POLITICAL NECESSITY DEFENSE JURISDICTION GUIDE

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Jurisdiction	Statute	Elements (note: many statutory defenses include an additional provision regarding the effect of a defendant's recklessness or negligence) (internal citations omitted)	Cases - Leading necessity precedent [context; allowed/denied; main point(s) upon which decision rested]	Cases - Leading political necessity defenses [context; allowed/denied; main point(s) upon which decision rested]	Burden of proof / threshold to present defense to jury (internal citations omitted) [Note: in political necessity cases courts often impose a higher evidentiary burden than is required under the law, making the official standard of limited value]	Notes (internal citations omitted)	Unreported, successful uses of political necessity defenses [see Additional Sources for further information]	Attempts to use climate necessity defense
Federal	None	Varies by circuit			Varies by circuit	Lower courts have assumed that the defense is available at common law, but the Supreme Court has not ruled definitively on the question: "As an initial matter, we note that it is an open question whether federal courts ever have authority to recognize a necessity defense not provided by statute." U.S. v. Oakland Cannabis Buyers' Coop, 532 U.S. 488, 490 (2001)		
Supreme Court	-	Not clear: the Court has discussed elements that specific defendants failed to satisfy, but has not listed what a successful defense requires	United States v. Oakland Cannabis Buyers' Coop, 532 U.S. 483 (2001) [medical marijuana; denied; legislative preference]; United States v. Bailey, 444 U.S. 394 (1980) [prison escape; denied; failure to surrender to authorities]	None	In United States v. Bailey, 444 U.S. 394, 412 n.9 (1980), the Court suggested that as a matter of judicial efficiency a defendant must offer evidence satisfying each element before trial; this dicta applied specifically to cases of prison escape.	In United States v. Oakland Cannabis Buyers' Coop, 532 U.S. 483 (2001), the Court noted that "it is an open question whether federal courts ever have authority to recognize a necessity defense not provided by statute," but considered the defense nonetheless. The Court added that "the [necessity] defense cannot succeed when the legislature itself has made a 'determination of values.'" United States v. Bailey, 444 U.S. 394 (1980) though not a political necessity case, contains useful dicta regarding the (implied) existence of the federal necessity defense, the general right of the jury to hear the defense, and the hazy distinction between necessity and duress. In Dixon v. U.S., 548 U.S. 1 (2006), when discussing duress, the Supreme Court made repeated reference to Oakland Cannabis Buyers' Coop to emphasize the statutory role in deciding which defenses are allowed and when.	None found	None

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1st Circuit	-	"The necessity defense requires the defendant to show that he (1) was faced with a choice of evils and chose the lesser evil, (2) acted to prevent imminent harm, (3) reasonably anticipated a direct causal relationship between his acts and the harm to be averted, and (4) had no legal alternative but to violate the law." United States v. Maxwell, 254 F.3d 21, 26 (1st Cir. 2001)	United States v. Maxwell, 254 F.3d 21 (1st Cir. 2001) [anti-nuclear weapons protest; denied; no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; United States v. Sued-Jimenez 275 F.3d 1 (1st Cir. 2001) [anti-war protest; denied; no causal nexus, availability of legal alternatives]	United States v. Maxwell, 254 F.3d 21 (1st Cir. 2001) [anti-nuclear weapon protest; denied; no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; United States v. Sued-Jimenez 275 F.3d 1 (1st Cir. 2001) [anti-war protest; denied; no causal nexus, availability of legal alternatives]	"We do not gainsay that a criminal defendant has a wide-ranging right to present a defense, but this does not give him a right to present irrelevant evidence. Thus, when the proffer in support of an anticipated affirmative defense is insufficient as a matter of law to create a triable issue, a district court may preclude the presentation of that defense entirely . . . [The defendant has an] entry-level burden of producing competent evidence." United States v. Maxwell, 254 F.3d 21, 26, 29 (1st Cir. 2001); "Because the elements of the necessity defense are conjunctive, the defense may be precluded entirely if proof of any one of the four prongs is lacking." United States v. Sued-Jimenez 275 F.3d 1, 6 (1st. Cir. 2001).	In Maxwell, 254 F.3d 21, 29 (1st Cir. 2001) the Court states: "Without exception, the decided cases teach that a defendant's legal alternatives will rarely, if ever, be deemed exhausted when the harm of which he complains can be palliated by political action. (many citations from other circuits)." Court states in Sued-Jimenez that there is "no evidence to support their claim that that their trespassory protests will result in a change of U.S. Naval policy so that the bombing and ammunition testing in Vieques will cease." United States v. Sued-Jimenez, 275 F.3d 1, 7 (1st Cir. 2001). Similarly, United States v. Maxwell, 254 F.3d 21, 28 (1st Cir. 2001) frames the nexus discussion as, roughly speaking, a question of whether trespass as such would cause nuclear submarines to leave the naval base.	None found	None
2nd Circuit	-	Not clear: the Circuit has only mentioned the defense in felon-in-possession (of a firearm) cases and in one unpublished illegal re-entry summary order, and has declined to rule whether the defense is actually available.	United States v. White, 552 F.3d 240 (2d Cir. 2009) [felon-in-possession; denied; no imminent threat]; United States v. Williams, 389 F.3d 402 (2d Cir. 2004) [felon-in-possession; denied; no imminent threat]; United States v. Crown F.Appx. 59 (2d Cir. 2001) (unpublished summary order) [Illegal re-entry to U.S.; denied; availability of legal alternatives]	None found	In United States v. White, 552 F.3d 240, 247 (2d Cir. 2009), the Court lists the test other courts have used for felon-in-possession cases, but implied that a defendant must offer evidence satisfying each element before trial.	"Although the language of 18 U.S.C. [§] 922(g)(1) does not provide for a necessity defense, we will assume, without deciding, that persons charged with violating 18 U.S.C. [§] 922(g)(1) may assert such a defense." United States v. Williams, 389 F.3d 402, 404-05 (2d Cir. 2004). In the case of an HIV-positive individual re-entering the U.S. after deportation, a District Court denied necessity evidence from being presented in limine. "The district court concluded, and we agree, that Crown was not entitled to offer evidence at trial on the defense of necessity because there were lawful alternatives available to him other than entering the United States illegally.'" United States v. Crown F.Appx. 59 (2d Cir. 2001) (unpublished summary order).	None found	None

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3rd Circuit	-	In the context of U.S.C. 18 § 922 (felon-in-possesion), "(1) he was under unlawful and present threat of death or serious bodily injury; (2) he did not recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) he had no reasonable legal alternative (to both the criminal act and the avoidance of the threatened harm); and (4) there is a direct causal relationship between the criminal action and the avoidance of the threatened harm." United States v. Paollelo 951 F.2d 537 (3d Cir. 1991)	United States v. Paollelo 951 F.2d 537 (3d Cir. 1991) [felon-in-possession; allowed; denial of justification jury instruction was error]; Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3d Cir. 1989) (civil case) [anti-abortion protest; denied; no harm, no expectation of success, availablility of legal alternatives]	Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3d Cir. 1989) (civil case) [anti-abortion protest; denied; no harm, no expectation of success, availablility of legal alternatives]	"Clearly, a court need not allow a defendant to present evidence on, or to discuss, anything she wishes the jury to hear. Indeed, a court would be remiss if it failed to screen what the jury is exposed to because of the potential for jury confusion or prejudice. A trial judge has a duty to limit the jury's exposure to only that which is probative and relevant and must attempt to screen from the jury any proffer that it deems irrelevant. In order to fulfill this duty, the court may utilize...an in limine order." United States v. Romano, 849 F2d 812, 815 (3d Cir. 1988)	Citing Oakland Cannabis Buyers' Coop, the Court stated: "...the availability of common-law defenses to federal crimes is not a foregone conclusion…" United States v. Taylor, 686 F.3d 182, 194 (3d Cir. 2012). "Nonetheless, the courts of appeals, including this court, have recognized that the justification defense is available under this statute...The courts have justified this conclusion on the ground that Congress legislated against the backdrop of the common law which has historically recognized this defense." United States v. Paollelo 951 F.2d 537 (3d Cir. 1991) (discussing 18 U.S.C. § 922). "The same analysis is applicable here. We emphasize in particular the numerous legal alternatives that Defendants had available to pursue their goal of persuading women not to have abortions." Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3rd Cir. 1989) (civil case, but citing Pennsylvania criminal code for necessity).	None found	None
4th Circuit	-	"[E]ssential elements of the defense are that defendants must have reasonably believed that their action was necessary to avoid an imminent threatened harm, that there are no other adequate means except those which were employed to avoid the threatened harm, and that a direct causal relationship may be reasonably anticipated between the action taken and the avoidance of the harm." United States v. Cassidy, 616 F.2d 101, 102 (4th Cir. 1979)	United States v. Cassidy, 616 F.2d 101 (4th Cir. 1979) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]	United States v. Cassidy, 616 F.2d 101 (4th Cir. 1979) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]; United States v. Moylan, 417 F.2d 1002 (4th Cir. 1969) [Vietnam draft record destruction; denied; defense unavailable for acts of moral protest]		United States v. Moylan, 417 F.2d 1002 (4th Cir. 1969) implies a strong bias against any justifications for civil disobedience: "No legal system could long survive if it gave every individual the option of disregarding with impunity any law which by his personal standard was judged morally untenable. Toleration of such conduct would not be democratic, as appellants claim, but inevitably anarchic."	None found	None

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5th Circuit	-	"(1) [D]efendant must show (1) that defendant was under an unlawful and present, imminent, and impending [threat] of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) that defendant had not recklessly or negligently placed himself in a situation in which it was probable that he would be [forced to choose the criminal conduct]; (3) that defendant had no reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and (4) that a direct causal relationship may be reasonably anticipated between the [criminal] action taken and the avoidance of the [threatened] harm." United States v. Gant, 691 F.2d 1159, 1162-3 (5th Cir. 1982) [specifically referring to defense to charge of felon firearm possession]	United States v. Gant, 691 F.2d 1159 (5th Cir. 1982) [firearm possession; denied; availability of legal alternatives]	None found	"We emphasize that since the justification defenses are affirmative defenses, defendant must demonstrate each element before he may successfully raise the defense of duress or necessity." United States v. Gant, 691 F.2d 1159, 1165 (5th Cir. 1982)	The defense of necessity was considered valid in a claim that the prosecution improperly suppressed potentially exculpatory necessity evidence: "In this case, Finley has pointed to new evidence which is both undisputed and highly probative of his affirmative defense of necessity ...We conclude that a showing of facts which are highly probative of an affirmative defense which if accepted by a jury would result in the defendant's acquittal constitutes a sufficient showing of 'actual innocence' to exempt a Brady claim from the bar of procedural default." Finley v. Johnson, 243 F.3d 215 (5th Cir. 2001).	None found	None

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6th Circuit	-	"To establish a prima facie case, the defendant must present some evidence that could support each of the following elements: (1) that defendant was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) that the defendant had not recklessly or negligently placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) that the defendant had no reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; (4) that a direct causal relationship may be reasonably anticipated between the criminal action taken and the avoidance of the threatened harm; [and] (5) that defendant did not maintain the illegal conduct any longer than absolutely necessary." United States v. Capozzi, 723 F.3d 720, 726 (6th Cir. 2013)	United States v. Capozzi, 723 F.3d 720 (6th Cir. 2013) [prison escape; denied; availability of legal alternative, no reasonable anticipation of causal nexus]	None found	"In order for a defendant to be entitled to present a defense to the jury, it is essential that the testimony given or proffered meet a minimum standard as to each element of the defense so that, if a jury finds it to be true, it would support an affirmative defense." United States v. Capozzi, 723 F.3d 720, 725 (6th Cir. 2013)	In contrast to the Third Circuit, the Sixth Circuit differentiates between justification and necessity, saying justification is more general: "The parties use the terms 'justification' and 'necessity' as if they were interchangeable. They are not. 'Justification,' and its counterpart, 'excuse,' are terms for general categories of defenses. See Wayne R. LaFave & Austin W. Scott, Jr., Criminal Law 356 (1972)...And 'necessity' is also a particular example of a defense that, when proved, will justify the defendant's action because 'the theory of necessity is that the defendant's free will was properly exercised to achieve the greater good and not that his free will was overcome by an outside force as with duress.'" United States v. Newcomb, 6 F.3d 1129 (6th Cir. 1993).	None found	None
7th Circuit	-	"The defense of 'necessity' upon which appellants also rely, has been recognized . . . with two conditions: 1) the defendants must reasonably believe their criminal conduct was necessary to avoid a harm more serious than that sought to be prevented by the statute defining the offense, and 2) there must be no reasonable, legal alternative to violating the law . . . Under any definition of these defenses one principle remains constant: if there was a reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm, the defenses will fail." United States v. Quilty, 741 F.2d 1031, 1033 (7th Cir. 1984)	United States v. Quilty, 741 F.2d 1031 (7th Cir. 1984) [anti-nuclear weapons protest; denied; availability of legal alternatives]	United States v. Quilty, 741 F.2d 1031 (7th Cir. 1984) [anti-nuclear weapons protest; denied; availability of legal alternatives]			None found	None

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8th Circuit	-	"A vital element of any necessity defense is the lack of a reasonable alternative to violating the law; that is, the harm to be avoided must be so imminent that, absent the defendant's criminal acts, the harm is certain to occur . . . [I]n political protest cases a sufficient causal relationship between the act committed by the defendants and avoidance of the asserted 'greater harm' inevitably will be lacking." United States v. Kabat, 797 F.2d 580, 591-92 (8th Cir. 1986)	United States v. Kabat, 797 F.2d 580 (8th Cir. 1986)	United States v. Kabat, 797 F.2d 580 (8th Cir. 1986) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]; United States v. LaForge & Katt, CR 4-84-66 (D. Minn 1986) [anti-nuclear weapons protest; allowed; convicted by jury]; United States v. Kroncke, 459 F.2d 697 (8th Cir. 1972) [Vietnam draft record destruction; denied; no reasonable anticipation of causal nexus, legislative preference, defense unavailable to test government policy]	"It is sufficient that the defendant have shown an underlying evidentiary foundation as to each element of the defense, regardless of how weak, inconsistent or dubious the evidence on a given point may seem. We have never held, however, that a defense must be submitted to the jury even when it cannot be said that a reasonable person might conclude the evidence supports the defendant's position." United States v. Kabat, 797 F.2d 580, 591 (8th Cir. 1986)	U.S. v. LaForge & Katt (DC MN No 4-84-66); 42 Guild Practitioner 100-103, 123-125 (1985) is the only discovered federal case in which a political necessity defense was allowed. The jury convicted the defendants, but the judge gave a much-reduced sentence and delivered a speech about the evils of nuclear arms. William P. Quigley, The Necessity Defense in Civil Disobedience Cases: Bring it to the Jury, 38 New England L. Rev 3 at 40, n. 136 (2003)	None found	None
9th Circuit	-	"To invoke the necessity defense . . . the defendants colorably must have shown that: (1) they were faced with a choice of evils and chose the lesser evil; (2) they acted to prevent imminent harm; (3) they reasonably anticipated a direct causal relationship between their conduct and the harm to be averted; and (4) they had no legal alternatives to violating the law." United States v. Schoon, 971 F.2d 193, 195 (9th Cir. 1991)	United States v. Schoon, 971 F.2d 193 (9th Cir. 1991) [trespass in congressional office to protest El Salvador policy; denied; lack of immediacy, lack of causal connection, necessity defense unavailable for "indirect civil disobedience"]	United States v. Schoon, 971 F.2d 193 (9th Cir. 1991) [protest against El Salvador policy; denied; no imminent harm, no reasonable anticipation of causal nexus, necessity defense unavailable for "indirect civil disobedience"]; United States v. Aguilar, 883 F.2d 662 (9th Cir. 1989) [providing sanctuary for Central American refugees; denied; availability of legal alternatives]; United States v. Cottier, 759 F.2d 760 (9th Cir. 1985) [anti-nuclear weapons protest; denied; harms insufficient under precedent]; United States v. Dorrell, 758 F.2d 427 (9th Cir. 1985) [anti-weapons protest; denied; availabiliy of legal alternatives, no reasonable anticipation of causal nexus]; United States v. Lowe, 654 F.2d 562 (9th Cir. 1981) [anti-nuclear weapons protest; denied; no direct harm, defendants cannot attack government policy through defense] ; United States v. May 622 F.2d 1000 (9th Cir. 1980) [anti-nuclear weapons protest; denied; no direct harm, defendants cannot attack government policy through defense]; United States v. Coupez, 603 F.2d 1347 (9th Cir. 1979) [bank robbery and bombings to trigger revolution; denied; no reasonable anticipation of causal nexus]; United States v. Simpson, 460 F.2d 515 (9th Cir. 1972) [Vietnam draft record destruction; denied; no reasonable anticipation of causal nexus]	"A district court may preclude a necessity defense where the evidence, as described in the defendant's offer of proof, is insufficient as a matter of law to support the proffered defense . . . Because the threshold test for admissibility of a necessity defense is a conjunctive one, a court may preclude invocation of the defense if proof is deficient with regard to any of the four elements." United States v. Schoon, 971 F.2d 193, 195 (9th Cir. 1991). But see United States v. Contento-Pachon, 723 F.2d 691, 693 (9th Cir. 1984) ("[f]actfinding is usually a function of the jury, and the trial court rarely rules on a defense as a matter of law").	United States v. Schoon, 971 F.2d 193 (9th Cir. 1991) made the oft-cited distinction between "direct" and "indirect" civil disobedience, ruling that the necessity defense is never allowed for protesters who violate any law other than one that directly harms them. The discussion, which analyzes four elements of the defense along the direct-indirect axis, has been favorably cited by many courts in other jurisdictions.	None found	None

