



Dennis-Yarmouth Regional High School

POLICE SERVICES UNIT

A Joint Unit of the Yarmouth Police & Dennis Police Departments

Elements of Self Defense in the Commonwealth of Massachusetts

The person asserting self-defense must:

1. Reasonably believe that he (she) was being attacked,
 - a. or was immediately about to be attacked, and
 - b. that his (her) personal safety was in immediate danger.
2. He (she) must have done everything that was reasonable in the circumstances to avoid physical combat before resorting to force.
3. He (she) must have used no more force than was reasonable and necessary in the circumstances to defend himself (herself).

It is not self-defense if the person asserting self-defense should reasonably have realized that he (she) was not in any real immediate danger.

In determining this, the following factors may be taken into account:

1. Relative size and strength of persons involved,
2. Where the incident took place,
3. Whether any threats were made,
4. Whether any weapons were involved and if so what type,
5. among other things.

Additionally, it is not self-defense if the person asserting self-defense retaliated after he (she) was no longer in any immediate danger and was pursuing his (her) attacker for revenge, or to ward off any possibility of attack in the indefinite future.

The right of self-defense arises from necessity, and ends when the necessity ends. Self-defense is available only where there is an immediate need to resort to force and not where other remedies are available. Before resorting to force, a person must first use every reasonable means that is available to him to avoid combat. This means that he (she) was permitted to use physical force in self-defense only if he (she) could not get out of the situation in some other way that was available and reasonable at the time. The defendant must have used any avenues of escape that were reasonably available before resorting to

force to protect himself (herself), if this could be done without exposing himself (herself) to further danger.

Where the incident took place may be particularly important. In some situations a person might have a clear field and be able to escape by walking away or otherwise getting to safety, or by summoning help if that could be done in time, or by holding the attacker at bay if the means were available, or by some other method. In other cases, such escape routes may not be available. The issue is whether the defendant's use of force reasonably seemed to be the only way to protect himself (herself) in the circumstances.

A person who uses what is clearly excessive and unreasonable force has himself (herself) become the aggressor and loses the right of self-defense. How much force is necessary may vary with the situation, of course and this is not an area where a lot of exactness is always possible. You are allowed to take into account that a person must decide quickly and under pressure in such a situation.

Courts recognize that these decisions are made quickly and under emotional strain.

Where two people engage in a fistfight by agreement, generally neither of them is acting in self-defense because they have not used all reasonable means to avoid combat. But a person does regain the right of self-defense if during the fight if he (she) reasonably concludes that the other person, contrary to their mutual understanding, has escalated the fight by introducing deadly force.

Generally the original aggressor has no right of self-defense unless he withdraws from the conflict in good faith and announces his intentions of abandoning the fight.

Excerpted from material provided by the Honorable Judge Joseph Reardon Barnstable District Court