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CAN YOU BE ARRESTED FOR SHOOTING A BURGLAR IN YOUR HOME?

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CAN YOU BE ARRESTED FOR SHOOTING A BURGLAR IN YOUR HOME?

Quick Answer: Yes - No - Maybe - Depends on what state you live. The Second Amendment guarantees Americans the right to bear arms, but it doesn't say when we can use them. Since basically 1789 when the Amendment was passed by Congress, a person's right to use a firearm in self-defense has been hotly debated. Today there is still no clear answer, despite gun laws and safety being a hot topic in the news and the public.

Safety at home is the biggest concern for gun rights advocates, who often ask, "Can I be arrested for shooting at a burglar in my home?" How this plays out and whether or not you can use self-defense as a means for your actions is incredibly circumstantial. As the question is worded, the answer is probably, "Maybe."

WHEN SHOOTING AN INTRUDER IS LEGAL

The law is gray when it comes to your legal right to fire upon an intruder in your home or on your property. Each state has its own set of rules, and even individual counties can have little nuances to the law. In general, however, you can only shoot a deadly weapon at an intruder if you fear for your life or someone else's life.

To prove that your life was in danger, you will have to consider these four aspects of the event:
Ability to harm: Does the person inside your home appear to be able to use deadly force? If they are holding a knife or pistol, the answer is clear – they are dangerous. But if they are unarmed and half your size, you probably do not have the right to shoot at them.

Opportunity to harm: When you encounter the intruder, are they given the chance to use deadly force? If an intruder has a knife and is within a couple yards, using your gun might be the only way to stop them from attacking you. But if they are holding a knife at the edge of your property, some thirty yards away, shooting them now could constitute manslaughter or murder.

Intent to harm: Is it clear that the intruder wants to hurt you? This

is perhaps the most difficult aspect to prove that imminent danger is present. In most cases, if you can show that the intruder had the ability and the opportunity, you could reasonably conclude that they also had the intent. The jury will need to ask, “Would a reasonable person have also feared for their life?”

No other choice: In some situations, you will need to show that you had no other options but to use your firearm in self-defense. If you are in your bedroom when they approach you suddenly, you do not have the option to flee or negotiate with them. If you hear someone in the upstairs bedroom, you seek them out, and shoot them in the back, the jury could conclude that you chose to attack them rather than leaving or calling the police from a safe room.

In the end, this debate is not over because it is subjective from every angle. Each person will react to danger and threats in their own way – where some panic, others remain calm. We all may have that base instinct to survive and protect ourselves but we each interpret how to carry out our actions differently.

As of the printing of this article the states that have legislatively adopted stand-your-ground laws are Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia and Wyoming.

The states that have adopted stand-your-ground in practice, either through case law/ precedent, jury instructions or by other means, are California, Colorado, Illinois, New Mexico, Oregon, Virginia, and Washington.

States that have adopted stand-your-ground, but limit it to only when a person is within their vehicle, are North Dakota, Ohio, and Wisconsin.

The states that have castle doctrine only with the duty to retreat in public are Arkansas, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New York, New Jersey, and Rhode Island. This means that people can use deadly force in their home, car, or other form of abode but have to retreat in public.

Vermont and Washington, D.C. require citizens to flee from criminal assailants, even within their own homes.

The basic formula is simple enough: You can shoot someone if they pose an imminent, credible threat of death or grievous bodily harm.

IMMINENT

The dictionary definition of “imminent” is likely to occur at any moment; impending.” From a gun owner’s point-of-view, it’s better to define “imminent” as “in the process of happening.” It’s a subtle but crucial difference.
An imminent threat of grievous bodily harm or death isn’t a threat that’s about to happen. It’s a

threat that's actually happening. A threat is imminent if the bad guy or guys are actively trying to hurt or kill you (or other innocent life).

If someone across the street waves a knife at you and says "Hey I'm going to attack you," that's a threat of grievous bodily harm or death. But it's not an imminent threat. Not until they cross the street and begin their attack.

By the same token, if you escape someone who tries to hurt or kill you, you can't grab your gun, return and open fire. In that case you're shooting a potential threat, not an imminent threat - even though the threat was imminent.

