

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**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**

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**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