

TABLE 2.1

Common Legal Defenses for Criminal Law

DEFENSE	EXPLANATION
Self-Defense	Self-defense may be successfully claimed if the defendant can demonstrate that he or she used force to repel an imminent, unprovoked attack, in the reasonable belief that he or she was about to be seriously injured. The defendant may only use as much force as is necessary to repel the attack. There are a number of limitations and exceptions to the general rules of self-defense. These include the retreat doctrine, which states that a person must retreat rather than use deadly force if doing so is possible without endangering the person's life. The castle doctrine, on the other hand, states that persons attacked in their home need not retreat from a potentially deadly invasion and/or attack. Self-defense also may apply to the defense of others, and in some limited circumstances to the defense of property.
Consent	Consent is a defense to some crimes, albeit a controversial one. Most jurisdictions provide that persons may consent to suffer what otherwise would be an actionable injury. What acts a person can consent to suffer are quite limited, however, and it must be demonstrated that the consent was voluntary, knowing, and intelligent. As we have seen, the "consent" of a minor to have sex with an adult is not considered voluntary, knowing, and intelligent and would therefore not be a legally permissible consent defense. An example of voluntary, knowing, and intelligent consent is that of the professional athlete who chooses to engage in activity where injury similar to an assault may occur.
Execution of Public Duties	Agents of the state, such as police officers or soldiers, are permitted to use reasonable force in the lawful execution of their duties. This defense allows the use of deadly force under the proper circumstances and allows police to engage in activities that are otherwise criminal if they are doing so as part of their law enforcement efforts, such as posing as a drug dealer. The most controversial element of this defense is police killings, since officers are limited to the circumstances under which deadly force can be used.
Intoxication	There are two forms of intoxication, voluntary and involuntary. Voluntary intoxication never provides a complete defense but in some states may negate the mens rea component for an offense requiring the specific intent by reducing the degree of the crime charged in some states. In other states, the rule is that the voluntary act of drinking establishes voluntariness and thus cannot be used as any kind of mitigation. It also may be used to argue for a lesser penalty. Involuntary intoxication may provide a defense if it can be shown that the actor was unaware that he or she was being drugged. In such cases, the actor is excused because he or she is not responsible for becoming intoxicated; consequently, it would be unfair to hold him or her liable for the resulting uncontrollable action. The Supreme Court has held that due process does not require that states allow the defense of intoxication (<i>Montana v. Egelhoff</i> , 1996).
Age	Historically, youth has been treated as a defense to criminal liability on the ground that persons below a certain age lack the requisite mental capability to form mens rea. Under the common law, there was a presumption that children under the age of seven years were incompetent. Today, the various jurisdictions define the age of majority (when one becomes an adult) at varying ages. Those classified as juveniles are dealt with not in the criminal justice system but rather in the juvenile justice system.