CREDIBLE

The dictionary definition of "credible" is "believable." From a gun owner's point-of-view, that's pretty much it.

If the person waving a knife and threatening you from across the street is an elderly person in a wheelchair, that's not a credible threat. If she/he starts a slow roll in your direction that is still not a credible threat. If she/he aims a rifle or hand gun at you from across the street, yeah, that qualifies.

GRIEVOUS BODILY HARM

The dictionary definition of "grievous" is causing great pain or suffering. From a gun owner's point-of-view, it's better to define "grievous" as a significant, sustained injury.

While a slap across the face can be plenty painful, that kind of bodily harm doesn't justifies a shooting response. An imminent, credible prospect of sexual assault, however, does.

ATTORNEY WIGGLE ROOM

With all these terms - imminent, credible, grievous - there's plenty of attorney wiggle room. For example, there've been women who've shot and killed their abuser when he wasn't in the process of abusing them. The defense lawyer stretched the definition of an "imminent threat" to successfully claimed justifiable homicide.

All these conditions are subject to interpretation (a.k.a., Monday morning quarterbacking) by the police, prosecutor, judge and/or jury. (Not to mention friends, family, co-workers, employers and the media.) The authorities and your peers are supposed to make their judgements based on what's called the "totality of circumstances": the who, what, when, where, how and why of the entire incident.

They are also supposed to be constrained by what's called the "reasonable person

standard." They're supposed to ask themselves if a reasonable person in the same circumstances would consider the threat imminent, credible and potentially grievous or deadly.

Generally speaking, you can legally shoot someone who's in the process of attacking you (or other innocent life) if they're fully capable of seriously hurting or killing you (or other innocent life). Of course, just because you can shoot someone doesn't necessarily mean you should - especially if you can run away or use some effective form of non-firearm self-defense. But you are on safe ground if you do. Depending on where you live and other factors beyond your control. But at least you have a reasonable chance of being alive to confront them.

MISCONCEPTIONS REGARDING SELF DEFENSE LAW

There is a widespread misconception concerning the interpretation of self-defense. There are several reasons for this, mainly the fact that self-defense laws vary from one state to another. Other factors come into play, The biggest misconception comes from the fact that the general public typically approaches the issue from the view point of stand your ground. You may ask, "What does it mean to me if I injure or kill someone?" Well, that's the wrong question, because self-defense can mean anything you want it to mean. The correct question should be, "What does self-defense law mean to a jury of my peers?"

Technically, you should be more concerned with the meaning of the term "Defense of Self-defense." Why? If you ever have to use a weapon for self-defense you will also have to "Defend your actions in a court of Law!" Guaranteed!
This is not meant to discourage you from learning, or using a weapon. In fact, a well-trained person is less likely to find himself (or herself) standing before a judge in a courtroom than someone who is untrained. But before I explain that, let's make sure we really understand what self-defense law is all about.

WHAT DOES THE TERM 'DEFENSE OF SELF-DEFENSE MEAN?

Imagine this courtroom scene...

Judge: "How does the defendant plead?"
Your attorney replies: "Not guilty, Your Honor."
The Judge asks: "What's his defense for this crime?"
Your attorney replies: "He's claiming self-defense, Your Honor."

Get the picture?
That is "Defense of Self-defense", according to self-defense law. Let me make this as clear as possible. If you injure or kill someone, no matter what the circumstances, you WILL be arrested and charged with a crime. The police will not make the assumption that you acted in self-defense. The police are not responsible for making that decision. They will let the courts sort that out.

Let me repeat. The police do not make judgments of right or wrong. That is for the courts to decide.

So Be Aware! If you use a weapon and harm someone in the process no matter what the reason or circumstance you must be prepared to defend yourself a second time in a court of law. Period!

DEFENSE OF SELF-DEFENSE - GOT IT?

So, if I ever have to use a weapon in self-defense, how do I defend myself against civil and/or criminal charges?

Let's start with the legal definition of Defense of Self-defense. In the United States legal system, under self-defense law, the statutes for the defense of self-defense allows a person charged with injury to another to excuse or justify his or her actions as reasonable force used in their own defense, or the defense of others.

