

**JUSTIFICATION:
USE OF -PHYSICAL FORCE
IN DEFENSE OF A PERSON
PENAL LAW 35.15 (1)
(Effective Sept. 1, 1980)**

(Amended: Jan. 2015; Feb. & July 2016; Jan. 2018; Oct. 2025)¹

NOTE: This charge should precede the reading of the elements of the charged crime, and then, the final element of the crime charged should read as follows:

“and #. That the defendant was not justified.”²

[With respect to count(s) (specify),] [T]he defendant has raised the defense of justification, also known as self-defense. The defendant, however, is not required to prove that he was justified. The People are required to prove beyond a reasonable doubt that the defendant was not justified.

I will now explain our law's definition of the defense of justification as it applies to this case.

Under our law, a person may use physical force upon another individual when, and to the extent that, he/she reasonably believes it to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of [unlawful³] physical force by such individual.

Note: *Add the following only when the evidence would support both a finding of multiple uses of physical force against an individual and a finding that while a use or uses of -physical force were justified, there came a point in time when the continued use of physical force was not justified and caused the victim physical injury, serious physical injury or death.*

Thus, the defense of justification does not necessarily apply throughout an entire encounter. The justified use of physical force terminates at the point that a person can no longer reasonably believe it to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of [unlawful] physical force by such individual. The defendant would

accordingly not be justified in causing (specify name of assailant/decedent) (physical injury/*serious physical injury/death*) if: [1] although the defendant was initially justified in the use of physical force against (specify name of assailant/decedent) the defendant continued using physical force at a point in time when the defendant could no longer reasonably believe it to be necessary to defend himself/herself [or someone else] from (specify name of assailant/decedent) use or imminent use of physical force; and [2] that it was the defendant's unjustified continued use of physical force which caused⁴ (specify name of assailant/decedent) (physical injury, *serious physical injury/death*).⁵

The determination of whether a person REASONABLY BELIEVES physical force to be necessary to defend himself/herself [or someone else] from what he/she reasonably believes to be the use or imminent use of physical force by another individual requires the application of a two-part test.⁶ That test applies to this case in the following way:

First, the defendant must have actually believed that (specify) was using or was about to use physical force against him/her [or someone else], and that the defendant's own use of physical force was necessary to defend himself/herself [or someone else] from it; and

Second, a "reasonable person" in the defendant's position, knowing what the defendant knew and being in the same circumstances, would have had those same beliefs.

Thus, under our law of justification, it is not sufficient that the defendant honestly believed in his own mind that he was faced with defending himself/herself [or someone else] against the use or imminent use of –physical force. An honest belief, no matter how genuine or sincere, may yet be unreasonable.

To have been justified in the use of –physical force, the defendant must have honestly believed that it was necessary to defend himself/herself [or someone else] from what he/she honestly believed to be the use or imminent use of such force by (specify), and a "reasonable person" in the defendant's position, knowing what the defendant knew and being in the same circumstances, would have believed that too.

On the question of whether the defendant did reasonably believe that physical force was necessary to defend himself/herself [or someone else] from what he/she reasonably believed to be the use or imminent use of such force by (specify), it does not matter that the defendant was or may have been mistaken in his/her belief; provided that such belief was both honestly held and reasonable.

[Add if there was evidence of a party's reputation for violence or threats or violent acts against the defendant or others:

Now, you have heard testimony that (specify) had:

Select as appropriate:

a reputation for violence [and/or]
engaged in threats of violence [and/or]
engaged in violent acts.

against

Select as appropriate:

the defendant
others
the defendant and others

Normally, the law does not permit such testimony. The reason is that every person, regardless of that person's relative worth to the community, has the right to live undisturbed by an unlawful assault.

