

Self Defense

Disclaimer: The following is not legal advice. This is one of those areas where everyone could really stand to study things written by experts in the field, and consulting a knowledgeable attorney with any questions.

By far the best plan of action in any such situation is first to be aware and avoid and then to walk away.

Carrying a firearm for self defense is serious business. You must never be anything but perfectly courteous and polite to everyone you meet. You must forever determine that anger or pride or machismo will never get the best of you. Don't go places where you wouldn't go if you were unarmed – a gun is not a magic talisman. Don't deal with or be around people who you know are involved or seem to be involved in bad stuff.

Is there a law against "brandishing" a firearm? Using a firearm in self defense (even if there are no shots fired) can be justified, depending on the scenario. "Justified" means you did something that would normally be a crime, but under the circumstances it is not. Pointing a firearm will only be justified if it is "reasonable" use of force.

IC 35-47-4-3

Pointing firearm at another person

Sec. 3. (a) This section does not apply to a law enforcement officer who is acting within the scope of the law enforcement officer's official duties or to a person who is justified in using reasonable force against another person under:

- (1) IC 35-41-3-2; or
- (2) IC 35-41-3-3.

(b) A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm was not loaded.

When is it legal to use a gun in self defense?

Shooting a firearm at another person is considered "**deadly force**" (regardless of the type of firearm, or type or caliber or ammunition used). IC 35-41-3-2 and IC 35-41-3-3 talk about the justified use of "**reasonable force**" and "**deadly force,**" and the full text is included below. "**Reasonable force**" is the force required **to prevent or stop** another person from using unlawful force against you or another person... **and no more.**

Don't get caught up in discussions about whether you should "shoot to kill" or not. If you shoot someone, it is automatically considered use of deadly force. The discussion is moot. The only justifiable reason to use of any level of reasonable force, up to and including deadly force, is to make the person who is doing, or who you truly believe is about to do you grave harm, **STOP** what they are doing. If the person stops and he is no longer a threat to your safety, you must also stop or reduce the level of force to an equally reasonable level. This doesn't automatically mean you have to put your gun away and shake hands. Holding your gun at ready *might* be reasonable. It depends on the circumstances. Again the best course of action is to leave the situation if at all possible, as soon as possible.

WARNING: Until and unless you have made the decision to fire your gun, **DO NOT** put your finger on the trigger. If you "accidentally" shoot someone you are holding at gunpoint, who is not an immediate deadly threat, you may be convicted of negligent homicide and will most likely be sued. You also have to consider whether pointing the gun at the person is "reasonable" use of force.

BEWARE! A "warning shot" might be construed as "deadly force" by a jury. You **MUST NOT**, in my opinion, fire a "warning shot" under **any** circumstances. Consider this: the bullet fired as a warning shot will travel in the

direction in was fired until something *or someone* stops it. Likewise, intentionally shooting someone in the hand, arm, or leg is still “deadly force.” I was in a gun shop one day and overheard a woman looking for a small gun say, “I don’t wanna kill ‘em, I’ll just shoot ‘em in the leg or somethin’.” The other attorney will argue that if deadly force wasn’t necessary why did you shoot them at all?

In the Indiana Code **reasonable force** is only justified:

- “to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force,” and
- (with respect to property other than a dwelling, cartilage, or occupied motor vehicle) “to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect.”

Note the words “reasonably believes”, “imminent”, and “immediately”. In the prosecutor’s office and in the court room, the “reasonable man” test will be applied in cases involving the use of force. Age, gender, and other physical limitations are taken into account in the “reasonable man” test. This also includes disparity in size, weight, age, physical strength, number of attackers, attacker having a weapon, or a having weapon available, as well as the victim’s ability and opportunity to evade or escape the attacker, etc. “Imminent” means “right now” not in five minutes, not tomorrow. If it’s not happening *right now*, or about to happen *right now*, you may have the opportunity to escape, call the police, etc. When it comes to personal property, remember: stuff is just stuff.

In the Indiana Code **deadly force** is only justified:

- “if the person reasonably believes that that force is necessary to prevent **serious bodily injury** to the person or a third person or the commission of a **forcible felony**.”
- “if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.”
- “if the person reasonably believes that the force is necessary to prevent or stop the other person from hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.”

IC 35-41-1-7

"Deadly force" defined

Sec. 7. "Deadly force" means force that creates a substantial risk of serious bodily injury.

IC 35-41-1-25

"Serious bodily injury" defined

Sec. 25. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) extreme pain;
- (4) permanent or protracted loss or impairment of the function of a bodily member or organ;

or

- (5) loss of a fetus.

IC 35-41-1-11

"Forcible felony" defined

Sec. 11. "Forcible felony" means a felony that involves the use or threat of force against a human being, or in which there is *imminent danger of bodily injury* to a human being. (Italics mine, see definition of "bodily injury" below)

IC 35-41-1-4

"Bodily injury" defined

Sec. 4. "Bodily injury" means any impairment of physical condition, including physical pain.

Now that you have read the definitions and know the terminology, below is the actual section of the Indiana Code as it pertains to the use of force. Learn and understand this section, and if you have questions, consult a knowledgeable attorney.

IC 35-41-3-2

Use of force to protect person or property

Sec. 2. (a) A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

(b) A person:

- (1) is justified in using reasonable force, including deadly force, against another person; and
- (2) does not have a duty to retreat;

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle.