While the statutes defining the legitimate use of force in defense of a person vary from state to state, the general rule makes a clear and important distinction between the use of physical force and deadly physical force. A person may use physical force to prevent imminent physical injury. However, a person may not use deadly physical force unless that person is in reasonable fear of serious physical injury or death.

Most statutes regarding self-defense law also include a duty to retreat clause, wherein deadly physical force may only be used if the person acting in self-defense is unable to safely retreat. The duty to retreat is discussed in more detail later. Just remember that a person is generally not obligated to retreat if in one's own home. For example: a person doesn't have to retreat from the living room to the kitchen, then to the bedroom, then to the bathroom, in what has come to be called the "castle exception" (derived from the expression "A man's home is his castle").

DEFENSE OF OTHERS

The rules are the same under self-defense law when force is used to protect another person from danger. Generally, the defendant must have a reasonable belief that the third party is in a position where he or she would have the right of self-defense. For example, a person who unknowingly chances upon two actors practicing in a fight would not be able to defend (in court) his/her restraint of the one that appeared to be the aggressor. Most courts have ruled that such a defense cannot be used to protect friends or family members who have engaged in a domestic fight. Likewise, one cannot use this defense if his/her actions were to aid a criminal.

When is the use of force (self-defense) justified?
Remember, there is a clear distinction in self-defense law between force and deadly force (injury, versus death.) The use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary in the circumstances.

A person may repel force by force in defense of his or her person, property or habitation, against unlawful force, that is, anyone who manifests, intends, attempts, or endeavors, by violence or surprise, to commit a forcible felony, such as murder, rape, robbery, arson, burglary and the like. In these cases he or she is not required to retreat, but he/she may resist and even pursue their adversary, until you have secured yourself from all danger.

In other words, it is perfectly legal to chase an intruder from your home, and if he/she turns to engage you, you still have the right to a defense of self-defense.

However, your purpose for pursuit may only be to apprehend the suspect until authorities arrive (citizen's arrest), or to ensure the invader is far enough away to prevent further harm to you, your family or property. If you do in fact capture the suspect, you may only use force enough to subdue him/her, and once subdued, no more force is allowed.

Deadly force, that is, force likely to cause death or great bodily harm, is justified under self-defense law only if a person reasonably believes that such force is necessary to prevent death or great bodily harm to themselves or others. In this case, if you pursue an adversary, then kill him or her, you can be assured your defense of self-defense will fail. You will go to prison for manslaughter, at the minimum, and possibly even murder.

Do I have to be hit first (or a hit attempted) before I can take action to defend myself?
No! Absolutely not!

Your defense of self-defense may include "preemptive" action (force) on your part. Lawful "preemptive" self-defense is simply the act of landing the first-blow in a situation that has reached a point of no hope for de-escalation or escape.

"An attempt to strike another, when sufficiently near so that there is danger, the person assailed may strike first, and is not required to wait until he has been struck."

INTIMIDATION IS A CRIME.

What is intimidation? If someone verbally threatens you, even if they have not yet touched you, they have committed the crime of intimidation, which is considered in most states as unlawful force or coercion. If someone threatens you by shouting, “I’m going to kill you!”, they have already committed a crime of intimidation. You should, in fact you must, assume that they mean what they say and immediately take whatever action you feel is appropriate under the circumstances! Do not wait until they actually attempt to murder you!

Many instructors, as well as experts on self-defense law, believe that if the situation is so clear-cut as to feel certain violence is unavoidable, the defender has a much better chance of surviving by acting first. That is landing the first blow and gaining the immediate upper hand. In fact, statistics have shown that showing or point your gun at an attacker, a shot of pepper spray, or a single well-placed blow in such a circumstance, has usually been all that is necessary to end the conflict. Certainly not by killing the aggressor but by convincing the attacker he or she has made a bad choice and picked the wrong victim.

WHAT ARE THE LIMITS TO THE DEFENSE OF SELF-DEFENSE?

Excessive Force: Obviously, you can’t shoot an unarmed person. That would be considered excessive force.

The most important limit to the defense of self-defense is that the level of response must not exceed the threat. This may seem a bit fuzzy, but that’s the way most self-defense laws are written.