However, in assessing whether the defendant did "reasonably believe" that the physical force he/she used was necessary to defend himself/herself [or someone else] from what he/she "reasonably believed" to be the use or imminent use of such force by (specify), you may consider whether the defendant knew that (specify) had

Select as appropriate:

A reputation for violence [and/or]
[Threatened⁷ (and/or)] engaged in violent acts

against

Select as appropriate:

the defendant
others
the defendant and others

If so, you may then consider to what extent, if any, that knowledge contributed to a "reasonable belief" on the defendant's part that the physical force the defendant used was necessary to defend himself/herself [or someone else] from what he/she "reasonably believed" was the use or imminent use of such force by (specify).⁸

Further, provided the defendant believed (specify) had such reputation or engaged in such acts, it does not matter whether that belief was correct.]

[Add as applicable:

Notwithstanding the rules I have just explained, the defendant would not be justified in using physical force under the following circumstances:

Select appropriate alternative(s):

(1) The defendant would not be justified if he/she was the **initial aggressor** of physical force;

[Add if applicable:

except, that the defendant's use of physical force would nevertheless be justified if he/she had withdrawn from the encounter and effectively communicated such withdrawal to (specify) but (specify) persisted in continuing the incident by the use or threatened imminent use of (unlawful⁹) physical force.]

[Arguing, using abusive language, calling a person names, or the like, unaccompanied by physical threats or acts, does not make a person an initial aggressor and does not justify physical force.]

"Initial aggressor" means the first person who uses, or threatens the imminent use of, physical force.

The actual striking of the first blow or inflicting of the first wound, however, does not necessarily determine who was the initial aggressor.

A person who reasonably believes that another is about to use physical force upon him/her need not wait until he/she is struck or wounded. He/she may, in such circumstances, be the first to use physical force, so long as he/she reasonably believed it was about to be used against him/her. He/she is then not considered to be the "initial aggressor," even though he/she strikes the first blow or inflicts the first wound.

[Add if there was evidence that the defendant was an intervenor:

If a person intervenes in a conflict in defense of another, that person is an initial aggressor only if he/she somehow initiated or participated in the initiation of the original use of [] physical force or the threat to use it, or reasonably should have known that the person he/she was defending initiated it. On the other hand, if he/she neither initiated, nor participated in the initiation of [] physical force, or the threat to use it, and had no reason to know who initiated it, then he/she is not the initial aggressor.^{10]}

[Add if there was evidence of a reputation for violence, or violent acts:

A person cannot be considered the initial aggressor simply because he/she has a reputation for violence or has engaged in violent acts prior to the time in question.^{11]}

[Add if there was evidence of threats:

You may [however] consider whether the deceased made threats against the defendant prior to the time in question and whether such threats indicated an intent to act upon them as the initial aggressor. In making that assessment, it does not matter in determining who was the initial aggressor whether the defendant was aware of the threats.^{12]}

(2) The defendant would not be justified if (specify's)

conduct was provoked by the defendant himself/herself with intent to cause physical injury to (specify).

(3) The defendant would not be justified if the physical force involved was the product of a combat by agreement not specifically authorized by law.

(4) A person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effected or attempted by a police officer or peace officer when it would reasonably appear that the latter is a police officer or peace officer.^{10]}

The People are required to prove beyond a reasonable doubt that the defendant was not justified.

Note: At this point, the trial court must select the appropriate alternative set forth below to fulfill the mandate of appellate decisions. See endnote (¹³). Those decisions require that in a case with multiple counts, in which some or all of the counts include the same definition of justification as an element, the trial court's instructions (as well as its verdict sheet) need to convey to the jury that once the jury has determined that the People have failed to prove that the defendant was not justified as to a count, the jury must not reconsider that same justification defense as to any other count and they must find the defendant not guilty of each and every count for which that same definition of justification is an element. (For a sample verdict sheet, see CJI2d Model Verdict Sheet for Justification.)

Select appropriate alternative:

(1) If justification applies to only one count, add the following:

It is thus an element of count [specify number and name of offense] that the defendant was not justified. As a result, if you find that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of that count.