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10th Circuit	-	"To succeed on a necessity defense, a defendant must show (1) there is no legal alternative to violating the law, (2) the harm to be prevented is imminent, and (3) a direct, causal relationship exists between defendant's action and the avoidance of harm." United States v. DeChristopher, 695 F.3d 1082, 1096 (10th Cir. 2012)	United States v. Seward, 687 F.2d 1270 (10th Cir. 1982) [anti-nuclear energy protest; denied; availability of legal alternatives, lack of real emergency]	United States v. DeChristopher, 695 F.3d 1082 (10th Cir. 2012) [disruption of oil and gas lease auction; denied; availability of legal alternatives]; United States v. Turner 44 F.3d 900 (10th Cir. 1995) [anti-abortion protest; denied; availability of legal alternatives]; United States v. Seward, 687 F.2d 1270 (10th Cir. 1982) [anti-nuclear power protest; denied; availability of legal alternatives, lack of real emergency]; United States v. Best, 476 F.Supp. 34 (D. Colo. 1979) [anti-nuclear power protest; pre-trial restriction on presentation of evidence imposing strict requirements for proffer of necessity]	"The refusal to give a particular jury instruction, even if the instruction is an accurate statement of the law, is within the discretion of the district judge. Moreover, while a defendant is entitled to an instruction regarding [her] theory of the case . . . [a] defendant is not entitled to an instruction which lacks a reasonable legal and factual basis." US v Turner 44 F.3d 900, 901 (10th Cir. 1995)		None found	United States v. DeChristopher, 695 F.3d 1082 (10th Cir. 2012) [disruption of oil and gas lease auction; denied; availability of legal alternatives]

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11th Circuit	-	"In order to establish the justification defense of necessity, defendants must show, among other things, that they had no reasonable alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm." United States v Montgomery, 772 F.2d 733, 736 (11th Cir. 1985)	United States v Montgomery, 772 F.2d 733 (11th Cir. 1985) [anti-nuclear weapons protest; denied; availability of legal alternatives]	United States v Montgomery, 772 F.2d 733 (11th Cir. 1985) [anti-nuclear weapons protest; denied; availability of legal alternatives]	"In order to have the defense submitted to a jury, a defendant must first produce or proffer evidence sufficient to prove the essential elements of the defense." United States v Montgomery, 772 F.2d 733, 736 (11th Cir. 1985)	In case of Greenpeace protestors boarding a ship bringing illegallly forested mahogany into the U.S., defendants proposed necessity jury instruction prior to trial. The judge did not preclude the possibility of the instruction, saying that he wouldn't rule it out before hearing the evidence at a jury trial, but noted in dicta that it would be very difficult for them to succeed on the basis that there were legal alternatives. U.S. v. Greenpeace, Inc., 314 F.Supp.2d 1252, (D. Fla. 2004) [charges dismissed on other grounds]	None found	
Federal administrative proceedings	-	"(1) [T]he party was faced with a choice of evils and chose the lesser evil; (2) the party acted to prevent imminent harm; (3) the party reasonably anticipated a direct causal relationship between their conduct and the harm to be averted; and (4) the party had no legal alternative to violating the law." Coast Guard Assessment Against Chiara D'Angelo at 3 (Activity No. 5169347, May 17, 2016)	Coast Guard Assessment Against Chiara D'Angelo (Activity No. 5169347, May 17, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; Coast Guard Assessment Against Matthew Fuller (Activity No. 5169346, June 13, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]	Coast Guard Assessment Against Chiara D'Angelo (Activity No. 5169347, May 17, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; Coast Guard Assessment Against Matthew Fuller (Activity No. 5169346, June 13, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]	Unclear	In Coast Guard Assessment Against Chiara D'Angelo (Activity No. 5169347, May 17, 2016) and Coast Guard Assessment Against Matthew Fuller (Activity No. 5169346, June 13, 2016), the hearing officer adapted the Ninth Circuit necessity definition, reasoning that the defense was available in civil penalty proceedings because of prior "public necessity" cases		Coast Guard Assessment Against Chiara D'Angelo (Activity No. 5169347, May 17, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; Coast Guard Assessment Against Matthew Fuller (Activity No. 5169346, June 13, 2016) [anti-oil drilling protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]
Alabama	Code of Ala. § 13A-3-21 (general justification statute); but see Code of Ala. § 13A-3-29, repealing necessity for acts otherwise constituting an offense	"1) [T]he harm must be committed under the pressure of physical or natural force, rather than human force; 2) the harm sought to be avoided is greater than (or at least equal to) that harm sought to be prevented by the law defining the offense charged; 3) the actor reasonably believes at the moment that his act is necessary and is designed to avoid the greater harm; 4) the actor must be without fault in bringing about the situation; and 5) the harm threatened must be imminent, leaving no alternative by which to avoid the greater harm." Allison v. Birmingham, 580 So. 2d 1377, 1380 (Ala. Crim. App. 1991)	Allison v. Birmingham, 580 So. 2d 1377 (Ala. Crim. App. 1991) [anti-abortion protest; denied; no legally cognizable harm]; Kauffman v. State, 620 So. 2d 90 (Ala. Crim. App. 1992) [medical marijuana; denied; defendant's use not enumerated in statute prohibiting marijuana]	Allison v. Birmingham, 580 So. 2d 1377 (Ala. Crim. App. 1991) [anti-abortion protest; denied; no legally cognizable harm]	Unclear	Code of Ala. § 1-3-1 (1975) states that "The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the legislature." In Kauffman v. State, 620 So. 2d 90, 91 (Ala. Crim. App. 1992), the court says that necessity does not fall under the statutory provision for duress, and instead is a common law defense.	None found	None

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Alaska	Alaska Stat. § 11.81.320	"Conduct which would otherwise be an offense is justified by reason of necessity to the extent permitted by common law when (1) neither this title nor any other statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved; and (2) a legislative intent to exclude the justification of necessity does not otherwise plainly appear." Alaska Stat. § 11.81.320. "1) [T]he act charged must have been done to prevent a significant evil; 2) there must have been no adequate alternative; 3) the harm caused must not have been disproportionate to the harm avoided." Nelson v. State, 597 P.2d 977, 979 (Ak. 1979)	State v. Greenwood, 237 P.3d 1018 (Ak. 2010) [driving under the influence; allowed; some evidence for all elements]; Nelson v. State, 597 P.2d 977 (Ak. 1979) [reckless destruction of property and joyriding; denial was harmless error; no emergency]	Muller v. State, 196 P.3d 815 (Ak. Ct. App. 2008) [anti-Iraq War protest; denied; no reasonable anticipation of causal nexus]; Cleveland v. Anchorage, 631 P.2d. 1073 (Ak. 1981) [anti-abortion protest; denied; no legally cognizable harms, availability of legal alternatives, no reasonable anticipation of causal nexus]; Bird v. Municipality of Anchorage, 787 P.2d 119 (Ak. Ct. App. 1990) [anti-abortion protest; denied; no legally cognizable harms, availability of legal alternatives, no reasonable anticipation of causal nexus]	"If a defendant presents 'some evidence' of each of these elements, the defendant is entitled to a jury instruction on the necessity defense. 'Some evidence' is evidence that, viewed in the light most favorable to the defendant, would allow a reasonable juror to find in the defendant's favor on each element of the defense. The 'some evidence' burden is not a heavy one -- as long as the defendant produces some evidence to support each element of the defense, any weakness or implausibility in that evidence is irrelevant and a matter for the jury, not for the court." State v. Greenwood, 237 P.3d 1018, 1022 (Ak. 2010)	"[The defense] is available if the accused reasonably believed at the time of acting that the first and second elements were present, even if that belief was mistaken; but the accused's belief will not suffice for the third element. An objective determination must be made as to whether the defendant's value judgment was correct, given the facts as he reasonably perceived them . . . the emergency which produces the 'necessity' behind the charged act must generally be a result of the physical forces of nature." Cleveland v. Anchorage, 631 P.2d. 1073, 1078 (1981).	None found	None
Arizona	Ariz. Rev. Stat. § 13-417	"A. Conduct that would otherwise constitute an offense is justified if a reasonable person was compelled to engage in the proscribed conduct and the person had no reasonable alternative to avoid imminent public or private injury greater than the injury that might reasonably result from the person's own conduct. B. An accused person may not assert the defense under subsection A if the person intentionally, knowingly or recklessly placed himself in the situation in which it was probable that the person would have to engage in the proscribed conduct. C. An accused person may not assert the defense under subsection A for offenses involving homicide or serious physical injury." Ariz. Rev. Stat. § 13-417	State v. Fell, 203 Ariz. 186 (Ariz. Ct. App. 2002) [driving under the influence; denied; defense unavailable for charged offense]; State v. Medina, 244 Ariz. 361 (Ariz. Ct. App. 2018) [felon-in-possession; denied; no imminence, defense raised too late]	None found	The court in State v. Medina, 244 Ariz. 361, 365 (Ariz. Ct. App. 2018) cites a self-defense case in saying that "the slightest evidence is all that is needed to support a justification defense."	There is no common law necessity defense in Arizona. The statutory necessity defense is available only for crimes listed under Title 13. State v. Evans, WL 2146714 (Ariz. Ct. App. 2013) at Par. 9-13	Arizona v. George Pettit, Tucson City Ct [occupation of federal housing to protest homelessness, justification defense allowed according to AZ Revised Stats §§13-401, 402, acquitted by magistrate judge]	None

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Arkansas	Ark. Code § 5-2-604	"Conduct that would otherwise constitute an offense is justifiable when: (1) The conduct is necessary as an emergency measure to avoid an imminent public or private injury; and (2) According to ordinary standards of reasonableness, the desirability and urgency of avoiding the imminent public or private injury outweigh the injury sought to be prevented by the law proscribing the conduct." Ark. Code § 5-2-604	Prodell v. State, 102 Ark. App. 360 (2008) [firearm possession; denied; no extraordinary attendant circumstances, availability of legal alternatives]	Pursley v. State, 21 Ark. App. 107 (1987) [anti-abortion protest; denied; no extraordinary circumstances, no imminent harm]	"The law is clear that a party is entitled to an instruction on a defense if there is sufficient evidence to raise a question of fact or if there is any supporting evidence for the instruction . . . Where the defendant has offered sufficient evidence to raise a question of fact concerning a defense, the instructions must fully and fairly declare the law applicable to that defense; however, there is no error in refusing to give a jury instruction where there is no basis in the evidence to support the giving of the instruction" Prodell v. State, 102 Ark. App. 360, 362-63 (2008). "Justification becomes a defense when any evidence tending to support its existence is offered...," and evidence is viewed in the light most favorable to the defendant (but burden shifts to preponderance for acquittal) Lewis v. State, 2014 Ark. App. 730 at 2 (2014); *see also* Sullivan v. State, 2015 Ark. App. 514 (2015); Petty v. State 2017 Ark. App. 347 (2017).		None found	None

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California	None	Defendant "violated the law (1) to prevent a significant evil, (2) with no adequate alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency." In re Eichorn, 69 Cal. App. 4th 382, 389 (1998)	People v. Galambos, 104 Cal. App. 4th 1147 (2002) [medical marijuana possession; denied; legislative preference]; In re Eichorn, 69 Cal. App. 4th 382 (1998) [violation of anti-camping statute; allowed; justified by homelessness]; People v. Lovercamp 43 Cal. App. 3d 823 (1974) [prison escape; allowed; justified by threat of rape]	People v. Garziano, 230 Cal. App. 3d 241 (1991) [anti-abortion protest; denied; defense unavailable in anti-abortion protests]; In re Weller, 164 Cal. App. 3d 44 (1985) [anti-nuclear weapons protest; denied; availability of legal alternatives]; People v. Weber, 208 Cal. Rptr. 719, 721-22 (Ca. Sup. Ct. 1984) [anti-nuclear weapons protest; denied; no imminent harm, availability of legal alternatives]	"The admissibility of the proffered evidence depends upon the sufficiency of the evidence to sustain a finding of each element of the privilege or defense." People v. Galambos, 104 Cal. App. 4th 1147 (2002).	"To accept the defense of necessity under the facts at bench would mean that markets may be pillaged because there are hungry people; hospitals may be plundered for drugs because there are those in pain; homes may be broken into because there are unfortunately some without shelter; department stores may be burglarized for guns because there is fear of crime; banks may be robbed because of unemployment. The defense of necessity is not a cause or a potentiality. It must be articulable to an immediate, imminent fear and compulsion. Some might argue that the apprehension of a nuclear holocaust is more than a potentiality; it is survival. But it is equally arguable that hunger, pain and shelter are to those in need, similarly, issues of survival. There were other forms of protest available to the defendants which disembowel the defense of necessity. In metropolitan areas, demonstrations and protests which are conducted within the law and without arrest are almost a daily occurrence." People v. Weber, 208 Cal. Rptr. 719, 721-22 (Ca. Sup. Ct. 1984) People v. Roberts, 47 Cal. 2d 374, 303 P.2d 721 (1956) established the idea that trespass laws may be broken for (even questionable) necessity reasons. Aldridge & Stark, Nuclear War, Citizen Intervention, and the Necessity Defense, 26 Santa Clara L. Rev. 299 at 313, (1986)	California v. Halem, No. 135842 (Berkeley Mun. Ct. 1991) [defendant acquitted of distributing clean needles after necessity instruction]; State v. McMillan, No. D 00518 (San Luis Obispo Jud. Dist. Mun. Ct., Cal. Oct. 13, 1987) [bench trial acquitted protesters at nuclear plant on theory of necessity]; California v. Lemnitzer, No. 27106E (Pleasanton-Livermore Mun. Ct. Feb. 1, 1982) [hung jury for protester at nuclear research facility after instruction on necessity, at retrial no necessity instruction but instruction on malice]; People v. Block (Galt Judicial Dist., Sacramento Co. Mun. Ct., Aug. 14, 1979) [one defendant acquitted of charges from protest at nuclear plant after necessity instruction, other defendants received split verdict and charges dropped]; California v. Acton, (S Coast Jud. Dist. Santa Clara Cty, #282899) [anti-CIA protest, jury trial for trespass and resisting; acquitted on necessity, another trespass charge dropped]; California v. Jerome, Livermore Pleasanton Mun. Ct., Alameda Cty, Traffic Div. Nos 5450895, 5451038, 5516177, 5516159 [nuclear facility blocked by sit-in, Transit Commissioner agreed to necessity evidence, charges dismissed]; California v. Greg Getty (Contra Costa Cty Muni Ct No 109158-6, 1987) [nuclear weapons protest; necessity raised, charges dismissed on other grounds]	None

