

As Introduced

134th General Assembly

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H. B. No. 38

Representatives West, Miller, A.

Cosponsors: Representatives Blackshear, Boggs, Boyd, Brent, Brown, Crawley, Denson, Galonski, Hicks-Hudson, Howse, Ingram, Jarrells, Kelly, Leland, Lepore-Hagan, Lightbody, Liston, Miller, J., Miranda, Robinson, Russo, Sheehy, Skindell, Smith, K., Smith, M., Sobecki, Sweeney, Sykes, Upchurch, Weinstein

A BILL

To amend sections 2307.601, 2901.05, and 2901.09 of
the Revised Code to limit the locations at which
a person has no duty to retreat.

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

Section 1. That sections 2307.601, 2901.05, and 2901.09 of
the Revised Code be amended to read as follows:

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

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

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

(B) For purposes of determining the potential liability of
a person in a tort action related to the person's use of force
alleged to be in self-defense, defense of another, or defense of
the person's residence, if the person lawfully is in that
person's residence, the person has no duty to retreat before

using force in self-defense, defense of another, or defense of 16
that person's residence, and, if the person lawfully is an 17
occupant of that person's vehicle or lawfully is an 18
occupant in a place in which vehicle owned by an immediate 19
family member of the person lawfully, the person has a right no 20
duty to be retreat before using force in self-defense or defense 21
of another. 22

~~(C) A trier of fact shall not consider the possibility of 23
retreat as a factor in determining whether or not a person who 24
used force in self-defense, defense of another, or defense of 25
that person's residence reasonably believed that the force was 26
necessary to prevent injury, loss, or risk to life or safety. 27~~

Sec. 2901.05. (A) Every person accused of an offense is 28
presumed innocent until proven guilty beyond a reasonable doubt, 29
and the burden of proof for all elements of the offense is upon 30
the prosecution. The burden of going forward with the evidence 31
of an affirmative defense, and the burden of proof, by a 32
preponderance of the evidence, for an affirmative defense other 33
than self-defense, defense of another, or defense of the 34
accused's residence ~~presented~~ as described in division (B)(1) of 35
this section, is upon the accused. 36

(B)(1) A person is allowed to act in self-defense, defense 37
of another, or defense of that person's residence. If, at the 38
trial of a person who is accused of an offense that involved the 39
person's use of force against another, there is evidence 40
presented that tends to support that the accused person used the 41
force in self-defense, defense of another, or defense of that 42
person's residence, the prosecution must prove beyond a 43
reasonable doubt that the accused person did not use the force 44
in self-defense, defense of another, or defense of that person's 45

residence, as the case may be. 46

(2) Subject to division (B)(3) of this section, a person 47
is presumed to have acted in self-defense or defense of another 48
when using defensive force that is intended or likely to cause 49
death or great bodily harm to another if the person against whom 50
the defensive force is used is in the process of unlawfully and 51
without privilege to do so entering, or has unlawfully and 52
without privilege to do so entered, the residence or vehicle 53
occupied by the person using the defensive force. 54

(3) The presumption set forth in division (B)(2) of this 55
section does not apply if either of the following is true: 56

(a) The person against whom the defensive force is used 57
has a right to be in, or is a lawful resident of, the residence 58
or vehicle. 59

(b) The person who uses the defensive force uses it while 60
in a residence or vehicle and the person is unlawfully, and 61
without privilege to be, in that residence or vehicle. 62

(4) The presumption set forth in division (B)(2) of this 63
section is a rebuttable presumption and may be rebutted by a 64
preponderance of the evidence, provided that the prosecution's 65
burden of proof remains proof beyond a reasonable doubt as 66
described in divisions (A) and (B)(1) of this section. 67

(C) As part of its charge to the jury in a criminal case, 68
the court shall read the definitions of "reasonable doubt" and 69
"proof beyond a reasonable doubt," contained in division (E) of 70
this section. 71

(D) As used in this section: 72

(1) An "affirmative defense" is either of the following: 73

(a) A defense expressly designated as affirmative;	74
(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.	75 76 77
(2) "Dwelling" means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes, but is not limited to, an attached porch, and a building or conveyance with a roof over it includes, but is not limited to, a tent.	78 79 80 81 82 83 84 85
(3) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.	86 87
(4) "Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.	88 89
(E) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.	90 91 92 93 94 95 96 97 98 99
Sec. 2901.09. (A) As used in this section, "residence" has <u>and "vehicle" have the same meaning-meanings</u> as in section 2901.05 of the Revised Code.	100 101 102

(B) For purposes of any section of the Revised Code that 103
sets forth a criminal offense, a person who lawfully is in that 104
person's residence has no duty to retreat before using force in 105
self-defense, defense of another, or defense of that person's 106
residence ~~if,~~ and a person who lawfully is an occupant of that 107
~~person~~ person's vehicle or who lawfully is an occupant in a 108
~~place in which~~ vehicle owned by an immediate family member of 109
the person lawfully ~~has a right~~ no duty to ~~be~~ retreat before 110
using force in self-defense or defense of another. 111

~~(C) A trier of fact shall not consider the possibility of~~ 112
~~retreat as a factor in determining whether or not a person who~~ 113
~~used force in self-defense, defense of another, or defense of~~ 114
~~that person's residence reasonably believed that the force was~~ 115
~~necessary to prevent injury, loss, or risk to life or safety.~~ 116

Section 2. That existing sections 2307.601, 2901.05, and 117
2901.09 of the Revised Code are hereby repealed. 118