(2) If justification applies to more than one count submitted

to the jury on the verdict sheet, add the following:

It is thus an element of counts [specify numbers and names of the offenses on verdict sheet] that the defendant was not justified. As a result, if you find, as to the first of those counts that you consider pursuant to my instructions, that the People have failed to prove beyond a reasonable doubt that the defendant was not justified, then you must find the defendant not guilty of that count and of the remaining count(s) to which that same definition of justification applies.

(3) If there are additional counts for which justification is not an element, add the following:

If you find the defendant not guilty of counts (specify numbers and names of the offenses for which lack of justification was an element), you still must consider the count(s) (specify name of count) for which the People are not required to prove that the defendant was not justified.

¹ The January 2015 amendment dealt with evidence of a party's reputation for violence.

The February 2016 amendment added a supplemental instruction for situations involving an intervener to accord with *People v Walker*, 26 NY3d 170 [2015]. A Note was also added at the end of the charge.

The July 2016 amendment included instructions regarding the consideration of evidence of threats made by the deceased against the defendant.

The January 2018 amendment provided more detailed instructions at the end of the charge on how to instruct the jury to consider counts with the lack of justification as an element. See text associated with endnote 19.

The October 2025 amendment was: [1] to add an instruction (to which endnote five applies) for the situation where there is evidence that a defendant is initially justified in using physical force but continues using -physical force at a point in time when the defendant is no longer justified; [2] to amend a couple of sections of the instruction which Judge Rivera in a concurring opinion in *People v T.P.*, _N.Y.3d_, 2025 NY Slip Op 03642 [2025] thought "jurors may misunderstand" in a scenario involving an assault or homicide in which there is evidence of a prior assault or threat of one by the victim against the defendant; and [3] to draw on *People v Miller*, 39 NY2d 543 [1976] to fulfill number [2].

The following is a summary of the October 2025 amendments:

First, the section under the addendum heading: “Add if there was evidence of a party’s reputation for violence” was amended to add at the end of the sentence: “or threats or violent acts against the defendant or others.” And in the text that follows, an option was added for the defendant having “engaged in threats of violence.” Note: This section of the instruction requires the defendant’s knowledge of threats; there is a separate section for “initial aggressor” which does not require the defendant’s knowledge. *Miller*, 39 NY2d at 551-52 [1976] [“if the defendant was not aware of the threat, the threat still is probative of the deceased’s state of mind and bears, thus, on whether the deceased was the aggressor. On the other hand, if the defendant did hear of the threat, the threat may also serve to indicate the defendant’s own apprehensive state of mind” (citation omitted)].

In the following sentence, the words: “against the defendant or others” was added. See *Miller*, 39 NY2d at 552 [“We can discern no valid distinction as to admissibility between violent acts that the victim directed at the defendant and acts which the victim directed towards identified third persons. The crucial factor is not who was the target of the violence, but that the defendant was aware at the time of the incident of the victim’s past violent behavior”].

In the sentence that follows, the following underscored words were added:

“If so, you may then consider to what extent, if any, that knowledge contributed to a “reasonable belief” on the defendant’s part that the physical force the defendant used was necessary . . .”

Second, in the section on “Initial Aggressor,” in the following sentence, the underscored words were added in lieu of the word “previously”:

“A person cannot be considered the initial aggressor simply because he/she has a reputation for violence or has engaged in violent acts prior to the time in question.”

Threats against the defendant, if any, are addressed in the next section, which was amended by adding the underscored words:

[Add if there was evidence of threats:

You may (however) consider whether the deceased made threats against the defendant prior to the time in question and whether such threats indicated an intent to act upon them as the initial aggressor. In making that assessment, it does not matter in determining who was the initial aggressor whether the defendant was aware of the threats.]

² See *People v McManus*, 67 NY2d 541, 549 [1986]; *People v Higgins*, 188 AD2d 839, 840 [3rd Dept 1992].

³ If the lawfulness of this- physical force is in issue, then include the word “unlawful,” which appears in the statute (see Penal Law § 35.15 [1] [b]), and explain how it applies to the case.

⁴ See CJI [NY] General Applicability, Causation-Death or Causation-Injury.