(c) With respect to property other than a dwelling, curtilage, or an occupied motor vehicle, a person is justified in using reasonable force against another person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person's trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect. However, a person:

- (1) is justified in using deadly force; and
- (2) does not have a duty to retreat;

only if that force is justified under subsection (a).

(d) A person is justified in using reasonable force, including deadly force, against another person and does not have a duty to retreat if the person reasonably believes that the force is necessary to prevent or stop the other person from hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight. For purposes of this subsection, an aircraft is considered to be in flight while the aircraft is:

- (1) on the ground in Indiana:
 - (A) after the doors of the aircraft are closed for takeoff; and
 - (B) until the aircraft takes off;
- (2) in the airspace above Indiana; or
- (3) on the ground in Indiana:
 - (A) after the aircraft lands; and
 - (B) before the doors of the aircraft are opened after landing.

(e) Notwithstanding subsections (a), (b), and (c), a person is not justified in using force if:

- (1) the person is committing or is escaping after the commission of a crime;
 - (2) the person provokes unlawful action by another person with intent to cause bodily injury to the other person; or
 - (3) the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.
- (f) Notwithstanding subsection (d), a person is not justified in using force if the person:
- (1) is committing, or is escaping after the commission of, a crime;
 - (2) provokes unlawful action by another person, with intent to cause bodily injury to the other person; or
 - (3) continues to combat another person after the other person withdraws from the encounter and communicates the other person's intent to stop hijacking, attempting to hijack, or otherwise seizing or attempting to seize unlawful control of an aircraft in flight.

IC 35-41-3-3

Use of force relating to arrest or escape

Sec. 3. (a) A person other than a law enforcement officer is justified in using reasonable force against another person to effect an arrest or prevent the other person's escape if:

- (1) a felony has been committed; and
- (2) there is probable cause to believe the other person committed that felony.

However, such a person is not justified in using deadly force unless that force is justified under section 2 of this chapter.

(b) A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest. However, an officer is justified in using deadly force only if the officer:

- (1) has probable cause to believe that that deadly force is necessary:
 - (A) to prevent the commission of a forcible felony; or
 - (B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and
- (2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

(c) A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.

(d) A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person. However, an officer is justified in using deadly force only if the officer:

- (1) has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and
- (2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

(e) A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if the officer has probable cause to believe that the force is necessary to prevent the escape of a person who is detained in the penal facility.

(f) Notwithstanding subsection (b), (d), or (e), a law enforcement officer who is a defendant in a criminal prosecution has the same right as a person who is not a law enforcement officer to assert self-defense under IC 35-41-3-2.

Now What?

Disclaimer: The following is not legal advice. You are advised to seek the counsel of a competent attorney.

You've just used your gun in self-defense. Adrenaline is coursing through your veins, your chest is pounding, you're shaking, you're nauseous, you may be in shock and have other injuries. "What do I do?"

- Watch your six (become aware of what is all around you, in case of multiple attackers). Get to a safe(r) place if you are able.
- Call 9-1-1 as soon as it is safe to do so, ask for police and an ambulance (or two, you may need one).
- Do not make any statements. Call your lawyer.

The 9-1-1 operator may ask for information, but remember this: everything you say will be recorded and can be used against you. Your goal is to get police and medical attention to the scene ASAP, **not** to tell the operator what happened. The operator will want you to stay on the phone until the police arrive. The police could take five or ten minutes to get there. That's a really long monologue. You don't have to answer the operator's questions. "Where are you?", "What is your description?", "Are you injured?", "Where is the injured person?" are probably OK to answer.

You will be disoriented and in shock, or seriously injured yourself. You may have tunnel vision or be partially deafened. Your perception of time will be altered, and you won't have a grasp on the details, but they will come to you in time. The ONE story you tell police should be the one you give in writing with your lawyer present after you collect your thoughts and remember all the details. You will be under *extreme* stress and every time you open your mouth a different story will come out.

When the police come, DO NOT have your gun in your hand (except, perhaps, if you are still fighting); keep your hands visible at all times and do not make any sudden movements. DO NOT move toward the police or toward your attacker. Follow every instruction exactly. If you're holding your custom three thousand dollar 1911, and they tell you to drop it, and you know it's going to fall into the White River, you drop it.

Expect to be disarmed and handcuffed and placed in the back of a police cruiser. They do this partly for safety, and partly because people don't want to go to jail and they start talking (ever seen COPS?). If someone is lying dead on the street, there's a virtual 100% chance you're going to take a ride, and **nothing** you say will change that fact. But **everything you say** can and will be used against you in court.

You may hear witnesses talking, and want to explain why they're all wrong. But imagine that you're in their shoes, oblivious to everything but themselves. POW! POW! POW! "What was that?!? Did you see that? That guy just shot that guy and he running off." Now all those people call 9-1-1 with your description. You may have scooped up your 4 year old girl to get her to safety, and now you're a kidnapper! Armed and dangerous!

Do not make any statements. You may have the unstoppable urge to explain everything that happened in great detail. Instead you should say this: "I want to fully assist you in your investigation regarding being a victim, but I am going to invoke my right to silence and counsel, and I am not making any statements or comments, until I have spoken with an attorney." (From the book *Indiana Handgun Law*, Second Edition, Bryan L. Ciyou) Don't even say that you fired your gun. It's OK to answer the question "Do you need medical assistance?"