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Defense of Self, Others, Habitations and Property in Florida Law

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Research Guides

Defense of Self, Others, Habitations and Property in Florida Law

Guide Information

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Guide URL:	http://libguides.law.gsu.edu/content.php?pid=109749
Description:	The purpose of this web research guide is to provide students, citizens and legal practitioners information on the law of self-defense, the defense of others and the defense of property in the State of Florida.
Tags:	defense, florida_law, property
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Disclaimer

Disclaimer: The information provided in this research guide in no way constitutes legal advice of any kind and should not be relied upon for legal authority. The author of this research guide disclaims any warranty that this research guide presents accurate information or that it contains current law.

Scope of Research and About the Author

This research guide covers only the relevant law of defense in the State of Florida in Florida Courts. No laws or cases of other states are discussed in this guide.

Purpose

The purpose of this web research guide is to provide students, citizens and legal practitioners information on the law of self-defense, the defense of others and the defense of property in the State of Florida.

About the Author

The author, Gino Emanuels is a second-year law student at Georgia State College of School. Gino is a gun advocate, a gun owner, and unopposed to exercising force in the name of self defense. Please direct any inquiries about this research to Nancy Johnson at **njohnson@gsu.edu**

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Primary Sources

Florida Statutes Generally

Summary: This code section contains the law of self-defense where an individual is defending his or herself or a third-person against the imminent use of unlawful force by another. The threat or use of force is appropriate if an actor reasonably believes that such force is necessary. Deadly force or that likely to cause great bodily injury is only authorized if an actor reasonably believes that such force is necessary to prevent death or great bodily injury, or the commission of a forcible felony. Florida's law relating to self-defense, the defense of others, and the defense of habitations and property is contained in the Florida Statutes. **Florida's Statutes can be found online here.**

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Florida Statutes

Defense of Self

FL. STAT. § 776.012: Use of Force in Defense of Person

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to s. 776.013.

Defense of Others

FL. STAT. § 776.031: Use of force in defense of others

A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Defense of Property

FL. STAT. § 776.013: Home Protection; Use of Deadly Force; Presumption of Fear of Death or Great Bodily Harm

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Immunity from Prosecution

FL. STAT. § 776.032: Immunity from criminal prosecution and civil action for justifiable use of force

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

Preclusion of Use of Force by Aggressor

FL. STAT. § 776.041: Use of force by aggressor

The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use of force against himself or herself, unless:

(a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Affirmative Defenses

FL. STAT. § 776.085: Defense to civil action for damages; party convicted of forcible or attempted forcible felony

(1) It shall be a defense to any action for damages for personal injury or wrongful death, or for injury to property, that such action arose from injury sustained by a participant during the commission or attempted commission of a forcible felony. The defense authorized by this section shall be established by evidence that the participant has been convicted of such forcible felony or attempted forcible felony, or by proof of the commission of such crime or attempted crime by a preponderance of the evidence.

(2) For the purposes of this section, the term "forcible felony" shall have the same meaning as in s. 776.08.

(3) Any civil action in which the defense recognized by this section is raised shall be stayed by the court on the motion of the civil defendant during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

(4) In any civil action where a party prevails based on the defense created by this section:

(a) The losing party, if convicted of and incarcerated for the crime or attempted crime, shall, as determined by the court, lose any privileges provided by the correctional facility, including, but not limited to:

1. Canteen purchases;

2. Telephone access;

3. Outdoor exercise;

4. Use of the library; and

5. Visitation.

(b) The court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney; however, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the losing party is incarcerated for the crime or attempted crime and has insufficient assets to cover payment of the costs of the action and the award of fees pursuant to this paragraph, the party shall, as determined by the court, be required to pay by deduction from any payments the prisoner receives while incarcerated.

(c) If the losing party is incarcerated for the crime or attempted crime, the court shall issue a written order containing its findings and ruling pursuant to paragraphs (a) and (b) and shall direct that a certified copy be forwarded to the appropriate correctional institution or facility.

Key Terms

FL. STAT. § 776.08: "Forcible felonies" defined.

"Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

FL. STAT. § 776.06: "Deadly Force" Defined

(1) The term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to:

(a) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(b) The firing of a firearm at a vehicle in which the person to be arrested is riding.

(2)(a) The term "deadly force" does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term "less-lethal munition" means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.

