another person or is the initial aggressor, there is a duty to withdraw from the altercation, if possible, and the defense of self-defense is not available to one who does not so withdraw. Hoemig v. State, 522 N.E.2d 392 (Ind. Ct. App. 1988). However, even an initial aggressor may be justified in using force if the defendant communicates his intent to withdraw and the other person continues or threatens to continue unlawful action. Hirsch v. State, 697 N.E.2d 37 (Ind. 1998).

Lambert v. State, 306 N.E.2d 115 (Ind. Ct. App. 1974) (even assuming that victim was initial aggressor, evidence revealed that D's actions exceeded bounds allowed under law of self-defense and that D, at time of shooting which occurred when victim began to retreat and made gesture of surrender, had become aggressor to unreasonable degree).

Ballard v. State, 808 N.E.2d 729 (Ind. Ct. App. 2004) (after closing and locking front door, 63 year-old could have retreated into safety of residence and contacted police for further help instead of retrieving handgun and engaging in further altercation).

Where a victim is felled by the first shot, even where that shot may be justified, a second shot cannot be justified as self-defense. Hill v. State, 532 N.E.2d 1153 (Ind. 1989). See also Schlegel v. State, 150 N.E.2d 563 (Ind. 1958).

Wade v. State, 482 N.E.2d 704 (Ind. 1985) (where medical testimony showed that victim was no longer a threat after the first shot, D reloaded and fired again, force used was not reasonable anymore).

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Hill v. State, 497 N.E.2d 1061 (Ind. 1986) (affirming conviction of battered wife who continued to fire shots into her estranged husband although he was no longer a threat when he fell to the ground).

D. Interplay Between Self-Defense, other Defense Theories and Sudden Heat

The theory of self-defense embraces intentional as well as accidental killings. Southard v. State, 422 N.E.2d 325 (Ind. Ct. App. 1981) (the theories of self-defense and accidental homicide are not inconsistent as a matter of law and may be raised simultaneously). Thus, the defense of self-defense is available to an accused who accidentally kills his assailant while asserting reasonable force to repel the assailant. Id.

Self-defense is not inconsistent with claim of sudden heat. Pinegar v. State, 553 N.E.325 (Ind. Ct. App. 1981). Under appropriate circumstances, evidence supporting sudden heat as a mitigating factor may also support a defense of self-defense, and the jury may consider both theories in delivering its verdict. Brantley v. State, 91 N.E.3d 566 (Ind. 2018).

Theories of self-defense and voluntary intoxication are not inconsistent as a matter of law and may be raised simultaneously as independent theories. Shackelford v. State, 486 N.E.2d 1014 (Ind. 1986).

VII. DEGREE OF FORCE

The reasonableness of the amount of force used will vary based on the threat or danger that the defendant was facing at the time of the use of force; such determinations are factual in nature and are up to the jury to decide. Ford-El v. State, 533 N.E.2d 157 (Ind. Ct. App. 1989) (reversing conviction where court failed to instruct that jury must determine whether D's use of railroad spike was use of deadly force removed factual issue of whether deadly force had been used from jury's determination, effectively invading province of jury).

Self-Defense is a law of necessity; right of self-defense arises with, ends with, and may only be equal to necessity. Jennings v. State, 318 N.E.2d 358 (Ind. 1974).

Reasonable force and/or a citizen's arrest may be properly effectuated regarding misdemeanor conduct only when the conduct amounts to actual violence or the imminent threat of actual violence towards person or property. Lemon v. State, 868 N.E.2d 1190 (Ind. Ct. App. 2007).

The force used to repel an attack must be reasonable and may be used only in the belief that such degree of force is necessary to defend oneself. Sanders v. State, 428 N.E.2d 23 (Ind. 1981). See also Crisler v. State, 509 N.E.2d 822 (Ind. 1987).

A. Deadly Force

Deadly force is justified only to prevent injury, the imminent danger of injury or force, or the threat of force, and not to effect an arrest or prevent escape. Rose v. State, 431 N.E.2d 521 (Ind. Ct. App. 1982). Deadly force may never be used by a non-law enforcement officer to effect the arrest or prevent the escape of a felon. Id. Even if a person is assaulted, the trier of fact can rightfully find that a reasonable person in the same circumstances would not have been placed in reasonable fear of death or great bodily harm and therefore would not have been justified in use of deadly force in self-defense. Spinks v. State, 437 N.E.2d 963 (Ind. 1982).

> Lilly v. State, 506 N.E.2d 23 (Ind. 1987) (despite evidence of prior threat, fact D had a broken ankle and claimed that he feared for his life, evidence did not show that D acted in self-defense where D was trimming hair when victim entered room, D turned, grabbed shotgun, cocked it, aimed it at victim, and pulled the trigger).

Mere fact that the victims were the initial aggressors is not dispositive as to whether deadly force was a reasonable response. Birdsong v. State, 685 N.E.2d 42 (Ind. 1997). Even if a person is initially assaulted, the trier of fact may find that the use of deadly force is not justified if a reasonable person in the same circumstances would not have been placed in reasonable fear of death or great bodily harm. McCraney v. State, 447 N.E.2d 589 (Ind. 1983) (jury was justified in finding that D had no reason to believe the killing was necessary to preserve his own life or prevent great bodily harm where the victim was intoxicated, although initial aggressor, and D had no knowledge of any weapons that victim may have had). See also Loyd v. State, 398 N.E.2d 1260 (Ind. 1980).

Where a victim is felled by the first shot, even where that shot may be justified, a second shot cannot be justified as self-defense. Hill v. State, 532 N.E.2d 1153 (Ind. 1989). See also Schlegel v. State, 150 N.E.2d 563 (Ind. 1958).

Wade v. State, 482 N.E.2d 704 (Ind. 1985) (where medical testimony showed that victim was no longer a threat after the first shot, D reloaded and fired again, force used was no longer reasonable).

B. Reasonableness

The amount of force used to protect oneself must be proportionate to the requirements or urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999) (fact that D was initially struck in mouth by victim was not life-threatening enough to justify self-defense with knife).

Where a person has used more force than necessary to repel an attack, the right to self-defense is extinguished and the ultimate result is that the victim then becomes the perpetrator. Geralds v. State, 647 N.E.2d 369 (Ind. Ct. App 1995) (force employed by D was unreasonable and excessive and destroyed any claim to self-defense that he may have had; although D's fear was reasonable, his extreme overreaction and use of deadly force was not; where victim-burglar fell through D's celling, D fired automatic machine gun 20 to 25 times and fired additional rounds at perpetrator as he attempted to retreat). See also Morrison v. State, 613 N.E.2d 865, 868 (Ind. Ct. App. 1993).

Boyer v. State, 883 N.E.2d 158 (Ind. Ct. App. 2008) (evidence supported rejection of self-defense claim in prosecution for domestic battery; although D asserted that in scratching victim's arms and face she was attempting to escape and repel victim as he battered her, there was evidence that D's response was greater than reasonably necessary to counter victim's initial conduct in nudging D toward the exit of victim's residence, and D struck victim in face after a third party had interceded and ended the initial altercation).

Martin v. State, 784 N.E.2d 997 (Ind. Ct. App. 2003) (State met its burden of negating at least one of the elements of self-defense beyond a reasonable doubt where the force used by D to protect his father was not proportionate to the requirements or urgency of the situation; victim and father were fighting, D pushed father out of the way, punched victim, knocked him to the ground, straddled him, and began hitting him in the face and then left; victim died from injuries).

