

## **IC 35-41-3**

### **Chapter 3. Defenses Relating to Culpability**

#### **IC 35-41-3-1**

##### **Legal authority**

Sec. 1. A person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.7.*

#### **IC 35-41-3-2**

##### **Use of force to protect person or property**

Sec. 2. (a) In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy.

(b) As used in this section, "public servant" means a person described in IC 35-41-1-17, IC 35-31.5-2-129, or IC 35-31.5-2-185.

(c) A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(d) A person:

- (1) is justified in using reasonable force, including deadly force, against any other person; and
- (2) does not have a duty to retreat;

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

(e) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully

in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

only if that force is justified under subsection (c).

(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 this subsection, 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.

(g) Notwithstanding subsections (c) through (e), a person is not justified in using force if:

- (1) the person is committing or is escaping after the commission of a crime;
- (2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or
- (3) 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.

(h) Notwithstanding subsection (f), a person is not justified in using force if the person:

- (1) is committing, or is escaping after the commission of, a crime;
- (2) provokes unlawful action by another person, with intent to cause bodily injury to the other person; or
- (3) continues to combat another person after the other person withdraws from the encounter and communicates the other person's intent to stop hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.

(i) 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.

(j) Notwithstanding subsection (i), a person is not justified in using 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 has 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.

(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.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.8; Acts 1979, P.L.297, SEC.1; P.L.59-2002, SEC.1; P.L.189-2006, SEC.1; P.L.161-2012, SEC.1.*

### **IC 35-41-3-3**

#### **Use of force relating to arrest or escape**

Sec. 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 section 2 of this chapter.

(b) 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. However, 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.

(c) 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.

(d) 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:

(1) 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

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

(e) 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.

(f) Notwithstanding subsection (b), (d), or (e), a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under IC 35-41-3-2.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.9; Acts 1979, P.L.297, SEC.2; P.L.245-1993, SEC.1.*

#### **IC 35-41-3-4**

##### **Repealed**

*(Repealed by Acts 1977, P.L.340, SEC.148.)*

#### **IC 35-41-3-5**

##### **Intoxication**

Sec. 5. It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:

(1) without his consent; or

(2) when he did not know that the substance might cause intoxication.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.10; Acts 1980, P.L.205, SEC.1; P.L.210-1997, SEC.4.*

#### **IC 35-41-3-6**

##### **Mental disease or defect**

Sec. 6. (a) A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was

unable to appreciate the wrongfulness of the conduct at the time of the offense.

(b) As used in this section, "mental disease or defect" means a severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.11; P.L.184-1984, SEC.1.*

### **IC 35-41-3-7**

#### **Mistake of fact**

Sec. 7. It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.12.*

### **IC 35-41-3-8**

#### **Duress**

Sec. 8. (a) It is a defense that the person who engaged in the prohibited conduct was compelled to do so by threat of imminent serious bodily injury to himself or another person. With respect to offenses other than felonies, it is a defense that the person who engaged in the prohibited conduct was compelled to do so by force or threat of force. Compulsion under this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.

(b) This section does not apply to a person who:

(1) recklessly, knowingly, or intentionally placed himself in a situation in which it was foreseeable that he would be subjected to duress; or

(2) committed an offense against the person as defined in IC 35-42.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.13.*

### **IC 35-41-3-9**

#### **Entrapment**

Sec. 9. (a) It is a defense that:

(1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and  
(2) the person was not predisposed to commit the offense.

(b) Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.14.*

### **IC 35-41-3-10**

#### **Abandonment**

Sec. 10. With respect to a charge under IC 35-41-2-4, IC 35-41-5-1, or IC 35-41-5-2, it is a defense that the person who engaged in the prohibited conduct voluntarily abandoned his effort to commit the underlying crime and voluntarily prevented its commission.

*As added by Acts 1976, P.L.148, SEC.1. Amended by Acts 1977, P.L.340, SEC.15.*

### **IC 35-41-3-11**

#### **Mental disease or defect; use of justifiable reasonable force**

Sec. 11. (a) As used in this section, "defendant" refers to an individual charged with any crime involving the use of force against a person.

(b) This section applies under the following circumstances when the defendant in a prosecution raises the issue that the defendant was at the time of the alleged crime suffering from the effects of battery as a result of the past course of conduct of the individual who is the victim of the alleged crime:

(1) The defendant raises the issue that the defendant was not responsible as a result of mental disease or defect under section 6 of this chapter, rendering the defendant unable to appreciate the wrongfulness of the conduct at the time of the crime.

(2) The defendant claims to have used justifiable reasonable force under section 2 of this chapter. The defendant has the burden of going forward to produce evidence from which a trier of fact could find support for the reasonableness of the defendant's belief in the imminence of the use of unlawful force or, when deadly force is employed, the imminence of serious bodily injury to the defendant or a third person or the commission of a forcible felony.

(c) If a defendant proposes to claim the use of justifiable reasonable force under subsection (b)(2), the defendant must file a written motion of that intent with the trial court not later than:

(1) twenty (20) days if the defendant is charged with a felony;  
or

(2) ten (10) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date. However, in the interest of justice and upon a showing of good cause, the court may permit the filing to be made at any time before the commencement of the trial.

(d) The introduction of any expert testimony under this section shall be in accordance with the Indiana Rules of Evidence.

*As added by P.L.210-1997, SEC.5.*