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Colorado	Colo. Rev. Stat. § 18-1-702	"Conduct which would otherwise constitute an offense is justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue." Colo. Rev. Stat. § 18-1-702	Andrews v. People, 800 P.2d 607 (Colo. 1990) [anti-nuclear weapons protest; denied; availability of legal alternatives, no actual aversion of injury, no imminent harm]	Andrews v. People, 800 P.2d 607 (Colo. 1990) [anti-nuclear weapons protest; denied; availability of legal alternatives, no actual aversion of injury, no imminent harm]	"Before a defendant can present a choice of evils defense to the jury, section 18-1-702 requires that the trial court make an initial determination of whether the allegations of facts by the defendant, if proved, would constitute legal justification for the prohibited conduct . . . A sufficient offer of proof must therefore establish: (1) all other potentially viable and reasonable alternative actions were pursued, or shown to be futile, (2) the action taken had a direct causal connection with the harm sought to be prevented, and that the action taken would bring about the abatement of the harm, and, (3) the action taken was an emergency measure pursued to avoid a specific, definite, and imminent injury about to occur." Andrews v. People, 800 P.2d 607, 610 (Colo. 1990)		Colorado v. Bock (Denver County Ct. June 12, 1985) [protesters acquitted of trespass at senator's office to protest policy in Central America after necessity instruction]; Colorado v. Bates, (Larimer Cty Ct Nos F38M0552, F83M0557, F83M0558) [nuclear protestors blocked a train; dismissed for failure to hold a speedy trial]; Colorado v. Keranen (Boulder Cty Ct Nos 85 M 2172, 2204) [anti-CIA protest; judge allowed "choice of evils" defense, charges dropped]; Colorado v. Erb (Boulder Cty Ct, Cr #86 M2511, Div 8), 45 Guild Practitioner 33 (1988) [anti-CIA protests; allowed; charges dropped]	None

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Connecticut	None (Conn. Gen. Stat. § 53a-16-22 describes a series of situations in which justification may be used as a defense, without eliminating the common law necessity defense)	Defendants must show "(a) that there is no third and legal alternative available, (b) that the harm to be prevented [was] imminent, and (c) that a direct causal relationship [may] be reasonably anticipated to exist between defendant's action and the avoidance of harm." State v. Drummy, 18 Conn. App. 303, 309 (1989)	State v. Varszegi, 236 Conn. 266 (1996) [prison escape; denied; no objective risk of harm]	State v. Clarke, 24 Conn. App. 541 (1991) [anti-abortion protest; denied; no legally cognizable harm, justification unavailable for infractions]; State v. Anthony, 24 Conn. App. 195 (1991) [anti-abortion protest; denied; no legally cognizable harm]; State v. Drummy, 18 Conn. App. 303 (1989) [anti-military recruitment protest; denied; no reasonable anticipation of causal nexus]	"Where an offer of proof is made with respect to a defense and it is clear from the offer of proof that the defense is insufficient as a matter of law, the trial court may properly refuse to permit evidence of the defense to be submitted to the jury." State v. Drummy, 18 Conn. App. 303, 309-10 (1989). "[A] defendant who wishes to assert a necessity defense is required to make a preliminary showing through an offer of proof before the defense may be submitted to the jury . . . As a threshold matter of law, the trial court must determine whether the necessity defense is warranted under the facts presented by the defendant." State v. Rubenstein, No. CR10267828, 2003 Conn. Super. LEXIS 1638 at *5 "...By introducing evidence that would justify [the necessity defense], the burden remains on the state to disprove it beyond a reasonable doubt" 5 Conn. Prac., Criminal Jury Instructions § 6.6 (4th ed.)		None found	None
Delaware	11 Del. Code § 463	"[C]onduct which would otherwise constitute an offense is justifiable when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the defendant, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue." 11 Del. Code § 463	Bodner v. State, 752 A.2d 1169 (Del. 2000) [driving under the influence; allowed; possibility of imminent harm]	Gies v. State, 567 A.2d 421 (Del. 1989) [anti-abortion protest; denied; no legally cognizable harm]	"A defendant is entitled to jury instructions on the defense of justification if he produces some credible evidence to support the elements of the defense that is sufficient to create a reasonable doubt regarding his guilt. The court need determine only that a reasonable juror could find that the evidence suggests a reasonable doubt regarding his guilt." Carter v. State, 663 A.2d 486 (Table) (Del. 1995)		None found	None

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District of Columbia	None	"In essence, the necessity defense exonerates persons who commit a crime under the 'pressure of circumstances,' if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendants' breach of the law. The defense is not available where: (1) there is a legal alternative available to the defendants that does not involve violation of the law, (2) the harm to be prevented is neither imminent, nor would be directly affected by the defendants' actions, and (3) the defendants' actions were not reasonably designed to actually prevent the threatened greater harm." Griffin v. U.S. 447 A.2d 776, 777-79 (D.C. Ct. App. 1982)	Griffin v. United States, 447 A.2d 776 (D.C. Ct. App. 1982) [anti-homelessness protest; denied; availability of legal alternatives, no imminent harm]	Reale v. United States, 573 A.2d 13 (D.C. Ct. App. 1990) [anti-homelessness protest; denied; availability of legal alternatives, no direct prevention of harm]; Shiel v. United States, 515 A.2d 405 (D.C. Ct. App. 1986) [anti-homelessness protest; denied; no reasonable anticipation of causal nexus]; Griffin v. United States, 447 A.2d 776 (D.C. Ct. App. 1982) [anti-homelessness protest; denied; availability of legal alternatives, no imminent harm]; Gaetano v. U.S., 406 A.2d 1291 (D.C. Ct. App. 1979) [anti-abortion protest; denied; no necessity when criminally interfering with others' rights]	Unclear. "This court has previously upheld a trial court's refusal to allow unlawful entry defendants to invoke a necessity defense, where the defendants' actions were not reasonably designed to actually prevent the threatened greater harm." Shiel v. United States, 515 A.2d 405, 409 (D.C. Ct. App. 1986)		None found	None
Florida	None	"The essential elements of the defense of necessity are (1) that the defendant reasonably believed that his action was necessary to avoid an imminent threat of death or serious bodily injury to himself or others, (2) that the defendant did not intentionally or recklessly place himself in a situation in which it would be probable that he would be forced to choose the criminal conduct, (3) that there existed no other adequate means to avoid the threatened harm except the criminal conduct, (4) that the harm sought to be avoided was more egregious than the criminal conduct perpetrated to avoid it, and (5) that the defendant ceased the criminal conduct as soon as the necessity or apparent necessity for it ended." Bozeman v. State, 714 So. 2d 570, 572 (Fla. D. Ct. App. 1998)	Hill v. State, 688 So.2d 901 (Fla. 1996) [murder of abortion doctor; denied; no legally cognizable harm]; Bozeman v. State, 714 So. 2d 570 (Fla. D. Ct. App. 1998) [driving with suspended license; allowed; evidence that defendant did not recklessly put self in situation, no legal alternatives]	Linnehan v. State, 454 So. 2d 625 (Fla. D. Ct. App. 1984) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]	"[A] defendant is entitled to have his jury instructed on the law applicable to his theory of defense if there is any evidence presented supporting such a theory, even if the only evidence supporting the defense theory comes from the defendant's own testimony." Bozeman v. State, 714 So. 2d 570, 572 (Fla. D. Ct. App. 1998)	"The harm or evil which a defendant, who asserts the necessity defense, seeks to prevent must be a legal harm or evil as opposed to a moral or ethical belief of the individual defendant." Hill v. State, 688 So.2d 901 (Fla. 1996)	None found	Florida v. Block (Fifteen Dist. Ct., Palm Beach Cty. Ct., Fla., 08MM003373AMB, Dec. 4, 2008) [power plant protest; necessity allowed; jury convicted]
Georgia	O.C.G.A. § 16-3-20 (general justification statute)	"The defense of justification can be claimed . . . [i]n all other instances which stand upon the same footing of reason and justice as those enumerated in this article." O.C.G.A. § 16-3-20 (e.g. reasonable fulfilment of public duties, reasonable discipline of child)	State v. Alvarez, 299 Ga. 213 (Ga. 2016) [murder; allowed; some evidence to support jury finding of justification]; Tarvestad v. State, 261 Ga. 605 (Ga. 1991) [driving without license; allowed; some evidence to support jury finding of justification]	Hoover v. State, 198 Ga. App 481 (Ga. Ct. App. 1991) [anti-abortion protest; denied; no legally cognizable harm]	"The trial court must charge the jury on the defendant's sole defense, even without a written request, if there is some evidence to support the charge." Tarvestad v. State, 261 Ga. 605, 606 (Ga. 1991)	Georgia does not have a common law necessity defense, instead relying upon the statutory justification defense, which allows for defenses "stand[ing[upon the same footing of reason and justice" as the enumerated justification defenses. O.C.G.A. § 16-3-20(6).	None found	None

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Hawai'i	Haw. Rev. Stat. § 703-302	"(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that: (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; and (b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear." Haw. Rev. Stat. § 703-302. The statutory defense has displaced the common law defense. However, many courts outside the state still cite Hawai'i common law precedent: "The 'necessity' defense exonerates persons who commit a crime under the 'pressure of circumstances' if the harm that would result from obeying the law would significantly exceeded the harm caused by breaking the law. The defense is not effective in the following situations: (1) Where there is a third alternative available to to defendants that does not involve violation of the law . . . (2) the harm to be prevented [is] imminent . . . (3) their actions were . . . reasonably designed to actually prevent the threatened greater harm." State v. Marley, 54 Haw. 450, 472 (1973)	State v. Marley, 54 Haw. 450 (1973) [anti-Vietnam War protest; denied: availability of legal alternatives, no imminent harm, no reasonable anticipation of causal nexus]	State v. Marley, 54 Haw. 450 (1973) [anti-Vietnam War protest; denied: availability of legal alternatives, no imminent harm, no reasonable anticipation of causal nexus]	Unclear. The state Supreme Court appears to apply a reasonable juror standard to pre-trial limitations of evidence: "Since no reasonable man could find otherwise, it was not error for the judge to have omitted an instruction on the necessity defense." State v. Marley, 54 Haw. 450, 473 (Haw. 1973)		None found	None

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Idaho	None	"1. A specific threat of immediate harm; 2. The circumstances which necessitate the illegal act must not have been brought about by the defendant; 3. The same objective could not have been accomplished by a less offensive alternative available to the actor; 4. The harm caused was not disproportionate to the harm avoided." State v. Hastings, 118 Idaho 854 (1990)	State v. Hastings, 118 Idaho 854 (1990) [medical marijuana possession; allowed; jury's role to determine facts]	State v. Chisholm, 126 Idaho 319 (Ct. App. 1994) [anti-nuclear waste protest; denied; no imminent harm]	"If evidence offered only to prove an affirmative defense is shown on a motion in limine to be inadequate as a matter of law to prove one of the essential elements of that defense, the proposed evidence is irrelevant. When the offered evidence, even if believed by a jury, would not make a prima facie showing of one element of an affirmative defense, there is no right to present that defense at trial." State v. Chisholm, 126 Idaho 319, 321 (Ct. App. 1994)		None found	None
Illinois	720 Ill. Comp. Stat. 5/7-13	"Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct." 720 ILCS 5/7-13. "Additionally, the defendant must reasonably believe that his conduct, which would otherwise be an offense, was necessary to avoid a public or private injury greater than the injury which might have reasonably resulted from his own conduct." People v. Berquist, 239 Ill. App. 3d 906 (1993)	People v. Kite, 153 Ill. 2d 40 (1992) [possession of weapon in prison; denied; no imminent harm]; People v. Berquist, 239 Ill.App.3d 906 (1993) [anti-abortion protest; denied; no legally cognizable harm]; Chicago v. Mayer, 308 N.E.2d 601 (Ill. 1974) [Vietnam war protest,; allowed; reasonable belief of necessity]	People v. Belsan 253 Ill. App.3d 1093 (1993) [anti-abortion protest; denied; no legally cognizable harm]; People v. Berquist, 239 Ill.App.3d 906 (1993) [anti-abortion protest; denied; no legally cognizable harm]; People v. Smith, 161 Ill.App.3d 213 (1987) [anti-abortion protest; denied; no legally cognizable harm]; People v. Krizka, 92 Ill.App.3d 288 (1981) [anti-abortion protest; denied; no legally cognizable harm]; People v. Stiso, 3 Ill.App.3d 101 (1981); [anti-abortion protest; denied; no legally cognizable harm]	"Generally, [t]he quantum of proof necessary to raise an affirmative defense is evidence sufficient to raise a reasonable doubt as to defendant's guilt or innocence. It follows that a defendant must provide a threshold of some evidence in order to properly raise the affirmative defense of necessity. Although the threshold of evidence required to raise an affirmative defense is low, the defendant bears the burden to satisfy that requirement, and where the defendant presents no supporting evidence, the proffered instruction should be refused." People v. Kite, 153 Ill. 2d 40 (Ill.1992)	Favorable language regarding the right to present the defense to the jury can be found in People v. Musgrove, Ill. App. 3d 216, 220-21 (2000), a drunk driving case: "Even slight evidence of the forcing of this choice is sufficient to make the defense an issue for the trier of fact . . . All of these factors need not be present to establish necessity, and the absence of one or more does not necessarily prohibit the assertion of the defense. Rather, these factors are most useful in assessing the weight and credibility of the defendant's claim." See also People v. Kucakik, 367 Ill.App.3d 176 (2006) (remanding for necessity instruction in driving under the influence case and objecting to judicial characterizations of the legal alternatives element)	Illinois v. Fish (Skokie Cir. Ct. Aug. 1987) [protesters acquitted of trespass at an army recruiting center after necessity instruction]; Chicago v. Streeter, Nos. 85-108644, 48, 49, 51, 52, 120323, 26, 27 (Cir. Ct., Cook County 11. May 1985); [defendants acquitted of trespass at office of South African consul after necessity instruction]; People v. Jarka, Nos. 002170, 002196-002212, 00214, 00236, 00238 (111. Cir. Ct. Apr. 15, 1985) [protesters acquitted after sit-in at naval training center to protest Central American policy, court gave necessity instruction that noted illegality of nuclear war]; People v. Brown, Nos. 78CM2520-78CM2540 (Cir. Ct. of Lake County, IL. January l979) [anti-nuclear protest; necessity allowed under Ill. Rev. Stat., ch. 38, § 7-13 (1962); jury acquitted]	None