C. Protection of dwelling, curtilage, or occupied motor vehicle

One cannot use defense of dwelling if in fact there had not been an attack or unlawful entry of his dwelling or premises. Bixler v. State, 471 N.E.2d 1093 (Ind. 1984). See also Smith v. State, 403 N.E.2d 869 (Ind. Ct. App. 1980).

Deadly force is not justifiable when used against a person trespassing upon property, in the absence of an imminent threat against the accused. Geralds v. State, 647 N.E.2d 369 (Ind. Ct.

App. 1995) (deadly force was excessive in the face of the trespasser's obvious retreat and lack of aggression towards D).

Hayes v. State, 15 N.E.3d 82 (Ind. Ct. App. 2014) (evidence did not support defense of property instruction where victim had knocked on D's front door in an effort to serve him with legal documents, she had returned to her truck when D arrived in the front yard with two guns; at that point victim got out of her truck to speak with D but remained on public sidewalk at all times).

Goodwin v. State, 439 N.E.2d 595 (Ind. 1982) (defense of property instruction was proper where D entered victim's home in angry manner, was armed, cursed and threatened victim, and approached victim with arm cocked).

D. Protection of other property

Force which might be justified to prevent consummation of offense may not be justified to later apprehend culprit or recover property. Suratt v. Petrol, Inc., 312 N.E.2d 487 (Ind. Ct. App. 1974).

A person is not justified in using deadly force to defend property other than a dwelling, curtilage, or occupied motor vehicle. Ind. Code § 35-41-3-2(c). Deadly force means any force that creates a substantial risk of serious bodily injury. Ind. Code § 35-41-1-17.

Pointing a loaded firearm is considered an action that creates a substantial risk of bodily injury to another person. Spurlock v. State, 675 N.E.2d 312 (Ind. 1996). Since a gun could accidentally be discharged or victim could grab gun causing serious injury or death to one or both of the parties involved, pointing a firearm creates a substantial risk of serious bodily injury. Nantz v. State, 740 N.E.2d 1276 (Ind. Ct. App. 2001) (concluding that the D's conduct of pointing a firearm constituted unreasonable force to protect his alleged property interest in a bulldozer).

Gomez v. State, 56 N.E.3d 697 (Ind. Ct. App. 2016) (domestic battery conviction affirmed; evidence supported conclusion that force used by D to defend property was unreasonable in light of urgency of situation and it was unreasonable to protect any alleged interest he may have had in rents from property).

McConnell v. McKillip, 573 F.Supp.2d 1090 (S.D. Ind. 2008) (property owner's conduct of attempting to strike city employees with a board and failure to comply with the officer's orders to put the board down was less peaceful than other manners he could have employed to defend his property; not entitled to self-defense instruction).

Huls v. State, 971 N.E.2d 739, 746 (Ind. Ct. App. 2012) (not an acceptable standard of conduct to fire a handgun into the night without determining who is there or whether the person poses a threat). See also Nordstrom v. State, 627 N.E.2d 1380, 1383 (Ind. Ct. App. 1994).

VIII. EVIDENCE

When a defendant asserts a claim of self-defense, any evidence legitimately tending to support his theory is admissible. Brand v. State, 766 N.E.2d 772 (Ind. Ct. App. 2002).

A. Burden of Proof

When the claim of self-defense is raised, the burden falls upon the State to negate at least one of the necessary elements. McEwen v. State, 695 N.E.2d 79 (Ind. 1998). Where self-defense is claimed, the burden is upon the State to show that the defendant has not met one or more of the requirements of such defense; whether the State has borne its burden is a question of fact to be decided by the jury. Nuss v. State, 328 N.E.2d 747 (Ind. Ct. App. 1975). See also Rogers v. State, 814 N.E.2d 695 (Ind. Ct. App. 2004); Shively v. State, 578 N.E.2d 644 (Ind. 1991); Pointer v. State, 585 N.E.2d 33 (Ind. Ct. App. 1992); Lilly v. State, 506 N.E.2d 23 (Ind. 1987); Lamotte v. State, 495 N.E.2d 729 (Ind. 1986); Mullen v. State, 421 N.E.2d 731 (Ind. Ct. App. 1981); McCraney v. State, 447 N.E.2d 589 (Ind. 1983); and Woolum v. State, 381 N.E.2d 1072 (Ind. Ct. App. 1978).

> Larkin v. State, ___N.E.3d___ (Ind. Ct. App. 2020) (based on the lack of sufficient evidence to contradict D's statement of self-defense, court of appeals was compelled to find the State did not meet its burden of negating his self-defense claim beyond a reasonable doubt). See also Cobbs v. State, 528 N.E.2d 62 (Ind. 1988).

The burden of proof can be met not only by rebuttal evidence when the defendant has presented evidence of the defense but also by affirmatively showing within its case-in-chief that the defendant was not acting in self-defense. Palmer v. State, 425 N.E.2d 640 (Ind. 1981).

B. Defendant's Intent and State of Mind

A defendant does not have to testify in order for the jury to be instructed on self-defense. Ault v. State, 950 N.E.2d 326 (Ind. Ct. App. 2011). Inferences about an individual's subjective state of mind are routinely drawn from the circumstances, regardless of whether that individual provides personal insight into his actual state of mind. Id. Jury is not required to credit a defendant's version of events. Kimbrough v. State, 911 N.E.2d 621 (Ind. Ct. App. 2009).

A defendant claiming self-defense is not necessarily restricted to producing evidence of his own state of mind or belief; it is ultimately the defendant's belief that is at issue; however, the beliefs of others may shed light upon the reasonableness of the defendant's beliefs. Hood v. State, 877 N.E.2d 492, 495-96 (Ind. Ct. App. 2007).

The defendant's own account of events, including his feelings, intent, perceptions, and the belief that he was in imminent danger, are essential elements of a self-defense claim. Hirsch v. State, 697 N.E.2d 37 (Ind. 1998) (court erred in excluding D's testimony).

C. Relevance

When a claim of self-defense is interposed, any fact which reasonably would place a person in fear or apprehension of death or bodily injury is admissible. Russell v. State, 577 N.E.2d 567, 568 (Ind. Ct. App. 1991).

Broome v. State, 687 N.E.2d 590 (Ind. Ct. App. 1997), *aff'd in part and vacated in part*, 694 N.E.2d 280 (Ind. 1998) (testimony describing consensual homosexual encounter between witness and victim but did not indicate that victim used force or violence is not relevant to support D's self-defense claim and cannot demonstrate D's reasonable belief in the need to prevent serious bodily injury).

Evidence of a victim's refusal to stop fighting is highly relevant to assessing D's claim of self-defense. Hirsch v. State, 697 N.E.2d 37 (Ind. 1998).

Victim's reputation and character for peace and quietude, if known to the accused at the time he acted, becomes relevant on the issue of whether or not he believed himself to be in danger. French v. State, 403 N.E.2d 821 (Ind. 1980). But see Gillespie v. State, 832 N.E.2d 1112 (Ind. Ct. App. 2005) (prosecution evidence not relevant to self-defense where evidence of D's anger, use of drugs and alcohol, and threats occurred before he faced the victim in a fight started by the victim, nor was it relevant to the amount of force necessary for D to protect himself).

Burnside v. State, 858 N.E.2d 232 (Ind. Ct. App. 2006) (trial court did not err in admitting evidence of a D's lack of a handgun permit).

