

In Hawaii, the "choice of evils" defense, or necessity defense, allows a person to claim justification for committing a crime to avoid a greater harm. To use this defense, the person must have reasonably believed their actions were necessary to avoid an imminent harm or evil that was greater than the harm caused by the crime, and the situation cannot have been caused by the defendant's own recklessness or negligence. [1, 2, 3, 4]

Elements of the choice of evils defense

- **Imminent harm:** The danger or evil to be avoided must be imminent, meaning it is about to occur.
- **Greater harm:** The harm the defendant sought to avoid must be greater than the harm caused by the offense.
- **No other legal alternative:** The defense is not available if the law defining the offense already provides an exception or defense for that specific situation.
- **Not caused by the defendant:** The defendant's own conduct cannot have caused the situation that created the necessity. If the choice of evils resulted from the defendant's recklessness or negligence, the defense is not available for offenses where recklessness or negligence is the basis for conviction. [2, 3, 4, 5]

Examples

- A person breaks into a cabin to escape a severe blizzard, causing property damage. They could argue this defense because the greater harm of freezing to death outweighs the harm to property.
- A driver speeds through a red light to get an injured person to the hospital. They could use this defense, arguing the urgency of the medical emergency justified their violation of traffic laws. [5]

AI responses may include mistakes.

[1] <https://scholarship.libraries.rutgers.edu/esploro/outputs/acceptedManuscript/Choice-of-evils-in-search-of/991031605948204646>

[2] <https://www.casemine.com/act/us/642fb044ab51704b7b46f96a>

[3] <https://www.youtube.com/watch?v=Ij2FDLooJ9U>

[4] https://data.capitol.hawaii.gov/sessions/session2017/HRS-Chapter-PDF's/HRS_0703.pdf

[5] <https://legal-resources.uslegalforms.com/c/choice-of-evils-defense>