

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 381

Representatives Keller, Hood

Cosponsors: Representatives Manning, D., Vitale, Becker, Riedel, Lang, Cross, Dean, Brinkman, Plummer, Jones, Grendell, Antani, Merrin, Zeltwanger, Stoltzfus, Lipps, McClain, Powell, Manchester, Jordan, Richardson, Smith, T.

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 enact the Ohio Stand Your 3
Ground Act to modify the law regarding self- 4
defense. 5

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

Section 1. That sections 2307.601, 2901.05, and 2901.09 be 6
amended and sections 2901.091 and 2901.092 of the Revised Code 7
be enacted to read as follows: 8

Sec. 2307.601. (A) As used in this section: 9

(1) "Peace officer" has the same meaning as in section 10
2935.01 of the Revised Code. 11

~~(2) "Residence" and "vehicle" have has the same meanings-~~ 12
meaning as in section 2901.05 of the Revised Code. 13

~~(2)-(3)~~ (3) "Tort action" has the same meaning as in section 14
2307.60 of the Revised Code. 15

16
(4) "Reasonable force" has the same meaning as in section 17
2901.09 of the Revised Code. 18

(B) For purposes of determining the potential liability of 19
a person in a tort action ~~related to the person's use of force~~ 20
~~alleged to be in self-defense, defense of another, or defense of~~ 21
~~the person's residence, if the person lawfully is in that~~ 22
~~person's residence, the following apply:~~ 23

(1) A person who is not engaged in illegal activity has no 24
duty to retreat from any place where the person is lawfully 25
present before using or threatening to use reasonable force in 26
self-defense, defense of another, or defense of that person's 27
residence, and, if the person lawfully is an occupant of that 28
person's vehicle or lawfully is an occupant in a vehicle owned 29
by an immediate family member of the person, the person has no 30
duty to retreat before using force in self-defense or defense of 31
another, including deadly force, in the same circumstances in 32
which a use or threatened use of force, including deadly force, 33
is authorized under section 2901.09 of the Revised Code. 34

(2) Except as provided in division (C) (2) of this section, 35
a trier of fact shall not consider the possibility of retreat as 36
a factor in determining whether or not a person who used force 37
in self-defense, defense of another, or defense of that person's 38
residence reasonably believed that the force was necessary to 39
prevent injury, loss, or risk to life or safety. 40

(C) The affirmative defense of self-defense, defense of 41
another, or defense of that person's residence is not available 42
in a tort action to any of the following: 43

(1) A person who uses force during the person's attempted 44

commission, commission, or escape after the commission or 45
attempted commission of a felony offense of violence; 46

(2) A person who uses force against another, who is an 47
aggressor, if the person initially provoked the aggressor to use 48
force or threat of force against the person, unless either of 49
the following apply: 50

(a) The use of force or threat of force by the aggressor 51
is sufficient for the person's reasonable belief that the person 52
is in imminent danger of death or great bodily harm, and the 53
person exhausts all reasonable means of escape other than the 54
use of force or threat of force that is likely to cause death or 55
great bodily harm to the aggressor. 56

(b) The use of force or threat of force by the aggressor 57
continues or resumes after the person, in good faith, withdraws 58
from physical contact and clearly indicates the desire to 59
withdraw and terminate the use of force or threat of force by 60
the person or the aggressor. 61

(3) A person who uses force to resist an unlawful arrest, 62
if the person uses the force against a peace officer and the 63
person using the force knows the person making the arrest is a 64
peace officer; 65

(4) A person who uses force to resist a lawful arrest, if 66
the person uses the force against a person making the arrest or 67
against a person assisting in making the arrest; 68

(5) A person who uses force against a peace officer, or a 69
person assisting a peace officer, if the peace officer is acting 70
in the performance of the peace officer's official duties; 71

(6) A person who uses force while committing a violation 72
of section 2923.13 of the Revised Code. 73

(D) The fact that an affirmative defense is not available 74
to a person under division (C) of this section does not affect 75
the person's right to bring any affirmative defense available to 76
the person under the common law of this state prior to the 77
effective date of this amendment. 78