Companion testimony of an imminent threat that is corroborative of a defendant's perception is relevant to make a determination of objective reasonableness. Hood v. State, 877 N.E.2d 492 (Ind. Ct. App. 2007) (trial court erred in excluding D's companion's testimony that he too thought the victim was reaching for a gun, where both testimony goes to support D's claim that he reasonably believed he was in danger of death or serious bodily injury).

Littler v. State, 871 N.E.2d 276 (Ind. 2007) (mother's testimony confirming the victim's mental condition and his history of violent behavior was probative and relevant to D's belief that he needed to use force against the victim and would have lent credibility to D's assertions).

Evidence of events that occurred after the crime that is not necessary to complete the story is inadmissible. McGee v. State, 495 N.E.2d 537 (Ind. 1986).

Front porch is a part of the premises upon which the right of self-defense can arise. Smith v. State, 403 N.E.2d 869 (Ind. Ct. App. 1980).

Relevance is not without its limits; evidence that is too remote may be inadmissible, particularly where the prejudicial impact outweighs the probative value. James v. State, 2018 Ind. App. LEXIS 80 (Ind. Ct. App. March 2, 2018) (trial court properly barred evidence of a threat by victim to kill the D made two years earlier; threat was too remote to be relevant especially considering that the parties' relationship had greatly improved in the ensuing two years).

1. General Crime Rate

General crime rate in an area is not relevant evidence to justify the shooting of an individual who may appear to a defendant to be in the least way suspicious. Woolum v. State, 381 N.E.2d 1072 (Ind. Ct. App. 1978). However, such evidence may be relevant if the defendant can prove that: (1) defendant had been a prior victim of one of those recent crimes; (2) the

circumstances of the recent crimes were similar to the defendant's circumstances; or (3) the victim had been connected in any way with the prior crimes. Id. at 1076.

D. Victim Character Evidence

A victim's violent nature is relevant to a defendant's theory of self-defense. Johnson v. State, 671 N.E.2d 1203, 1208, n.8 (Ind. Ct. App. 1996). There is a risk of prejudice when introducing evidence of a victim's character, as "[l]earning of the victim's bad character could lead the jury to think that the victim merely 'got what he deserved' and to acquit for that reason. Nevertheless, at least in murder and perhaps in battery cases as well, when the identity of the first aggressor is really in doubt, the probative value of the evidence ordinarily justifies taking this risk." McCormick on Evidence § 193, at 1072 (7th ed. 2013).

Proof of a person's character is admissible when the defendant in a homicide or battery case offers evidence to prove that: (1) the victim was the initial aggressor; or (2) the victim had a violent character and the defendant's knowledge of that character gave him reason to fear the victim. Zachary v. State, 888 N.E.2d 343, 347 (Ind. Ct. App. 2008) (*citing* Eldridge v. State, 627 N.E.2d 844, 849 (Ind. Ct. App. 1994)). See also Coleman v. State, 694 N.E.2d 269 (Ind. 1998).

1. Fear or Apprehension of Victim

Evidence of the victim's character may be admitted to show that the victim had a violent character giving the defendant reason to fear him. Holder v. State, 571 N.E.2d 1250, 1254 (Ind. Ct. App. 1983). The victim's reputation for violence is pertinent to a claim of self-defense. Brooks v. State, 683 N.E.2d 574, 576 (Ind. 1997). The victim's reputed character, propensity for violence, prior threats and acts, if known by the defendant, may be relevant to the issue of whether a defendant was afraid of the victim prior to utilizing force or deadly force against him. Brand v. State, 766 N.E.2d 772 (Ind. Ct. App. 2002) (holding that a D is entitled to support his claim of self-defense by introducing evidence of matters that would make his fear of the victim reasonable).

Welch v. State, 828 N.E.2d 433 (Ind. Ct. App. 2005) (events which occurred after stabbing could not be relevant to D's state of mind or reasonable fear at time of stabbing).

Mills v. State, 498 N.E.2d 1236 (Ind. 1986) (any history of fighting that victim had been involved in was properly excluded since D testified that he did now know the victim or anything about him at the time of the incident).

Evidence introduced by a defendant to show his apprehension of the victim must imply a propensity for violence on the part of the victim. Davis v. State, 481 N.E.2d 387, 390 (Ind. 1985). Evidence must relate specifically to the victim, not to his family or a third party such as a close friend or business associate. Schmanski v. State, 385 N.E.2d 1122, 1125 (Ind. 1979). The victim's threats do not need to be directed toward the defendant; but the defendant must have knowledge of these matters at the time of the fatal confrontation between the victim and the defendant. Holder v. State, 571 N.E.2d 1250, 1254 (Ind. Ct. App. 1983). See also Feliciano v. State, 477 N.E.2d 86, 88 (Ind. 1985). However, a defendant must first introduce appreciable evidence of the victim's aggression to substantiate the claim of

self-defense before evidence is admissible to show the reasonableness of the defendant's fear of the victim. Holder v. State, 571 N.E.2d 1250, 1254 (Ind. Ct. App. 1983). See also Phillips v. State, 550 N.E.2d 1290, 1297 (Ind. 1990); Shepard v. State, 451 N.E.2d 1118 (Ind. Ct. App. 1983); and Graham v. State, 535 N.E.2d 1152, 1154 (Ind. 1989).

Bragg v. State, 695 N.E.2d 179 (Ind. Ct. App. 1998) (D's testimony was enough to justify giving of instruction).

Brand v. State, 766 N.E.2d 772 (Ind. Ct. App. 2002) (D's evidence that victim had dealt drugs, been a gang member, and had offered to sell the defendant a firearm was probative of the reasonableness of defendant's fear; the defendant did, in fact, know about the drug dealing, gang membership and firearm).

Broome v. State, 687 N.E.2d 590, 601 (Ind. Ct. App. 1987), *aff'd in part and vacated in part*, 694 N.E.2d 280 (Ind. 1998) (trial court's refusal to admit evidence of victim's homosexual conduct was not error; nothing in testimony would have indicated that victim had a reputation for physically injuring, or using force against, the objects of his sexual advances, and thus, was not probative).

Russell v. State, 577 N.E.2d 567 (Ind. 1991) (fact that D knew the victim had just been released from prison could place him in fear or apprehension because it is not unreasonable to assume such a person may have violent character and is admissible to prove self-defense claim).

The Indiana Supreme Court has held that a claim of self-defense requires both a subjective belief that force is necessary to prevent serious bodily injury and that such actual belief is reasonable under the circumstances. Littler v. State, 871 N.E.2d 276 (Ind. 2007). Thus, "a defendant claiming self-defense is not necessarily restricted to producing evidence of his own state of mind or belief. It is ultimately the defendant's belief that is at issue; however, the beliefs of others may shed light upon the reasonableness of the defendant's beliefs." Hood v. State, 877 N.E.2d 492, 495-96 (Ind. Ct. App. 2007).

Littler v. State, 871 N.E.2d 276 (Ind. 2007) (in murder prosecution, trial court erroneously excluded evidence of victim's prior acts of violence, his mental condition and history of violent behavior to corroborate the defendant's fear).

2. Victim as Initial Aggressor

When evidence of the victim's violent character is offered for the purpose of showing that the victim was the aggressor against the defendant in support of a claim of self-defense, there is no requirement of a foundational showing of the defendant's knowledge of the victim's character. Chapman v. State, 469 N.E.2d 50, 54 (Ind. Ct. App. 1984).