⁵ *People v Castillo*, 42 NY3d 628, 631 (2024) ["The defense does not automatically apply throughout the entirety of an encounter—a defendant who may be justified in using physical force at the start of an encounter loses the right to use such force ‘ “at the point he can no longer reasonably believe the assailant still poses a threat to him” ’ (*People v Williams*, 35 NY3d 24, 45 [2020], quoting *People v Del-Debbio*, 244 AD2d 195, 195 (1st Dept 1997))"]; *People v Sullivan*, 68 N.Y.2d 495, 510 N.Y.S.2d 518, 503 N.E.2d 74 (1986) (The evidence before a grand jury was sufficient to charge a police officer with reckless manslaughter where the officer, facing -physical force, justifiably fired and disarmed the assailant with his first shot, five seconds passed and the officer fired a second time killing the assailant).

⁶ See *People v Goetz*, 68 NY2d 96, 115 [1986].

⁷ *Miller*, 39 NY2d at 549 ["the threats of the deceased against the defendant are admissible, whether communicated to the defendant or not. Even if the defendant was not aware of the threat, the threat still is probative of the deceased's state of mind and bears, thus, on whether the deceased was the aggressor"].

⁸ See *Miller*, 39 NY2d at 550-551 ["a defendant, asserting at trial justification as a defense, ought to be permitted to adduce evidence of violent acts of the victim and his knowledge thereof. At the same time, however, the jury must be cautioned that this evidence may only be considered with respect to the issue of the reasonableness of defendant's apprehensions, and, further, that the character of the deceased and his specific past violent acts are not otherwise relevant to the issues before them"].

⁹ If the lawfulness of this -physical force is in issue, then include the word "unlawful," which appears in the statute [see Penal Law § 35.15(1)(b)], and explain how it applies to the case.

¹⁰ *Id.*

¹¹ While evidence of the defendant's knowledge of the victim's reputation for violence or specific acts of violence is admissible to show that the defendant's fears were reasonable, the evidence is not admissible "to show that the deceased was the aggressor, for if competent for that purpose, similar evidence could be given as to the reputation of the defendant as bearing on the probability that he was the aggressor." *People v Rodawald*, 177 NY 408, 423 [1904]); see Prince, Richardson On Evidence, § 4-409, p172 (11th ed. Farrell)

¹² See *People v Petty*, 7 NY3d 277, 285 [2006] ["evidence of a deceased victim's prior threats against defendant is admissible to prove that the victim was the initial aggressor, whether or not such threats are communicated to defendant"] *Miller*, 39 NY2d at 549 [1976] ["if the defendant was not aware of the threat, the threat still is probative of the deceased's state of mind and bears, thus, on whether the deceased was the aggressor"].

¹³ See:

(1) *Appellate Division, First Department: People v. Blackwood*, 147 A.D.3d 462 [2017] ["the court's charge did not convey to the jury that an acquittal on the top count. . . based on a finding of justification would preclude consideration of the other charges" for which the lack

of justification was an element); *People v Roberts*, 280 AD2d 415, 416 [2001] ["Although the court instructed the jurors that justification was a defense to all of the counts, it did not instruct them that if they were to find defendant not guilty by reason of justification on a count, they were not to consider any lesser crimes"].

(2) *Appellate Division, Second Department: People v Feuer*, 11 AD3d 633, 634 [2004] ["[T]he error committed by the trial court in failing to instruct the jurors that if they found the defendant not guilty of a greater charge on the basis of justification, they were not to consider any lesser counts, is of such nature and degree so as to constitute reversible error"]; *People v Bracetty*, 216 AD2d 479, 480 [1995] ["The court failed to instruct the jury...that the jurors were only to consider the lesser offense if they found the defendant not guilty of the greater offense for a reason other than justification"].

(3) *Appellate Division, Third Department: People v Higgins*, 188 AD2d 839, 840-841 [1992] [The trial court properly informed the jury that "only if defendant was found not guilty of the greater offense for a reason other than justification, was the jury to consider the lesser offense"]