(E) Except as provided in division (C) of this section, 79
the immunity from civil action provided in division (A) of 80
section 2901.092 of the Revised Code, and the requirement for an 81
award in a civil action of reasonable attorney's fees, court 82
costs, compensation for loss of income, and expenses incurred 83
that is set forth in division (C) of that section, apply 84
regarding a tort action described in this section. 85

(F) (1) In a tort action filed against a person related to 86
the person's use or threatened use of force, including deadly 87
force, against another, the person has a right to a pretrial 88
immunity hearing, as described in division (F) (2) of this 89
section, regarding a claim of immunity from liability for 90
injury, death, or loss to another based on self-defense, defense 91
of another, or defense of that person's residence. 92

(2) A person who is a defendant in a tort action of the 93
type described in division (F) (1) of this section who would like 94
a pretrial hearing as described in that division shall file a 95
pretrial motion claiming that the person used or threatened to 96
use the force, including deadly force, in self-defense, defense 97
of another, or defense of that person's residence. The filing of 98
the motion establishes a prima facie claim of self-defense, 99
defense of another, or defense of that person's residence. Upon 100
the filing of the motion, the court shall hold a pretrial 101
immunity hearing and shall grant the motion and hold that the 102
person used or threatened to use the force, including deadly 103

force, in self-defense, defense of another, or defense of that 104
person's residence unless the party seeking to overcome the 105
immunity provides substantial evidence that the person did not 106
use or threaten to use the force, including deadly force, in 107
self-defense, defense of another, or defense of that person's 108
residence. 109

Sec. 2901.05. (A) (1) Every person accused of an offense is 110
presumed innocent until proven guilty beyond a reasonable doubt, 111
and the burden of proof for all elements of the offense is upon 112
the prosecution. The burden of going forward with the evidence 113
of an affirmative defense, and the burden of proof, by a 114
preponderance of the evidence, for an affirmative defense other 115
than self-defense, defense of another, or defense of the 116
accused's residence presented as described in division (B) (1) of 117
this section, is upon the accused. 118

(2) A person accused of an offense that involved the 119
person's use or threatened use of force, including deadly force, 120
against another has a right to a pretrial immunity hearing, as 121
described in division (B) (1) of this section, regarding a claim 122
of immunity from criminal prosecution based on self-defense, 123
defense of another, or defense of that person's residence. 124

(B) (1) A person ~~is allowed~~ accused of an offense that 125
involved the person's use or threatened use of force, including 126
deadly force, against another who would like a pretrial hearing 127
as described in division (A) (2) of this section shall file a 128
pretrial motion claiming that the person used or threatened to 129
act use the force, including deadly force, in self-defense, 130
defense of another, or defense of that person's residence. ~~If,~~ 131
~~at~~ The filing of the motion establishes a prima facie claim of 132
self-defense, defense of another, or defense of that person's 133

residence. Upon the trial-filing of a person who is accused of- 134
an offense that involved the person's use of force against- 135
another, there is evidence presented that tends to support- 136
motion, the court shall hold a pretrial immunity hearing and 137
shall grant the motion and hold that the accused person used or 138
threatened to use the force, including deadly force, in self- 139
defense, defense of another, or defense of that person's 140
residence,unless the prosecution must prove beyond a reasonable- 141
doubt state proves by clear and convincing evidence that the 142
accused person did not use or threaten to use the force, 143
including deadly force, in self-defense, defense of another, or 144
defense of that person's residence, as the case may be. 145

(2) Subject to division (B)(3) of this section, a person 146
is presumed to have acted in self-defense or defense of another 147
when using defensive or threatening to use deadly force that is 148
intended or likely to cause death or great bodily harm to 149
another if any of the following apply: 150

(a) The person against whom the defensive deadly force is 151
used or threatened is in the process of unlawfully and without 152
privilege to do so entering, or has unlawfully and without 153
privilege to do so entered, the residenceor, occupied vehicle 154
occupied by, or place of business or employment, of the person 155
using or threatening to use the defensive deadly force, or any 156
other place in which the person using or threatening to use the 157
deadly force is lawfully present; 158

(b) The person against whom the deadly force is used or 159
threatened is by force or threat removing or attempting to 160
unlawfully remove another person against the other person's will 161
from any place that the person using or threatening to use the 162
deadly force is lawfully present; 163