Evidence offered for this purpose is limited to only evidence of the victim's reputation as evidence of his character. Niemeyer v. McCarty, 51 N.E.2d 365 (Ind. 1943). Thus, character evidence to show that the victim was the initial aggressor may only be proved by general reputation evidence, not by evidence of specific bad acts. Norris v. State, 398 N.E.2d 1203,

1205 (Ind. 1986). See also Coleman v. State, 694 N.E.2d 269, 277 (Ind. 1998) and Johnson v. State, 671 N.E.2d 1203, 1208 (Ind. Ct. App. 1996).

Miller v. State, 166 N.E.2d 338 (Ind. 1960) (trial court committed reversible error in sustaining the State's objection to testimony from two police officers concerning the victim's bad reputation for peace and quiet).

Sweazy v. State, 1 N.E.2d 992 (Ind. 1937) (where a murder D claimed his victim had been the aggressor, trial court did not err in admitting evidence of the victim's good reputation for peace and quietude).

Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (trial court properly allowed D's testimony that victim had reputation in community for being violent and correctly rejected testimony as to victim's propensity for carrying weapons when both testimony was offered to prove victim was initial aggressor).

Brooks v. State, 683 N.E.2d 574 (Ind. 1997) (trial court did not err in excluding testimony that victim had been charged with two counts of battery, one of which resulted in conviction; the D argued that evidence regarding victim's violent propensities would have supported his claim that victim was initial aggressor in confrontation). See also Bell v. State, 820 N.E.2d 1279 (Ind. Ct. App. 2005); Guillen v. State, 829 N.E.2d 142 (Ind. Ct. App. 2005); and Price v. State, 765 N.E.2d 1245 (Ind. 2002).

Wells v. State, 904 N.E.2d 265 (Ind. Ct. App. 2009) (victim's violent act of forcing asexual encounter with another previously was not admissible under Rule 404(b) to corroborate the D's story that the victim acted similarly towards him).

E. Hearsay

When evidence is offered to prove defendant's fear or apprehensive of the victim to justify use of reasonable force for self-defense, such evidence is not being offered for the truth of the matter asserted, but rather to prove the defendant's beliefs at the time of the use of force; thus, no hearsay exception is needed since it does not constitute hearsay. See Smith v. State, 490 N.E.2d 300 (Ind. 1986).

Miller v. State, 720 N.E.2d 696, 704 (Ind. 1999) (admissible facts showing fear or concern of death or bodily injury must relate to the D's fear of the victim). See also Henderson v. State, 455 N.E.2d 1117 (Ind. 1983).

Hirsch v. State, 697 N.E.2d 317 (Ind. 1998) (trial court erred by barring D from testifying to victim's refusal to stop fighting; D did not offer statement to prove truth of matter asserted, but to show that D was acting reasonably by continuing to pin victim on floor because D believed victim was going to continue fighting and that D was not initial aggressor or did not enter into combat with victim).

F. Examples of Sufficient Evidence

Wood v. State, 319 N.E.2d 688 (Ind. Ct. App. 1974) (where D, armed with a shotgun went to a former girlfriend's home to continue an altercation that began over the phone, jury rightfully rejected D's claim of self-defense although decedent had also been armed and D was injured due to decedent's actions). See also Crisler v. State, 509 N.E.2d 822 (Ind. 1987) and Hollowell v. State, 707 N.E.2d 1014 (Ind. Ct. App. 1999).

Wade v. State, 482 N.E.2d 704 (Ind. 1985) (sufficient evidence negated D's claim of self-defense where medical testimony indicated that decedent would no longer have been a threat after first shotgun wound; degree of force exceeded). See also Hill v. State, 497 N.E.2d 1061 (Ind. 1986); Weedman v. State, 21 N.E.3d 873 (Ind. Ct. App. 2014); and Hinkle v. State, 471 N.E.2d 1088 (Ind. 1984).

Shively v. State, 578 N.E.2d 644 (Ind. 1991) (evidence did not support self-defense where D threatened to get even with the victim and was holding a knife in his hand when he rushed toward victim and stabbed him).

Sailors v. State, 593 N.E.2d 202 (Ind. Ct. App. 1992) (evidence did not support an inference that D reasonably feared for his life). See also Lloyd v. State, 448 N.E.2d 1062 (Ind. 1983) and King v. State, 61 N.E.3d 1275 (Ind. Ct. App. 2016).

Jordan v. State, 656 N.E.2d 816 (Ind. 1995) (evidence demonstrated that D participated willingly in the violence and did not have a reasonable fear of harm when he fired his handgun and killed victim).

Birdsong v. State, 685 N.E.2d 42 (Ind. 1997) (D used unreasonable force where two victims forced their way into D's apartment armed with a gun and a can of wasp spray, dropping gun as they entered, and D chopped them with an axe and shot them, continuing after incapacitation). See also Hill v. State, 497 N.E.2d 1061 (Ind. 1986) and Hinkle v. State, 471 N.E.2d 1088 (Ind. 1984).

Miller v. State, 720 N.E.2d 696 (Ind. 1999) (jury rejected self-defense where D aggressively approached unarmed victim and purposefully fired at him multiple times, despite D's claim that he saw the victim reach for a weapon).

Brown v. State, 738 N.E.2d 271 (Ind. 2000) (where D shot both victims, there was sufficient evidence for jury to conclude D did not shoot in self-defense).

Carroll v. State, 744 N.E.2d 432 (Ind. 2001) (where D claims that victim pulled a gun on him, there was sufficient evidence to rebut D's claim of self-defense where the decedent suffered deep stab wounds inflicted with great force and defensive wounds on the hand, which could not have occurred while holding a gun).

Hobson v. State, 795 N.E.2d 1118 (Ind. Ct. App. 2003) (self-defense claim sufficiently rebutted where victim was initial aggressor, D chose to fight back, and grabbed a gun after they were separated, and then shot victim in back as victim was running away). See also Mariscal v. State, 719 N.E.2d 1208 (Ind. 1997).

Green v. State, 870 N.E.2d 560 (Ind. Ct. App. 2007) (sufficient evidence rebutted D's self-defense claim where victim had been kicked, strangled, and stabbed in the neck, while D showed no signs of injury; D also took steps to conceal murder).

McKinney v. State, 873 N.E.2d 630 (Ind. Ct. App. 2007) (deadly force was not proportionate to situation where victim was on a "bad trip" from drugs, made an aggressive move toward pregnant wife of D's friend; victim's aggression ceased when D put the victim in a headlock, placed a gun against his temple, and shot him in the head).

Boyer v. State, 883 N.E.2d 158 (Ind. Ct. App. 2008) (D's conduct in scratching the victim on the face and arms as the victim escorted D to a door showed that D's use of force was not reasonably justified under the circumstances). See also Martin v. State, 784 N.E.2d 997 (Ind. Ct. App. 2003).

Simpson v. State, 915 N.E.2d 511 (Ind. Ct. App. 2009) (D shot victim in retaliation for beating a third person, not to defend third person; when D shot victim, he could not have been laboring under a reasonable fear of death or great bodily harm).

Huls v. State, 971 N.E.2d 739 (Ind. Ct. App. 2012) (State successfully negated D's self-defense claim where teenagers that D shot at were not on his property, he opened fire without identifying his target, and continued to shoot after the teenagers asked him to stop firing and stated that they were leaving).

Shoultz v. State, 995 N.E.2d 647 (Ind. Ct. App. 2013) (D instigated violence that led to him killing his father; D's characterizing of duct-taping a puppy's legs as a joke or prank diminished the seriousness of his action, despite his father's violent entry into his room).