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Indiana	None	"(1) [T]he act charged as criminal must have been done to prevent a significant evil; (2) there must have been no adequate alternative to the commission of the act; (3) the harm caused by the act must not be disproportionate to the harm avoided; (4) the accused must entertain a good-faith belief that his act was necessary to prevent greater harm; (5) such belief must be objectively reasonable under all the circumstances; and (6) the accused must not have substantially contributed to the creation of the emergency." Toops v. State, 643 N.E.2d 387, 390 (Ind. App. Ct. 1994)	Commonwealth v. Brogan, 415 Mass. 169 (1993) [anti-abortion protest; denied; no legally cognizable harm]; Commonwealth v. Schuchardt, 408 Mass. 347 (1990) [anti-nuclear weapons protest; denied; no imminent harm]; Commonwealth v. Hood, 389 Mass. 581 (1983) [anti-nuclear power protest; denied; no reasonable anticipation of causal nexus, availability of legal alternatives]; Commonwealth v. Brugmann, 13 Mass. App. Ct. 373 (1982) [anti-nuclear power protest; denied; availability of legal alternatives]; Commonwealth v. Averill, 12 Mass. App. Ct. 260 (1981) [anti-nuclear power protest; denied; no reasonable anticipation of causal nexus, no legally cognizable harm]	Judge v. State, 659 N.E.2d 608 (Ind. Ct. App. 1995) [anti-abortion protest; denied; defense unavailable when interfering with constitutional rights]	"The law in this jurisdiction is well settled that a defendant in a criminal case is entitled to have the jury instructed on any theory or defense which has some foundation in the evidence. And this is so even if the evidence is weak or inconsistent." Toops v. State, 643 N.E.2d 387, 389-90 (Ind. App. Ct. 1994). "In order to negate a claim of necessity, the State must disprove at least one element of the defense beyond a reasonable doubt." Dozier v. State, 709 N.E.2d 27, 29 (Ind. App. Ct. 1999)		None found	None

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Iowa	None	"The rationale of the necessity defense lies in defendant being required to choose the lesser of two evils and thus avoiding a greater harm by bringing about a lesser harm. At least one commentator has suggested the following factors as a framework for analysis where the defendant is not personally at fault in creating the situation calling for the necessity to make a selection: (1) the harm avoided, (2) the harm done, (3) the defendant's intention to avoid the greater harm, (4) the relative value of the harm avoided and the harm done, and (5) optional courses of action and the imminence of disaster." State v. Walton, 311 N.W.2d 113, 115 (Iowa 1981)	State v. Bonjour, 694 N.W.2d 511 (Iowa 2005) [medical marijuana possession; denied; legislature should decide if defense exists]; State v. Walton, 311 N.W.2d 113 (Iowa 1981) [firearm possession; denied; no imminent harm, availability of legal alternatives]	Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637 (Iowa 1991) [injunction against abortion protester; necessity defense for trespass denied; no defense for protests against government policy]	"[A]lthough the State must carry the burden to disprove the necessity defense beyond a reasonable doubt, the defendant has the burden of generating a fact question on the defense . . . If all the requirements of the defense are not addressed in the defendant's evidence, trial court is not obligated to submit the issue to the jury." State v. Walton, 311 N.W.2d 113, 115 (Iowa 1981)	"The necessity defense is generally not available to excuse criminal activity by those who disagree with the policies of the government." Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 641 (Iowa 1991)	None found	None
Kansas	None	The Kansas Supreme Court has not explicitly recognized the existence of a common law necessity defense, but it has favorably quoted the elements laid out by the Tenth Circuit in United States v. Turner, 44 F.3d 900, 902 (2005): "(1) that the defendant was faced with a choice of evils and chose the lesser evil, (2) the defendant acted to prevent imminent harm, (3) the defendant reasonably anticipated a direct causal relationship between his conduct and the harm to be averted, and (4) the defendant had no legal alternatives to violating the law." State v. Roeder, 300 Kan. 901, 917 (2014)	State v. Roeder, 300 Kan. 901 (2014) [murder of abortion doctor; denied; incorrect balancing of harms, no imminent harm, availability of legal alternatives]	City of Wichita v. Holick, 151 P.3d 864 (Kan. App. 2007) [anti-abortion protest; denied; incorrect balancing of harms, no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; City of Wichita v. Tilson, 253 Kan. 285 (1993) [anti-abortion protest; denied; no legally cognizable harm]; State v. Greene, 5 Kan. App. 2d 698 (1981) [anti-nuclear weapons protest; "compulsion" defense denied; no imminent harm, no legally cognizable harm]	"[T]his court has recognized that both our state and federal constitutions entitle a criminal defendant to present the theory of his or her defense. But it is not error for the trial court to exclude evidence that is not relevant to a legally sufficient theory of defense." State v. Roeder, 300 Kan. 901, 914 (2014)	Kansas has not explicitly recognized the necessity defense; instead, in each cited case, courts have held that even if the necessity defense existed, the defendant has failed to present sufficient evidence warranting its presentation.	None found	None

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Kentucky	Ky. Rev. Stat. § 503-030	"[C]onduct which would otherwise constitute an offense is justifiable when the defendant believes it to be necessary to avoid an imminent public or private injury greater than the injury which is sought to be prevented by the statute defining the offense charged, except that no justification can exist under this section for an intentional homicide." Ky. Rev. State § 503-030	Burke v. Commonwealth, 322 S.W.3d 71 (Ky. 2010) [prison escape; denied; no imminent harm]; Senay v. Commonwealth, 650 S.W.2d 259 (Ky. 1983) [firearm possession; denied; no imminent harm]	None found	"Where a defendant fails to produce evidence which would support him in choosing the commission of an otherwise unlawful act over other lawful means of protecting himself, the trial court is not required to instruct the jury on the choice of evils defense." Senay v. Commonwealth, 650 S.W.2d 259, 260-61 (Ky. 1983). But see Baird v. Commonwealth, 709 S.W.2d 458, 459 (Ky. Ct. App. 1986) (reversing denial of "execution of public duty" justification instruction for felon in possession of firearm; "Both the former Court of Appeals and this Court have previously determined that in cases in which the defendant has confessed his commission of the act of which he stands accused but asserts a legal excuse or justification exonerating him of criminal intent, the trial court is bound to present that defense to the jury in the form of a concrete instruction").		United States v. Braden (W.D. Ky. 1985) [charges dropped after defendants protesting Central America policy at senator's office raised necessity]	None
Louisiana	L.a.R.S. §14:18 (general justification statute with enumerated situations for which it is available)	Lousiana courts have not defined the elements of a justification defense. Instead, defendants must identiy which provision under La.R.S. § 14:18 allows for their justification defense and courts analyze the defense in a highly contextual manner.	State v. Boleyn, 328 So.2d 95 (La. 1976) [prison escape; denied; no evidence of unavailability of alternatives]	State v. Aguillard, 567 So.2d 674 (La. Ct. App. 1990) [anti-abortion protest; denied; no legally cognizable harm]	"Before submission of this defense to the jury, an accused must lay an appropriate foundation." State v. Boleyn, 328 So.2d 95, 97 (La. 1976) [prison escape; denied; no evidence of unavailability of alternatives]	Louisiana has no common law necessity defense. Defendants must assert a justification under La.R.S. §14:18, which allows for the defense only in certain enumerated situations like self-defense.	None found	None

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Maine	Me. Rev. Stat. 17-A § 103	"Conduct that the person believes to be necessary to avoid imminent physical harm to that person or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the crime charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute." Me. Rev. Stat. 17-A § 103. "(1) [T]he defendant or another person must be threatened with imminent physical harm, when viewed objectively; (2) the present conduct must be for the purpose of preventing a greater harm; or stated another way, the urgency of the present harm must outweigh the harm that the violated statute seeks to prevent; (3) the defendant must subjectively believe that his conduct is necessary; and (4) the defendant must have no reasonable, legal alternatives to the conduct." State v. Brokelbank, 33 A.3d 925, 929-30 (Me. 2011)	State v. Kee, 398 A.2d 384 (Me. 1978) [anti-nuclear power protest; denied; no imminent harm]	State v. Dansinger, 521 A.2d 685 (Me. 1987) [anti-nuclear weapons protest; denied; no imminent harm, no reasonable anticipation of causal nexus]; State v. Kee, 398 A.2d 384 (Me. 1978) [anti-nuclear power protest; denied; no imminent harm]	"Because it is a defense, the 'competing harms' justification does not become eligible for consideration by the fact-finder unless and until defendant meets the burden of ensuring the presence of evidence (whether coming from the State or defendant) sufficient to raise a reasonable doubt as to each of the elements of the defense." State v. Kee, 398 A.2d 384, 386 (Me. 1978)	The defense is called "competing harms" in Maine. Maine imposes an especially harsh imminence test, requiring an objective showing of an imminent, physical harm (not the defendant's subjective belief). See State v. Kee, 398 A.2d 384 (Me. 1978).	None found	None

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Maryland	None	Not explicit. With regards to handgun possession, the state's highest court has ruled that: "(1) [T]he defendant must be in present, imminent, and impending peril of death or serious bodily injury, or reasonably believe himself or others to be in such danger; (2) the defendant must not have intentionally or recklessly placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) the defendant must not have any reasonable, legal alternative to possessing the handgun; (4) the handgun must be made available to the defendant without preconceived design, and (5) the defendant must give up possession of the handgun as soon as the necessity or apparent necessity ends." State v. Crawford, 308 Md. 683, 699-70 (1987). See also Frasher v. State, 8 Md.App. 439, 448 (Md. Ct. Sp. App. 1970): "If a choice exists but only between two evils, one of which is the commission of a wrongful act, and the emergency was not created by the wrongful act of another person it is spoken of as an act done in a case of necessity. This doctrine applies not only to the obvious situation when the act done was necessary, or reasonably seemed to be necessary, to save life or limb or health, as for example, self defense, defense of other persons, or defense of habitation, but also where the act done was not of particular gravity and the danger or apparent danger to be avoided was less serious in its nature."	State v. Crawford, 308 Md. 683 (1987) [handgun possession; allowed; evidence of all elements]	Sigma Reproductive Health Center v. State, 297 Md. 660 (1983) [anti-abortion protest; denial of defense and subpoena; defense unavailable in anti-abortion protests, availability of legal alternatives]	"[I]t is incumbent upon the court . . . when requested in a criminal case, to give an . . . instruction on every essential question or point of law supported by the evidence." State v. Crawford, 308 Md. 683, 700 (1987)		None found	None

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Massachusetts	None	"(1) [A] clear and imminent danger, not one which is debatable or speculative; (2) [a reasonable expectation that his or her action] will be effective as the direct cause of abating the danger; (3) there is [no] legal alternative which will be effective in abating the danger; and (4) the Legislature has not acted to preclude the defense by a clear and deliberate choice regarding the values at issue." Commonwealth v. Magadini, 474 Mass. 593 (2016)	Commonwealth v. Magadini, 474 Mass. 593 (2016) [homeless trespass; allowed; evidence to support jury finding of necessity]; Commonwealth v. Kendall, 451 Mass. 10 (2008) [driving under the influence; denied; availability of legal alternatives]; Commonwealth v. Hood, 389 Mass. 581 (1983) [anti-nuclear power protest; denied; no reasonable anticipation of causal nexus, availability of legal alternatives]	Commonwealth v. Brogan, 415 Mass. 169 (Mass. 1993) [anti-abortion protest; denied; no legally cognizable harm]; Commonwealth v. Schuchardt, 408 Mass. 347 (Mass. 1990) [anti-nuclear war protest; denied; no imminent harm]; Commonwealth v. Hood, 389 Mass. 581 (Mass. 1983) [anti-nuclear power protest; denied; no reasonable anticipation of causal nexus, availability of legal alternatives]; Commonwealth v. Brugmann, 433 N.E.2d 457 (Mass. App. Ct. 1982) [anti-nuclear power protest; denied; availability of legal alternatives]; Commonwealth v. Averill, 423 N.E.2d 6 (Mass. App. Ct. 1981) [anti-nuclear power protest; denied; no reasonable anticipation of causal nexus, no legally cognizable harm]	"In considering whether a defendant is entitled to a jury instruction on the defense of necessity, we have stated that a judge shall so instruct the jury only after the defendant has presented some evidence on each of the four underlying conditions of the defense . . . Notwithstanding a defendant's argument that the jury should be allowed to decide whether the defendant has established a necessity defense, a judge need not instruct on a hypothesis that is not supported by evidence in the first instance . . . Thus, if some evidence has been presented on each condition of a defense of necessity, then a defendant is entitled to an appropriate jury instruction." Commonwealth v. Kendall, 451 Mass. 10, 14-15 (2008). "In determining whether there has been sufficient evidence of the foundational conditions to the necessity defense, all reasonable inferences should be resolved in favor of the defendant, and, no matter how incredible his testimony, that testimony must be treated as true." Commonwealth v. Magadini, 474 Mass. 593, 600 (2016)	Massachusetts may make it easier than other jursidictions for defendants to present evidence supporting the necessity defense: there are many reported cases of necessity defenses making it to trial, and in Commonwealth v. Hood (1983) the Supreme Judicial Court recommended that judges not rule on the sufficieny of the defense (and possibly exclude it) until all evidence has been introduced at trial. However, as elsewhere, the trial judge retains broad discretion to reject the defense in limine (before trial). Judge Liacos wrote a series of concurring opinions stressing the idea that the necessity defense should not be suppressed in limine. See Hood; Commonwealth v. Leno, 415 Mass. 835 (1993); Commonwealth v. Brogan, 415 Mass. 169 (1993); Commonwealth v. Schuchardt, 408 Mass. 347 (1990). See also Commonwealth v. Magadini, 474 Mass. 593, 599 (2016) (favorable language on the definition of "legal alternatives")	Massachusetts v. Schaeffer-Duffy (Worcester Dist. Ct. 1989) [protesters acquitted of trespass at a nuclear facility after necessity instruction]; Massachusetts v. Carter, No. 86-45 CR 7475 (Hampshire Dist. Ct. 1987) [defendants, including President Carter's daughter, acquitted of trespass and disorderly conduct in protest against CIA recruitment after necessity instruction]	Commonwealth v. O'Hara (Fall River Dist. Ct., MA, No. 1332CR593, Sep. 8, 2014) [coal ship blockade; charges dropped on day of trial]; Massachusetts v. Gore (Boston Mun. Ct., Mass., No. 1606CR000923, Mar. 27, 2018) [pipeline protest; allowed; charges downgraded to civil, defendants found "not responsible"]
Michigan	None	"An act which would otherwise constitute a crime may also be excused on the ground that it was done under compulsion or duress. The compulsion which will excuse a criminal act, however, must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough." People v. Hubbard, 115 Mich. App. 73, 78 (1982)	People v. Hubbard, 115 Mich. App. 73 (1982) [anti-nuclear plant protest; denied; no legally cognizable harm, no reasonable anticipation of causal nexus]	State v. Carter (Ingraham Cir. Ct., MI, No. 13-000917-FH, Jan. 29, 2014) [pipeline blockade; denied; no legally cognizable harm]; People v. Hubbard, 115 Mich. App. 73 (1982) [anti-nuclear plant protest; denied; no legally cognizable harm, no reasonable anticipation of causal nexus]	"[T]here must be some evidence from which each element of such defense may be inferred before the defense may be considered by a trier of fact." People v. Hubbard, 115 Mich. App. 73, 77 (1982)		Michigan v. Jones et aL., Nos. 83-101194-101228 (Oakland County Dist. Ct. 1984) [defendants acquitted of charges related to blockade of cruise missile site after necessity instruction]; Michigan v. Largrou, Nos. 85-000098, 99, 100, 102 (Oakland County Dist. Ct. 1985) [defendants acquitted of charges related to blockade of cruise missile site, with the court noting the absence of malice and the absence of alternative methods]	State v. Carter (Ingraham Cir. Ct., MI, No. 13-000917-FH, Jan. 29, 2014) [pipeline blockade; denied; no legally cognizable harm]

