

As Introduced

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H. B. No. 498

Representatives Lear, Robb Blasdel

**Cosponsors: Representatives Hall, T., Dean, Fowler Arthur, Gross, Thomas, D.,
Kishman, Mullins, Fischer, King, Hoops, Schmidt, Stephens, Willis**

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 enact the Ohio Self-Defense 3
Act to modify the law regarding self-defense. 4

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

Section 1. That sections 2307.601, 2901.05, and 2901.09 be 5
amended and sections 2901.091 and 2901.092 of the Revised Code 6
be enacted to read as follows: 7

Sec. 2307.601. (A) As used in this section: 8

(1) "Peace officer" has the same meaning as in section 9
2935.01 of the Revised Code. 10

(2) "Residence" has the same meaning as in section 2901.05 11
of the Revised Code. 12

~~(2)~~ (3) "Tort action" has the same meaning as in section 13
2307.60 of the Revised Code. 14

(4) "Reasonable force" has the same meaning as in section 15
2901.09 of the Revised Code. 16

(B) For purposes of determining the potential liability of 17

a person in a tort action ~~related to the person's use of force~~ 18
~~alleged to be in self-defense, defense of another, or defense of~~ 19
~~the person's residence, the~~, a person who is not engaged in 20
illegal activity has no duty to retreat from any place where the 21
person is lawfully present before using or threatening to use 22
reasonable ~~force in self-defense, defense of another, or defense~~ 23
~~of that person's residence if that person is in a place in which~~ 24
~~the person lawfully has a right to be.~~ 25

~~(C) A~~, including deadly force, in the same circumstances 26
in which a use or threatened use of force, including deadly 27
force, is authorized under section 2901.09 of the Revised Code. 28

(C) The affirmative defense of self-defense, defense of 29
another, or defense of that person's residence is not available 30
in a tort action to any of the following: 31

(1) A person who uses force during the person's attempted 32
commission, commission, or escape after the commission or 33
attempted commission of a felony offense of violence; 34

(2) A person who uses force against another, who is an 35
aggressor, if the person initially provoked the aggressor to use 36
force or threat of force against the person, unless either of 37
the following apply: 38

(a) The use of force or threat of force by the aggressor 39
is sufficient for the person's reasonable belief that the person 40
is in imminent danger of death or great bodily harm, and the 41
person exhausts all reasonable means of escape other than the 42
use of force or threat of force that is likely to cause death or 43
great bodily harm to the aggressor. 44

(b) The use of force or threat of force by the aggressor 45
continues or resumes after the person, in good faith, withdraws 46

from physical contact and clearly indicates the desire to 47
withdraw and terminate the use of force or threat of force by 48
the person or the aggressor. 49

(3) A person who uses force to resist an unlawful arrest, 50
if the person uses the force against a peace officer and the 51
person using the force knows the person making the arrest is a 52
peace officer; 53

(4) A person who uses force to resist a lawful arrest, if 54
the person uses the force against a person making the arrest or 55
against a person assisting in making the arrest; 56

(5) A person who uses force against a peace officer, or a 57
person assisting a peace officer, if the peace officer is acting 58
in the performance of the peace officer's official duties; 59

(6) A person who uses force while committing a violation 60
of section 2923.13 of the Revised Code. 61

(D) The fact that an affirmative defense is not available 62
to a person under division (C) of this section does not affect 63
the person's right to bring any affirmative defense available to 64
the person under the common law of this state prior to the 65
effective date of this amendment. 66

(E) Except as provided in division (C) of this section, 67
the immunity from civil action provided in division (A) of 68
section 2901.092 of the Revised Code, and the requirement for an 69
award in a civil action of reasonable attorney's fees, court 70
costs, compensation for loss of income, and expenses incurred 71
that is set forth in division (C) of that section, apply 72
regarding a tort action described in this section. 73

(F) (1) In a tort action filed against a person related to 74
the person's use or threatened use of force, including deadly 75

force, against another, the person has a right to a pretrial 76
immunity hearing, as described in division (F) (2) of this 77
section, regarding a claim of immunity from liability for 78
injury, death, or loss to another based on self-defense, defense 79
of another, or defense of that person's residence. 80

(2) A person who is a defendant in a tort action of the 81
type described in division (F) (1) of this section who would like 82
a pretrial hearing as described in that division shall file a 83
pretrial motion claiming that the person used or threatened to 84
use the force, including deadly force, in self-defense, defense 85
of another, or defense of that person's residence. The filing of 86
the motion establishes a prima facie claim of self-defense, 87
defense of another, or defense of that person's residence. Upon 88
the filing of the motion, the court shall hold a pretrial 89
immunity hearing and shall grant the motion and hold that the 90
person used or threatened to use the force, including deadly 91
force, in self-defense, defense of another, or defense of that 92
person's residence unless the party seeking to overcome the 93
immunity provides substantial evidence that the person did not 94
use or threaten to use the force, including deadly force, in 95
self-defense, defense of another, or defense of that person's 96
residence. 97

