

5-1-2008

Defense of Self, Others, Habitations and Property in Georgia Law

David M. O'Dea

Georgia State University College of Law

Follow this and additional works at: http://readingroom.law.gsu.edu/lib_student



Part of the [Law Commons](#)

Institutional Repository Citation

O'Dea, David M., "Defense of Self, Others, Habitations and Property in Georgia Law" (2008). *Law Library Student-Authored Works*. Paper 63.

http://readingroom.law.gsu.edu/lib_student/63

This Article was created by a Georgia State University College of Law student for the Advanced Legal Research class. It has been preserved in its original form, and may no longer reflect the current law. It has been uploaded to the Digital Archive @ GSU in a free and open access format for historical purposes. For more information, please contact jgermann@gsu.edu.

Defense of Self, Others, Habitations and Property in Georgia Law

Guide Information

Last Updated: Aug 16, 2011

Updated:

Guide URL: <http://libguides.law.gsu.edu/DefenseofSelfOthersHabitationsProperty>

Description: David M. O'Dea - Spring 2008 - Criminal Law; Georgia Law

Tags: [defense](#), [georgia law](#), [property](#)

RSS: [Subscribe to Updates via RSS](#)

Guide Index

[Home](#)

[Primary Sources](#)

[Secondary Sources](#)

[Interest Groups & Associations](#)

Home

Purpose

The purpose of this web research guide is to provide students, citizens and legal practitioners information on the law of self-defense, the defense of others and the defense of property in the State of Georgia.

Disclaimer

BE ADVISED: This research guide covers only the relevant law of defense in the State of Georgia in Georgia Courts. It does not cover the law of the United States nor any other states. Furthermore, this research guide in no way constitutes legal advice in any shape or form. The author, David O'Dea is a third-year law student at Georgia State Law School. Please direct any inquiries about this research to Nancy Johnson at njohnson@gsu.edu

[Back to Top](#)

Primary Sources

Georgia Statutes

Georgia's law relating to self-defense, the defense of others, and the defense of habitations and property is contained in the Official Code of Georgia. [The Official Code of Georgia can be found Online HERE.](#)

1. Self-Defense and Defense of Others

O.C.G.A. § 16-3-21 (2008): Use of force in defense of self or others, including justifiable homicide; conflicting rules.

Summary: This code section contains the law of self-defense where an individual is defending his or herself or a third-person against the imminent use of unlawful force by another. The threat or use of force is appropriate if an actor reasonably believes that such force is necessary. Deadly force or that likely to cause great bodily injury is only authorized if an actor reasonably believes that such force is necessary to prevent death or great bodily injury, or the commission of a forcible felony.

O.C.G.A. § 16-1-3(6) (2008): "Forcible felony" defined.

Summary: This code section defines a "forcible felony" to mean any felony which involves the use or threat of physical force or violence against any person.

O.C.G.A. § 16-3-23.1 (2008): Use of force in defense of habitation, property, self, or others; no duty to retreat.

Summary: This section affirms one of Georgia's common law traditions by stating that an individual acting under O.C.G.A. 16-3-21 has no duty to retreat and he or she has the right to stand his or her ground when acting in defense.

O.C.G.A. § 16-3-22 (2008): Persons rendering assistance to law enforcement officers.

Summary: This code section states the law of defense where an individual renders assistance to a law enforcement officer who is being hindered in the performance of his official duties or whose life is being endangered by the conduct of another. This section provides the same immunity to a responding citizen that a law enforcement officer is protected under, provided the responding citizen acts reasonably and in good faith. The law enforcement agency's report creates a rebuttable presumption of good faith on part of the responding citizen.

[BACK TO TOP](#)

2. Defense of Habitation

O.C.G.A § 16-3-23 (2008): Use of force in defense of habitation.

Summary: This code section states the law of defense where an individual uses force to prevent or terminate an unlawful entry or attack upon a habitation. Use of force is appropriate only when entry is made in a violent or tumultuous manner.

O.C.G.A. § 16-3-24.1 (2008): "Habitation" and "personal property" defined.

Summary: This code section defines "habitation" to include any dwelling, motor vehicle, or place of business.

O.C.G.A. § 16-3-23.1 (2008): Use of force in defense of habitation, property, self, or others; no duty to retreat.

Summary: This code section affirms one of Georgia's common law traditions by stating that an individual acting under O.C.G.A. 16-3-23 has no duty to retreat and he or she has the right to stand his or her ground when acting in defense of his or her habitation.

3. Defense of Property

O.C.G.A. § 16-3-24 (2008): Use of force in defense of property.

