



## **INFORMATION BULLETIN:**

### ***USE OF DEADLY FORCE IN SELF-DEFENSE IN CALIFORNIA***

**JUNE 3, 2020**

As a result of the current unrest in our society, coupled with law enforcement resources being overwhelmed in many cities, law-abiding residents have been left to their own devices in terms of protecting themselves and their loved ones. As we saw during the 1992 riots in Los Angeles, business owners and individuals alike are choosing to exercise their Second Amendment rights to do so, many of whom are first time gun owners.

To assist gun owners that are now choosing to carry a firearm for purposes of lawful self-defense, CRPAF has prepared the following information as a helpful guide in understanding California's complex laws regarding the use of deadly force in self-defense. It is important to note, however, that this bulletin is being prepared for general information purposes only and should not be taken as legal advice. For this reason, should you have questions regarding the contents of this bulletin, or any other questions regarding the use of a firearm in self-defense, we urge you to contact an attorney. Contact us by sending an email to [contact@crpa.org](mailto:contact@crpa.org) if you would like a referral for an attorney in your area.

#### **I. LEGAL BASICS**

Before discussing the requirements of the lawful use of deadly force in self-defense, it is important to understand some basic principles regarding our current legal system. In a typical criminal case, the prosecutor bears the burden of proving beyond a reasonable doubt that a person committed a crime.<sup>1</sup> This applies in cases of homicide, which under California law are either murder or manslaughter. The difference between the two is that in the case of murder, the defendant has acted with malice aforethought.<sup>2</sup>

When using deadly force in self-defense, however, the defendant is essentially admitting to the underlying act of killing another person but with legal justification. As a result, the defendant typically bears the

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<sup>1</sup> CALCRIM 220.

<sup>2</sup> Malice does not require hatred or ill will toward the victim and does not require deliberation or the passage of time to form. CALCRIM 520. Rather, it is a mental state that must be formed before the act is committed. *Id.* Put another way, malice is a wrongful act done intentionally and without legal cause or excuse. *See People v. Taylor*, 36 Cal. 255 (1868).

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burden of proving their actions were justified. If the prosecutor is then unable to prove beyond a reasonable doubt that the killing was not justified, the defendant must be found not guilty of homicide.<sup>3</sup>

## II. USE OF DEADLY FORCE IN SELF-DEFENSE UNDER CALIFORNIA LAW

Although California has adopted statutory provisions regarding justifiable homicide, a better source of information is the California Criminal Jury Instructions.<sup>4</sup> This is because many of California's statutory provisions do not account for developments in case law. What's more, the jury instructions are provided to the individual members of a jury when ultimately deciding a defendant's guilt, and for that reason should be studied carefully.

As stated in CALCRIM 505, a defendant will have acted in lawful self-defense if all the following conditions are met:

- **The defendant reasonably believed they were in imminent danger of being killed or suffering great bodily injury;**
- **The defendant reasonably believed the immediate use of deadly force was necessary to defend against that danger; and,**
- **The defendant used no more force than was reasonably necessary to defend against that danger.**

Note how each of the above have an element of reasonableness. This is the core of any self-defense claim. In the eyes of a jury, reasonableness is determined by looking at the known facts and circumstances as they appeared to the defendant and then asking what a reasonable person in a similar situation with similar knowledge and experience would do.<sup>5</sup>

Stated another way, the jury is trying to place themselves in the shoes of the person claiming self-defense and looking at the situation from their point of view. If the defendant's beliefs are considered reasonable by the jury, the fact that there may not have been an actual danger to the defendant is irrelevant.<sup>6</sup> But this also means that persons with more training and experience can be held to a higher standard than the general public.

For purposes of the above requirements, the harm must be immediate and inevitable, meaning that a belief in future harm is insufficient no matter how great it is believed to be.<sup>7</sup> Note, however, that a defendant

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<sup>3</sup> CALCRIM 505.

<sup>4</sup> You can view all of the California Criminal Jury Instructions, including those discussed in this bulletin, on the California Court's website at <https://www.courts.ca.gov/partners/documents/calcrim.pdf>.

<sup>5</sup> CALCRIM 505.

<sup>6</sup> By way of example only, if the defendant claiming self-defense had a firearm pointed at them in a threatening manner, and the defendant reasonably believed their life was immediately threatened, the fact that the firearm was unloaded or otherwise inoperable would be irrelevant for purposes of the defendant's self-defense claim unless it can be shown the defendant somehow knew of the firearm's condition beforehand.

<sup>7</sup> CALCRIM 505.

