



H.B. 541

126th General Assembly
(As Introduced)

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BILL SUMMARY

- States that a person is justified in using force, except deadly force, against another when and to the extent that the person using the force reasonably believes that the use of the force is necessary to defend the person's self or a third person against the imminent use of unlawful force by the person against whom the force is used.
- Specifies that if a person is justified in using force as provided in the previous dot point, that person is justified in the use of deadly force against the other person and does not have a duty to retreat in specified circumstances.
- Provides that a person is justified in the use of defensive force against another that is intended or likely to cause death or serious physical harm to the other person and does not have a duty to retreat if the person using the defensive force holds a reasonable fear of imminent peril of death or serious physical bodily harm to the person's self or a third person.
- States that a person who is not engaged in an unlawful activity and who is attacked in any place where the person has a right to be has no duty to retreat, has the right to stand the person's ground and meet force with force, including deadly force, and is justified in using the force, including deadly force, if the person reasonably believes it is necessary to do so to prevent death or great bodily harm to the person's self or a third person or to prevent the commission of a forcible felony.
- In defense of property, provides that a person is justified in the use of force, except deadly force, against another when and to the extent that the

person using the force reasonably believes that the use of the force is necessary to prevent or terminate the other person's trespass on, or other tortious or criminal interference with, certain real property, and is justified in the use of deadly force against the other person if the person using the deadly force reasonably believes that the use of the deadly force is necessary to prevent the imminent commission of a forcible felony.

- States that a person does not have a duty to retreat when in defense of property, as described in the previous dot point, if the person is in a place where the person has a right to be.
- For the purposes of the use of force, deadly force, or defensive force, creates a presumption that a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.
- Repeals current law's grant of civil immunity in an action by a trespasser and instead grants immunity to a person who is generally justified in using the force, deadly force, or defensive force from criminal prosecution or liability and from liability for injury, death, or loss to person or property in any civil action that is based on or related to the use of the force, deadly force, or defensive force.
- Prohibits a law enforcement agency from arresting the person for using force, deadly force, or defensive force unless the agency determines that there is probable cause to believe that the force, deadly force, or defensive force that was used was unlawful.
- Provides that a person is not justified in the use of force, deadly force, or defensive force if either (1) the person is attempting to commit, committing, or escaping after the commission of a forcible felony or (2) the person initially provokes the use of force against the person's self, unless either (a) the force directed against the person as a result of the provocation is so great that the person reasonably believes that the person is in imminent danger of death or serious physical harm and that the person has exhausted every reasonable means to escape that imminent danger other than the use of force or (b) in good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that the person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

- Specifies that it is the intent of the General Assembly in enacting the bill to supercede, in part, the judicial doctrine of duty to retreat.

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CONTENT AND OPERATION

Use of force

Ohio courts have developed a doctrine of self-defense that generally holds that a person who is outside of the person's place of residence or business and who is attacked has a duty to retreat before using deadly force in self-defense or in defense of another.¹ In enacting the bill, the General Assembly intends to, in part, supercede this doctrine and make other changes to the availability of the use of force. (Section 3.)

Use of force in defense of person

The bill provides that a person is justified in using force, except deadly force, against another when and to the extent that the person using the force reasonably believes that the use of the force is necessary to defend the person's self or a third person against the imminent use of unlawful force by the person against whom the force is used (R.C. 2305.62(A)). If a person is justified in using force as provided in the previous sentence, that person is justified in the use of *deadly force* against the other person and does not have a duty to retreat if either of the following apply (R.C. 2305.62(B)):

¹ See **COMMENT** for a greater explanation of the common law doctrine of self-defense and the duty to retreat.

(1) The person using the deadly force reasonably believes that the use of the deadly force is necessary to prevent imminent death or serious physical harm to the person's self or a third person or to prevent the imminent commission of a forcible felony.²

(2) The circumstances described below in "*Use of defensive force in defense of person*," apply.

