

CR 425.03 Affirmative defense [Rev. 4/13/19]

COMMENT

Effective 3/28/19, R.C. 2901.05 shifted the burden of proof from the defendant having to prove self-defense, defense of another, or defense of a residence by a preponderance of the evidence to the state having to disprove the same beyond a reasonable doubt. The General Assembly did not express a clear intent whether HB 228, which shifted the burden of proof of self-defense, applies to offenses before 3/28/19. The court must decide as a threshold matter whether HB 228 is retroactive. If the court decides that it is not retroactive, then this instruction should be used for self-defense, defense of another, or defense of a residence. If the court decides it is retroactive, then the conclusion set out in the applicable instruction for self-defense, defense of another, or defense of a residence should be used.

1. GUILTY GENERAL. If you find that the state proved beyond a reasonable doubt all the essential elements of the offense of (*insert name of offense*) and that the defendant failed to prove by a preponderance of the evidence the defense of (duress) (insanity) (*insert applicable affirmative defense*), your verdict must be guilty.
2. NOT GUILTY GENERAL. If you find that the state failed to prove beyond a reasonable doubt any one of the essential elements of the offense of (*insert name of offense*) or if you find that the defendant proved by a preponderance of the evidence the defense of (duress) (insanity) (*insert applicable affirmative defense*), then you must find the defendant (not guilty) (not guilty by reason of insanity).
3. GUILTY WITH SELF-DEFENSE (ADDITIONAL). If you find that the state proved beyond a reasonable doubt all the essential elements of the offense of (*insert name of offense*) and proved beyond a reasonable doubt that the defendant did not act in (self-defense) (defense of his/her residence), your verdict must be guilty.
4. NOT GUILTY WITH SELF-DEFENSE. If you find that the state failed to prove beyond a reasonable doubt any one of the essential elements of the offense of (*insert name of offense*) or if you find the state failed to prove beyond a reasonable doubt that the

defendant did not act in (self-defense) (defense of his/her residence), then you must find the defendant not guilty.

5. VERDICT.

(A) DURESS. OJI-CR 421.15, OJI-CR 425.33.

(B) INSANITY. OJI-CR 421.25, OJI-CR 421.27, OJI-CR 421.29.

(C) SELF-DEFENSE. OJI-CR 421.19, OJI-CR 421.191, OJI-CR 421.21, OJI-CR 421.211, OJI-CR 421.23.