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Minnesota	None	"A necessity defense defeats a criminal charge if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant's breach of the law. In addition, the defense exists only if (1) there is no legal alternative to breaking the law, (2) the harm to be prevented is imminent, and (3) there is a direct, causal connection between breaking the law and preventing the harm." State v. Rein, 477 N.W.2d 716 , 717(Minn. Ct. App. 1991)	State v. Rein, 477 N.W.2d 716 (Minn. Ct. App. 1991) [anti-abortion protest; denied; availability of legal alternatives, no legally cognizable harm, necessity defense unavailable for "indirect civil disobedience"]; State v. Johnson, 289 Minn. 196 (Minn. 1971) [snowmobile traffic infraction; denied; no imminent harm]	State v. Wicklund, 1997 WL 30857 (Minn. Ct. App. 1997) [anti-animal testing protest; denied; availability of legal alternatives, no legally cognizable harm, necessity defense unavailable for "indirect civil disobedience"]; State v. Rein, 477 N.W.2d 716 (Minn. Ct. App. 1991) [anti-abortion protest; denied; availability of legal alternatives, no legally cognizable harm, necessity defense unavailable for "indirect civil disobedience"]	The state Supreme Court has indicated that defendants have a broad right to present their evidence: "The state is required to bear its burden of proof before the defendants determine whether or not they will offer any evidence and, if so, what evidence they will offer. The use of a motion in limine against a defendant in a criminal case, particularly one as broad in scope as in this case, is questionable considering the constitutional rights of defendants . . . We deem it fundamental that criminal defendants have a due process right to explain their conduct to a jury." State v. Brechon, 352 N.W.2d 745, 748-751 (Minn. 1984) (allowing claim of right defense to charge of trespass at defense contractor). In State v. Hage, 595 N.W.2d 200 (Minn. 1999), the state Supreme Court found that a necessity defendant must prove the defense by a preponderance of the evidence. In State v. Klapstein, 2018 WL 1902473 (Minn. Ct. App. Apr. 23 2018), Court of Appeals upheld trial court ruling to allow necessity, although trial court later abrogated its own ruling.		None found	State v. Bol (Sixth Jud. Dist. Ct., St. Louis Cty., Minn., No. 69DU-CR-18-166, Dec. 14, 2018) [pipeline protest; denied; availability of legal alternatives]; State v. Klapstein (Ninth Jud. Dist. Ct. Clearwater Cty., Minn., No. 15-CR-16-413, Oct. 9, 2018) [pipeline protest; initially allowed, later limited; case dismissed during trial]; State v. Holiday (Fourth Jud. Dist. Ct., Hennepin Cty., Minn., No. 27-CR-17-2097, May 14, 2018) [banner drop against pipelines; denied; no imminent threat, no nexus, availability of alternatives]; State v. Cussen-Anglada (Ninth Jud. Dist. Ct., Minn., Itasca Cty., No. 31-CR-19-395, Mar. 25, 2019) [ongoing]
Mississippi	None	"To prove that he had an objective need to commit a crime excusable by the defense of necessity, a defendant must prove three essential elements: (1) the act charged was done to prevent a significant evil; (2) there must was [sic] no adequate alternative; and (3) the harm caused was not disproportionate to the harm avoided." Stodghill v. State, 892 So.2d 236, 238 (Miss. 2005). There is also a "requirement in our case law that the threatened harm be specific and imminent." McMillan v. City of Jackson, 701 So. 2d 1105, 1007 (Miss. 1997)	Stodghill v. State, 892 So.2d 236 (Miss. 2005) [driving while intoxicated; denied; availability of legal alternative]s	McMillan v. City of Jackson, 701 So. 2d 1105 (Miss. 1997) [anti-abortion protest; denied; availability of legal alternatives, no legally cognizable harm, no imminent harm]	"When a defendant attempts to prove an affirmative defense, such as necessity, it is his burden to prove that such circumstances exist so as to substantiate such a defense." Stodghill v. State, 892 So.2d 236, 239 (Miss. 2005)		None found	None

Jurisdiction	Statute	Elements (note: many statutory defenses include an additional provision regarding the effect of a defendant's recklessness or negligence) (internal citations omitted)	Cases - Leading necessity precedent [context; allowed/denied; main point(s) upon which decision rested]	Cases - Leading political necessity defenses [context; allowed/denied; main point(s) upon which decision rested]	Burden of proof / threshold to present defense to jury (internal citations omitted) [Note: in political necessity cases courts often impose a higher evidentiary burden than is required under the law, making the official standard of limited value]	Notes (internal citations omitted)	Unreported, successful uses of political necessity defenses [see Additional Sources for further information]	Attempts to use climate necessity defense
Missouri	Mo. Rev. Stat. § 563.026	"Conduct which would otherwise constitute any offense other than a class A felony or murder is justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding the injury outweighs the desirability of avoiding the injury sought to be prevented by the statute defining the offense charged." Mo. Stat. § 563.026. "The application of the defense is limited to the following circumstances: (1) the defendant is faced with a clear and imminent danger, not one which is debatable or speculative; (2) the defendant can reasonably expect that his action will be effective as the direct cause of abating the danger; (3) there is no legal alternative which will be effective in abating the danger; and (4) the legislature has not acted to preclude the defense by a clear and deliberate choice regarding the values at issue." State v. Diener, 706 S.W.2d 582, 585 (Mo. App. Ct. 1986).	State v. Diener, 706 S.W.2d 582 (Mo. App. Ct. 1986) [anti-nuclear weapons protest; denied; no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; State v. Kirkland, 684 S.W.2d 402 (Mo. App. Cit. 1984) [prison escape; denied; failure to surrender to authorities, no imminent harm]	State v. Burkempher, 882 S.W.2d 193 (Mo. App. Ct. 1994), [anti-abortion protest; denied; defense unavailable for anti-abortion protests]; State v. O'Brien, 784 S.W.2d 187 (Mo. App. Ct. 1989) [anti-abortion protest; denied; defensve unavailable for interference with constitutional rights]; State v. Diener, 706 S.W.2d 582 (Mo. App. Ct. 1986) [anti-nuclear weapons protest; denied; no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; State v. Levering, 661 S.W.2d 792 (Mo. App. Ct. 1983) [anti-nuclear power protest; denied; defense unavailable for protests of legally protected activity]; St. Louis v. Klocker, 637 S.W.2d 174 (Mo. App. Ct. 1982) [anti-abortion protest; denied; no legally cognizable harm, defendant chose greater harm, conflict with law]	"Paragraph 4 of the 'Notes on Use' appended to MAI–CR2d 2.40, provides, inter alia, as follows: 'This instruction cannot be given unless the court determines that the claimed facts and circumstances, if true, are legally sufficient for justification. Section 563.026.2. Subject to that rule, if there is evidence to support this defense, MAI–CR 2.40 must be given whether requested or not. It is an affirmative defense.'" State v. Kirkland, 684 S.W.2d 402, 406 (Mo. App. Ct. 1984)		None found	None
Montana	45-2-212, MCA (compulsion)	Montana has merged necessity and related defenses into the compulsion statute: "A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct that the person performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if the person reasonably believes that death or serious bodily harm will be inflicted upon the person if the person does not perform the conduct." 45-2-212, MCA. "The compulsion defense merges the common law defenses of necessity, justification, compulsion, duress and 'choice of two evils.'" City of Missoula v. Asbury, 265 Mont. 14, 18 (1994)	City of Missoula v. Asbury, 265 Mont. 14 (1994) [anti-abortion protest; denied; no imminent or unlawful harm]	City of Missoula v. Asbury, 265 Mont. 14 (1994) [anti-abortion protest; denied; no imminent or unlawful harm]; City of Helena v. Lewis, 260 Mont. 421 (1993) [anti-abortion protest; denied; no imminent or unlawful harm]	"It is equally clear, however, that limitations exist on the right to be heard and present a defense. In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence . . . The purpose of a motion in limine is to prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial. We will not overturn a court's grant of such a motion absent an abuse of discretion . . . The admissibility of the evidence to be offered . . at trial is, in the first instance, a question of relevance." City of Missoula v. Asbury, 265 Mont. 14, 17 (1994)	Despite codifying justification defenses, the state Supreme Court continues to look to common-law formulations of necessity. See City of Helena v. Lewis, 260 Mont. 421 (Mont. 1993); State v. Ottwell, 240 Mont. 376, 378 (1989); State v. Pease, 233 Mont. 65, 70 (1988); State v. Strandberg, 223 Mont. 132, 135 (1986); State v. Stuit, 176 Mont. 84, 88 (1978). "The compulsion defense does not include imminent threats of harm to a third party. The statute does not excuse criminal conduct unless the person asserting the defense reasonably believes that death or serious bodily injury will be inflicted upon him if he does not perform the criminal act." City of Helena v. Lewis, 260 Mont. 421, 426 (1993).	None found	Montana v. Higgins (Twelfth Jud. Dist. Ct. Choteau Cty., Mont., No. DC-16-18, Feb. 12, 2019) [pipeline protest; denied; unavailable for protest]; City of Helena v. McKinlay (Helena Mun. Ct. MT, No. 2012-NT-4385 et seq., Jan. 29, 2013) [coal export protest; denied; availability of legal alternatives]

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Nebraska	R.R.S. Neb. § 28-1407	"(1) Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if: (a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; (b) Neither sections 28-1406 to 28-1416 nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and (c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear." R.R.S. Neb. § 28-1407. "[T]he justification or choice of evils defense requires that a defendant (1) acts to avoid a greater harm; (2) reasonably believes that the particular action is necessary to avoid a specific and immediately imminent harm; and (3) reasonably believes that the selected action is the least harmful alternative to avoid the harm, actual or reasonably believed by the defendant to be certain to occur." State v. Cozzens, 241 Neb. 565, 572 (1992)	State v. Cozzens, 241 Neb. 565 (1992) [anti-abortion protest: denied; no legally cognizable harm]	State v. Cozzens, 241 Neb. 565 (1992) [anti-abortion protest: denied; no legally cognizable harm]	"[T]he defendants must factually establish that their actions . . . were efforts to prevent a specific and immediate harm to at least one reasonably identifiable person." State v. Cozzens, 241 Neb. 565, 572 (1992)	"Thus, availability and applicability of the justification or choice of evils defense require that a defendant's conduct be responsive to a legally recognized harm, and the defense may not be used to justify or excuse criminal activity as an expression of disagreement with decisions by a branch of government. Sincere belief and fervor, resulting in impatience with the alternative and frequently time-consuming process for change in a democracy subject to a constitution, do not supply a legal basis for the justification or choice of evils defense." State v. Cozzens, 241 Neb. 565, 574 (1992)	None found	None
Nevada	None	Unclear. Nevada recognizes the common law necessity defense, but the state Supreme Court has explicitly refrained from outlining its elements in situations other than prison escape because it has not yet found a defendant entitled to bring the defense. See Hoagland v. State, 240 P.3d 1043, 1046 (Nev. 2010)	Hoagland v. State, 240 P.3d 1043, 1046 (Nev. 2010) [driving under the influence; denied; defendant created emergency]	None found	"It is well established that a defendant is entitled to a jury instruction on his theory of the case, so long as there is evidence to support it, regardless of whether the evidence is weak, inconsistent, believable, or incredible. However, a defendant must proffer sufficient evidence to support each element of the defense." Hoagland v. State, 240 P.3d 1043, 1047 (Nev. 2010)		Nevada v. Brooks (Beatty Township Justice Ct., Nye Cty, #11-2800, et seq.) [anti-nuclear protest; defendants filed brief on necessity defense; judge postponed ruling on motions in limine, charges dropped]	None

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New Hampshire	N.H. Rev. Stat. § 627:3	"Conduct which the actor believes to be necessary to avoid harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute, either in its general or particular application." N.H. Rev. Stat. § 627:3. "In sum, in order for the defense to be available, a number of requirements must be satisfied. The otherwise illegal conduct must be urgently necessary, there must be no lawful alternative, and the harm sought to be avoided must outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the violated statute." See State v. O'Brien, 132 N.H. 587, 590 (1989)	State v. Dorsey, 118 N.H. 844 (1978) [anti-nucleaer power protest; denied; no legally cognizable harm, availability of legal alternatives]	State v. Weitzman, 121 N.H. 83 (1980) [anti-nuclear power protest; denied; defense unavailable for nuclear protests]; State v. Koski, 120 N.H. 112 (1980) [anti-nuclear power protest; denied; defense unavailable for nuclear protests]; State v. Dupuy, 118 N.H. 848 (1978) [anti-nuclear power protest; denied; no legally cognizable harm, availability of legal alternatives]; State v. Dorsey, 118 N.H. 844 (1978) [anti-nuclear power protest; denied; no legally cognizable harm, availability of legal alternatives]	"The scope of the trial court's inquiry is defined by the type of harm sought to be avoided by the defendant compared to the type of harm sought to be avoided by the particular statute the defendant has violated. If the trial court determines that no reasonable person, viewing the evidence in the light most favorable to the defendant, could maintain a reasonable doubt as to the absence of the defense, namely, that the harm sought to be avoided by the defendant outweighs the harm sought to be avoided by the violated statute, then the competing harms defense is unavailable to the defendant." State v. Bernard, 141 N.H. 230, 236-37 (1996)	In State v. Dorsey, 118 N.H. 844 (1978), the state Supreme Court adopted a very harsh version of the legislative choice test, finding that because state and federal legsilatures had approved the use of nuclear power, there was no possibility that trespassing to protest nuclear power could be justified. The court relied on this point to deny the necessity defense in a series of subsequent Seabrook Nuclear Power trespassing cases. Additionally, courts engage in a balancing test of the harm of the violation and the harm sought to be avoided. See State v. O'Brien, 132 N.H. 587, 590 (1989).	New Hampshire v. Chichester (Rockingham Cty. Super. Ct. 1990) [anti-nuclear power protest; defendant raised necessity; outcome unknown]	None

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New Jersey	N.J. Stat. § 2C:3-2	"Conduct which would otherwise be an offense is justifiable by reason of necessity to the extent permitted by law and as to which neither the code nor other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the justification claimed does not otherwise plainly appear." N.J. Stat. § 2C:3-2. "(1) conduct is justifiable only to the extent permitted by law, (2) the defense is unavailable if either the Code or other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved, and (3) the defense is unavailable if a legislative purpose to exclude the justification otherwise plainly appears." State v. Tate, 102 N.J. 64, 70 (1986)	State v. Tate, 102 N.J. 64 (1986) [medical marijuana possession; denied; legislative preference, availability of legal alternatives]	State v. Loce, 267 N.J. Super. 102 (N.J. Sup. Ct. 1991) [anti-abortion protest; denied; legislative preference]	New Jersey's statutory requirement of proof beyond a reasonable doubt does not "[r]equire the disproof of an affirmative defense unless and until there is evidence supporting such defense." N.J. Stat. § 2C:1-13.	New Jersey also recognizes the common law necessity defense as "gap-filling" authority where statutory language is silent on the specific situation. See State v. Tate, 102 N.J. 64, 73 (1986)	New Jersey v. Driscoll (New Brunswick Muni.Ct. #S5484432) [Right to Housing activists raised necessity defense, charges dropped without explanation]	None
New Mexico	None	New Mexico does not distinguish between necessity and duress. The elements of the duress defense are: "(1) [T]hat the defendant committed the crime under threats; (2) that the defendant feared immediate great bodily harm to himself or another person if he did not commit the crime; and (3) that a reasonable person would have acted in the same way under the circumstances." State v. Duncan, 111 N.M. 354, 355 (1991). "[D]uress is a defense available in New Mexico except when the crime charged is a homicide or a crime requiring intent to kill." Esquibel v. State, 91 N.M. 498, 501 (1978).	State v. Castrillo, 112 N.M. 766 (1991) [firearm possession; denied; availability of legal alternatives]; Esquibel v. State, 91 N.M. 498 (1978) [prison escape; allowed; evidence of imminent harm], rev'd on other grounds, State v. WIlson 116 N.M. 793 (1994)	None found	"To warrant submission to the jury of the defense of duress, a defendant must make a prima facie showing that he was in fear of immediate and great bodily harm to himself or another and that a reasonable person in his position would have acted the same way under the circumstances." State v. Castrillo, 112 N.M. 766, 769 (1991).		None found	None

