

As Introduced

132nd General Assembly

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H. B. No. 590

Representatives Vitale, Keller

**Cosponsors: Representatives Hood, Antani, Brinkman, Becker, Thompson,
Schaffer, Retherford, Brenner, Zeltwanger, Lang, Riedel, Hoops, Merrin, Sprague,
Householder, Dean**

A BILL

To amend sections 2307.601, 2901.05, and 2901.09 1
and to enact sections 2901.091 and 2901.092 of 2
the Revised Code to define what constitutes 3
reasonable force and specify when a person is 4
justified in its use or threatened use, to 5
provide that a person has no duty to retreat 6
from any place where the person is lawfully 7
present prior to using or threatening to use 8
reasonable force, to establish civil and 9
criminal immunity for a person who uses or 10
threatens to use reasonable force, to revise the 11
circumstances under which a person who uses or 12
threatens to use deadly force is presumed to be 13
acting in self-defense or in defense of another, 14
and to establish a procedure and standards for 15
asserting and disproving self-defense, defense 16
of another, or defense of a residence in a 17
criminal or civil case. 18

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2307.601, 2901.05, and 2901.09 be 19
amended and sections 2901.091 and 2901.092 of the Revised Code 20
be enacted to read as follows: 21

Sec. 2307.601. (A) As used in this section: 22

(1) "Residence" ~~and "vehicle" have~~ has the same ~~meanings-~~ 23
meaning as in section 2901.05 of the Revised Code. 24

(2) "Tort action" has the same meaning as in section 25
2307.60 of the Revised Code. 26

(3) "Reasonable doubt" is present when the court or jury 27
as trier of fact, after it has carefully considered and compared 28
all the evidence, cannot say it is firmly convinced of the truth 29
of the allegation that is the basis of the cause of action. It 30
is a doubt based on reason and common sense. "Reasonable" doubt 31
is not mere possible doubt, because everything relating to human 32
affairs or depending on moral evidence is open to some possible 33
or imaginary doubt. "Proof beyond a reasonable doubt" is proof 34
of such character that an ordinary person would be willing to 35
rely and act upon it in the most important of the person's own 36
affairs. 37

~~(B) For purposes of determining the potential liability of~~ 38
~~a person in a tort action related to the person's use of force~~ 39
~~alleged to be in self-defense, defense of another, or defense of~~ 40
~~the person's residence, if the person lawfully is in that~~ 41
~~person's residence, the~~ (1) A person who is not engaged in 42
illegal activity has no duty to retreat from any place where the 43
person is lawfully present before using or threatening to use 44
reasonable force in self-defense, defense of another, or defense 45
of that person's residence, and, if the person lawfully is an 46
occupant of that person's vehicle or lawfully is an occupant in 47

~~a vehicle owned by an immediate family member of the person, the~~ 48
~~person has no duty to retreat before using force in self-defense~~ 49
~~or defense of another, including deadly force, in the same~~ 50
circumstances in which a use or threatened use of force, 51
including deadly force, is authorized under section 2901.09 of 52
the Revised Code. 53

(2) The immunity from civil action provided in division 54
(A) of section 2901.092 of the Revised Code, and the requirement 55
for an award in a civil action of reasonable attorney's fees, 56
court costs, compensation for loss of income, and expenses 57
incurred that is set forth in division (C) of that section, 58
apply regarding a tort action described in this section. 59

(C) (1) In a tort action filed against a person related to 60
the person's use or threatened use of force against another, the 61
person has a right to a pretrial immunity hearing, as described 62
in division (C) (2) of this section, regarding a claim of 63
immunity from liability for injury, death, or loss to another 64
based on self-defense, defense of another, or defense of that 65
person's residence. 66

(2) A person who is a defendant in a tort action of the 67
type described in division (C) (1) of this section who would like 68
a pretrial hearing as described in that division shall file a 69
pretrial motion claiming that the person used or threatened to 70
use the force in self-defense, defense of another, or defense of 71
that person's residence. The filing of the motion establishes a 72
prima facie claim of self-defense, defense of another, or 73
defense of that person's residence. Upon the filing of the 74
motion, the court shall hold a pretrial immunity hearing and 75
shall grant the motion and hold that the person used or 76
threatened to use the force in self-defense, defense of another, 77

or defense of that person's residence unless the party seeking 78
to overcome the immunity proves beyond a reasonable doubt that 79
the person did not use or threaten to use the force in self- 80
defense, defense of another, or defense of that person's 81
residence. 82