(G) Except as provided in division (C) (2) of this section, 98
a trier of fact shall not consider the possibility of retreat as 99
a factor in determining whether or not a person who used force 100
in self-defense, defense of another, or defense of that person's 101
residence reasonably believed that the force was necessary to 102
prevent injury, loss, or risk to life or safety. 103

Sec. 2901.05. ~~(A)~~ (A) (1) Every person accused of an offense 104
is presumed innocent until proven guilty beyond a reasonable 105

doubt, and the burden of proof for all elements of the offense 106
is upon the prosecution. The burden of going forward with the 107
evidence of an affirmative defense, and the burden of proof, by 108
a preponderance of the evidence, for an affirmative defense 109
other than self-defense, defense of another, or defense of the 110
accused's residence presented as described in division (B) (1) of 111
this section, is upon the accused. 112

(2) A person accused of an offense that involved the 113
person's use or threatened use of force, including deadly force, 114
against another has a right to a pretrial immunity hearing, as 115
described in division (B) (1) of this section, regarding a claim 116
of immunity from criminal prosecution based on self-defense, 117
defense of another, or defense of that person's residence. 118

(B) (1) A person ~~is allowed~~ accused of an offense that 119
involved the person's use or threatened use of force, including 120
deadly force, against another who would like a pretrial hearing 121
as described in division (A) (2) of this section shall file a 122
pretrial motion claiming that the person used or threatened to 123
~~act use~~ the force, including deadly force, in self-defense, 124
defense of another, or defense of that person's residence. ~~If,~~ 125
~~at~~ The filing of the motion establishes a prima facie claim of 126
self-defense, defense of another, or defense of that person's 127
residence. Upon the ~~trial filing of a person who is accused of~~ 128
~~an offense that involved the person's use of force against~~ 129
~~another, there is evidence presented that tends to support~~ 130
motion, the court shall hold a pretrial immunity hearing and 131
shall grant the motion and hold that the ~~accused~~ person used or 132
threatened to use the force, including deadly force, in self- 133
defense, defense of another, or defense of that person's 134
residence, unless the ~~prosecution must prove beyond a reasonable~~ 135
~~doubt~~ state proves by clear and convincing evidence that the 136

~~accused~~ person did not use or threaten to use the force, 137
including deadly force, in self-defense, defense of another, or 138
defense of that person's residence, as the case may be. 139

(2) Subject to division (B) (3) of this section, a person 140
is presumed to have acted in self-defense or defense of another 141
when using ~~defensive or~~ threatening to use deadly force that is 142
intended or likely to cause death or great bodily harm to 143
another if any of the following apply: 144

(a) The person against whom the ~~defensive deadly~~ force is 145
used or threatened is in the process of unlawfully and without 146
privilege to do so entering, or has unlawfully and without 147
privilege to do so entered, the residence ~~or~~, occupied vehicle 148
~~occupied by~~, or place of business or employment, of the person 149
using or threatening to use the ~~defensive deadly~~ force, or any 150
other place in which the person using or threatening to use the 151
deadly force is lawfully present; 152

(b) The person against whom the deadly force is used or 153
threatened is by force or threat removing or attempting to 154
unlawfully remove another person against the other person's will 155
from any place that the person using or threatening to use the 156
deadly force is lawfully present; 157

(c) The person using or threatening to use the deadly 158
force knows or has reason to believe that any of the conditions 159
set forth in division (B) (2) (a) or (b) of this section are 160
occurring or have occurred. 161

(3) The presumption set forth in division (B) (2) of this 162
section does not apply if ~~either~~, at the time the deadly force 163
is used or threatened, any of the following is true circumstances 164
are present: 165

(a) The person against whom the ~~defensive-deadly~~ force is 166
used or threatened has a right to be in, ~~or is a lawful resident~~ 167
~~of, the residence or vehicle~~ place where the person used or 168
threatened to use the deadly force, and a protective or no- 169
contact order is not in effect against the person against whom 170
the deadly force is used or threatened. 171

(b) The person sought to be removed as described in 172
division (B) (2) (b) of this section is a child or grandchild or 173
is otherwise in the lawful custody or under the lawful 174
guardianship of the person against whom the deadly force is used 175
or threatened. 176

