

Vermont Model Criminal Jury Instructions

Self Defense

- CR07-101. [Self Defense](#) (11/09/07)
- CR07-091. [The Aggressor and Self-Defense](#) (06/16/03)
- CR07-111. [Use of Deadly Force in Self Defense](#) (07/26/19)
- CR07-121. [Use of Deadly Force in Self Defense and in Defense of Another](#) (06/18/03)

Reporter's Note

Although characterized as a defense, self-defense is something the State must disprove once it is presented in the case. However, the defendant is not entitled to an instruction on self-defense until there is *prima facie* evidence to support the defense. State v. Albarelli, 2016 VT 119, ¶¶ 12–18 (insufficient evidence to support self-defense charge where there was lack of evidence showing that defendant believed he was “in peril of imminent bodily harm,” and where defendant failed to show that his belief of imminent bodily harm was reasonable); State v. Little, 167 Vt. 577, 577-78 (1997) (mem.) (evidence did not support a charge); State v. Darling, 141 Vt. 358, 361-62 (1982) (any error in the charge was harmless, where the evidence did not support the charge); State v. Cantrell, 151 Vt. 130, 135-36 (1989) (in order to be entitled to an instruction on a defense, defendant must establish a *prima facie* case on its elements).

The committee has discussed this instruction with Prof. Tiersma. Instruction CR07-101 follows the traditional approach of explaining what self-defense is, and then explaining that the State must prove that the defendant did not act in self-defense.

Self-defense is measured against the act of the crime. The use of deadly force requires greater justification than the use of a lesser force. A court should exercise caution in selecting the appropriate instruction to use in a particular case. The general rules are summarized in State v. Rounds, 104 Vt. 442 (1932). Other cases discussing self-defense include State v. Hoadley, 147 Vt. 49, 54 (1986); State v. Barrett, 128 Vt. 458, 460-61 (1970); State v. Dragon, 128 Vt. 568, 572 (1970); State v. Wilson, 113 Vt. 524, 527 (1944).

The Aggressor and Self-Defense. CR07-091 reflects the general rule that an “aggressor” may not act in lawful self-defense or defense of another. Note, however, that “when the aggressor starts the fight using only nondeadly force, and is then met with unjustified deadly force . . . , the aggressor may reasonably defend himself against the unjustified deadly force.” State v. Trombley, 174 Vt. 459, 464 (2002); *see also* W. LaFave, 2 Subst. Crim. L. § 10.4(e) (2d ed. Oct. 2017 update). Depending on the evidence presented, it may be necessary to account for that exception in the instructions.

Use of Deadly Force. The instruction on the use of deadly force in self-defense, CR07-111, includes an instruction that under certain circumstances, the law does not require the defendant to retreat. See State v. Hatcher, 167 Vt. 338, 348 (1997).

The instruction for self-defense, and defense of another, CR07-121, derives from the trial court’s instructions in

State v. Verrinder, 161 Vt. 250 (1993). However, these instructions have been shortened significantly. One of the changes is to eliminate an instruction on duty to retreat. In State v. Hatcher, 167 Vt. 338 (1997), the trial court instructed the jury that if the defendant honestly and reasonably believed “it was immediately necessary to use deadly force to protect himself from an imminent threat of death or bodily injury, the law does not require him to retreat.” Id. at 348.

The committee notes that “defense of another” provides justification for a homicide only if the necessary relationship exists. See 13 V.S.A. § 2305(1).

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