Kimble v. State, 569 N.E.2d 653 (Ind. 1991) (evidence rebutted self-defense claim; although D testified that victim was armed, no gun or bullets were found, and other witnesses testified that they did not see a gun in the victim's hands).

Pointer v. State, 585 N.E.2d 33 (Ind. Ct. App. 1992) (evidence supported D's conviction because witnesses' testimony portrayed the D as the initial aggressor who struck the unarmed victim from behind without a reasonable fear of personal harm).

Brewer v. State, 646 N.E.2d 1382 (Ind. 1995) (evidence sufficient to support murder conviction where D believed that unwanted sexual advances from the victim should be considered threatening enough to justify deadly force, victim had already received consensual fellatio form the victim, and evidence indicated that D continued beating the victim long after the threat had dissipated).

Milam v. State, 719 N.E.2d 1208 (Ind. 1999) (evidence was sufficient to negate the D's claim that killed her husband in self-defense where the D had frequently threatened to kill her husband the night before, and daughter hearing D state that she was going to kill her husband the next day and described the killing to other inmates).

Wilson v. State, 770 N.E.2d 799 (Ind. 2002) (State sufficiently rebutted D's claim of self-defense with evidence that D was a willing participant in the violence, continued shooting after any danger to D had ceased, and never made an attempt to withdraw from the mutual aggression).

Bryant v. State, 984 N.E.2d 240 (Ind. Ct. App. 2013) (evidence was sufficient to show that D was not justified in using pencil as weapon to stab D where D challenged victim to fight in his cell and rejecting the victim's expressed intent to withdraw from combat).

Roach v. State, 695 N.E.2d 934 (Ind. 1998) (jury could reasonably infer D was guilty of a knowing killing or acted in self-defense where evidence showed that D fired gun from distance of three feet or more and had a blood alcohol level of .277%).

Quinn v. State, 126 N.E.3d 924 (Ind. Ct. App. 2019) (in attempted murder prosecution, State's evidence sufficiently negated D's self-defense claim, where D went to victim's home angry and planning to hurt victim, walked around outside home carrying a loaded gun, knocked several times and refused to respond when victim repeatedly asked who was outside, and drew his gun before victim opened the door. This evidence alone supports a finding that D provoked, instigated, or willingly participated in the violence that subsequently ensued).

IX. JURY INSTRUCTIONS

A defendant in a criminal case is entitled to have the jury instructed on any theory of defense that has some foundation in the evidence; even if the evidence is weak and inconsistent so long as the evidence presented at trial has some probative value to support it. Creager v. State, 737 N.E.2d 771, 776 (Ind. Ct. App. 2000). See also Southard v. State, 422 N.E.2d 325 (Ind. Ct. App. 1981) and Shepard v. State, 451 N.E.2d 1118 (Ind. Ct. App. 1983).

Patton v. State, 837 N.E.2d 576 (Ind. Ct. App. 2005) (trial court's failure to instruct jury that D had no duty to retreat was harmless where D's defense at trial was that he was defending himself, although witnesses disagreed on whether D was the aggressor, three out of four witnesses testified D shot first, and twenty-three of thirty-two bullet casings recovered from the scene were linked to gun D was using; in light of evidence, court could not say an instruction that D had no duty to retreat would have impacted the jury's verdict).

Burton v. State, 978 N.E.2d 520 (Ind. Ct. App. 2012) (DVD showing two officers dragging D from his car onto ground and fracturing D's facial bones provided a strong evidentiary foundation that warranted the giving of a self-defense instruction; failure to so instruct was not harmless error).

Dixson v. State, 22 N.E.3d 836 (Ind. Ct. App. 2014) (where uncontradicted evidence showed that D was not in a place he had a right to be, instructional error did not affect jury's verdict).

A. Adequacy

There is no requirement that the instructions contain a statement that the State is required to prove the absence of self-defense; State may fulfill this burden by relying upon evidence in its case-in-chief. Moore v. State, 414 N.E.2d 558 (Ind. 1981). See also Woods v. State, 319 N.E.2d 688 (Ind. Ct. App. 1974).

If instruction given by trial court to jury is erroneous such that it could mislead reasonable juror as to applicable law, reversal is warranted. Carson v. State, 686 N.E.2d 864 (Ind. Ct. App. 1997). Determinative question is whether error by itself infected entire trial such that resulting conviction violates due process. Willford v. State, 571 N.E.2d 310 (Ind. Ct. App. 1991).

Carson v. State, 686 N.E.2d 864 (Ind. Ct. App. 1997) (where instruction given omitted prevention of forcible felony as justification for use of such force, instruction was incorrect statement of law on essential aspect of D's defense; conviction reversed).

Phillips v. State, 129 N.E. 466 (Ind. 1921) (where some evidence that D drew his revolver to defend his wife, an instruction that, if the weapon was drawn and pointed but was not drawn in defense of the person accused, D should be found guilty of drawing a dangerous weapon invaded the province of the jury).

Nuss v. State, 328 N.E.2d 747 (Ind. Ct. App. 1975) (an instruction limiting the reasonableness of D's claim to his belief based solely on acts of the deceased assailant was reversible error since D is entitled to rely on prior threats against him and other factors in addition to the deceased acts to prove the reasonableness of his fear).

Fuentes v. State, 952 N.E.2d 275 (Ind. Ct. App. 2011) (where instruction did not permit the jury to find that the D acted in self-defense if the jury found that the D committed the offense of carrying a handgun without a permit, it was an incorrect statement of the law; error was harmless because D's firing of multiple shots undercut his claim of self-defense).

Where the instructions include several statements about the defendant's right to defend himself against attack they are adequate to instruct the jury. Lloyd v. State, 448 N.E.2d 1062 (Ind. 1983) (no error in omission of the phrase "when a D without fault on his part is violently assaulted he may defend himself).

Miller v. State, 720 N.E.2d 696 (Ind. 1999) (instructions did not put an undue emphasis on the factor of fear).

Russell v. State, 981 N.E.2d 1280 (Ind. Ct. App. 2013) (trial court did not err in failing to give a nexus requirement instruction). But see Harvey v. State, 652 N.E.2d 876 (Ind. Ct. App. 1995) (court denied jury consideration of self-defense claim because it ignored any nexus between crime and shooting). See also Smith v. State, 777 N.E.2d 32 (Ind. Ct. App. 2002).

Carson v. State, 686 N.E.2d 864 (Ind. Ct. App. 1997) (since jury instruction omitted prevention of a forcible felony as a justification for the use of deadly force was an incorrect statement of the law and was reversible error).

Bragg v. State, 695 N.E.2d 179 (Ind. Ct. App. 1998) (error not to instruct jury on justified use of force in certain circumstances when, without instruction, jury was permitted to find D guilty even if they believed claim that D was without fault in initiating incident).

B. Pattern Jury Instructions

Below is a collection of pattern jury instructions pertaining to self-defense, taken from our available database at www.in.gov/ipdc. Please check for updated versions before using.

1. Use of Force to Protect Person

It is an issue whether the Accused acted in [self-defense] [defense of another person].

A person may use reasonable force against another person to protect [himself/herself from what he/she] or [someone else] from what the Accused reasonably believes to be the imminent use of unlawful force.

A person is justified in using deadly force, and does not have a duty to retreat, only if he/she reasonably believes that deadly force is necessary [to prevent serious bodily injury to himself/herself or a third person] [to prevent the commission of a forcible felony].

However, a person may not use force if:

[he/she is committing a crime that is directly and immediately connected to the (*confrontation use a descriptive term based on evidence*).]