Summary: This code section states the law of defense where an individual is preventing or terminating another's trespass, tortious or criminal interference with real property.

O.C.G.A. § 16-1-3(6) (2008): "Forcible felony" defined.

Summary: This code section defines a "forcible felony" to mean any felony which involves the use or threat of physical force or violence against any person. Force likely to cause death or great bodily injury is only authorized when one reasonably believes they are stopping the commission of a forcible felony.

O.C.G.A. § 16-3-24.1 (2008): "Habitation" and "personal property" defined.

Summary: This code section defines "personal property" to mean personal property other than a motor vehicle.

O.C.G.A. § 16-3-23.1 (2008): Use of force in defense of habitation, property, self, or others; no duty to retreat.

Summary: This section affirms one of Georgia's common law traditions by stating that an individual acting under O.C.G.A. 16-3-24 has no duty to retreat and he or she has the right to stand his or her ground when acting in defense.

[BACK TO TOP](#)

4. Immunity from Prosecution and Affirmative Defenses

O.C.G.A 16-3-24.2 (2008): Immunity from criminal prosecution where use of threats or force is justified.

Summary: This code section provides general immunity from criminal prosecution for a valid defensive action by an actor under all of the previous code section except O.C.G.A. 16-3-22 which has immunity in its own statutory terms.

O.C.G.A 16-3-28 (2008): Affirmative defenses.

Summary: This code section states that all prior listed defenses will be treated as affirmative defenses in Georgia's Courts.

Selected Georgia Cases

1. Self-Defense and the Defense of Others

Lewis v. State, 270 Ga. 891 (1999)(evidence that the defendant was the victim of a prior attack at the hands of a different attacker is irrelevant in determining the defendant's state of mind when attacked by another in a justification defense case).

Clark v. State, 271 Ga. 27 (1999)(if the force used by a defendant is excessive and the defendant reasonably knew that it was excessive, then the defendant has acted unlawfully).

Koritta v. State, 263 Ga. 703 (1994)(where slight evidence is present and suggests that a victim was killed by an act of the defendant, committed while the defendant was engaged in an intentional attempt to protect himself and others from death or great bodily harm at the hands of the victim, a charge on justification is necessary).

Conklin v. State, 254 Ga. 558 (1985)(emphasizes that Georgia has long recognized since 1898 that in the face of a felonious assault, a man who is free from blame has no duty to retreat).

Nelson v. State, 254 Ga. 611 (1985)(reaffirms Chancellor v. State, 165 Ga.App. 365 (1983) for the proposition that the reasonable man standard governs the defensive act of an individual).

2. Defense of Habitation

Hammock v. State, 277 Ga. 612 (2004)(held that for purposes of O.C.G.A. § 16-3-23 (2008), a person's habitation can be a particular space in a jointly-occupied dwelling provided that such person has obtained the right to occupy that space and exclude his co-inhabitants therefrom).

Stobbart v. State, 272 Ga. 608 (2000)(the defense of habitation is not available to a defendant who has invited a victim into his or her home).

Bishop v. State, 257 Ga. 136 (1987)(defense of habitation cannot be accomplished by setting up a spring gun on one's property as the property owner must reasonably believe that entry is being made on his or her property to commit a felony).

Turner v. State, 111 Ga.App. 860 (1965)(defense of habitation is not available to an individual being attacked in his or her front yard when their is no endeavor to enter the habitation).

3. Defense of Property

Patel v. State, 278 Ga. 759 (2004)(limits the defense of property justification to situations where a forcible felony is directed at the person of the defendant).

State v. Moore, 243 Ga. 594 (1979)(defense of property against another requires that force be used against a person, where defendant was convicted of criminal trespass for breaking down a gate to property he claimed a proscriptive right to).

4. Immunity from Prosecution and Affirmative Defenses

Boggs v. State, 261 Ga.App. 104 (2003)(immunity from prosecution is a question of law which the trial court must determine before the trial of the defendant commences).

Holloway v. McElroy, 474 F.Supp 1363 (M.D. Ga. 1979)(federal habeas review that cast serious doubt on Georgia's ability to treat defensive statutes as affirmative defenses where the Court stated, "the court reaches the inescapable conclusion that the absence of self-defense is an element of the crime which the prosecution must disprove beyond a reasonable doubt").

Henderson v. State, 234 Ga. 827 (1975)(jury charge that asked the jury to determine with respect to a claim of self-defense whether the defendant was acting under a reasonable fear that his life was in danger at the time he committed act erroneously shifted the burden of proof to the defendant).