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				People v. Bucci (Town of Cortlandt Justice Ct., No. 15110183, Dec. 1, 2016) [pipeline blockade; denied; no imminent harm, no reasonable anticipation of causal nexus]; People v. Schlauder (N.Y.C. Crim. Ct., No. 2014NY076969, Mar. 5, 2015) [climate change protest on Wall Street; denied; no imminent harm, no reasonable aniticpation of causal nexus, availability of legal alternatives]; People v. Shenker, 187 Misc.2d 521 (N.Y.C. Crim Ct. 2001) [trespass to prevent bulldozing of garden; denied; no imminent harm, incorrect balancing of harms]; People v. Bauer, 161 Misc.2d 588 (Watertown City Ct. 1994) [anti-abortion protest; denied; defense not available for abortion protest]; People v. Bordowitz, 155 Misc.2d 128 (N.Y.C. Crim Ct. 1991) [distribution of clean needles; allowed; evidence of emergency]; People v. Craig, 78 N.Y.2d 616 (N.Y. 1991) [protest against Central American policy; denied; no legally cognizable harm, no reasonable anticipation of causal nexus]; People v. Gray, 150 Misc.2d 852 (N.Y.C. Crim Ct. 1991) [anti-air pollution protest; allowed and acquitted; imminent harm, correct balancing of harms, reasonable belief, exhaustion of legal alternatives]; People v. O'Grady, 147 Misc.2d 118 (N.Y. Sup. Ct. 1990) [anti-nuclear weapons		New York courts have noted that the state necessity statute imposes a higher burden than the Model Penal Code provision it is based upon by requiring that the defendant's action be objectively justifiable; in other words, it is irrelevant whether the defendant reasonably believed that her action was necessary. See People v. Craig, 78 N.Y.2d 616 (1991). People v. Gray, 150 Misc.2d 852, 860-61 (N.Y.C. Crim Ct. 1991) is one of the few reported cases with an extended analysis affirming a successful necessity defense. "It has been asserted that because a democracy creates legal avenues of protest, alternatives must always exist. In the opinion of this Court, however, to dispense with the necessity defense by assuming that people always have access to		

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New York	N.Y. Penal Law § 35.05	"Otherwise criminal conduct is not criminal when such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder." N.Y. Penal Law § 35.05	People v. Craig, 78 N.Y.2d 616 (1991) [protest against Central American policy; denied; no legally cognizable harm, no reasonable anticipation of causal nexus]; People v. Gray, 150 Misc.2d 852 (N.Y.C. Crim Ct. 1991) [anti-air pollution protest; allowed and acquitted; imminent harm, correct balancing of harms, reasonable belief, exhaustion of legal alternatives]	protest; denied; no imminent harm, no reasonable anticipation of causal nexus]; People v. Scutari, 148 Misc.2d 440 [N.Y. Dist. Ct. 1990] [protest against Central American policy; denied; no imminent harm, no reasonable anticipation of causal nexus]; People v. Alderson, 144 Misc.2d 133 (N.Y.C. Crim. Ct. 1989) [AIDS protest; denied; no imminent harm, no reasonable anticipation of causal nexus, availability of legal alternatives]; People v. Crowley, 142 Misc.2d 663 (Town of Greece Justice Ct. 1989) [anti-abortion protest; denied; legislative preference]; People v. Archer, 143 Misc.2d 390 (Rochester City Ct. 1988) [anti-abortion protest; allowed if post-first-trimister abortions being performed (defendants later convicted)]; People v. Chacere, 104 Misc.2d 521 (N.Y. Dist. Ct. 1980) [anti-nuclear power protest; denied; no imminent harm, no reasonable anticipation of causal nexus]	"It is particularly important to clearly delineate and evaluate whether defendants have met their initial burden of production in trials involving the necessity defense, since if that question is resolved in a defendant's favor, the burden of proof then shifts dramatically, and the People must disprove the defense beyond a reasonable doubt. This is true whether the trier of fact is a jury or a judge. As to the burden of production in affirmative defenses, it is uniformly held that a defendant is obliged to start matters off by putting in some evidence of his defense unless the prosecution does so in presenting its side. Our courts have held that in determining whether a defendant has presented sufficient evidence for an instruction on the defense of justification, the evidence must be viewed in the light most favorable to the accused. It is the duty of the judge, at least on request, to instruct on the law of justification whenever there is 'some evidence' in the case." People v. Gray, 150 Misc.2d 852, 855 (N.Y.C. Crim Ct. 1991)	effective legal means of protest circumvents the purpose of the defense. When courts rule as a matter of law that defendants always have a reasonable belief in other adequate alternatives, they are asserting that regardless of how diligent a party is in pursuing alternatives, no matter how much time has been spent in legitimate efforts to prevent the harm, no matter how ineffective previous measures have been to handle the emergency, the courts in hindsight can always find just one more alternative that a citizen could have tried before acting out of necessity." See also People v. Archer, 143 Misc.2d 390, 404 (Rochester City Ct. 1988): "Thus, in cases of moral indignation, the flexibility of the New York statute avoids the chafing attrition of the eternal struggle between what is legal and what is moral. The statute allows a Jury to ventilate its displeasure at morally reprehensible conduct regardless of its legality by approving, in a verdict of not guilty, the behavior of those who try, even illegally, to prevent that conduct from happening."		People v. Bucci (Town of Cortlandt Justice Ct., No. 15110183, Dec. 1, 2016) [pipeline blockade; denied; no imminent harm, no reasonable anticipation of causal nexus]; People v. Schlauder (N.Y.C. Crim. Ct., No. 2014NY076969, Mar. 5, 2015) [climate change protest on Wall Street; denied; no imminent harm, no reasonable aniticpation of causal nexus, availability of legal alternatives]; People v. Berlin (Town of Cortlandt Justice Ct., N.Y, Jan. 8, 2019) [pipeline protest; denied; availability of legal alternatives]; New York v. Cromwell (Town of Wawayanda Justice Court, N.Y., No. 15120561, May 20, 2017) [pipeline protest; allowed; convicted because action would not prevent harm, harm not imminent, available alternatives]; New York v. Angie (Town of Reading Court, N.Y., June 28, 2016) [natural gas protest; denied; mistrial]

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North Carolina	None	"A defendant must prove three elements to establish the defense of necessity: (1) reasonable action, (2) taken to protect life, limb, or health of a person, and (3) no other acceptable choices available." State v. Hudgins, 167 N.C. App. 705, 710-11 (2005). "[T]he defense is unavailable where the legislature has acted to preclude the defense by making a clear and deliberate choice regarding the values at issue." State v. Thomas, 103 N.C. App. 264, 267 (1991).	State v. Hudgins, 167 N.C. App. 705 (2005) [driving while intoxicated; allowed; some evidence for each element, jury must determine reasonableness]	State v. Thomas, 103 N.C. App. 264 (1991) [anti-abortion protest; denied; legislative preference]	"For a jury instruction to be required on a particular defense, there must be substantial evidence of each element of the defense when the evidence [is] viewed in the light most favorable to the defendant . . . 'Substantial evidence' is evidence that a reasonable person would find sufficient to support a conclusion." State v. Hudgins, 167 N.C. App. 705, 709 (2005)		None found	None
North Dakota	N.D. Cent. Code § 12.1-5-01 (general justification provision)	"1. Except as otherwise expressly provided, justification or excuse under this chapter is a defense. 2. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence. 3. That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action." N.D. Cent. Code § 12.1-5-01	State v. Manning, 716 N.W.2d 466 (N.D. 2006) [removing a child in violation of custody order; allowed; defendant may present evidence relevant to necessity]; State v. Rasmussen, 524 N.W.2d 843 (N.D. 1994) [driving with suspended license; allowed; facts support justification in face of life-threatening circumstances]	State v. Sahr, 470 N.W.2d 185 (N.D. 1991) [anti-abortion protest; denied; no legally cognizable harm]	"The burden of production for the defense of lesser evils (choice of evils, necessity) is always on the defendant." State v. Sahr, 470 N.W.2d 185, 189 n.1 (N.D. 1991)	North Dakota courts have not conclusively ruled on the existence of the state's necessity defense, but the Supreme Court has entertained claims of common law necessity. See State v. Manning, 716 N.W.2d 466, 467 (N.D. 2006) and State v. Sahr, 470 N.W.2d 185, 190-91 (N.D. 1991) (noting that "NDCC Ch. 12.1-05 is not intended to preclude the judicial development of other justifications"). On the other hand, the Supreme Court has suggested that a justification defense is only possible in the specific circumstances listed in that chapter: execution of public duty, self-defense, defense of others, use of force with parental, custodial, or similar responsibilities, or use of force in defense of premises and property. See State v. Zottnick, 2011 ND 84. "The evil, harm, or injury sought to be avoided, or the interest sought to be promoted, by the commission of a crime must be legally cognizable to be justified as necessity. In most cases of civil disobedience a lesser evils defense will be barred. This is because as long as the laws or policies being protested have been lawfully adopted, they are conclusive evidence of the community's view on the issue." State v. Sahr, 470 N.W.2d 185 (N.D. 1991)	None found	North Dakota v. Iron Eyes (Fourth Jud. Dist. Ct. Hennepin Cty., Minn., No. 27-CR17-2097, Aug. 21, 2018) [Standing Rock protest; plea deal]; North Dakota v. Foster (Northeast Jud. Dist. Ct. Pembina Cty., N.D.., No. 34-2016-CR-00186, Oct. 6, 2017) [pipeline protest; denied; no legal nexus, availability of alternatives, no imminent harm]

Jurisdiction	Statute	Elements (note: many statutory defenses include an additional provision regarding the effect of a defendant's recklessness or negligence) (internal citations omitted)	Cases - Leading necessity precedent [context; allowed/denied; main point(s) upon which decision rested]	Cases - Leading political necessity defenses [context; allowed/denied; main point(s) upon which decision rested]	Burden of proof / threshold to present defense to jury (internal citations omitted) [Note: in political necessity cases courts often impose a higher evidentiary burden than is required under the law, making the official standard of limited value]	Notes (internal citations omitted)	Unreported, successful uses of political necessity defenses [see Additional Sources for further information]	Attempts to use climate necessity defense
Ohio	None	"(1) [T]he harm must be committed under the pressure of physical or natural force, rather than human force; (2) the harm sought to be avoided is greater than, or at least equal to that sought to be prevented by the law defining the offense charged; (3) the actor reasonably believes at the moment that his act is necessary and is designed to avoid the greater harm; (4) the actor must be without fault in bringing about the situation; and (5) the harm threatened must be imminent, leaving no alternative by which to avoid the greater harm." Kettering v. Berry, 57 Ohio App. 3d 66, 68 (1990).	Kettering v. Berry, 57 Ohio App. 3d 66 (1990) [anti-abortion protest; denied; no legally cognizable harm]	City of Cincinnati v. Flannery, 176 Ohio App. 3d 181 (2008) [anti-Iraq War protest; denied; no legally cognizable harm]; State v. Sheen, 1993 Ohio App.LEXIS 5657 [anti-air pollution protest; acquittal; no casual connection, but appeals court could not overturn jury acquittal]; Dayton v. Gigandate, 83 Ohio App.3d 886 (1992) [anti-abortion protest; denied; defense unavailable for anti-abortion protest]; State v. Prince, 71 Ohio App. 3d 694 (1991) [anti-CIA recruitment protest; denied; availability of legal alternatives, appellants failed to provide trial transcript]; Dayton v. Drake, 69 Ohio App.3d 180 (1990) [anti-abortion protest; denied; defense unavailable for anti-abortion protest]; Kettering v. Berry, 57 Ohio App. 3d 66, 69 (1990) [anti-abortion protest; denied; no legally cognizable harm]; Cleveland v. Sundermeier, 48 Ohio App.3d 204 (1989) [anti-abortion protest; denied; availability legal alternatives]; Cleveland v. Egeland, 26 Ohio App. 3d 83 (1986) [anti-nuclear weapons protest; denied; no imminent harm, defense does not allow interference with others' rights]; State v. Surber, 1982 Ohio App. LEXIS 14310 [anti-nuclear power protest; denied; no imminent harm]	Unclear. "To further judicial economy and avoid confusion, the court may prevent the presentation of matters which have no legal relevance to the issues before it. This power includes the admissibility of evidence and the existence of bona fide issues or defenses." Kettering v. Berry, 57 Ohio App. 3d 66, 69 (1990). "The defense of necessity, which the defendants proffered and which defendants intended to pursue, was distinct substantive matter for exemption from criminal liability. In such an instance, the burden of proving such distinctive matter is upon the defendants raising that defense." State v. Sheen, 1993 Ohio App. LEXIS 5657 at *5.		None found	None

Jurisdiction	Statute	Elements (note: many statutory defenses include an additional provision regarding the effect of a defendant's recklessness or negligence) (internal citations omitted)	Cases - Leading necessity precedent [context; allowed/denied; main point(s) upon which decision rested]	Cases - Leading political necessity defenses [context; allowed/denied; main point(s) upon which decision rested]	Burden of proof / threshold to present defense to jury (internal citations omitted) [Note: in political necessity cases courts often impose a higher evidentiary burden than is required under the law, making the official standard of limited value]	Notes (internal citations omitted)	Unreported, successful uses of political necessity defenses [see Additional Sources for further information]	Attempts to use climate necessity defense
Oklahoma	None	"In general, the defense of necessity is allowed when a defendant is faced with the burden of committing a lesser harm to prevent the occurrence of a different and somewhat greater harm. The harm being prevented needs to be significant and immediate . . . [T]he defendant cannot create the circumstances which gave rise to the choices." Jones v. City of Tulsa, 857 P.2d 814, 816 (Okla.Crim.App. 1993). The court favorably cited the elements of Model Penal Code §3.02, though noted they were not binding.	Lay v. State, 179 O.3d 615, 622 (Okla.Crim.App. 2008) abrogated on other grounds by Harmon v. State, 248 P.3d 918 (Okla.Crim.App. 2011) [murder; denied; incorrect balancing of harms]; Jones v. City of Tulsa, 857 P.2d 814 (Okla.Crim.App. 1993) [anti-abortion protest; denied; defendants were reckless in creating situation, no legally cognizable harm]	State v. Johnson (Atoka Dist. Ct., Okla., Oct. 23, 2014) [pipeline blockade; denied; no reasonable anticipation of causal nexus]; Jones v. City of Tulsa, 857 P.2d 814 (Okla.Crim.App. 1993) [anti-abortion protest; denied; defendants were reckless in creating situation, no legally cognizable harm]	Unclear		None found	State v. Johnson (Atoka Dist. Ct., Okla., Oct. 23, 2014) [pipeline blockade; denied; no reasonable anticipation of causal nexus]
Oregon	Or. Rev. Stat. § 161.200	"(1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when: (a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and (b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. (2) The necessity and justifiability of conduct under subsection (1) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder." Or. Rev. Stat. § 161.200. "ORS 161.200 requires a defendant seeking to advance the choice-of-evils defense to present evidence of three cumulative elements: (1) his conduct was necessary to avoid a threatened injury; (2) the threatened injury was imminent; and (3) it was reasonable for him to believe that the need to avoid that injury was greater than the need to avoid the injury that the statute that he was found to have violated, seeks to prevent." State v. Dewhitt, 276 Or. App. 373, 390 (2016).	State v. Clowes, 310 Or. 686 (1990) [anti-abortion protest; denied; inconsistent with another provision of the law, no legally cognizable injury]	Downtown Women's Ctr., P.C. v. Advocates for Life, Inc., 111 Or. App. 317 (1992) [anti-abortion protest; denied; inconsistent with another provision of the law]; State v. Troen, 100 Or. App. 442 (1990) [animal testing facility break-in; denied; inconsistent with another provision of the law]; State v. Clowes, 310 Or. 686 (1990) [anti-abortion protest; denied; inconsistent with another provision of the law, no legally cognizable injury]; State v. Hund, 76 Or. App. 89 (Or. Ct. App. 1985) [anti-logging protest; denied; availability of legal alternatives, no emergency]	"The trial judge must decide, under OEC 104(1), whether the proffered evidence satisfies the minimum threshold of relevancy required by OEC 401, i.e., whether the proffered evidence (1) has any tendency to prove or disprove a fact (2) that is of consequence to the determination of the action." State v. Clowes, 310 Or. 686, 692 (1990).	"With respect to the first element, for criminal conduct to be 'necessary' to avoid a threatened injury, a defendant must show that no other course of action [was] available to him but to commit the crime." State v. Dewhitt, 276 Or. App. 373, 390 (2016). "In order for a threatened injury to be 'imminent' under either ORS 161.200 . . . the threat must exist at the time of the commission of the charged offense." State v. Boldt, 116 Or. App. 480, 483–84 (1992)	State v. Mouer (Columbia Co. Dist. Ct., Dec. 12-16, 1977) [protesters acquitted of trespass at nuclear site after instruction on necessity]	None

