[CAPTION]

NOTICE OF DEFENSE OF JUSTIFIABLE REASONABLE FORCE

The Defendant, by counsel, pursuant to I.C. 35-41-3-11(b)(2) and I.C. 35-41-3-2, hereby notifies the prosecuting attorney of the Defendant's intention to offer defense of justifiable reasonable force and/or alleged deadly force in this cause.

The Defendant states that on the date of the alleged offense as charged, the Defendant was justified in using reasonable force and/or alleged deadly force when he reasonable believed that force was necessary to prevent imminence of serious bodily injury to himself and a third person, his girlfriend, when confronted by and out-numbered by and battered by [insert alleged victim], and in the presence of [insert names]. The Defendant in support of his defense states that the Defendant and a third person, [insert name], were struck by [insert alleged victim] and that the Defendant was not the initial aggressor in this matter.

Wherefore, if the above-stated facts are not enough to carry the Defendant's burden of producing evidence from which the trier of fact could find support for the reasonableness of the Defendant's belief in the imminence of serious bodily injury to the Defendant or a third person, then Defendant, by counsel, respectfully requests that the Court set a hearing at which the Defendant can establish the proof to carry his burden of going forward to produce evidence for this defense, and for any other relief as the Court may deem just and proper in the premises.

(Signature)

REFERENCES **CASEBANK L.3**

I.C. 35-41-3-2 (defining self-defense)

CASE LAW

Gammons v. State, 148 N.E.3d 301 (Ind. 2020) (Under Indiana's self-defense statute, "a person is not justified in using force if the person," among other things, "is committing . . . a crime." Ind. Code § 35-41-3-2. Here, during Defendant's trial for attempted murder and carrying a handgun without a license, he asserted that he acted in self-defense when he fired six shots at a man who aggressively confronted him and whom he knew had a history of violence. Over Defendant's objection, the trial court instructed the jury using language that tweaked his tendered self-defense instruction and stated that "a person may not use force if," among other things, "he is committing a crime that is directly and immediately related to the confrontation." Noting and agreeing with Justice Boehm's concurring opinion in *Mayes v. State,* 744 N.E.2d 390, 396 (Ind. 2001), which warned that the "but for" test was too broad and could foreclose self-defense where the defendant should be free to argue it, the Indiana Supreme Court held that self-defense is only barred when there is "an immediate causal connection between the crime and the confrontation." Because the instructional error could have served as the basis for the jury's decision to convict, the Court reversed Defendant's conviction and remanded for a new trial.

Hirsch v. State, 697 N.E.2d 37 (Ind. 1998) (the trial court's failure to permit the Defendant to present all evidence relevant to his self-defense claim required reversal; the Defendant was improperly prohibited from testifying as to the victim's refusal to stop fighting; when dealing with a self-defense claim, the Defendant's credibility is extremely important, and the Defendant is the only person who can testify to his feelings, intent, perceptions and his actual belief that he was in imminent harm).

Ault v. State, 950 N.E.2d 326 (Ind.Ct.App. 2011) (trial court abused its discretion by requiring Defendant to testify in order to obtain an instruction on self-defense. The Indiana self-defense statute requires both subjective belief force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances. Inferences about an individual's subjective state of mind are routinely drawn from the circumstances, regardless of whether that individual provides personal insight into his actual state of mind. Thus, trial court's ruling that Defendant had to testify in order for the jury to be instructed on self-defense was erroneous).

Dixson v. State, 22 N.E.3d 836 (Ind.Ct.App. 2014) (in battery prosecution which did not involve deadly force, trial court erred in instructing jury that Defendant had to have a reasonable fear of death or serious bodily harm. This contradicted the correctly-given instruction which stated the Defendant could use reasonable force to protect himself from what he reasonably believed to be the imminent use of unlawful force. When taken as a whole, the instructions misled the jury with respect to Defendant's self-defense claim. However, the error was harmless because uncontradicted evidence negated the self-defense claim).

Russell v. State, 577 N.E.2d 567 (Ind. 1991) (any fact that reasonably would place a person in fear or apprehension of death or great bodily injury is admissible to support claim of self-defense to charge of murder).

Littler v. State, 871 N.E.2d 276 (Ind. 2007) (the phrase "reasonably believes," as used in the Indiana self-defense statue, requires both subjective belief that force was necessary to prevent serious bodily injury and that such belief was one that a reasonable person would have under the circumstances).

Johnson v. State, 671 N.E.2d 1203 (Ind.Ct.App. 1996) (victim's violent nature is relevant to the Defendant's theory of self-defense; merely asserting self-defense is not the equivalent to asserting

propensity to act in self-defense in similar situation, nor does such assertion automatically put the Defendant's character in issue).

Brand v. State, 766 N.E.2d 772 (Ind.Ct.App. 2002) (when Defendant claims he acted in self defense, evidence of victim's character may be admitted to show that victim had violent character, giving Defendant reason to fear victim).

Mayes v. State, 744 N.E.2d 390 (Ind. 2001) (notwithstanding I.C. 35-41-3-2, which provides that self-defense is not available to person who is committing a crime, the fact that the Defendant is committing a crime at the time he is allegedly defending himself is not sufficient standing alone to deprive the Defendant of the defense of self-defense; rather, there must be immediate causal connection between crime and confrontation; stated differently, evidence must show that but for the Defendant committing a crime, the confrontation resulting in the injury to the victim would not have occurred).

