

Home and Personal Security

Remember criminals tend to sneak around to find weaknesses before actually doing their thing. A good high fence, your dog and some lights will stop this in town, but out of town in the woods such a fence would cost too much. If you don't have the property posted they can always say they were just out for a hike, mushroom hunting, or whatever. There is a lot of public access property around so unless your land is posted to show that it is private land you cannot legally expect to exclude them. Don't bother with paper or plastic signs that disappear in a year. Go for the metal signs at hardware stores and put them along your property at frequent intervals. Don't forget to post your gate.

Okay. If you have installed a locked gate and posted your property line and have installed motion lights and have a watchdog and you mind your own business without provoking anyone, then you have done everything reasonable to prevent a conflict with a criminal. But, none of these things matter much to criminals if they think they are all just empty warnings. Sadly, we already know that bad guys tend to pick the most unprepared and defenseless among us. This is no coincidence. The evidence is everywhere that what really discourages bad guys is the prospect of confronting an armed citizen. So, if someone is criminal enough or doped-up enough to come straight through all of these defenses to get to your home then you are truly in a world of hurt if you do not have a final plan. What's your plan? Dial 911 and ask them to wait? Appease them? Ignore them so they might go away before you die from loss of blood? Like it or not God made man, but Colt, and Smith and Wesson made men equal.

Let's review briefly what the Oregon State Statutes say about defending yourself while on your premises. Let us presume that you are on your own property or legally in control of the property, not provoking any kind of fight and someone trespasses upon that property. Please note the word "reasonable" as it repeatedly appears in the law. If you ever shoot anyone, a jury will be asked to say whether what you did was reasonable and necessary. That is, to decide if they would have done just the same thing under the circumstances. Also, pay attention to the difference between physical force and **deadly physical force** (bold type was added by me for emphasis).

ORS 161.225 says: "A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises." "...Premises" includes any building and any real property." So, someone who is trespassing may not be attempting to commit any crime at all. If they leave upon being warned, then there is no need for any kind of force. It is only if they are engaged in criminal behavior like

theft or arson, or vandalism or assault that any kind of physical force might be reasonable and necessary. The wording of the law allows the use of any extent of force, presumably including **deadly** force if it is reasonable and necessary under the circumstances.

So, you are legally entitled to protect your property with reasonable physical force as is necessary. As a practical matter, it is probably not a good idea to attempt to use any kind of physical force against anybody anywhere unless you are prepared for what might happen if the situation escalates and you suddenly need to defend against an attack.

So, let's focus on the use of **deadly physical force**. ORS 161.219 says: "A person is **not** justified in using **deadly physical force** upon another person **unless** the person reasonably believes that the other person is: (1) Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or, (2) Committing or attempting to commit a burglary in a dwelling; or, (3) Using or about to use unlawful deadly physical force against a person." Again, in ORS 161.225 the law says: "A person may use **deadly physical force**...only: (a) In defense of a person; or (b) When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by the trespasser." If they are stealing your tires, gas, firewood or cattle you certainly can try to physically stop them, but you don't get to execute them no matter how much you might wish to at the time. You can only use **deadly physical force** to defend against an attack against you or someone else or to protect against burglary in your actual dwelling. My personal interpretation about the law allowing the use of **deadly force** in the case of burglary and arson is that it would not be reasonable to expect you to give anyone the benefit of the doubt if they are breaking into your home. If you are at home, where are you supposed to retreat to? What are your choices? But burglary at a building not your dwelling might not justify **deadly force**.

I am not a lawyer and can only offer personal opinion but you will always be better off if you avoid a gunfight by doing what it takes to prevent easy access to your property by criminals. You can use **deadly physical force** only under very specific circumstances. This is reasonable and as it must be, but if you ever shoot anyone for many reasons this will be one of the saddest days of your life. You will be required to prove on the basis of the physical evidence and testimony that it was justified according to the letter of criminal law. Even if your actions were absolutely justified and the evidence shows this to be so, you may still be charged with a crime by a politically motivated District Attorney and end up losing everything to pay for your legal defense. After it is shown that you are not criminally liable, there is nothing to prevent the criminal or his survivors from suing you for everything you have in civil court where the rules of evidence that can be used against you are much more lax.

In either civil and criminal court you will be judged according to how reasonable and necessary your actions appear to be to a jury of complete strangers sitting in comfort and safety months after a terrifying event that happened in near darkness with no time to think in the closeness of your own home. Now, if you have done all of the things we have been talking about to prevent the shooting in the first place this is all evidence you can use in court to show that you are neither foolish nor bloodthirsty but instead you are a reasonable person who tried to prevent this from happening in the first place.

Humm...better get a gate, some no trespassing signs, some motion lights and a dog in addition to that cannon. By the way, for Christmas why not show you really care for someone by giving them something thoughtful and practical. How about gift wrapping a couple of sets of motion lights and volunteering to help install them? As little as \$35.00 a pop is not too much to show your love and concern. If Grandmother needs several sets of lights or a gate, why don't the kids and grandkids pool their money for the lady's Christmas?

So! Merry Christmas and God bless us, everyone!

In January, let's kick off a new year with a little information on guns, ammunition, and gun safes, shall we?

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