[Back to Top](#)

Secondary Sources

Law Review Articles and and Peach Sheets

1. Articles: While few law review articles comprehensively discuss Georgia's specific defensive law, similar legislation in numerous other states in recent years has generated much discussion.

Eric Del Pozo, Note, *Retreat Does Not Equal Surrender: Defensive Deadly Force In Dwellings After People v. Aiken*, 82 St. John's L. Rev. 359 (2008). This article provides a thorough discussion on the duty to retreat under New York Law. The article also examines similar statutes nation wide. It provides a fair and balanced perspective on the recent changes to these laws.

Michelle Jaffe, Note, *Up in Arms over Florida's New Stand Your Ground Law*, 30 Nova L. Rev. 155 (2005-2006). This article is a discussion of Florida's "stand your ground law" which is similar in application to Georgia's Law. It provides an even balances view of opponents and proponents positions on these laws, while reaching some independent conclusions. This article also discusses numerous state laws similar and different to Floridas.

Marcia Baron, Note, *Justifications and Excuses*, 2 Ohio St. J. Crim. L. 387 (2005). This is a philosophical paper more intent on examining the underlying logic and morality behind self-defense, it provides interesting academic fodder. For a practitioner, perhaps it has limited value, but for academic analysis it is very thorough and well written.

Re'em Segev, *Fairness, Responsibility and Self-Defense*, 45 Santa Clara L. Rev. 383 (2005). This article also offers philosophical justifications for self-defense law. It provides little analysis of applicable law. However, it does excel at tracing the deep historical roots of defense law and provides some interesting insight on the question of reasonableness.

Catherine L. Carpenter, *Of the Enemy Within, The Castle Doctrine, and Self-Defense*, 86 Marq. L. Rev. 653 (2003). This article is the most thorough examination of the defense of habitation that I have found. It provides both excellent commentary and case law analysis with a focus on law in Mid-Western States. It also extensively discusses the duty to retreat.

Seth D. DuCharme, Note, *The Search for Reasonableness in Use-of-Force Cases: Understanding the Effects of Stress on Perception and Performance*, 70 Fordham L. Rev. 2515 (2002). This article asks the question, what is reasonable when someone is in a violent confrontation, where one's body and mind are

overloaded? This article could be very useful when arguing the critical issue of reasonableness. It provides a nice combination of legal and non-legal issue consideration.

Teri Ann Forehand, Note, *Open Season On Batterers In Georgia? Georgia Supreme Court Allows Jury Instructions On Battered Person Syndrome In Self-Defense Cases: Smith v. State*, 15 Ga. St. U. L. Rev. 821 (1997). This article discussed Battered Person Syndrome in Georgia Courts, and its effect on justification defenses. It also provides a nice, though dated summary of Georgia's defense law. This article discusses many of the evidentiary issues that will arise in this type of defense.

Monique M. Gousie, Comment, *From Self-Defense to Coercion: McMaugh v. State-Use of Battered Woman's Syndrome to Defend Wife's Involvement in Third-Party Murder*, 28 New Eng. L. Rev. 453 (1993). This article provides extensive discussion of Battered Persons Syndrome in various courts across the nation.

2. Peach Sheets: These law review articles are compiled by Georgia State College of Law Students and provide details regarding statutory changes in Georgia Law.

Derek E. Empie, Recent Statute, 18 Ga. St. U. L. Rev 25 (2001). This article provides a nice description of the major statutory changes to Georgia's defense laws in 2001. While not overloaded with analysis, it provides a nice summary of the statutory changes and some of the underlying history that prompted the legislation.

Legal Encyclopedias and Treatises

1. Georgia Jurisprudence: Provides excellent coverage of the applicable case law and statutory material. This is the single best place to start one's analysis of a justification defense. The materials are well written, current, and broken up in a logical manner. Each section provides extensive treatment on the particular area it discusses with numerous case citations. Available at GSU Law Library: KFG80 G.36 1995 v.20 2002