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need not exercise an option of retreat before using deadly force in self-defense in public.<sup>8</sup> However, once the threat of danger ends, so too does the right to use deadly force. And the term “great bodily injury” is defined as significant or substantial physical injury, that is, greater than minor or moderate harm.<sup>9</sup> The harm can also be that of suffering a “forcible and atrocious crime,” such as being raped, maimed, robbed, or other crime whose character and manner reasonably create a fear of death or serious bodily harm.<sup>10</sup>

#### **a. Imperfect Self-Defense and the “Initial Aggressor” Exception**

Should a defendant’s actions fail to meet the above requirements, the defendant may be held guilty of voluntary manslaughter (but not murder) by means of their imperfect self-defense claim.<sup>11</sup> In such cases, the defendant must still have actually believed they were in imminent danger of being killed or suffering great bodily injury and the immediate use of deadly force was necessary, but that their belief was otherwise unreasonable under the circumstances.<sup>12</sup>

But this changes if the defendant initially started the confrontation or engaged in mutual combat. In such cases, a defendant will only be entitled to use deadly force in self-defense if they first actually and in good faith tried to stop fighting, indicated to their opponent in a reasonable manner that they wanted to stop fighting and that they themselves had stopped, and the defendant gave their opponent a chance to stop fighting.<sup>13</sup> In effect this imposes a kind of duty to retreat on the defendant before using deadly force in self-defense.

#### **b. Defense of Others and Defense of Property**

In general, a person may lawfully use deadly force to defend another if the person being defended themselves had a right to use deadly force in self-defense.<sup>14</sup> This implies a certain amount of knowledge of the situation, making it extremely difficult to justify otherwise. For this reason, individuals who find themselves at or near potentially deadly and dangerous situations should refrain from intervening unless it is clear the person being attacked has a right to use deadly force in self-defense.

Gun owners also need to be aware that deadly force is generally never justified to defend property.<sup>15</sup> This includes pets, which are considered personal property for purposes of the law. This also includes other

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; *See also People v. Ceballos*, 12 Cal.3d 470, 479 (1974).

<sup>11</sup> *See* CALCRIM 571.

<sup>12</sup> *Id.*

<sup>13</sup> CALCRIM 3471.

<sup>14</sup> CALCRIM 505.

<sup>15</sup> *See, e.g., People v. Ceballos*, 12 Cal.3d 470 (1974) (holding that deadly force cannot be justified to prevent all felonies of a type involving the breaking and entry of a dwelling place, and where the character and manner of burglary do not reasonably create a fear of great bodily harm, there is no cause for the exaction of human life or for the use of deadly force).

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tangible property, including personally owned firearms. However, a person is entitled to use a reasonable amount of force to protect property.<sup>16</sup>

California also creates a presumption of a person acting in self-defense when defending themselves in their own home, often referred to as the “Castle Doctrine.”<sup>17</sup> In such cases, the law will presume the defendant reasonably feared imminent death or great bodily injury provided specific elements are met. By doing so, this shifts the burden back to the prosecutor to prove the defendant did not have a reasonable fear when using deadly force against the intruder. But the presumption is nevertheless rebuttable, and for that reason individuals should never rely on California’s Castle Doctrine when acting in self-defense.

### III. ADDITIONAL CONSIDERATIONS

Aside from murder and manslaughter, there are other crimes a person can be charged with for improperly using a firearm. Common among these are assault with a deadly weapon, brandishing, and negligent discharge.<sup>18</sup> Only in cases of self-defense will a defendant’s actions generally be excused, which means all the above requirements will need to be satisfied.<sup>19</sup> It should also be noted that persons acting in self-defense will not be held criminally liable for the injury of an innocent bystander.<sup>20</sup> But this protection does not also extend to potential civil liability.

### IV. SUMMARY AND CONCLUSION

Above all else, remember that a person acting in self-defense will ultimately be judged by 12 strangers on a jury. Knowing this, should you find yourself in a situation where you may be forced to use deadly force, ask yourself if you feel confident that your actions would be viewed as reasonable by those 12 strangers. If not, or you are not sure, then you should consider any possible alternatives before resulting to using deadly force.

There is also no substitute for training and education. The above information merely scratches the surface of California’s complex laws regarding the lawful use of a firearm in self-defense. Gun owners of all skill levels should constantly strive to better their skills and their knowledge of the law. To that end, CRPA offers a number of training opportunities available to the public that are taught by skilled instructors and legal experts. For more information about these programs, visit [www.CRPA.org](http://www.CRPA.org) or send an email to [contact@crpa.org](mailto:contact@crpa.org).

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<sup>16</sup> CALCRIM 3476.

<sup>17</sup> CALCRIM 3477.

<sup>18</sup> Many believe exhibiting a firearm is enough to diffuse a potentially dangerous situation. However, this can still create liability for brandishing, which is usually a misdemeanor under California law. See Pen. Code § 417. Doing so could also be classified as assault with a deadly weapon, which can be prosecuted as either a felony or misdemeanor. Pen. Code § 245.

<sup>19</sup> See, e.g., CALCRIM 875, 983 (stating that in order to be found guilty, the defendant must not have acted in self-defense or defense of another).

<sup>20</sup> See *People v. Matthews*, 91 Cal.App.3d 1018, 1024 (1979).

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