(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

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Pertinent Florida Cases

Defense of Self and Others

D.M.L. v. State, App. 2 Dist., 976 So.2d 670 (2008). (The self-defense statute does not limit this defense to certain offenses; it does not prohibit the use of this defense against property crimes.)

State v. Smiley, App. 4 Dist., 927 So.2d 1000 (2006) (Statute expanding right of self-defense by abolishing common-law duty to retreat before using deadly force attached new legal consequences to events completed before its enactment by making substantive change to right of self defense and was not merely remedial, and thus could not be retroactively applied to defendant charged with first-degree murder allegedly committed prior to enactment of statute, where alleged murder took place in defendant's vehicle and defendant would have had a duty to retreat before using deadly force prior to enactment of statute, but after enactment of statute, would have had no duty to retreat.)

Wilson v. State, App. 4 Dist., 971 So.2d 963 (2008). (One may not resort to deadly force in self defense without first using every reasonable means available to avoid the danger, including retreat.)

Robbins v. State, App. 5 Dist., 891 So.2d 1102 (2004). (A person is justified in using deadly force in self-defense if he or she reasonably believes such force is necessary to protect one's self from imminent death or great bodily harm; the circumstances must be such that the defendant had cause to think loss of life or serious injury is imminent.)

Stewart v. State, App. 2 Dist., 672 So.2d 865 (1996) ("Deadly force" occurs when natural, probable, and foreseeable consequences of defendant's acts are death.)

State v. James, App. 3 Dist., 867 So.2d 414 (2003) ("Duty to retreat" rule has an exception, known as the "castle doctrine," which espouses that one is not required to retreat from one's residence, or one's "castle," before using deadly force in self-defense, so long as the deadly force is necessary to prevent death or great bodily harm.)

Defense of Property

Rodriguez v. State, App. 3 Dist., 837 So.2d 1177 (2003) (Interpretation of the definition of forcible felony to include burglary did not allow use of deadly force to prevent such crimes as burglary of an unoccupied structure or burglary of an unoccupied conveyance; use of deadly force required a reasonable belief that use of deadly force was necessary to prevent the forcible felony of burglary, and the use of such force could not be reasonably necessary where the structure was unoccupied.)

Quaggin v. State, App. 5 Dist., 752 So.2d 19 (2000) (Florida law does not require a homeowner to determine, beyond a reasonable doubt, that the intruder is a burglar before using deadly force.)

Immunity from Prosecution

McDaniel v. State, App. 2 Dist., 2009 WL 4723310 (2009) (When statutory immunity from prosecution for the justified use of force is properly raised by a defendant, the trial court must decide the matter by confronting and weighing only factual disputes; the court may not deny a motion simply because factual disputes exist.)

McDaniel v. State, App. 2 Dist., 2009 WL 4723310 (2009) (When statutory immunity from prosecution for the justified use of force is properly raised by a defendant, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches.)

Affirmative Defenses

State v. Rivera, App. 5 Dist., 719 So.2d 335 (1998) (If defendant establishes prima facie case of self-defense, state must overcome defense by rebuttal, or by inference in its case in chief, and should it fail to do so, trial court is duty bound to grant judgment of acquittal in favor of defendant.)

D.M.L. v. State, App. 3 Dist., 773 So.2d 1216 (2000) (Self-defense may be used as a defense to a charge of disorderly conduct provided that

the person charged did not provoke the fight.)

Jenkins v. State, App. 2 Dist., 942 So.2d 910 (2006) (If the state fails to sustain its burden of disproving defense of self-defense, the trial court is duty-bound to grant a judgment of acquittal in favor of the defendant.)

Jenkins v. State, App. 2 Dist., 942 So.2d 910 (2006) (If a defendant establishes a prima facie case of self-defense, the state must overcome the defense by rebuttal, or by inference in its case-in-chief.)

Jenkins v. State, App. 2 Dist., 942 So.2d 910 (2006) (The burden of proving guilt beyond a reasonable doubt never shifts from the state, and such standard broadly includes the requirement that the state prove beyond a reasonable doubt that the defendant did not act in self-defense.)

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Secondary Sources

Alternative Sources

Though statutes and case law are the BEST source for information when conducting research, secondary sources also prove beneficial. Law review articles and Legal encyclopedias provide great persuasive authority and will often lead the researcher to cases and other primary sources.

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Law Review Articles

Defense of Self and Others

Law review articles are a great way to get information on the latest topics concerning the area of law which you are researching. There are plenty of law review articles available from various institutions pertaining to the laws surrounding defense and use of deadly force.