(or)

[he/she is escaping after the commission of a crime that is directly and immediately connected to the (*confrontation use a descriptive term based on evidence*).]

(or)

[he/she provokes a fight with another person with intent to cause bodily injury to that person.]

(or)

[he/she has willingly entered into a fight with another person or started the fight, unless he withdraws from the fight and communicates to the other person his intent to withdraw and the other person nevertheless continues or threatens to continue the fight.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not act in self-defense.

Authority: IN Pattern Instruction No. 10.0300, Ind. Code § 35-41-3-2.

Comments from Pattern Committee:

> [T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred. Mayes v. State, 744 N.E.2d 390 (Ind. 2001).
>
> The committing a crime limits apply only when defendant "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide D entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license). When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002). The following terms are defined by law: "bodily injury" (Ind. Code § 35-31.5-2-29, Instruction No. 14.0420); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); and "serious bodily injury" (Ind. Code § 35-31.5-2-291; Instruction No. 14.3620).

Note [added]: In Burnside v. State, 858 N.E.2d 232, 240-41 (Ind. Ct. App. 2006), IAC of appellate counsel was found for not challenging an instruction given at trial that required a finding of self-defense as a precondition to a verdict on the lesser included offense of reckless homicide.

Note: Additional fact - specific and more creative instructions regarding self-defense may be found in the "Battered Spouse Defense" Section.

2. Use of Force to Protect Property

It is an issue whether the Accused acted in defense of [his/her] property.

With respect to property other than [a dwelling] [the land adjoining a dwelling, including buildings, used for domestic purposes] [an occupied motor vehicle]. A person may use reasonable force, but not deadly force, against another person if he reasonably believes that the force is necessary to immediately prevent or terminate the other person's [trespass on] [criminal interference with] property [lawfully in Accused's possession] [lawfully in possession of a member of Accused's immediate family] [belonging to a person whose property Accused has authority to protect].

[However, a person may not use force if:

[(he/she) is committing a crime that is directly and immediately connected to the trespass or criminal interference with the property (lawfully in Accused's possession) (lawfully in possession of a member of Accused's immediate family) (belonging to a person whose property Accused has authority to protect) (*use a descriptive term based on evidence*).]

(or)

[(he/she) is escaping after the commission of a crime that is directly and immediately connected to the property (lawfully in Accused's possession) (lawfully in possession of a member of Accused's immediate family) (belonging to a person whose property Accused has authority to protect)) (*use a descriptive term based on evidence*).]

(or)

[(he/she) provokes a fight with another person with intent to cause bodily injury to that person]

(or)

[(he/she) has willingly entered into a fight with another person or started the fight, unless he/she withdraws from the fight and communicates to the other person his/her intent to withdraw and the other person nevertheless continues or threatens to continue the fight.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not act in defense of his/her property.

Comment from Pattern Committee

If there is no evidence suggesting the property being protected was the defendant's dwelling or in his curtilage, omit the bracketed first phrase in the first sentence.

If there is an issue whether the property defendant was protecting was or was not part of the "curtilage," see the definitions for "curtilage" in Instruction No. 10.0400 and its Commentary.

The "committing a crime" or "escaping after the commission of a crime" limits on this defense do not apply if defendant was "coincidentally committing some (unrelated) criminal offense." The limits apply only when defendant "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license). See also Mayes v. State, 744 N.E.2d 390 (Ind. 2001) ("There must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.")

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); and "dwelling" (I.C. 35-31.5-2-107; Instruction No. 14.1400).

3. Use of Force to Protect Dwelling, Curtilage, or Motor Vehicle

It is an issue whether the Accused acted in defense of [his/her] [dwelling] [adjoining property].

A person may use reasonable force, including deadly force, against another person, and does not have a duty to retreat, if he/she reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

However, a person may not use force if:

[(he/she) is committing a crime that is directly and immediately connected to the (entry to) (attack on) his dwelling. (*use a descriptive term based on evidence*)]

(or)

[(he/she) is escaping after the commission of a crime that is directly and immediately connected to the (entry to) (attack on) his dwelling. (*use a descriptive term based on evidence*)]

(or)

[(he/she) provokes a fight with another person with intent to cause bodily injury to that person.]

(or)

[(he/she) has willingly entered into a fight with another person or started the fight, unless he/she withdraws from the fight and communicates to the other person his/her intent to withdraw and the other person nevertheless continues or threatens to continue the fight.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not act in defense of [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

Authority: IN Pattern Instruction 10.03400, Ind. Code § 35-41-3-2.

Comments from the Pattern Committee:

The statute here applies to attacks or entries on defendant's "curtilage." Few jurors will know what "curtilage" means and so the Committee has not employed it in the instruction. The Committee suggests that the "land adjoining the dwelling, including buildings, used for domestic purposes" appearing above will suffice in most cases to define "curtilage." In cases where a "curtilage" issue is in serious dispute, the trial judge may wish to use Instruction No. 14.42's more elaborate definition for "curtilage," derived from Fox v. State, 179 Ind. App. 267, 384 N.E.2d 1159 (1979)("curtilage" as used in common-law definition of arson). The "committing a crime" or "escaping after the commission of a crime" limits on this defense do not apply if defendant was "coincidentally committing some [unrelated] criminal offense." The limits apply only when defendant "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol

and hence was committing the offense of possession of a handgun without a license). See also Mayes v. State, 744 N.E.2d 390 (Ind. 2001) ("There must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.")

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002). The following terms are defined by law: "bodily injury" (Ind. Code § 35-31.5-2-29, Instruction No. 14.0420); "deadly force" (Ind. Code § 35-31.5-2-85; Instruction No. 14.1020); "dwelling" (Ind. Code § 35-31.5-2-107; Instruction No. 14.1400); and "serious bodily injury" (Ind. Code § 35-31.5-2-291; Instruction No. 14.3620).

4. Citizen's Use of Force Relating to Arrest or Escape

A person other than a law enforcement officer is justified in using reasonable force against another person to effect that person's arrest or prevent that person's escape if:

1. a felony has been committed; and

2. there is probable cause to believe the other person committed that felony.

The felony of [*name felony the accused asserts was committed by arrested person*] is defined as

[define felony].

It is a defense to the charge of [*name offense charged*] that:

1. The felony of [name felony the accused asserts was committed by arrested person] had in fact been committed, and

2. The accused knew that [name felony] had been committed, and

3. Based on all the circumstances known to the accused there was a reasonable probability [*name arrested person*] had committed the felony, and

4. The accused used reasonable non-deadly force **[* see note]** to [arrest (*name arrested person*)] [prevent (*name arrested person*) from escaping].

The State has the burden of disproving this defense beyond a reasonable doubt.

Authority: Ind. Pattern Instruction 10.1100, Ind. Code § 35-41-3-3(a).

Comment from Pattern Committee:

There is no Indiana decision stating where the burden of proof lies. Nationally, "[t]he burden of persuasion is nearly always on the state, beyond a reasonable doubt." P. Robinson, Criminal Law Defenses § 142(a) (West 1984).

Note: This instruction must be modified if the accused used deadly force regarding a felony which would give him such a right under Ind. Code § 35-41-3-2 (e.g., defense of self or another, dwelling or curtilage)

Under Ind. Code § 35-41-3-3, it states that deadly force is allowed if it is justified under section 2.

5. Law Enforcement Officer's Use of Force Relating to Arrest or Escape

[A law enforcement officer is justified in using reasonable force if he/she reasonably believes that the force is necessary to effect a lawful arrest.

