

## Chapter 3

### DEFENSES

#### 301 DEFENSES; BURDEN OF PROOF

1. When a "defense," other than an "affirmative defense," defined by statute is raised at a trial, the Nation has the burden of disproving such defense beyond a reasonable doubt.
2. When a defense declared by statute to be an "affirmative defense" is raised at a trial, the defendant has the burden of establishing such defense by a preponderance of the evidence.

#### 302 INFANCY

1. Except as provided in subdivision two of this section, a person less than thirteen years old is not criminally responsible for conduct.
2. In any prosecution for an offense, lack of criminal responsibility by reason of infancy, as defined in this section, is a defense.

#### 303 JUSTIFICATION; A DEFENSE

In any prosecution for an offense, justification, as defined in Section 304 through 308, is a defense.

#### 304 JUSTIFICATION; GENERALLY

Unless otherwise limited by the ensuing provisions of this chapter defining justifiable use of physical force, conduct which would otherwise constitute an offense is justifiable and not criminal when:

1. Such conduct is required or authorized by law or by a judicial decree, or is performed by a public servant in the reasonable exercise of his official powers, duties or functions; or
2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

#### 305 JUSTIFICATION; USE OF PHYSICAL FORCE GENERALLY

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

1. A parent, guardian or other person entrusted with the care and supervision of a person under the age of eighteen or an incompetent person, and a teacher or other person entrusted with

the care and supervision of a person under the age of eighteen for a special purpose, may use physical force, but not deadly physical force, upon such person when and to the extent that he reasonably believes it necessary to maintain discipline or to promote the welfare of such person.

2. A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his direction, may use physical force when and to the extent that he reasonably believes it necessary to maintain order, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious physical injury.
3. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force upon such person to the extent that he reasonably believes it necessary to thwart such result.
4. A duly licensed physician, or a person acting under his direction, may use physical force for the purpose of administering a recognized form of treatment which he reasonably believes to be adapted to promoting the physical or mental health of the patient if (a) the treatment is administered with the consent of the patient or, if the patient is under the age of eighteen years or an incompetent person, with the consent of his parent, guardian or other person entrusted with his care and supervision, or (b) the treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.
5. A person may, pursuant to the ensuing provisions of this Code, use physical force upon another person in defense of himself or a third person, or in defense of premises, or in order to prevent larceny of or criminal mischief to property, or in order to effect an arrest or prevent an escape from custody. Whenever a person is authorized by any such provision to use deadly physical force in any given circumstance, nothing contained in any other such provision may be deemed to negate or qualify such authorization.

### **306 JUSTIFICATION; USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON**

1. A person may, subject to the provisions of subdivision (2), use physical force upon another person when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless:
  - A. The latter's conduct was provoked by the actor himself with intent to cause physical injury to another person; or
  - B. The actor was the initial aggressor; except that in such case his use of physical force is nevertheless justifiable if he has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or
  - C. The physical force involved is the product of a combat by agreement not specifically authorized by law.
2. A person may not use deadly physical force upon another person under circumstances specified in subdivision one unless:

- A. He reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he knows that he can with complete safety as to himself and others avoid the necessity of so doing by retreating; except that he is under no duty to retreat if he is:
  - (i) in his dwelling and not the initial aggressor; or
  - (ii) a police officer or peace officer or a person assisting a police officer; or
- B. He reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible sodomy or robbery; or
- C. He reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by law.

**307 JUSTIFICATION; USE OF PHYSICAL FORCE IN DEFENSE OF PREMISES AND IN DEFENSE OF A PERSON IN THE COURSE OF BURGLARY**

1. Any person may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force if he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson.
2. A person in possession or control of any premise, or a person licensed or privileged to be thereon or therein, may use physical force upon another person when he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. He may use any degree of physical force, other than deadly physical force, which he reasonably believes to be necessary for such purpose, and he may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, as prescribed in subdivision one, or in the course of a burglary or attempted burglary, as prescribed in subdivision three.
3. A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit a burglary of such dwelling or building, may use deadly physical force upon such other person when he reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.
4. As used in this section, the following terms have the following meanings:
  - A. The terms "premises," "building" and "dwelling" have the meanings prescribed in Section 487;
  - B. Persons "licensed or privileged" to be in buildings or upon other premises include,

but are not limited to, police officers or peace officers acting in the performance of their duties.

**308 JUSTIFICATION; USE OF PHYSICAL FORCE TO PREVENT OR TERMINATE LARCENY OR CRIMINAL MISCHIEF**

A person may use physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes such to be necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission by such other person of larceny or of criminal mischief with respect to property other than premises.

**309 DURESS**

1. In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.
2. The defense of duress as defined in subdivision one of this section is not available when a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

**310 ENTRAPMENT**

In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was induced or encouraged to do so by a public servant, or by a person acting in cooperation with a public servant, seeking to obtain evidence against him for purpose of criminal prosecution, and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. Inducement or encouragement to commit an offense means active inducement or encouragement. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

**311 RENUNCIATION**

1. In any prosecution for an offense, other than an attempt to commit a crime, in which the defendant's guilt depends upon his criminal liability for the conduct of another person pursuant to Section 207, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant withdrew from participation in such offense prior to the commission thereof and made a substantial effort to prevent the commission thereof.
2. In any prosecution for criminal facilitation it is an affirmative defense that, prior to the commission of the felony which he facilitated, the defendant made a substantial effort to prevent the commission of such felony.
3. In any prosecution pursuant to Section 418 for an attempt to commit a crime, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

4. In any prosecution for criminal solicitation pursuant to Section 401-407 or for conspiracy pursuant to Section 408-417 in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose the defendant prevented the commission of such crime.
5. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:
  - A. a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose, or
  - B. a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

### **312 MENTAL DISEASE OR DEFECT**

In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either:

1. The nature and consequences of such conduct; or
2. That such conduct was wrong.