9 ILSA J Int'l & Comp L 457, THE LEGALITY OF THE UNITED STATES WAR ON TERROR: IS ARTICLE 51 A LEGITIMATE VEHICLE FOR THE WAR IN AFGHANISTAN OR JUST A BLANKET TO COVER-UP INTERNATIONAL WAR CRIMES?

25 Nova L. Rev. 1, Criminal Law: 2000 Survey of Florida Law.

30 Nova L. Rev. 155, NOTE AND COMMENT: UP IN ARMS OVER FLORIDA'S NEW "STAND YOUR GROUND" LAW.

31 Nova L. Rev. 375, NOTE AND COMMENT: Battered Woman's Syndrome: Setting a Standard in Florida.

20 Fla. St. U.L. Rev. 679, COMMENT: BATTERED WOMEN IN FLORIDA: WILL JUSTICE BE SERVED?

33 Fla. St. U.L. Rev. 351, RECENT DEVELOPMENT: FLORIDA LEGISLATION; FLORIDA LEGISLATION--THE CONTROVERSY OVER FLORIDA'S NEW "STAND YOUR GROUND" LAW--FLA. STAT. § 776.013 (2005).

63 U. Miami L. Rev. 395, Note: Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification.

Defense of Property

30 Nova L. Rev. 155, NOTE AND COMMENT: UP IN ARMS OVER FLORIDA'S NEW "STAND YOUR GROUND" LAW.

31 Nova L. Rev. 355, NOTE AND COMMENT: Nowhere to Run: Custody, Relocation, and Domestic Violence in Florida.

33 Fla. St. U.L. Rev. 351, RECENT DEVELOPMENT: FLORIDA LEGISLATION; FLORIDA LEGISLATION--THE CONTROVERSY OVER FLORIDA'S NEW "STAND YOUR GROUND" LAW--FLA. STAT. § 776.013 (2005).

17 U. Fla. J.L. & Pub. Pol'y 231, ESSAY: CULTURE IN OUR MIDST.

63 U. Miami L. Rev. 395, Note: Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification.

Affirmative Defenses

30 Nova L. Rev. 155, NOTE AND COMMENT: UP IN ARMS OVER FLORIDA'S NEW "STAND YOUR GROUND" LAW.

63 U. Miami L. Rev. 395, Note: Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification.

Deadly Force

63 U. Miami L. Rev. 395, Note: Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification.

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Legal Encyclopedias and Treatisies

Defense of Self

Excessive Force by Police Officer, 21 Am. Jur. Proof of Facts 3d 685.

Self-Defense, FL Jur. 2d Criminal Law § 1917.

District Courts of Appeal, Generally--Certiorari Jurisdiction, FL Jur. 2d Criminal Law § 2803.

Objection to Instruction--Necessity of Request for Instruction, FL Jur. 2d Criminal Law § 2835.

Defense of Property; “Castle Doctrine”, FL Jur. 2d Criminal Law § 3181.

Deadly Force, FL Jur. 2d Criminal Law § 3182.

Failure to Retreat, FL Jur. 2d Criminal Law § 3192.

Jury Instructions--Justifiable Use of Deadly or Nondeadly Force, FL Jur. 2d Criminal Law § 3295.

Defense of Others, FL Jur. 2d Criminal Law § 3300.

Justifiable Homicide, Generally; Use of Deadly Force, FL Jur. 2d Criminal Law § 3414.

Retreat in One's Home or Place of Business; Exception Where Victim Has Equal Right, FL Jur. 2d Criminal Law § 3440.

Burden of Proof--Defenses; Self-Defense, Alibi, FL Jur. 2d Criminal Law § 3526.

Self-Defense, FL Jur. 2d Criminal Law § 3616.

Use of Force; to Resist Unlawful Arrest--To Resist Excessive Force, FL Jur. 2d Criminal Law § 4114.

Criminal Mischief, Generally, FL Jur. 2d Criminal Law § 4484.

Character of Victim, FL Jur. 2d Evidence & Witnesses § 245.

Character of Victim--Reputation and Specific Act Evidence, FL Jur. 2d Evidence & Witnesses § 246.

Proof of Delinquency, FL Jur. 2d Family Law § 342.

Assault and Battery, FL Jur. 2d Family Law § 345.