However, an officer is justified in using deadly force only if the officer:

(has probable cause to believe that deadly force is necessary to prevent the commission of a forcible felony)

(or)

(to effect an arrest of a person whom the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person)

and

(has given a warning, if feasible, to the person against whom the deadly force is to be used).

]

[A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.]

[A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person.

However, an officer is justified in using deadly force only if the officer:

(has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person)

and (has given a warning, if feasible, to the person against whom the deadly force is to be used).

]

[A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if he reasonably believes that the force is necessary to prevent the escape of a person who is detained in the penal facility.]

The State has the burden of disproving this defense beyond a reasonable doubt.

Authority: Ind. Pattern Instruction 10.1200

Note: This instruction is much more liberal than the statute, and therefore the statute is set forth following in Instruction 10.31.

Comments from Pattern Committee:

The following terms are defined by law: "deadly force" (Ind. Code § 35-31.5-2-85; Instruction No. 14.1020); "forcible felony" (Ind. Code § 35-31.5-2-138; Instruction No. 14.1780); "law enforcement officer" (Ind. Code § 35-31.5-2-185; Instruction No. 14.2440); "penal facility" (Ind. Code § 35-31.5-2-232; Instruction No. 14.2960); and "serious bodily injury" (Ind. Code § 35-31.5-2-291; Instruction No. 14.3620).

"The burden of persuasion is nearly always on the state, beyond a reasonable doubt." P. Robinson, Criminal Law Defenses § 134 (West 1984).

6. Violent Reputation of Deceased

You have heard evidence that the deceased, [deceased name], had a reputation as a dangerous and violent individual. You may consider such evidence in determining whether he was the initial aggressor in this case.

Authority: Chapman v. State, 469 N.E.2d 50 (Ind. Ct. App. 1984).

7. Self-Defense by an Aggressor

If you find from the evidence and the reasonable inferences to be drawn therefrom, that the Accused started the fight with the victim, then the Accused has a duty to retreat or attempt to retreat.

If you find that the Accused had no opportunity to retreat, or if he or she has attempted unsuccessfully to withdraw from the conflict, then he or she may be justified in killing in self-defense if you find that the State has failed to disprove the defense, as I have described it to you, beyond a reasonable doubt.

Authority: McDonald v. State, 264 Ind. 477, 346 N.E.2d 569 (1975), overruled in part by Watts v. State, 885 N.E.2d 1228, 1233 (Ind. 2008); *See also* French v. State, 273 Ind. 275, 403 N.E.2d 821 (1980) and Washington v. State, 997 N.E.2d 342 (Ind. 2013) (although this is a different factual situation, this is the Court's most recent discussion of the *French* instruction).

8. Self-Defense—Duty to Retreat

There is no duty on behalf of the accused to retreat prior to using force to protect himself or third parties.

Authority: French v. State, 403 N.E.2d 821 (Ind. 1980); *see* Washington v. State, 997 N.E.2d 342 (Ind. 2013) (the Court's most recent discussion of the French instruction); Ind. Code § 35-41-3-2.

Note: Patton v. State, 837 N.E.2d 576 (Ind. Ct. App. 2005) (trial court's failure to instruct jury that defendant had no duty to retreat found harmless in light of overwhelming evidence of guilt and conflicting evidence of who was the aggressor).

Alternative instructions:

When an accused is not the initial aggressor and he reasonably believes that he is in danger of serious bodily injury or death, there is no duty on behalf of the accused to retreat prior to using force to protect himself or third parties.

Authority: French v. State, 403 N.E.2d 821 (Ind. 1980).

An accused's belief that he is in "apparent danger" does not require that danger be actual in order to support his claim of self-defense, but only that the belief be in good faith. In asserting his right of self-defense, one may use the force he believes necessary even though in hindsight, it appears that there was no danger at all.

Belief that "deadly force" was necessary must be in good faith and the accused's reaction to that belief must be reasonable based on surrounding circumstances. Importantly, the reasonableness of the belief can only be determined from the accused's perspective at the time of the event and under all existing circumstances.

Authority: Geralds v. State, 647 N.E.2d 369 (Ind. Ct. App. 1995); Shepard v. State, 451 N.E.2d 1118 (Ind. Ct. App. 1983); and Nuss v. State, 328 N.E.2d 747 (Ind. Ct. App. 1975).

For purposes of self-defense, the amount of force which is reasonably necessary to defend oneself is to be determined from the standpoint of the accused in light of the surrounding circumstances. The force employed must not be out of proportion to the apparent urgency of the situation. The right to self-defense is extinguished where the person has used more force than was reasonably necessary to repel the attack.

Authority: Geralds v. State**,** 647 N.E.2d 369 (Ind. Ct. App. 1995) and Morrison v. State, 613 N.E.2d 865 (Ind. Ct. App. 1993).

9. Right to Resist Excessive Force—Resisting Law Enforcement

The law does not allow a peace officer to use more force than necessary to effect an arrest, and if he does use such unnecessary force, he thereby becomes a trespasser, and an arrestee therefore may resist the arrester's use of excessive force by the use of reasonable force to protect himself against great bodily harm or death. If you find that Officer [officer's name] used more force than necessary to effectuate the arrest, then the accused was permitted to resist the arrest to such an extent as necessary to protect himself from great bodily harm or death, and you must find him not guilty of resisting law enforcement.

Authority: Wilson v. State, 842 N.E.2d 443, 446 (Ind. Ct. App. 2006); Burton v. State, 978 N.E.2d 520 (Ind. Ct. App. 2013); see also Ind. Code § 35-41-3-2(i) (amended in 2012 in response to Barnes v. State, 946 N.E.2d 572 (Ind. 2011), *clarified on reh'g*, 953 N.E.2d 473

(Ind. 2011) to restore a citizen's right to use reasonable force to protect themselves against unlawful police force/entry); See also Cupello v. State, 27 N.E.3d 1122 (Ind. Ct. App. 2015) (involving battery on a law enforcement officer) and Harper v. State, 3 N.E.3d 1080 (Ind. Ct. App. 2014) (officers lied to gain unlawful entry into Harper's home).

Cases cited in Wilson's instruction: Plummer v. State, 34 N.E. 968 (Ind. 1893); Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App. 1985); Wise v. State, 401 N.E.2d 65 (Ind. Ct. App.1980); Heichelbech v. State, 281 N.E.2d 102 (Ind. 1972); Birtsas v. State, 297 N.E.2d 864 (Ind. Ct. App. 1973).

Alternate instructions:

A person is entitled to reasonably resist the unlawful entry of police or law enforcement officers in the person's dwelling or curtilage.

Authority: Cupello v. State, 27 N.E.3d 1122 (Ind. Ct. App. 2015); Adkisson v. State, 728 N.E.2d 175 (Ind. Ct. App. 2000); Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App. 1985); Ind. Code § 35-41-3-2.

The Castle Doctrine is an affirmative defense to the crime of battery on a law enforcement officer when that officer has unlawfully entered the person's dwelling. The Accused has a statutory right to use reasonable force to terminate a law enforcement officer's entry and to prevent further access to his home.

Authority: Cupello v. State, 27 N.E.3d 1122, 1124 (Ind. Ct. App. 2015).

Force is used when an individual directs strength, power, or violence towards police officers, or when he makes a threatening gesture or movement in their direction.

