Technical Assistance Practice Advisory

**Self-Defense –During Arrest or Detention**
**WPIC 17.02.01**

**Basic Rule**: **A person may use force to resist an arrest or detention or to aid another person in resisting arrest only when the arrestee is in actual and imminent danger of serious injury from a law enforcement officer's use of excessive force. A person may employ such force and means as a reasonably prudent person would use under similar circumstances.**

**The rule applies regardless of whether the arrest is lawful or unlawful**. The rule does not change if the arrestee believes the arrest to be unlawful. State v. Valentine, 132 Wn.2d 1, 21, 935 P.2d 1294, 1304 (1997); State v. Holeman, 103 Wn.2d 426, 430, 431, 693 P.2d 89 (1985); City of Seattle v. Cadigan, 55 Wn. App. 30, 37, 776 P.2d 727 (1989); *State v. Ross,* 71 Wn. App. 837, 841, 863 P.2d 102 (1993).

**The State has the burden of proving beyond a reasonable doubt that the force the defendant used was not lawful.** The force the defendant uses against the law enforcement official must be objectively reasonable and proportioned to the physical injury attempted. State v. Rousseau*,* 40 Wn.2d 92, 94–95, 241 P.2d 447 (1952), *overruled on other grounds by* Valentine, 132 Wn.2d at 21. However, the use of any force to prevent an arrest that threatens only the defendant's *loss of freedom* is not reasonable. Valentine*,* 132 Wn.2d at 21 (emphasis added); State v. Goree, 36 Wn. App. 205, 209, 673 P.2d 194 (1983); *see also* State v. Westlund*,* 13 Wn. App. 460, 461, 467, 536 P.2d 20 (1975) (orderly and safe law enforcement demands that an arrestee not resist a lawful arrest and a bystander not intervene on his behalf unless the arrestee is actually about to be seriously injured or killed). To assert self -defense during an arrest, the arrestee must be in actual danger of serious bodily injury. Cardigan, 55 Wn.App. at 37.

**The defendant acts at his own peril, and, if the law enforcement officer was not about to seriously injure him, neither his resistance nor third party interference is justified**. Westlund, 13 Wn. App at 469; State v. Mierz, 127 Wn.2d 460, 477, 901 P.2d 286, 294 (1995) (no threat of serious bodily injury when police agents entered defendant's property and placed him under arrest); *see also* State v. Bradley, 96 141 Wn.2d 731, 734-38, 10 P.3d 358 (2000) (correction officer's use of pepper spray, physical restraint, and handcuffs did not put defendant in danger of serious injury and was lawful beyond a reasonable doubt; defendant's use of "fighting and swinging and kicking" was not reasonable.)

**The defendant need not know that the arresting person is a police officer or that the arrest is lawful**. State v. Belleman, 70 Wn. App. 778, 780-83, 856 P.2d 403, 405 (1993) (defendant not entitled to affirmative defense of self-defense in prosecution for third-degree assault arising from his resistance to arrest on ground that he did not know that arrest by off-duty police officer was lawful). The defendant's subjective state of mind is insufficient prove self-defense. *Id*. at 783; *see also* State v. Goree, 36 Wn. App. 205, 209, 673 P.2d 194 (1983) (evidence that defendant intended to resist apprehension, that apprehension was lawful, and that an assault upon officer occurred was sufficient to sustain conviction of third-degree assault while resisting arrest, and State did not need to offer proof as to whether the defendant considered the apprehension lawful).

**Self-defense instruction applies to resisting detention by a correctional institutional officer**. Bradley, 141 Wn.2d at 737-38 (defendant may claim self-defense and use force to resist the actions of a correctional officer only when that person is in actual, imminent danger of serious injury).

## Additional Resources

Self Defense, WDA Practice Advisory, May 2009, available at the WDA website in the Resource Folder under Practice Advisories (or click here for link).