Sec. 2901.05. (A) (1) Every person accused of an offense is 83
presumed innocent until proven guilty beyond a reasonable doubt, 84
and the burden of proof for all elements of the offense is upon 85
the prosecution. The burden of going forward with the evidence 86
of an affirmative defense, and the burden of proof, by a 87
preponderance of the evidence, for an affirmative defense other 88
than self-defense, defense of another, or defense of the 89
accused's residence presented as described in division (B)(1) of 90
this section, is upon the accused. 91

(2) A person accused of an offense that involved the 92
person's use or threatened use of force against another has a 93
right to a pretrial immunity hearing, as described in division 94
(B)(1) of this section, regarding a claim of immunity from 95
criminal prosecution based on self-defense, defense of another, 96
or defense of that person's residence. 97

(B) (1) A person accused of an offense that involved the 98
person's use or threatened use of force against another who 99
would like a pretrial hearing as described in division (A)(2) of 100
this section shall file a pretrial motion claiming that the 101
person used or threatened to use the force in self-defense, 102
defense of another, or defense of that person's residence. The 103
filing of the motion establishes a prima facie claim of self- 104
defense, defense of another, or defense of that person's 105
residence. Upon the filing of the motion, the court shall hold a 106
pretrial immunity hearing and shall grant the motion and hold 107

that the person used or threatened to use the force in self- 108
defense, defense of another, or defense of that person's 109
residence unless the state proves beyond a reasonable doubt that 110
the person did not use or threaten to use the force in self- 111
defense, defense of another, or defense of that person's 112
residence. 113

(2) Subject to division (B) ~~(2)~~ (3) of this section, a 114
person is presumed to have acted in ~~self-defense~~ self-defense or 115
defense of another when using ~~defensive or threatening to use~~ 116
deadly force that is intended or likely to cause death or great 117
bodily harm to another if any of the following apply: 118

(a) The person against whom the ~~defensive~~ deadly force is 119
used or threatened is in the process of unlawfully and without 120
privilege to do so entering, or has unlawfully and without 121
privilege to do so entered, the residence ~~or, occupied~~ vehicle 122
~~occupied by, or place of business or employment, of the person~~ 123
using or threatening to use the ~~defensive~~ deadly force, or any 124
other place in which the person using or threatening to use the 125
deadly force is lawfully present; 126

(b) The person against whom the deadly force is used or 127
threatened is by force or threat removing or attempting to 128
unlawfully remove another person against the other person's will 129
from any place that the person using or threatening to use the 130
deadly force is lawfully present; 131

(c) The person using or threatening to use the deadly 132
force knows or has reason to believe that any of the conditions 133
set forth in division (B) (2) (a) or (b) of this section are 134
occurring or have occurred. 135

~~(2) (a)~~ (3) The presumption set forth in division (B) ~~(1)~~ (2) 136

of this section does not apply if, at the time the deadly force 137
is used or threatened, any of the following circumstances are 138
present: 139

(a) The person against whom the ~~defensive~~ deadly force is 140
used or threatened has a right to be in, ~~or is a lawful resident~~ 141
~~of, the residence or vehicle~~ place where the person used or 142
threatened to use the deadly force, and a protective or no- 143
contact order is not in effect against the person against whom 144
the deadly force is used or threatened. 145

(b) The person sought to be removed as described in 146
division (B) (2) (b) of this section is a child or grandchild or 147
is otherwise in the lawful custody or under the lawful 148
guardianship of the person against whom the deadly force is used 149
or threatened. 150

(c) The ~~presumption set forth in division (B) (1) of this~~ 151
~~section does not apply if the person who uses or threatens to~~ 152
~~use the defensive~~ deadly force uses or threatens to use it while 153
~~engaged in a residence or vehicle and the person is unlawfully,~~ 154
~~and without privilege to be, in that residence or vehicle~~ 155
~~criminal offense, while attempting to escape from the scene of a~~ 156
~~criminal offense that the person has committed, or while using~~ 157
~~the residence, place of business or employment, or occupied~~ 158
~~vehicle to further a criminal offense.~~ 159

(d) The person against whom the deadly force is used or 160
threatened is a law enforcement officer who has entered or is 161
attempting to enter a residence, place of business or 162
employment, or occupied vehicle in the lawful performance of the 163
law enforcement officer's official duties, and either the 164
officer identified himself or herself as a law enforcement 165
officer in accordance with any applicable law or the person 166

using the deadly force knows or reasonably should know that the 167
person who has entered or is attempting to enter is a law 168
enforcement officer. 169

~~(3)~~(4) The presumption set forth in division (B) ~~(1)~~(2) of 170
this section is a rebuttable presumption and may be rebutted by 171
a preponderance of the evidence, provided that the prosecution's 172
burden of proof remains proof beyond a reasonable doubt as 173
described in division (B) (1) of this section. 174