Defense of Others

Defense of Property; “Castle Doctrine”, FL Jur. 2d Criminal Law § 3181.

Defense of Others, FL Jur. 2d Criminal Law § 3300.

Defense of Property

Self-Defense, FL Jur. 2d Criminal Law § 1751.

Self-Defense, FL Jur. 2d Criminal Law § 1917.

District Courts of Appeal, Generally--Certiorari Jurisdiction, FL Jur. 2d Criminal Law § 2803.

Objection to Instruction--Necessity of Request for Instruction, FL Jur. 2d Criminal Law § 2835.

Duty and Discretion of Court, FL Jur. 2d Criminal Law § 2849.

Defense of Property; "Castle Doctrine", FL Jur. 2d Criminal Law § 3181.

Deadly Force, FL Jur. 2d Criminal Law § 3182.

Failure to Retreat, FL Jur. 2d Criminal Law § 3192.

Jury Instructions--Castle Doctrine, FL Jur. 2d Criminal Law § 3296.

Self-Defense, FL Jur. 2d Criminal Law § 3465.

Burden of Proof--Defenses; Self-Defense, Alibi, FL Jur. 2d Criminal Law § 3526.

Character or Reputation of Deceased--Specific Acts of Violence, FL Jur. 2d Criminal Law § 3554.

Character or Reputation of Deceased--Foundation Required, Generally, FL Jur. 2d Criminal Law § 3555.

Construction of Statute as Prospective or Retrospective, FL Jur. 2d Statutes § 108.

Deadly Force

Use of Excessive Force--Use of Force in Arresting Fleeing Felon, FL Jur. 2d Criminal Law § 167.

Objection to Instruction--Necessity of Request for Instruction, FL Jur. 2d Criminal Law § 2835.

Deadly Force, FL Jur. 2d Criminal Law § 3182.

Immunity and Affirmative Defenses

Privileged Use of Force in Self-Defense, 33 Am. Jur. Proof of Facts 2d 211.

Justified Use of Force in Defense of Private Property, 38 Am. Jur. Proof of Facts 2d 731.

Self-Defense, FL Jur. 2d Criminal Law § 1917.

Deadly Force, FL Jur. 2d Criminal Law § 3182.

Jury Instructions--Castle Doctrine, FL Jur. 2d Criminal Law § 3296.

Self-Defense, FL Jur. 2d Criminal Law § 3465.

Decedent's Criminal Conduct; Defendant's Self-Defense, FL Jur. 2d Death § 28.

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Internet Resources

Special Interest Groups

The National Rifle Association

Powerful gun rights lobbying group that many assert is the driving force behind the emergence of "stand your ground" defensive laws across the United States

Florida Firearms Network

Forum and discussion board dedicated to firearm rights advocacy and awareness.

http://www.flarms.com/

Florida Shooters Network

Forum and discussion board that promotes gun safety, training, and gun education of gun laws in Florida.

Florida Association of Criminal Defense Lawyers (FACDL)

Database designed to help people find criminal defense attorneys in the state of Florida. A great resource to find an attorney that specializes in defending people who have used force to defend themselves, property, or others.

WestLaw

Westlaw is a fee-based computer research legal database that allows a wide range of research methods including search by case name, keywords, sources, jurisdictions, statutes, regulations, etc. Westlaw also has a KeyCite feature that facilitates checking whether a certain case has been overruled or is still valid law.

Search terms useful for finding information about Justifiable Use of Force include:

"Self Defense"

"Deadly Force"

Search by Statute:

Westlaw > Law School > Statutes > Show all > Florida Table of Contents > West's Florida Statutes Annotated

LexisNexis

Lexis-Nexis is a fee-based computer research legal database that allows a wide range of research methods including search by case name, keywords, sources, jurisdictions, statutes, regulations, etc. Lexis-Nexis has a **Shepard's** feature that facilitates checking whether a certain case has been overruled or is still valid law.

Lexis-Nexis may be better suited for research relating to international law, especially European sources, because Lexis-Nexis carries a greater number of international treatises. Access Lexis-Nexis treatises by using a keyword search or by checking on the plus signs next to the relevant subject.

Legal **>** States Legal - U.S. **>** Florida **>** Search Analysis & CLE Materials **>** Criminal Law & Procedure **> Florida Criminal Defense Trial Manual – TOC (search "self defense")**

Other Internet Sources

www.Google.com

www.findlaw.com

www.wikipedia.org

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