

# Massachusetts Law on Self Defense

- Individuals have a right to defend themselves and others from attack
- A person cannot lawfully use self-defense unless they are attacked or are immediately about to be attacked.
- The lawful exercise of self defense arises from necessity and ends when the necessity ends
- An individual may only use force sufficient to prevent an attack
- The law does not allow retaliation or revenge
- Self-defense is available only where there is an immediate need to resort to force and not where other remedies are available.

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# Deadly Force in Self Defense

## Defense of Self

- The individual must have an actual and reasonable belief that they are in immediate danger of death or serious bodily harm
- The individual must believe they can save themselves only by use of deadly force
- The individual must take all proper and reasonable means to avoid physical combat before resorting to deadly force
  - A person may use physical force in self-defense only if they could not get out of the situation in some other way that was available and reasonable at the time.
  - Unless they are in their home, a person must retreat to avoid using deadly force unless they reasonably believe they cannot do so safely
- The individual must not use more force to defend themselves than was reasonably necessary under the circumstances
  - How much force is reasonably necessary will depend on the situation

## Defense of Others

- Individuals can use deadly force in defense of another
- They must reasonably believe another person is in immediate danger of death or serious bodily injury from which the other person could not save themselves without using deadly force

## Defense of Property

- Individuals cannot use deadly force to defend property

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# Model Jury Instruction 9.262

## Self Defense: Use of Deadly Force

- A person may use physical force in self-defense only if they could not get out of the situation in some other way that was available and reasonable at the time.
- In determining whether an individual used all reasonable means to avoid physical combat before resorting to the use of deadly force depends on all the circumstances, including the relative physical capabilities of the combatants, the weapons used, the availability of room to maneuver or escape from the area, and the location of the assault.
- “This rule does not impose an absolute duty to retreat regardless of personal safety considerations; an individual need not place himself in danger nor use every means of escape short of death before resorting to self-defense . . . . He must, however, use every reasonable avenue of escape available to him.” Commonwealth v. Benoit, 452 Mass. 212, 226-227 (2008), *quoting* Commonwealth v. Pike, 428 Mass. 393, 398 (1998)

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# Self-defense under the “Castle Law”

## G.L. c. 278, § 8A.

- A lawful resident of a dwelling, such as a house or apartment, is not required to retreat before using reasonable force against an unlawful intruder, if the resident reasonably believes that the intruder is about to kill or seriously injure them or another person lawfully in the dwelling, and also reasonably believes that force is necessary to protect themselves or the other person lawfully in the dwelling.
- While the castle law eliminates an occupant’s duty to retreat from a confrontation with an unlawful intruder, the statute does not eliminate the duty to retreat from a person lawfully on the premises, “even when that guest launches a life-threatening assault on the defendant.” Peloquin, 437 Mass. at 208; *see also* Commonwealth v. Painten, 429 Mass. 536, 545-546 (1999); Commonwealth v. Lapointe, 402 Mass. 321, 328-329 (1988).

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# Disengagement Tactics

Disengagement tactics include, but are not limited to:

- verbal persuasion
- warnings
- slowing down the pace of an incident
- waiting out a person
- creating distance between you and the threat
- calling for help

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# Time = Options

- When you can slow down the pace of an incident, your options for a positive outcome increase.
- It allows for more information or resources to become available, including the arrival of first responders to offer assistance.



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