20 Ga. Jur. Criminal Law § 3:9 Generally (2007).

20 Ga. Jur. Criminal Law § 3:10 Reasonable Man Standard (2007).

20 Ga. Jur. Criminal Law § 3.12 Duty to Retreat (2007).

20 Ga. Jur. Criminal Law § 3:13 Use of Deadly Force (2007).

20 Ga. Jur. Criminal Law § 3:14 Self-Defense in Felony Murder (2007).

20 Ga. Jur. Criminal Law § 3:15 Preventing Forcible Felony (2007).

20 Ga. Jur. Criminal Law § 3:17 Battered Person Syndrome (2007).

20 Ga. Jur. Criminal Law § 3:18 Mutual Combat (2007).

20 Ga. Jur. Criminal Law § 3:19 Evidence Relevant to Self-Defense (2007).

20 Ga. Jur. Criminal Law § 3:21. Defense of Habitation, Generally (2007).

20 Ga. Jur. Criminal Law § 3:24. Defense of Other Property, Generally (2007).

20 Ga. Jur. Criminal Law § 5:41 Mutual Combat (2007).

20 Ga. Jur. Criminal Law § 5:67 Retreat (2007).

20 Ga. Jur. Criminal Law § 6:70 Reasonable Force (2007).

20 Ga. Jur. Criminal Law § 6:71 Defendant as Initial Aggressor (2007).

20 Ga. Jur. Criminal Law § 6:72 Mutual Combat (2007).

20 Ga. Jur. Criminal Law § 6:74 Defense of Others (2007).

13 Ga. Jur. Personal Injury and Torts § 5:19 Threat or Use of Force in Defense of Habitation (2007).

13 Ga. Jur. Personal Injury and Torts § 5:20 Self Defense (2007).

13 Ga. Jur. Personal Injury and Torts § 13:18 Self- Defense (2007).

13 Ga. Jur. Personal Injury and Torts § 13:20 Defense of Third Persons (2007).

2. Kurtz Criminal Offenses and Defenses in Georgia: Provides extensive coverage of all the statutory affirmative defenses in Georgia. This should be at the top of the list for a practitioner trying to understanding these types of defenses in Georgia. Its discussion and analysis is very thorough, though slightly less thorough than Georgia Jurisprudence. This resource also cites to some cases not covered in the other materials. Available at GSU Law Library Reference Desk: KFG 566.8.K87

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Justification Defense, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Law Enforcement Defense, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Weapons, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Accident Defense, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Crime Prevention Defense, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Disorderly Conduct Crimes, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Homicide, (Thomson-West 2006).

Robert E. Cleary, *Kurtz Criminal Offenses and Defenses in Georgia*, Self-Defense, (Thomson-West 2006).

3. American Law Reports: ALRs contain broad summaries of legal topics. ALRs are a very useful tool to get a broad overview of a specific issue with a nation wide scope. Available at GSU Law Library: KF 132.A522 4th ver v.73

John F. Wagner Jr., Annotation, *Standard for Determination of Reasonableness of Criminal Defendant's Belief, for Purposes of Self-Defense Claim, that Physical Force is Necessary—Modern Cases*, 73 A.L.R.4th 993 (1989). This article extensively discusses what constitutes a reasonable use of force based on a variety of cases from across many jurisdictions. This issue is critical in that reasonable force is an element in all justified defense claims.

4. American Jurisprudence: American Jurisprudence contains a broad thorough summary and discussion on the law of defense across the United States. While not specifically covering Georgia's Law, its discussion still proves valuable as most state provisions are quite similar to each other. Available at the GSU Law Library Row 30

40 Am. Jur. 2d *Homicide* §§ 138-178 (2007). This article is an extremely in depth treatment of the subject. It includes discussion of all the classic elements of a justification defense, and modern applications of state statutes. It also includes extensive discussion of the defense of habitation and modern reforms to defensive statutes with a nation wide scope.

57 Am. Jur. 2d *Negligence* §§ 210-212 (2007). This is a great primer on these defenses when one is involved in a defense to a civil tort action. While the flavor of these defenses remain the same as their criminal counterparts, different factual questions often emerge. The article nicely points out these key differences.

Books

[Back to Top](#)

Interest Groups & Associations

Interest Groups

1. [Prosecuting Attorneys' Counsel of Georgia](#)

Georgia organization that provides extensive training resources to prosecutors across Georgia and the South East while actively lobbying the State Legislature

2. [The National Rifle Association](#)

Powerful gun rights lobbying group that many assert is the driving force behind the emergence of "stand your ground" defensive laws across the United States

3. [Georgia Defense Lawyers Association](#)

Georgia organization that provides extensive training resources to defense lawyers across Georgia and the South East. The website provides a comprehensive summary of state gun laws

4. [Georgia Association of Criminal Defense Lawyers](#)

Georgia organization that provides seminar training to attorney members, with an emphasis on criminal defense. Actively resists proposed legislation that curtails criminal defendants' rights

5. [Georgians for Gun Safety](#)

Georgia organization that lobbies extensively to reduce gun deaths in Georgia. Actively opposes Georgia's "stand your ground" defense laws. The website has numerous linked news articles specific to Georgia's defensive laws

[Back to Top](#)

Powered by [Springshare](#); All rights reserved. [Report a tech support issue](#).