(c) The person using or threatening to use the deadly force knows or has reason to believe that any of the conditions set forth in division (B) (2) (a) or (b) of this section are occurring or have occurred. 164
165
166
167

(3) The presumption set forth in division (B) (2) of this section does not apply if ~~either, at the time the deadly force is used or threatened, any~~ of the following ~~is true~~ circumstances are present: 168
169
170
171

(a) The person against whom the ~~defensive deadly force~~ is used or threatened has a right to be in, ~~or is a lawful resident of, the residence or vehicle~~ place where the person used or threatened to use the deadly force, and a protective or no-contact order is not in effect against the person against whom the deadly force is used or threatened. 172
173
174
175
176
177

(b) The person sought to be removed as described in division (B) (2) (b) of this section is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the deadly force is used or threatened. 178
179
180
181
182

(c) The person who uses or threatens to use the defensive deadly force uses or threatens to use it while engaged in a criminal offense, while attempting to escape from the scene of a criminal offense that the person has committed, or while using the residence, place of business or employment, or occupied vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle further a criminal offense. 183
184
185
186
187
188
189

(d) The person against whom the deadly force is used or threatened is a law enforcement officer who has entered or is attempting to enter a residence, place of business or 190
191
192

employment, or occupied vehicle in the lawful performance of the 193
law enforcement officer's official duties, and either the 194
officer identified himself or herself as a law enforcement 195
officer in accordance with any applicable law or the person 196
using or threatening to use the deadly force knows or reasonably 197
should know that the person who has entered or is attempting to 198
enter is a law enforcement officer. 199

(4) The presumption set forth in division (B) (2) of this 200
section is a rebuttable presumption and may be rebutted by a 201
preponderance of the evidence, provided that the prosecution's 202
burden of proof remains ~~proof beyond a reasonable doubt by clear~~ 203
and convincing evidence as described in ~~divisions (A) and~~ 204
division (B) (1) of this section. 205

(C) As part of its charge to the jury in a criminal case, 206
the court shall read the definitions of "reasonable doubt" and 207
"proof beyond a reasonable doubt," contained in division ~~(D)~~ (E) 208
of this section. 209

(D) As used in this section: 210

(1) An "affirmative defense" is either of the following: 211

(a) A defense expressly designated as affirmative; 212

(b) A defense involving an excuse or justification 213
peculiarly within the knowledge of the accused, on which the 214
accused can fairly be required to adduce supporting evidence. 215

(2) "Dwelling" means a building or conveyance of any kind 216
that has a roof over it and that is designed to be occupied by 217
people lodging in the building or conveyance at night, 218
regardless of whether the building or conveyance is temporary or 219
permanent or is mobile or immobile. As used in this division, a 220
building or conveyance includes, but is not limited to, an 221

attached porch, and a building or conveyance with a roof over it 222
includes, but is not limited to, a tent. 223

(3) "Residence" means a dwelling in which a person resides 224
either temporarily or permanently or is visiting as a guest. 225

(4) "Vehicle" means a conveyance of any kind, whether or 226
not motorized, that is designed to transport people or property. 227

(E) "Reasonable doubt" is present when the jurors, after 228
they have carefully considered and compared all the evidence, 229
cannot say they are firmly convinced of the truth of the charge. 230
It is a doubt based on reason and common sense. Reasonable doubt 231
is not mere possible doubt, because everything relating to human 232
affairs or depending on moral evidence is open to some possible 233
or imaginary doubt. "Proof beyond a reasonable doubt" is proof 234
of such character that an ordinary person would be willing to 235
rely and act upon it in the most important of the person's own 236
affairs. 237

Sec. 2901.09. (A) As used in this section, ~~"residence" and~~ 238
~~"vehicle" have~~ and in sections 2901.091 and 2901.092 of the 239
Revised Code: 240

(1) "Peace officer" has the same meaning as in 241
section 2901.05-2935.01 of the Revised Code. 242

(2) "Reasonable force" means the use or threatened use of 243
force that a reasonable person would judge to be necessary to 244
prevent an injury or loss and can include deadly force if a 245
person reasonably believes that using or threatening to use such 246
force is necessary to avoid injury or risk to the person's life 247
or safety or the life or safety of another. 248