The reality is, if all self-defense laws were absolutely clear, there would be no need for lawyers. But let’s stay on subject. Basically, if a victim uses excessive force they become the aggressor. Force becomes excessive when it exceeds that which is needed to assure one’s own safety. In other words, when he or she says, “I give up!”, you have to stop hitting him or her immediately!

You cannot say to the judge or jury in court “But Your Honor! It was only one more for good measure! He deserved it!”

Can you see the judge or jury frowning? Are you prepared to hear the words, “Guilty as charged!”?

MUTUAL COMBAT

Another important concept to the limits on defense of self-defense is something I would hope you would never be involved. But it is worth mentioning here, just for the sake of clarity.

Let’s go back to the definition of unlawful force. It has already been described as murder, rape, robbery, arson, burglary and the like. Notice the word “argument” is not included!

"When there is mutual combat upon a sudden quarrel, both parties are the aggressors, and if in the fight one is killed it will be manslaughter at least."

Ninety percent of all "fights" are started over something stupid. If the court feels your actions were unwarranted or avoidable, your defense of self-defense will fail. Especially, if those actions result in deadly force.

PRECAUTIONARY MEASURES

Some statutes on self-defense law require that when threatened with violence, it is the duty of the person threatened to use all prudent and precautionary measures to prevent the attack. For example, if by closing a door which was usually left open, one could prevent an attack, it would be prudent, and perhaps the law might require that it should be closed in order to preserve the peace.

Also, as a general rule, "no person is allowed to defend them-self with force if they can call law enforcement. In other words, call 9-1-1 first!

If you call for help, and you get attacked before the police arrive, do whatever you feel is necessary to protect yourself or others. In such a case, I doubt that you could find any jury in the country that would ever convict you of a crime.

However, if it can be shown that you could have called the cops and avoided the whole situation, you will be perceived as taking the law into your own hands, and you can expect to spend a long time in jail.

WHY DO I NEED TO RESEARCH THE SELF-DEFENSE LAWS IN MY STATE?

It would seem that all states would have the same self-defense laws, and for the most part, they do.

However, the confusion is based on the sometimes subtle differences in wording, and the basic concept of "duty to retreat", as previously mentioned.

DUTY TO RETREAT

The confusion comes from a fundamental difference in the philosophy of criminal law. The current self-defense laws in America are based on a theory of one's duty to retreat, meaning when faced with a hostile situation, run away. If you cannot run away and have to defend yourself, then use of force is acceptable.

In criminal law, the duty to retreat is a specific component which sometimes appears in the defense of self-defense, and which must be addressed if the defendant is to prove that his

or her conduct was justified. In those jurisdictions where the requirement exists, the burden of proof is on the defense to show that the defendant was acting reasonably. This is often taken to mean that the defendant had first avoided conflict and secondly, had taken reasonable steps to retreat and so demonstrated an intention not to fight before eventually using force.

STAND-YOUR-GROUND LAW - THE NEW DEBATE IN SELF DEFENSE LAW

"Stand Your Ground" laws, sometimes called shoot-first laws by their critics, are statutes that significantly expand the boundaries of legal self-defense by eliminating a person's duty to retreat from an invader or assailant in certain cases.

The state of Florida became the first to enact such a self-defense law on October 1, 2005. The Florida statute allows the use of deadly force when a person reasonably believes it necessary to prevent the commission of a "forcible felony." Under the statute, forcible felonies include treason; murder; manslaughter; sexual battery; car-jacking; home-invasion; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful placing, throwing, 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.

The Florida law authorizes the use of defensive force by anyone 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. Furthermore, under the law, such a person 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. The statute also grants civil and criminal immunity to anyone found to have had such a reasonable belief.