(c) The person who uses or threatens to use the ~~defensive-~~ 177
deadly force uses or threatens to use it while engaged in a 178
criminal offense, while attempting to escape from the scene of a 179
criminal offense that the person has committed, or while using 180
the residence, place of business or employment, or occupied 181
vehicle and the person is unlawfully, and without privilege to 182
be, in that residence or vehicle further a criminal offense. 183

(d) The person against whom the deadly force is used or 184
threatened is a law enforcement officer who has entered or is 185
attempting to enter a residence, place of business or 186
employment, or occupied vehicle in the lawful performance of the 187
law enforcement officer's official duties, and either the 188
officer identified himself or herself as a law enforcement 189
officer in accordance with any applicable law or the person 190
using or threatening to use the deadly force knows or reasonably 191
should know that the person who has entered or is attempting to 192
enter is a law enforcement officer. 193

(4) The presumption set forth in division (B) (2) of this 194
section is a rebuttable presumption and may be rebutted by a 195

preponderance of the evidence, provided that the prosecution's 196
burden of proof remains ~~proof beyond a reasonable doubt by clear~~ 197
~~and convincing evidence~~ as described in ~~divisions (A) and~~ 198
~~division~~ (B) (1) of this section. 199

(C) As part of its charge to the jury in a criminal case, 200
the court shall read the definitions of "reasonable doubt" and 201
"proof beyond a reasonable doubt," contained in division (E) of 202
this section. 203

(D) As used in this section: 204

(1) An "affirmative defense" is either of the following: 205

(a) A defense expressly designated as affirmative; 206

(b) A defense involving an excuse or justification 207
peculiarly within the knowledge of the accused, on which the 208
accused can fairly be required to adduce supporting evidence. 209

(2) "Dwelling" means a building or conveyance of any kind 210
that has a roof over it and that is designed to be occupied by 211
people lodging in the building or conveyance at night, 212
regardless of whether the building or conveyance is temporary or 213
permanent or is mobile or immobile. As used in this division, a 214
building or conveyance includes, but is not limited to, an 215
attached porch, and a building or conveyance with a roof over it 216
includes, but is not limited to, a tent. 217

(3) "Residence" means a dwelling in which a person resides 218
either temporarily or permanently or is visiting as a guest. 219

(4) "Vehicle" means a conveyance of any kind, whether or 220
not motorized, that is designed to transport people or property. 221

(E) "Reasonable doubt" is present when the jurors, after 222
they have carefully considered and compared all the evidence, 223

cannot say they are firmly convinced of the truth of the charge. 224
It is a doubt based on reason and common sense. Reasonable doubt 225
is not mere possible doubt, because everything relating to human 226
affairs or depending on moral evidence is open to some possible 227
or imaginary doubt. "Proof beyond a reasonable doubt" is proof 228
of such character that an ordinary person would be willing to 229
rely and act upon it in the most important of the person's own 230
affairs. 231

Sec. 2901.09. (A) As used in this section, ~~"residence"~~ has 232
and in sections 2901.091 and 2901.092 of the Revised Code: 233

(1) "Peace officer" has the same meaning as in section 234
2901.05-2935.01 of the Revised Code. 235

(2) "Reasonable force" means the use or threatened use of 236
force that a reasonable person would judge to be necessary to 237
prevent an injury or loss and may include deadly force if a 238
person reasonably believes that using or threatening to use such 239
force is necessary to avoid injury or risk to the person's life 240
or safety or the life or safety of another. 241

(3) "Residence" has the same meaning as in section 2901.05 242
of the Revised Code. 243

(B) For purposes of any section of the Revised Code that 244
sets forth a criminal offense, ~~a~~ the following apply: 245

(1) A person who is not engaged in illegal activity has no 246
duty to retreat from any place where the person is lawfully 247
present before using or threatening to use reasonable force, 248
including deadly force, in self-defense, defense of another, or 249
defense of that person's residence, as authorized under this 250
section. 251

(2) Except as provided in division (C) (2) of this section, 252

a court or jury as trier of fact shall not consider the 253
possibility of retreat as a factor in determining whether a 254
person who used or threatened to use force, including deadly 255
force, reasonably believed that such force was necessary to 256
prevent injury, loss, or risk to life or safety. 257

~~(3) A person has no duty to retreat before using force in~~ 258
~~self-defense, defense of another, or defense of that person's~~ 259
~~residence if that person is in a place in which the person~~ 260
~~lawfully has a right to be.~~ 261