(C) As part of its charge to the jury in a criminal case, 175
the court shall read the definitions of "reasonable doubt" and 176
"proof beyond a reasonable doubt," contained in division (D) of 177
this section. 178

(D) As used in this section: 179

(1) An "affirmative defense" is either of the following: 180

(a) A defense expressly designated as affirmative; 181

(b) A defense involving an excuse or justification 182
peculiarly within the knowledge of the accused, on which the 183
accused can fairly be required to adduce supporting evidence. 184

(2) "Dwelling" means a building or conveyance of any kind 185
that has a roof over it and that is designed to be occupied by 186
people lodging in the building or conveyance at night, 187
regardless of whether the building or conveyance is temporary or 188
permanent or is mobile or immobile. As used in this division, a 189
building or conveyance includes, but is not limited to, an 190
attached porch, and a building or conveyance with a roof over it 191
includes, but is not limited to, a tent. 192

(3) "Residence" means a dwelling in which a person resides 193
either temporarily or permanently or is visiting as a guest. 194

(4) "Vehicle" means a conveyance of any kind, whether or 195
not motorized, that is designed to transport people or property. 196

(E) "Reasonable doubt" is present when the jurors, after 197
they have carefully considered and compared all the evidence, 198
cannot say they are firmly convinced of the truth of the charge. 199
It is a doubt based on reason and common sense. Reasonable doubt 200
is not mere possible doubt, because everything relating to human 201
affairs or depending on moral evidence is open to some possible 202
or imaginary doubt. "Proof beyond a reasonable doubt" is proof 203
of such character that an ordinary person would be willing to 204
rely and act upon it in the most important of the person's own 205
affairs. 206

Sec. 2901.09. (A) As used in this section and in sections 207
2901.091 and 2901.092 of the Revised Code, "residence" and 208
"vehicle" have the same meanings as in section 2901.05 of the 209
Revised Code. "reasonable force" means that force that a 210
reasonable person would judge to be necessary to prevent an 211
injury or loss and can include deadly force if a person 212
reasonably believes that using or threatening to use such force 213
is necessary to avoid injury or risk to the person's life or 214
safety or the life or safety of another. 215

(B) For purposes of any section of the Revised Code that 216
sets forth a criminal offense, a person is justified in the use 217
of or threat to use reasonable force, including deadly force, 218
when the person reasonably believes that such force is necessary 219
to defend the person or another from any actual or imminent use 220
of unlawful force. 221

(C) A person is justified in the use of or threat to use 222
reasonable force, including deadly force, even if an alternative 223
course of action is available. 224

(D) A person who lawfully is not engaged in that person's residence illegal activity has no duty to retreat from any place where the person is lawfully present before using or threatening to use reasonable force in self defense, defense of another, or defense of that person's residence, and a person who lawfully is an occupant of that person's vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self defense or defense of another, including deadly force, as authorized under this section. 225
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(E) A person may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the person's belief and the person acts reasonably in response to that belief. 235
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(F) A court or jury as trier of fact shall not consider the possibility of retreat as a factor in determining whether a person who used or threatened to use force, including deadly force, reasonably believed that such force was necessary to prevent injury, loss, or risk to life or safety. 239
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Sec. 2901.091. (A) As used in this section, "forcible felony" means any of the following: 244
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(1) A felony violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02, 2907.03, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code; 246
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(2) Any felony offense not identified in division (A)(1) of this section that involves the use or threatened use of physical force or violence against any individual. 250
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(B) A person who reasonably believes that another person 253

is committing or is about to commit a forcible felony is 254
justified in using or threatening to use reasonable force, 255
including deadly force, against the other person to prevent or 256
halt the commission of the forcible felony. 257

Sec. 2901.092. (A) A person who uses or threatens to use 258
reasonable force, including deadly force, in accordance with 259
section 2901.09 or 2901.091 of the Revised Code shall be immune 260
from arrest, detention, the filing of criminal charges, criminal 261
prosecution, or civil action arising from the person's use or 262
threatened use of the reasonable force. 263

(B) A law enforcement officer may use standard 264
investigating procedures for investigating the use or threatened 265
use of force, but the law enforcement officer shall not arrest a 266
person for the person's use or threatened use of force unless 267
the law enforcement officer has probable cause to believe that 268
the person's use or threatened use of force was not justified 269
under section 2901.09 or 2901.091 of the Revised Code. 270

(C) The court shall award reasonable attorney's fees, 271
court costs, compensation for loss of income, and all expenses 272
incurred by the defendant in defense of any civil action brought 273
by a plaintiff if the court finds that the defendant is immune 274
from criminal prosecution or civil action as provided in 275
division (A) of this section. 276

Section 2. That existing sections 2307.601, 2901.05, and 277
2901.09 of the Revised Code are hereby repealed. 278