Authority: Wellman v. State, 703 N.E.2d 1061

10. Use of Force Against a Public Servant to Protect Person

It is an issue whether the Accused acted against a public servant in lawful [self-defense] [defense of another person].

A person may use reasonable force against a public servant to protect [the person] [someone else] from what the person reasonably believes to be the imminent use of unlawful force.

However, a person may not use force against a public servant if:

[the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[while acting with the intent to cause bodily injury to the public servant, the person provokes action by the public servant.]

or

[the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action.]

or

[the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not act in lawful self-defense.

Authority: IN Pattern Instruction No 10.0700 Ind. Code § 35-41-3-2(i), (j)

Comments from the Pattern Committee

Under the law authorizing self-defense against a person who is *not* a public servant, the prohibition of the defense when the Accused is committing a crime applies only when there is an immediate connection between the crime and the confrontation:

[T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the Accused committing a crime, the confrontation resulting in injury to the victim would not have occurred. Mayes v. State, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is *not* a public servant, that the prohibition of the defense when Accused is committing a crime applies only when Accused "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995) , *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The Mayes and Harvey cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (Ind. Code § 35-31.5-2-29, Instruction No. 14.0420); and “public servant” (Ind. Code § 35-41-3-2; Instruction No. 14.3340).

11. Use of Force Against a Public Servant to Protect Dwelling, Curtilage, or Motor Vehicle

It is an issue whether the Accused acted against a public servant in lawful defense of property.

A person may lawfully use reasonable force against a public servant if the person reasonably believes that the force is necessary to prevent or terminate the public servant's entry of or attack on [the person's dwelling] [the land adjoining the person's dwelling, including buildings, used for domestic purposes] [the person's occupied motor vehicle].

However, a person may not use force against a public servant if:

[the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[while acting with the intent to cause bodily injury to the public servant**,** the person provokes action by the public servant.]

or

[the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action.]

or

[the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not use reasonable force in defense of [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

Authority: IN Pattern Instruction No. 10.0800; Ind. Code § 35-41-3-2(i), (j).

Comments from the Pattern Committee

The statute here applies to attacks or entries on defendant's "curtilage." Few jurors will know what "curtilage" means and so the Committee has not employed it in the instruction. The Committee suggests that the "land adjoining the dwelling, including buildings, used for domestic purposes" appearing above will suffice in most cases to

define "curtilage." In cases where a "curtilage" issue is in serious dispute, the trial judge may wish to use Instruction No. 14.0980's more elaborate definition for "curtilage," derived from Fox v. State, 179 Ind. App. 267, 384 N.E.2d 1159 (1979) ("curtilage" as used in common-law definition of arson).

Under the law authorizing self-defense against a person who is *not* a public servant, the prohibition of the defense when the Accused is committing a crime applies only when there is an immediate connection between the crime and the confrontation:

(T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred. Mayes v. State, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is *not* a public servant, that the prohibition of the defense when defendant is committing a crime applies only when defendant "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995) , *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The Mayes and Harvey cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002) .

The following terms are defined by law: “bodily injury” (Ind. Code § 35-31.5-2-29, Instruction No. 14.0420); and “public servant” (Ind. Code § 35-41-3-2; Instruction No. 14.3340).

12. Use of Force Against a Public Servant to Protect Property

It is an issue whether the Accused acted against a public servant in lawful defense of property.

A person may lawfully use reasonable force against a public servant if the person reasonably believes that the force is necessary to prevent or terminate the public servant's [unlawful trespass on] [criminal interference with] property [lawfully in the person's possession] [lawfully in the possession of a member of the person's immediate family] [belonging to another person when the person has the authority to protect it].

However, a person may not use force against a public servant if:

[the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant) (*use a descriptive term based on evidence*).]

or

[while acting with the intent to cause bodily injury to the public servant, the person provokes action by the public servant.]

or

[the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action.]

or

[the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties.]

The State has the burden of proving beyond a reasonable doubt that the Accused did not act against a public servant in lawful defense of property.

Authority: IN Pattern Instruction No. 10.0900; Ind. Code § 35-41-3-2(i), (j)

Comments from Pattern Committee

If there is an issue whether the property defendant was protecting was or was not part of the "curtilage," see the definitions for "curtilage" in Instruction No. 10.0400 and its Commentary.

Under the law authorizing self-defense against a person who is not a public servant, the prohibition of the defense when the defendant is committing a crime applies only when there is an immediate connection between the crime and the confrontation:

[T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred. Mayes v. State, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is not a public servant, that the prohibition of the defense when defendant is committing a crime applies only when defendant "was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed." Harvey v. State, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had

no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The Mayes and Harvey cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: "bodily injury" (Ind. Code § 35-31.5-2-29, Instruction No. 14.0420); and "public servant" (Ind. Code § 35-41-3-2; Instruction No. 14.3340).

13. Use of Deadly Force Against a Public Servant

It is an issue whether the Defendant lawfully used deadly force against a public servant.

A person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless:

1. the person reasonably believes that the public servant is [acting unlawfully] [not engaged in the execution of the public servant's official duties]

and

2. the deadly force is reasonably necessary to prevent serious bodily injury to the person or a third person.

The State has the burden of proving beyond a reasonable doubt that the Defendant did not lawfully use deadly force against a public servant.

Authority: IN Pattern Instruction 10.1000; Ind. Code § 35-41-3-2(k)

Comment from Pattern Committee

It is established that when a claim of self-defense is raised and finds support in the evidence, the burden to disprove the defense beyond a reasonable doubt rests on the State. Wilson v. State, 770 N.E.2d 799 (Ind. 2002). Based on Wilson, this case requires the State to disprove the defense as well.

The following terms are defined by law: "deadly force" (Ind. Code § 35-31.5-2-85; Instruction No. 14.1020); "public servant" (Ind. Code § 35-41-3-2; Instruction No. 14.3340); and "serious bodily injury" (Ind. Code § 35-31.5-2-291; Instruction No. 14.3620).

14. Law Enforcement—Unlawful Engagement of Duties

Generally a police or law enforcement officer has no more right to enter private property than any other stranger. However, a police or law enforcement officer may enter onto private property and approach a private residence to conduct an investigation or for

legitimate business. The police or law enforcement officer is not permitted to go anywhere that a stranger or uninvited visitor would not be expected to go, and must use the most obvious and normal routes of access to and egress from the residence and stay within recognized means of access, which in most cases is the most direct and recognized route to and from the front door of the residence.

If you find that police or law enforcement officers entered onto private property and into an area where they were not permitted to go, then you must find that the police or law enforcement officers were not lawfully engaged in the execution of their duties.

Authority: Adkisson v. State, 728 N.E.2d 175 (Ind. Ct. App. 2000)

Related instruction (Unlawful entry by police):

> When police or law enforcement officers enter onto private property and approach a private residence to conduct an investigation or for legitimate business, citizens have a right to refuse to respond or to answer their front door. This refusal to respond or open the front door does not give police or law enforcement officers the right to proceed to other areas beyond the recognized means of normal access, which in most cases is the most direct and recognized route to and from the front door of the residence.

Authority: Cupello v. State, 27 N.E.3d 1122 (Ind. Ct. App. 2015); Harper v. State, 3 N.E.3d 1080 (Ind. Ct. App. 2014) (officers lied to gain unlawful entry into Harper's home); Divello v. State, 782 N.E.2d 433 (Ind. Ct. App. 2003); Cox v. State, 696 N.E.2d 853, 858 (Ind. 1998); and United States v. Berkowitz, 927 F.3d 1376, 1387 (7th Cir. 1991).