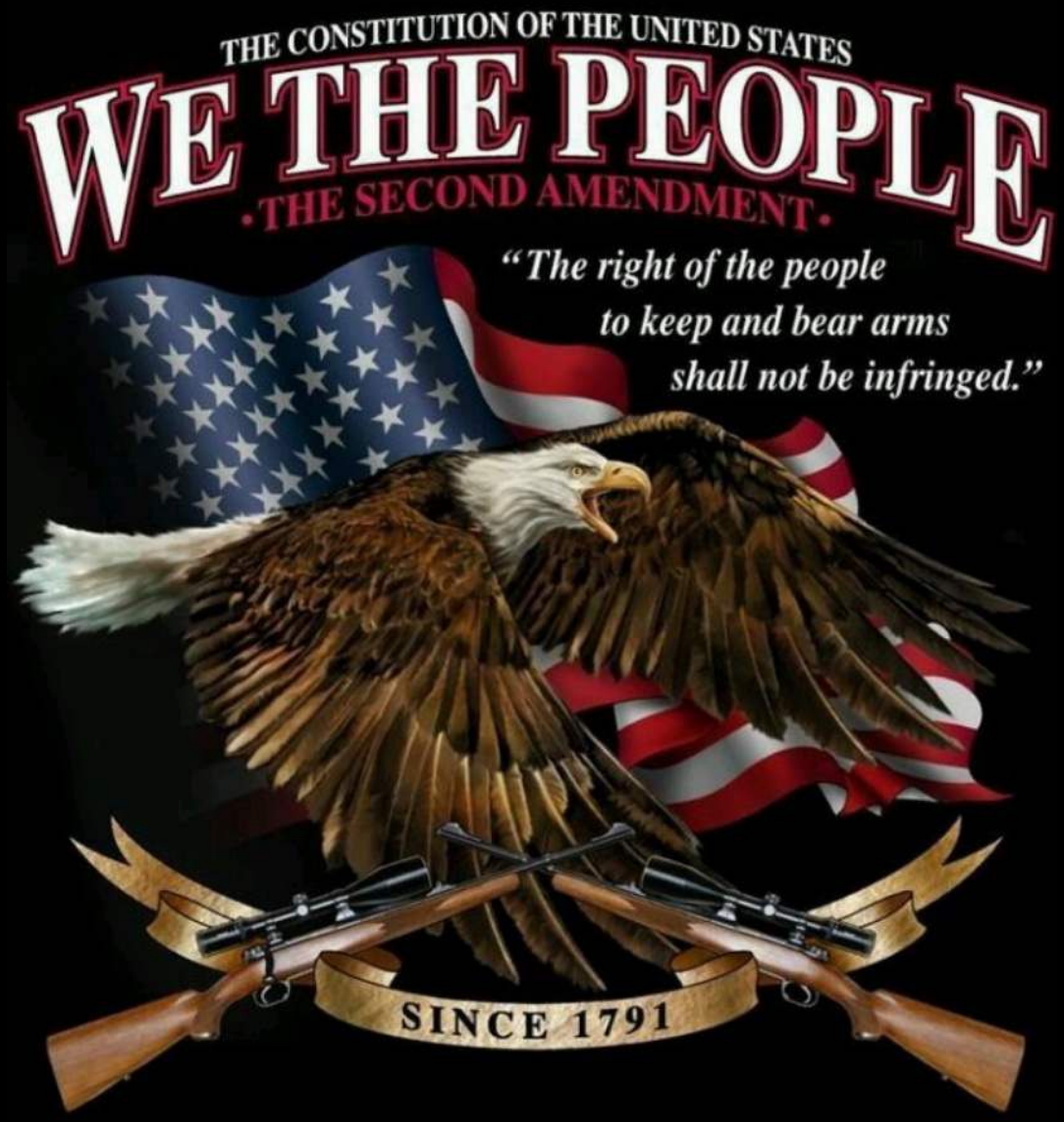
Bottom Line: Use force, especially deadly force, only as a last resort. Remember that according to self-defense laws in most states, it is assumed that one has the duty to retreat from assault, if possible. Use common sense: You are always better off by doing everything possible to avoid a physical confrontation.

In your defense of self-defense, you may need to prove that you took precautionary steps to avoid the situation, such as locking doors and windows, or calling the police first.

A common misunderstanding is that a person about to take defensive steps has a duty to warn, if it would seem to do any good. No, there is no law that even remotely implies you must tell your assailant, "I'm warning you! However, if you have a gun, let the intruder or attacker know it.

ONE FINAL THOUGHT.

If you ever use any weapon to defend yourself, be it pepper spray, stun gun, knife, hand-gun, long-gun, stick, or stone, no matter how justified you may be, you will find yourself in a tangled web of legal expenses.



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