~~(C) A trier of fact shall not consider the possibility of~~ 262
~~retreat as a factor in determining whether or not a person who~~ 263
~~used force in self-defense, defense of another, or defense of~~ 264
~~that person's residence reasonably believed that the force was~~ 265
~~necessary to prevent injury, loss, or risk to life or safety is~~ 266
justified in the use of or threat to use reasonable force, 267
including deadly force, when the person reasonably believes that 268
such force is necessary to defend the person or another from any 269
actual or imminent use of unlawful force. 270

(4) A person is justified in the use of or threat to use 271
reasonable force, including deadly force, even if an alternative 272
course of action is available. 273

(5) A person may be wrong in the estimation of the danger 274
or the force necessary to repel the danger as long as there is a 275
reasonable basis for the person's belief, and the person acts 276
reasonably in response to that belief. 277

(C) The affirmative defense of self-defense, defense of 278
another, or defense of that person's residence is not available 279
in a criminal action to any of the following: 280

(1) A person who uses force during the person's attempted 281

commission, commission, or escape after the commission or 282
attempted commission of a felony offense of violence; 283

(2) A person who uses force against another, who is an 284
aggressor, if the person initially provoked the aggressor to use 285
force or threat of force against the person, unless either of 286
the following apply: 287

(a) The use of force or threat of force by the aggressor 288
is sufficient for the person's reasonable belief that the person 289
is in imminent danger of death or great bodily harm, and the 290
person exhausts all reasonable means of escape other than the 291
use of force or threat of force that is likely to cause death or 292
great bodily harm to the aggressor. 293

(b) The use of force or threat of force by the aggressor 294
continues or resumes after the person, in good faith, withdraws 295
from physical contact and clearly indicates the desire to 296
withdraw and terminate the use of force or threat of force by 297
the person or the aggressor. 298

(3) A person who uses force to resist an unlawful arrest, 299
if the person uses the force against a peace officer and the 300
person using the force knows the person making the arrest is a 301
peace officer; 302

(4) A person who uses force to resist a lawful arrest, if 303
the person uses the force against a person making the arrest or 304
against a person assisting in making the arrest; 305

(5) A person who uses force against a peace officer, or a 306
person assisting a peace officer, if the peace officer is acting 307
in the performance of the peace officer's official duties; 308

(6) A person who uses force while committing a violation 309
of section 2923.13 of the Revised Code. 310

(D) The fact that an affirmative defense is not available 311
to a person under division (C) of this section does not affect 312
the person's right to bring any affirmative defense available to 313
the person under the common law of this state prior to the 314
effective date of this amendment. 315

Sec. 2901.091. (A) As used in this section, "forcible 316
felony" means any of the following: 317

(1) A felony violation of section 2903.01, 2903.02, 318
2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02, 319
2907.03, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12 320
of the Revised Code; 321

(2) Any felony offense not identified in division (A) (1) 322
of this section that involves the use or threatened use of 323
physical force or violence against any individual. 324

(B) A person who reasonably believes that another person 325
is committing or is about to commit a forcible felony and who 326
uses or threatens to use reasonable force, including deadly 327
force, as authorized under section 2901.09 of the Revised Code, 328
is justified in using or threatening to use reasonable force, 329
including deadly force, against the other person to prevent or 330
halt the commission of the forcible felony. 331

Sec. 2901.092. (A) A person who uses or threatens to use 332
reasonable force, including deadly force, in accordance with 333
section 2901.09 or 2901.091 of the Revised Code shall be immune 334
from arrest, the filing of criminal charges, criminal 335
prosecution, or civil action arising from the person's use or 336
threatened use of the reasonable force, including deadly force. 337

(B) A law enforcement officer may use standard 338
investigating procedures for investigating the use or threatened 339

use of force, including deadly force, but the law enforcement 340
officer shall not arrest a person for the person's use or 341
threatened use of force, including deadly force, unless the law 342
enforcement officer has probable cause to believe that the 343
person's use or threatened use of force, including deadly force, 344
was not justified under section 2901.09 or 2901.091 of the 345
Revised Code. 346

(C) The court shall award treble damages including 347
reasonable attorney's fees, court costs, compensation for loss 348
of income, and all expenses incurred by the defendant in defense 349
of any civil action brought by a plaintiff or criminal action 350
brought by a prosecutor if the court finds that the defendant is 351
immune from criminal prosecution or civil action as provided in 352
division (A) of this section. In a criminal action, any damages 353
awarded under this division shall be paid by the county or 354
political subdivision that charged the defendant. 355

Section 2. That existing sections 2307.601, 2901.05, and 356
2901.09 of the Revised Code are hereby repealed. 357

Section 3. This act shall be known as the Ohio Self- 358
Defense Act. 359