Black v. State, 829 N.E.2d 607 (Ind.Ct.App. 2005) (prohibiting reference to self defense during voir dire was fundamental error because Defendant was denied the right to a fair and impartial jury provided by Article 1, Section 13 of the Indiana Constitution; prohibiting Defendant from questioning prospective jurors regarding self defense during voir dire was so prejudicial to his rights as to make a fair trial impossible).

State v. Harmon, 846 N.E.2d 1056 (Ind.Ct.App. 2006) (trial court abused its discretion by excluding self-defense evidence in trial for unlawful possession of a firearm by a serious violent felon (SVF); Indiana's prohibition against a felon possessing a firearm was not intended to affect his or her right to use a firearm in self defense).

Hood v. State, 877 N.E.2d 492 (Ind.Ct.App. 2007) (in murder prosecution, trial court committed reversible error by excluding evidence that corroborated Defendant's self-defense claim; "Reasonably believes," as used in the Indiana self-defense statue, requires both subjective belief that force was necessary to prevent serious bodily injury and that such actual belief was reasonable; Defendant was entitled to support his claim of self-defense with evidence his fear was reasonable).

Cobbs v. State, 528 N.E.2d 62 (Ind. 1988) (evidence was insufficient to support the Defendant's conviction of two counts of murder; the Defendant admitted shooting two victims, but alleged that he acted in self-defense in course of robbery; the State did not disprove self-defense beyond reasonable doubt; when self-defense is raised casting some reasonable doubt as to guilt, State must prove that the Defendant did not meet at least one element of self-defense: elements are: (1) Defendant acted without fault, (2) was in place he/she had legal right to be, and (3) was in real danger of death or great bodily harm or such apparent danger as to cause good faith fear of death or bodily harm).

French v. State, 403 N.E.2d 821 (Ind. 1980) (reversible error to fail to instruct jury, as to self-defense, that Defendant may repel force by reasonably necessary force and that Defendant will not be accountable for error in judgment as to amount of force necessary, provided that Defendant acted honestly; it was also error to fail to apprise jury that existence of danger, necessity or apparent necessity, as well as amount of force required to resist attack can only be determined from Defendant's standpoint at that time and under the existing circumstances).

Pinegar v. State, 553 N.E.2d 525 (Ind. 1990) (self-defense is not inconsistent with claim of sudden heat).

Southard v. State, 422 N.E.2d 325 (Ind.Ct.App. 1981) (theories of self-defense and accidental killing are not inconsistent and may be raised simultaneously).

Wardlaw v. State, 286 N.E.2d 649 (Ind. 1972) (a person may act upon appearances that seem to be threatening his life, even though he may actually be mistaken).

Barnes v. State, 946 N.E.2d 572 (Ind. 2011), *reh'g granted*, 953 N.E.2d 473 (Indiana no longer recognizes common law right to reasonably resist unlawful police entry into a person's residence because public policy disfavors such a right); *Cf.* IC 35-41-3-2 (2012 amendment in response to *Barnes*).

Miller v. State, 720 N.E.2d 696 (Ind. 1999) (firing multiple shots at victim undercuts a claim of self-defense); See also Birdsong v. State, 685 N.E.2d 42 (Ind. 1997).

Nantz v. State, 740 N.E.2d 1276 (Ind.Ct.App. 2001) (Defendant may not point loaded firearm at person in order to defend property).

Bryan v. State, 450 N.E.2d 53 (Ind. 1983) (right of self-defense passes when danger passes).

Hill v. State, 532 N.E.2d 1153 (Ind. 1989) (where first shot disables alleged assailant, second shot is not justified as self defense).

Hollowell v. State, 707 N.E.2d 1014 (Ind.Ct.App. 1999) (amount of force used to protect oneself must be proportionate to urgency of situation; here, fact that the Defendant was initially struck in mouth by victim was not life-threatening enough to justify self-defense with knife).

Bixler v. State, 471 N.E.2d 1093 (Ind. 1984) (in murder prosecution where the Defendant asserted self-defense, jury was properly instructed to look from the standpoint of the Defendant in determining the existence of danger and the extent of force to be used). See also Stallings v. State, 264 N.E.2d 618 (Ind. 1970); Shaw v. State, 534 N.E.2d 745 (Ind. 1989).

Dayhuff v. State, 545 N.E.2d 1100 (Ind.Ct.App. 1989) (the Defendant has the right to have jury instructed on any theory of defense that has some foundation in evidence; the Defendant's testimony here constitutes some evidence, however weak, that he may have acted in self-defense; it was for jury to determine whether D's evidence was credible and whether it was sufficient to warrant use of force; held, trial court erred in refusing to instruct jury on self-defense). See also Bragg v. State, 695 N.E.2d 179 (Ind.Ct.App. 1998) (Defendant's testimony was enough to justify giving of instruction).

Carson v. State, 686 N.E.2d 864 (Ind.Ct.App. 1997) (trial court erroneously instructed jury on use of deadly force in self-defense because instruction omitted prevention of forcible felony as justification for use of such force; here, trial court erred by instructing jury that "[a] person may use deadly force only if he reasonably believes force is necessary to prevent serious bodily injury or harm to himself or another.").

NOTE

Although the statute does not require self-defense, defense of property or defense of others to be pled prior to trial, many counties have local rules that do. Moreover, by asserting the defense prior to trial, the Defendant is entitled to preliminary instructions on the defense.