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Pennsylvania	18 Pa. Cons. Stat. § 503; Title 18, Chapter 5 also includes specific justification provisions for various crimes such as destruction of property	"(a) General rule.--Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if: (1) the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged; (2) neither this title nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and (3) a legislative purpose to exclude the justification claimed does not otherwise plainly appear. (b) Choice of evils.--When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability." 18 Pa. Cons. Stat. § 503. "In order, then, to be entitled to an instruction on justification as a defense to a crime charged, the actor must first offer evidence that will show: (1) that the actor was faced with a clear and imminent harm, not one which is debatable or speculative; (2) that the actor could reasonably expect that the actor's actions would be effective in avoiding this greater harm; (3) that there is no legal alternative which will be effective in abating the harm; and (4) that the Legislature has not acted to preclude the defense by a clear and deliberate choice regarding the values at issue." Commonwealth v. Capitolo, 508 Pa. 372, 378 (1985).	Commonwealth v. Capitolo, 508 Pa. 372 (1985) [anti-nuclear power protest; denied; no emergency, no reasonable anticipation of causal nexus]	Commonwealth v. Markum, 373 Pa.Super. 341 (1988) [anti-abortion protest; denied; no legally cognizable injury, no imminent harm, availability of legal alternatives]; Commonwealth v. Wall, 372 Pa.Super. 534 (1988) [anti-abortion protest; denied; no legally cognizable injury, no reasonable anticipation of causal nexus, no imminent harm, availability of legal altneratives]; Commonwealth v. Capitolo, 508 Pa. 372 (1985) [anti-nuclear power protest; denied; no emergency, no reasonable anticipation of causal nexus]; Commonwealth v. Berrigan, 509 Pa. 118. (1985) [anti-nuclear weapons protest; denied; no imminence, no reasonable anticipation of causal nexus]	"As with any offer of proof, it is essential that the offer meet a minimum standard as to each element of the defense so that if a jury finds it to be true, it would support the affirmative defense-here that of necessity. This threshold requirement is fashioned to conserve the resources required in conducting jury trials by limiting evidence in a trial to that directed at the elements of the crime or at affirmative defenses raised by the defendant. Where the proffered evidence supporting one element of the defense is insufficient to sustain the defense, even if believed, the trial court has the right to deny use of the defense and not burden the jury with testimony supporting other elements of the defense . . . It is initially the trial court's duty to examine the offer to ensure that it meets minimum standards as to each element of the defense of justification; if one element is lacking the trial court is justified in not permitting the jury to hear evidence on that or other elements of the defense." Commonwealth v. Capitolo, 508 Pa. 372, 378-90 (1985)	"The defense of necessity . . . does not arise from a 'choice' of several courses of actions; instead it is based on a real emergency. It can be asserted only by an actor who is confronted with such a crisis as a personal danger (to oneself or others), a crisis which does not permit a selection from among several solutions, some of which do not involve criminal acts. Accordingly, the defense can be raised only in situations that deal with harms or evils that are readily apparent and recognizable to reasonable persons. The defense cannot be permitted to justify acts taken to foreclose speculative and uncertain dangers, and is therefore limited in application to acts directed at the avoidance of harm that is reasonably certain to occur." Commonwealth v. Capitolo, 508 Pa. 372, 378 (1985). In Commonwealth v. Berrigan, 325 Pa. Super. 242 (1984), the Superior Court of Pennsylvania initially overturned the conviction of Daniel Berrigan and others who had trespassed and destroyed missile components at a General Electric plant; this opinion is often cited by necessity defendants as one of the few favorable and comprehensive reported decisions. However, the state Supreme Court reversed this decision and upheld the trial court's denial of the necessity defense. Commonwealth v. Berrigan, 509 Pa. 118 (1985).	None found	None

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Rhode Island	None	"[T]o be excused from liability, a defendant must show (a) that there is no third and legal alternative available, (b) that the harm to be prevented [is] imminent, and (c) that a direct, causal relationship [is] reasonably anticipated to exist between defendant's action and the avoidance of harm. Moreover, under the prevailing view, [t]he defense of necessity does not arise from a 'choice' of several courses of action, it is instead based on a real emergency. It can be asserted only by a defendant who was confronted with such a crisis as a personal danger, a crisis which did not permit a selection from among several solutions, some of which did not involve criminal acts. It is obviously not a defense to charges arising from a typical protest." State v. Champa, 494 A.2d 102, 104-05 (R.I. 1985)	State v. Champa, 494 A.2d 102 (R.I. 1985) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]	State v. Champa, 494 A.2d 102 (R.I. 1985) [anti-nuclear weapons protest; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]	"[Q]uestions of relevancy are addressed to the sound discretion of the trial justice." State v. Champa, 494 A.2d 102, 106 (R.I. 1985)		None found	None

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South Carolina	None	"[I]n order to prove necessity in this context, a defendant must show that: (1) there is a present and imminent emergency arising without fault on the part of the actor concerned; (2) the emergency is of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done; and (3) there is no other reasonable alternative, other than committing the crime, to avoid the threat of harm." State v. Cole, 304 S.C. 47, 49–50 (1991)	State v. Sullivan, 345 S.C. 169 (2001) [unlawful possession of a pistol; allowed; sufficient evidence for jury instruction]; State v. Cole, 304 S.C. 47 (1991) [driving with a suspended license; allowed; sufficient evidence for jury instruction]; State v. Worley, 265 S.C. 551 (1975) [prison escape; denied; failure to surrender to authorities]	None found	"Necessity is an affirmative defense which the defendant must establish by a preponderance of the evidence. In addition, we find that fairness demands that the defendant be required to provide notice to the prosecution of his intention to rely on the defense of necessity." State v. Cole, 304 S.C. 47, 50 (1991)	South Carolina courts have only recognized the availability of the necessity defense in limited circumstances, but may apply the defense to new sets of facts. See State v. W.M.S., 320 S.C. 403, 406 (Ct. App. 1995).	None found	None
South Dakota	S.D. Codified Laws § 22-5-1 (duress/coercion)	"No person may be convicted of a crime based upon conduct in which that person engaged because of the use or threatened use of unlawful force upon himself, herself, or another person, which force or threatened use of force a reasonable person in that situation would have been lawfully unable to resist." S.D. Codified Laws § 22-5-1. "The statute can only be interpreted to allow what would otherwise be unlawful force in situations of imminent necessity. Unless the individual situation required an immediate response necessary to prevent unlawful force from being inflicted upon [the defendant] or another, the statute is not applicable." State v. Rich, 417 N.W.2d 868, 871 (S.D. 1988)	State v. Ducheneaux, 671 N.W.2d 841 (S.D. 2003) [medical marijuana possession; denied; no unlawul force, availability of legal alternatives]; State v. Rome, 426 N.W.2d 19 (S.D. 1988) [taking a minor child from a custodial parent; allowed; sufficient showing to present evidence at trial]	State v. Bowers, 498 N.W.2d 202 (S.D. 1993) [anti-abortion protest; denied; no legally cognizable injury]	"The defense of necessity [is] properly raised when the offered evidence, if believed by the jury, would support a finding by them that the offense . . . was justified by a reasonable fear of death or bodily harm so imminent or emergent that, according to ordinary standards of intelligence and morality, the desirability of avoiding the injury outweighs the desirability of avoiding the public injury arising from the offense committed." State v. Ducheneaux, 671 N.W.2d 841, 844 (S.D. 2003).	South Dakokta's justification defense is essentially the same as duress, requiring fear of death or bodily harm. "The use or threatened use of force which will excuse the commission of the criminal conduct must be present and immediate and of such a nature as to induce in the defendant's mind the well-grounded apprehension of imminent death or serious bodily injury if the act is not done. Threat or fear of future injury is not sufficient. There must be no reasonable opportunity for the defendant to escape the danger without committing the crime. If you have a reasonable doubt whether or not the defendant committed the act with which he is charged under the use or threatened use of force as it has been defined, you must find him not guilty." South Dakota Pattern Jury Instructions, vol. II, Criminal, § 2–14–3.	None found	None

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Tennessee	Tenn. Code Ann. § 39-11-609	-39-11-616, 39-11-620 and 39-11-621, conduct is justified, if: (1) The person reasonably believes the conduct is immediately necessary to avoid imminent harm; and (2) The desirability and urgency of avoiding the harm clearly outweigh the harm sought to be prevented by the law proscribing the conduct, according to ordinary standards of reasonableness." Tenn. Code Ann. § 39-11-609. "The Comments explain: The defense is limited to situations: (1) where the defendant acts upon a reasonable belief that the action is necessary to avoid harm; and (2) where the harm sought to be avoided is clearly greater than the harm caused by the criminal act. The defense is further limited in application to those offenses where it is not expressly excluded by statute. Subdivisions (1) and (2) contemplate a balancing between the harm caused by the conduct constituting an offense, and the harm the defendant sought to avoid by the conduct. If the harm sought to be avoided was, by ordinary standards of reasonableness, clearly greater than the harm actually caused (the offense), the defendant's conduct causing the offense is justified." State v. Perrier, 2016 WL 4707934, at *22 (Tenn. Crim. App. 2016). "To be entitled to the defense of necessity, [the defendant] must show	State v. Davenport, 973 S.W.2d 283 (Tenn. Crim. App. 1998) [robbery; denied; no imminent threat, availability of legal alternatives]; State v. Green, 915 S.W.2d 827 (Tenn. Crim. App. 1995) [burglary and theft; allowed; sufficient factual issue for jury]; State v. Culp, 900 S.W.2d 707 (Tenn. Crim. App. 1994) [prison escape; remand to admit necessiy evidence; sufficient showing of relevant evidence]; State v. Jenkins, No. 03C01-9202CR50, 1992 WL 227547 (Tenn. Crim. App. 1992) [motor vehicle violation; allowed; sufficient factual issue for jury]	State v. Morton, 1991 WL 80204 (Tenn. Crim. App. 1991) [anti-abortion protest; denied; no legally cognizable injury]	"Courts are not required to give a requested charge unless the evidence fairly raises the proposition of law sought by the person requesting the special charge." State v. Morton, 1991 WL 80204 at *3 (Tenn. Crim. App. 1991) "Neither duress nor necessity are affirmative defenses. Both are 'defenses.' If admissible evidence fairly raises either defense, the trial court must submit the defense to the jury and the prosecution must prove beyond a reasonable doubt that the defense does not apply. Thus, unlike an affirmative defense, the defendant need not prove either duress or necessity by a preponderance of the evidence." State v. Culp, 900 S.W.2d 707, 710 (Tenn. Crim. App. 1994). "To determine if it is fairly raised by the proof, a court must, in effect, consider the evidence in the light most favorable to the defendant, including drawing all reasonable inferences flowing from that evidence. This is because it would be improper for a court to withhold a defense from the jury's consideration because of judicial questioning of any witness credibility." State v. Bult, 989 S.W.2d 730, 733 (Tenn. Crim. App. 1998)	"As the Sentencing Commission Comments to these sections provide, the defenses not only entail what a defendant actually believes, but include, as well, what is a reasonable belief under the circumstances. This means that the defendant's conduct and mental state must meet an objective standard of reasonableness for the conduct to be justified under these statutory defenses. Thus, the mere fact that the defendant believes that his conduct is justified would not suffice to justify his conduct." State v. Bult, 989 S.W.2d 730, 732 (Tenn. Crim. App. 1998)	None found	None