(3) "Residence" has the same meaning as in section 2901.05 249
of the Revised Code. 250

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

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

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

~~(3) A person who lawfully is in that person's residence has no duty to retreat before using 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 is justified in the use of or threat to use reasonable force, including deadly force, when the person reasonably believes that such force is necessary to defend the person or another from any actual or imminent use of unlawful force.~~

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

(5) 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 280
reasonable basis for the person's belief and the person acts 281
reasonably in response to that belief. 282

(C) The affirmative defense of self-defense, defense of 283
another, or defense of that person's residence is not available 284
in a criminal action to any of the following: 285

(1) A person who uses force during the person's attempted 286
commission, commission, or escape after the commission or 287
attempted commission of a felony offense of violence; 288

(2) A person who uses force against another, who is an 289
aggressor, if the person initially provoked the aggressor to use 290
force or threat of force against the person, unless either of 291
the following apply: 292

(a) The use of force or threat of force by the aggressor 293
is sufficient for the person's reasonable belief that the person 294
is in imminent danger of death or great bodily harm, and the 295
person exhausts all reasonable means of escape other than the 296
use of force or threat of force that is likely to cause death or 297
great bodily harm to the aggressor. 298

(b) The use of force or threat of force by the aggressor 299
continues or resumes after the person, in good faith, withdraws 300
from physical contact and clearly indicates the desire to 301
withdraw and terminate the use of force or threat of force by 302
the person or the aggressor. 303

(3) A person who uses force to resist an unlawful arrest, 304
if the person uses the force against a peace officer and the 305
person using the force knows the person making the arrest is a 306
peace officer; 307

(4) A person who uses force to resist a lawful arrest, if 308

the person uses the force against a person making the arrest or 309
against a person assisting in making the arrest; 310

(5) A person who uses force against a peace officer, or a 311
person assisting a peace officer, if the peace officer is acting 312
in the performance of the peace officer's official duties; 313

(6) A person who uses force while committing a violation 314
of section 2923.13 of the Revised Code. 315

(D) The fact that an affirmative defense is not available 316
to a person under division (C) of this section does not affect 317
the person's right to bring any affirmative defense available to 318
the person under the common law of this state prior to the 319
effective date of this amendment. 320

Sec. 2901.091. (A) As used in this section, "forcible 321
felony" means any of the following: 322

(1) A felony violation of section 2903.01, 2903.02, 323
2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2907.02, 324
2907.03, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, or 2911.12 325
of the Revised Code; 326

(2) Any felony offense not identified in division (A) (1) 327
of this section that involves the use or threatened use of 328
physical force or violence against any individual. 329

(B) A person who reasonably believes that another person 330
is committing or is about to commit a forcible felony and who 331
uses or threatens to use reasonable force, including deadly 332
force, as authorized under section 2901.09 of the Revised Code, 333
is justified in using or threatening to use reasonable force, 334
including deadly force, against the other person to prevent or 335
halt the commission of the forcible felony. 336

Sec. 2901.092. (A) A person who uses or threatens to use 337
reasonable force, including deadly force, in accordance with 338
section 2901.09 or 2901.091 of the Revised Code shall be immune 339
from arrest, the filing of criminal charges, criminal 340
prosecution, or civil action arising from the person's use or 341
threatened use of the reasonable force, including deadly force. 342

(B) A law enforcement officer may use standard 343
investigating procedures for investigating the use or threatened 344
use of force, including deadly force, but the law enforcement 345
officer shall not arrest a person for the person's use or 346
threatened use of force, including deadly force, unless the law 347
enforcement officer has probable cause to believe that the 348
person's use or threatened use of force, including deadly force, 349
was not justified under section 2901.09 or 2901.091 of the 350
Revised Code. 351

(C) The court shall award reasonable attorney's fees, 352
court costs, compensation for loss of income, and all expenses 353
incurred by the defendant in defense of any civil action brought 354
by a plaintiff if the court finds that the defendant is immune 355
from criminal prosecution or civil action as provided in 356
division (A) of this section. 357

Section 2. That existing sections 2307.601, 2901.05, and 358
2901.09 of the Revised Code are hereby repealed. 359

Section 3. This act shall be known as the Ohio Stand Your 360
Ground Act. 361