Jurisdiction	Statute	Elements (note: many statutory defenses include an additional provision regarding the effect of a defendant's recklessness or negligence) (internal citations omitted)	Cases - Leading necessity precedent [context; allowed/denied; main point(s) upon which decision rested]	Cases - Leading political necessity defenses [context; allowed/denied; main point(s) upon which decision rested]	Burden of proof / threshold to present defense to jury (internal citations omitted) [Note: in political necessity cases courts often impose a higher evidentiary burden than is required under the law, making the official standard of limited value]	Notes (internal citations omitted)	Unreported, successful uses of political necessity defenses [see Additional Sources for further information]	Attempts to use climate necessity defense
Texas	Tex. Penal Code § 9.22	"Conduct is justified if: (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm; (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear." Tex. Penal Code § 9.22. "In addition, 'imminent' means something that is impending, not pending; something that is on the point of happening, not about to happen. 'Imminent harm' occurs when there is an emergency situation, and it is 'immediately necessary' to avoid that harm when a split-second decision is required without time to consider the law." McGarity v. State, 5 S.W.3d 223, 227 (Tex. App. 1999)	Brazelton v. State. 947 S.W.2d 644 (Tex. App. 1997) [medical marijuana posession; remand for new trial; sufficient showing to present evidence]; Spakes v. State, 913 S.W.2d 597 (Tex.Crim.App. 1996) [prison escape; allowed; no requirement of surrender for presentation of evidence]; Wilson v. State, 777 S.W.2d 823 (Tex. App. 1989) [anti-apartheid protest in campus office; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]	Cyr v. State, 887 S.W.2d 203 (Tex. App. 1994) [anti-abortion protest; denied; no legally cognizable harm, no imminent harm]; Egger v. State, 817 S.W.2d 183 (Tex. App. 1991) [anti-abortion protest; denied; no legally cognizable harm]; Reed v. State, 794 S.W.2d 806 (Tex. App. 1990) [anti-abortion protest; denied; no legally cognizable harm]; Wilson v. State, 777 S.W.2d 823 (Tex. App. 1989) [anti-apartheid protest in campus office; denied; availability of legal alternatives, no reasonable anticipation of causal nexus]; Bobo v. State, 757 S.W.2d 58 (Tex. App. 1988) [anti-abortion protest; denied; no legally cognizable harm, no imminent harm]; Erlandson v. State, 763 S.W.2d 845, 852 (Tex. App. 1988) [anti-abortion protest; denied; no legally cognizable harm]; Schermbeck v. State, 690 S.W.2d 315, 317 (Tex. App. 1985) [anti-abortion protest; denied; no imminent harm]	"The defendant has the initial burden of producing evidence regarding the necessity defense. If the defendant produces evidence, from whatever source and of whatever strength, raising every element of the defense, then he is entitled to an instruction on the defense, and the State must disprove the defense beyond a reasonable doubt An element of the defense is 'raised' if there is evidence that a rational juror could accept as sufficient to prove that element. In other words, whether the defense is raised by the evidence is always a question of law. Furthermore, with respect to necessity, a defendant's belief and 'standards' may be reasonable or unreasonable as a matter of law." Wilson v. State, 777 S.W.2d 823, 825 (Tex. App. 1989). "An accused's right to present a particular defense may be restricted if all of the elements of the defense are not met by the presentation of material and relevant evidence." Egger v. State, 817 S.W.2d 183, 185 (Tex. App. 1991)	"To raise the defense of necessity, a defendant must admit violating the statute under which he is charged. Only if the defendant admits committing the offense may he offer necessity as a justification." Aldrich v. State, 53 S.W.3d 460, 468 (Tex. App. 2001). "While the availability of legal alternatives may be relevant to the reasonableness of an actor's conduct, the unavailability of alternative legal courses of conduct is not a requirement of the defense of necessity." Brazelton v. State. 947 S.W.2d 644, 649 (Tex. App. 1997). Texas also has a statutory "defense of third persons," Texas Penal Code § 9.33, which has been rejected by courts in anti-abortion protest cases. See Boushey v. State, 804 S.W.2d 148 (Tex. App. 1990).	None found	None
Utah	Utah Code Ann. § 76-2-302 (compulsion)	"(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted. (2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress." Utah Code Ann. § 76-2-302. "[I]n order to assert the defense: 1) the defendant must be faced with a specific, imminent threat of death or serious bodily injury, and 2) there is no reasonable legal alternative to violating the law." State v. Ott, 763 P.2d 810, 812 (Utah Ct. App. 1988)	State v. Ott, 763 P.2d 810 (Utah Ct. App. 1988) [robbery; denied; no imminent threat, availability of legal alternatives]; State v. Tuttle, 730 P.2d 630 (Utah 1986) [prison escape; denied; jury instructions properly qualified]	None found	"A defendant is entitled to have the jury instructed on the defense's theory of the case if there is any basis in the evidence to support that theory . . . the State [has the] burden to disprove compulsion beyond a reasonable doubt." State v. Maama, 359 P.3d 1266, 1269-70 (Utah 2015)	Although Utah has codified its criminal defenses, courts may still look to the common law where the codification does not show a clear intent to foreclose the common law. See State v. Tuttle, 730 P.2d 630, 633 (Utah 1986)	West Valley City v. Hirshi, No. 891003031-3 MC (Salt Lake County, Ut. Cir. Ct., W. Valley Dept. 1990) [protesters at nuclear missile plant acquitted after necessity instruction]	None

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Vermont	None	"(1) There must be a situation of emergency arising without fault on the part of the actor concerned; (2) This emergency must be so imminent and compelling as to raise a reasonable expectation of harm, either directly to the actor or upon those he was protecting; (3) This emergency must present no reasonable opportunity to avoid the injury without doing the criminal act; and (4) The injury impending from the emergency must be of sufficient seriousness to outmeasure the criminal wrong." State v. Warshow, 138 Vt. 24 (1979).	State v. Warshow, 138 Vt. 22 (1979) [anti-nuclear power protest; denied; no imminent harm]	State v. Cram, 157 Vt. 466 (1991) [protest against arms shipment to El Salvador government; denied; no reasonable anticipation of causal nexus]; State v. McCann, 149 Vt. 147 (1987) [protest against arms shipments to Nicaraguan contras; allowed; interlocutory appeal unavailable to contest trial court grant of leave to present justification evidence]; State v. Warshow, 138 Vt. 22 (1979) [anti-nuclear power protest; denied; no imminent harm]	"To avoid conviction, defendant need not refute the elements of the underlying [] charge, but bears the burden of proving by a preponderance of the evidence that her admitted criminal acts were necessary under certain circumstances defined by common law . . . Defendant need[] only to make a prima facie presentation from which a reasonable juror could find that the requirements of the necessity defense were satisfied . . . Defendant must make a minimally sufficient case for every element to be entitled to the instruction." State v. Thayer, 188 Vt. 482, 485-86 (2010)	"[T]he necessity defense is not applicable if it has been legislatively precluded . . . The second and third elements are governed by defendant's belief, and that belief must be reasonable." State v. Cram, 157 Vt. 466, 469 (1991)	Vermont v. Keller, No. 1372-4-84-CNCR (Vt. Dist. Ct. Nov. 17, 1984) [defendants acquitted of trespass in congressman's office during protest against Central Americ policy after extensive testimony and necessity instruction]; Vermont v. McCann, Chittenden Cir. Dist. Ct. Unit 2 #2857-7-86-CNCR, 44 Guild Practitioner 101 (1987), 521 A2d 75 Vt Sup Ct 1987 [weapons system protest; evidence on necessity, Nuremberg Principles, international law defenses allowed; charges dropped]	Vermont v. Gardner (Chittenden Sup. Ct., Vt., No. 2700-7-16, Feb. 28, 2017) [blocked pipeline construction; denied; necessity not availabile to political protestors]
Virginia	None	"[I]n order to use the defense of duress or necessity, the offender must show (1) a reasonable belief that the action was necessary to avoid an imminent threatened harm; (2) a lack of other adequate means to avoid the threatened harm; and (3) a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of the harm." Edmonds v. Commonwealth, 292 Va. 301, 306 (2016).	Edmonds v. Commonwealth, 292 Va. 301 (2016) [firearm possession; denied; no imminent harm]	Buckley v. City of Falls Church, 7 Va. App. 32 (1988) [anti-abortion protest; denied; availability of legal alternatives]; Commonwealth v. Bastow, 3 Va. Cir. 9 (1980) [anti-nuclear energy protest; denied; no imminent harm, availability of legal alternatives]	"A defendant is entitled to have the jury instructed . . . on those theories of the case that are supported by more than a scintilla of evidence." Humphrey v. Com., 37 Va. App. 36, 49 (2001)	"[T]he legislature may abrogate the common law rule by choosing to resolve the conflicting public policy matters by the enactment of law. Thus, the defense of necessity is available only in situations wherein the legislature has not itself, in its criminal statute, made a determination of values. If it has done so, its decision governs." Humphrey v. Com., 37 Va. App. 36, 45 (2001). "One principle remains constant in modern cases considering the defense of necessity: if there is a reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm, the defense is not available." Buckley v. City of Falls Church, 7 Va. App. 32, 34 (1988)	None found	None

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Washington	None	"The defendant must prove by a preponderance of the evidence that: (1) he or she believed the commission of the crime was necessary to avoid or minimize a harm, (2) the harm sought to be avoided was greater than the harm resulting from the violation of the law, and (3) no legal alternative existed." State v. Jeffrey, 77 Wash. App. 222, 225 (1995)	State v. Kurtz, 178 Wn.2d 466 (2013) [medical marijuana possession; remand for hearing on sufficiency of evidence; no legislative preemption]; State v. Jeffrey, 77 Wash. App. 222 (1995) [firearm possession; denied; no imminent harm, availability of legal alternatives]; State v. Diana, 24 Wash. App. 908 (1979) [medical marijuana possession; remand for hearing on potential beneficial effect; medical necessity defense exists]	State v. Ward (Skagit Co. Sup. Ct., Wash., No. 16-1-01001-5, Feb.1, 2017) [pipeline shutdown; denied; no legally cognizable harm, availability of legal alternatives]; Washington v. Brockway (Snohomish Co. Dist. Ct., Wash., No. 5053A- 14D, Jan. 13, 2016) [oil train blockade; denied; availability of legal alternatives]; State v. Aver, 109 Wn.2d 303 (1987) [anti-nuclear weapons protest; denied; generally insufficient evidence]	"[N]ecessity is an affirmative defense and should not be considered by the jury unless the defendant has submitted substantial evidence to support it." State v. Niemczyk, 31 Win. App. 803, 807 (1982)		Washington v. Bass, Nos. 4750-038, -395 to -400 (Thurston County Dist. Ct. April 8, 1987); [protesters acquitted of charges from occupation of state capitol in anti-apartheid protest after necessity instruction]; Washington v. Heller (Seattle Mun. Ct. 1985) [protesters acquitted of trespassing at the home of South African consul after necessity on instruction]; Washington v. Karon (Benton Cty. Dist. Ct. Nos J85-1136-39) [plutonium-uranium facility protest; Court Commissioner allowed Nuremberg; necessity defenses; charges dismissed]; Washington v. Steven Hill (Bellingham Muni. Ct. 1991) [Gulf War protestors blocked Seattle streets; necessity and international law raised; jury hung, charges dropped]	State v. Ward, 438 P.3d 588 (2019) [pipeline protest; allowed; court of appeals overturned denial in State v. Ward (Skagit Co. Sup. Ct., Wash., No. 16-1-01001-5, Feb. 1, 2017)]; Washington v. Brockway (Snohomish Co. Dist. Ct., Wash., No. 5053A- 14D, Jan. 13, 2016) [oil train blockade; denied; availability of legal alternatives]; Washington v. Taylor (Spokane Cty. Dist. Ct., Wash., No. 6Z0117975, Jan. 16, 2019) [coalt train protest; trial court allowed, superior court denied due to legal alternatives]; Washington v. Doerscher (Thurston Cty. D. Ct., Wash, No. C00002726, June 2018) [fracking protest; denied; plea deal]; Washington v. Claydon (Skagit Co. Sup. Ct., Wash., No. 6Z0595647, Mar. 23, 2017) [oil train protest; denied; failure to meet elements]; City of Bellingham v. Alexander (City of Bellingham Mun. Ct., Wash., No. CB0075354, March 18, 2013) [coal train protest; denied; availability of alternatives]
West Virginia	None	West Virginia courts have not articulated the common law necessity defense. The Supreme Court has defined the defense of compulsion: "[I]n general an act which would otherwise constitute a crime may be excused on the ground that it was done under compulsion or duress, since the necessary ingredient of intention ... is then lacking.The compulsion or coercion which will excuse the commission of a criminal act must be present, imminent, and impending, and of such a nature as to induce a well grounded apprehension of death or serious bodily harm if the act is not done; it must be continuous, and there must be no reasonable opportunity to escape the compulsion without committing the crime. A threat of future injury is not enough, particularly after danger from the threat has passed. However, it is not necessary that accused show that he was absolutely driven and made to commit the act charged as a crime." State v. Tanner, 171 W. Va. 529, 532 (1982)	State v. Poling, 207 W. Va. 299 (2000) [medical marijuana possession; compulsion and necessity denied; no present and continuous compulsion, legislative preference]; State v. Tanner, 171 W. Va. 529 (1982) [robbery; compulsion denied; no imminent harm]	None found	"If the evidence raised a reasonable doubt about his criminal intent to commit the offense charged, it would be a valid legal defense." State v. Tanner, 171 W. Va. 529, 532 (1982). On the related "defense of another" defense: "To properly assert the defense of another doctrine, a defendant must introduce sufficient evidence of the defense in order to shift the burden to the State to prove beyond a reasonably doubt that the defendant did not act in defense of another." State v. Phillips, 205 W. Va. 673, 686 (1999)	Although the necessity defense has not been recognized in West Virginia, the Supreme Court recognizes common-law defenses. "We are a common-law state, and [the defendant] was entitled to an instruction on his theory of defense if the evidence supporting it was sufficient to take the question to the jury." State v. Tanner, 171 W. Va. 529, 532 (1982)	None found	None

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Wisconsin	Wis. Stat. § 939.47	"Pressure of natural physical forces which causes the actor reasonably to believe that his or her act is the only means of preventing imminent public disaster, or imminent death or great bodily harm to the actor or another and which causes him or her so to act, is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2nd-degree intentional homicide." Wis. Stat. § 939.47. "[T[he four elements which comprise the § 939.47, Stats., necessity defense [are]: (1) the defendant must have acted under pressure from natural physical forces; (2) the defendant's act was necessary to prevent imminent public disaster, or death, or great bodily harm; (3) the defendant had no alternative means of preventing the harm; and (4) the defendant's beliefs were reasonable." State v. Anthuber, 201 Wis. 2d 512, 518 (Ct. App. 1996)	State v. Migliorino, 150 Wis. 2d 513 (1989) [anti-abortion protest; denied; availability of legal alternatives]; State v. Olsen, 99 Wisc. 2d 572 (Ct. App. 1980) [anti-nuclear power protest; denied; no natural physical forces]	State v. Miller, 173 Wis. 2d 908 (Ct. App. 1993) [anti-abortion protest; denied; no legally cognizable harm]; State v. Migliorino, 150 Wis. 2d 513 (1989) [anti-abortion protest; denied; availability of legal alternatives]; State v. Horn, 126 Wis. 2d 447 (Ct. App. 1985) [anti-abortion protest; denied; availability of legal alternatives]; State v. Olsen, 99 Wisc. 2d 572 (Ct. App. 1980) [anti-nuclear power protest; denied; no natural physical forces]	"As with all other statutory defenses, a defendant asserting a necessity defense carries the initial burden of presenting sufficient evidence showing an entitlement to the defense." State v. Lisiecki, 305 Wis. 2d 377 (Ct. App. 2007)	"Section 939.46 [defense of compulsion] specifically requires that the actor hold a reasonable belief that his act is the only means of preventing imminent death or great bodily harm . . . [T]he reasonableness of the actor's belief must be judged objectively." State v. Horn, 126 Wis. 2d 447, 455 (Ct. App. 1985)	None found	Wisconsin v. Good-Cane-Milk (Douglas Cty. Cir. Ct. No. 17CM427, Aug. 13, 2018) [pipeline protest; denied; no necessity defense in Wisconsin, court rejected coercion defense]

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Wyoming	None	The Supreme Court has treated the "defense of duress/coercion/necessity" as one defense. Amin v. State, 811 P.2d 255, 261 (Wyo. 1991). "Coercion or duress has been recognized as a defense to criminal charges, other than a charge of taking the life of an innocent person. Coercion or duress must be present, imminent or impending, and of such a nature so as to induce a well-grounded fear of death or serious bodily harm if the otherwise criminal act is not done. Id. The burden of demonstrating the elements of such a defense is upon the defendant." Campbell v. State, 999 P.2d 649, 659 (Wyo. 2000)	James v. State, 357 P.3d 101 (Wyo. 2015) [robbery; allowed; sufficient evidence for jury instruction]; Campbell v. State, 999 P.2d 649 (Wyo. 2000) [child endangerment; denied; no imminent harm]; Amin v. State, 811 P.2d 255 (Wyo. 1991) [prison kidnapping; denied; no imminent harm, availability of legal alternatives]; 370 P.2d 371	None found	"Due process requires the trial court to give a correct instruction to the jury that details the defendant's theory of the case. The instruction must sufficiently inform the court of the defendant's theory and must be supported by competent evidence. A theory of the case is more than a comment on the evidence that tells the jury how to consider the evidence. Fundamentally, the instruction must in the first instance be a proper theory of the case, or theory of defense, instruction. That is, the offered instruction must present a defense recognized by statute or case law in this jurisdiction . . . Any competent evidence is sufficient to establish a defense theory even if it consists only of testimony of the defendant. We view the evidence in a light favorable to the accused and the accused's testimony must be taken as entirely true to determine if the evidence is competent. Even if the court deems the evidence to be weak, or unworthy of belief, the instruction must be given if a jury could reasonably conclude the evidence supports the defendant's position. The refusal to allow an instruction requested by the defendant when due process requires the defendant's instruction be given is reversible error per se." Holloman v. State, 51 P.3d 214, 219 (Wyo. 2002)		None found	None