Use of defensive force in defense of person

The bill also provides for the use of "defensive force." Under the bill, a person is justified in the use of defensive force against another that is intended or likely to cause death or serious physical harm to the other person and does not have a duty to retreat if the person using the defensive force holds a reasonable fear of imminent peril of death or serious physical bodily harm to the person's self or a third person. Except as provided in the next paragraph, a person is presumed to have held a reasonable fear of imminent peril of death or serious physical harm to the person's self or a third person when using defensive force that is intended or likely to cause death or serious physical bodily harm to another if both of the following apply (R.C. 2305.63(A)(2)):

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or that person had removed or was attempting to remove another against the other person's will from a dwelling, residence, or occupied vehicle.

(2) The person who uses the defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act of a type described in paragraph (1), above, was occurring or had occurred.

This presumption of having held a reasonable fear of imminent peril of death or serious physical harm to the person's self or a third person, however, does not apply in any of the following circumstances (R.C. 2305.63(A)(3)):

(1) The person against whom the defensive force is used has the right to be in, or is a lawful resident of, the dwelling, residence, or vehicle, and that person is not the subject of a protection order issued or consent agreement approved pursuant to R.C. 2903.213, 2903.214, 2919.26, or 3113.31, a protection order issued by a court of another state, or a protection order issued pursuant to R.C.

² The bill does not define the term "forcible felony" and perhaps should be changed to the term "offense of violence" which is defined in R.C. 2901.01(A)(9).

2945.04.³ For the purposes of this provision, a person who has the right to be in, or is a lawful resident of, a dwelling, residence, or vehicle includes, but is not limited to, the owner, lessee, or titleholder of the dwelling, residence, or vehicle.

(2) The person sought to be removed by the person against whom the defensive force was used is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used.

(3) The person who uses the defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity.

(4) The person against whom the defensive force is used is a law enforcement officer who is entering or attempting to enter a dwelling, residence, or vehicle in the performance of the officer's official duties, and either the officer identified himself or herself as a law enforcement officer in accordance with any applicable law, or the person using the defensive force knew or reasonably should have known that the person entering or attempting to enter the dwelling, residence, or vehicle was a law enforcement officer.

Use of force when attacked

The bill specifies that a person who is not engaged in an unlawful activity and who is attacked in any place where the person has a right to be has no duty to retreat, has the right to stand the person's ground and meet force with force, including deadly force, and is justified in using the force, including deadly force, if the person reasonably believes it is necessary to do so to prevent death or great bodily harm to the person's self or a third person or to prevent the commission of a forcible felony (R.C. 2305.63(B)).

Use of force in defense of property

The bill provides that a person is justified in the use of force, except deadly force, against another when and to the extent that the person using the force reasonably believes that the use of the force is necessary to prevent or terminate the other person's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property that lawfully is in the person's possession, that lawfully is in the possession of a third person who is a member of the person's immediate family or household, or that is property of a third person whose property the person has a legal duty to protect. A person who

³ "Protection order issued by a court of another state" has the same meaning as in R.C. 2919.27.

is justified in using force, as provided in the previous sentence, is justified in the use of deadly force against the other person only if the person using the deadly force reasonably believes that the use of the deadly force is necessary to prevent the imminent commission of a forcible felony. Additionally, a person does not have a duty to retreat if the person is in a place where the person has a right to be. (R.C. 2305.64.)

Presumption common to use of force, deadly force, and defensive force

The bill provides that for the purposes of the use of force, deadly force, or defensive force as described above in "**Use of force in defense of person,**" "**Use of defensive force in defense of person,**" "**Use of force when attacked,**" and "**Use of force in defense of property,**" a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence (R.C. 2305.62(C), 2305.63(C), and 2305.64(D)).

Immunity from liability

Current law

R.C. 2305.40(B)(1) provides that the owner, lessee, or renter of real property or a member of the owner's, lessee's, or renter's family who resides on the property is not liable in damages to a trespasser on the property, to a member of the family of the trespasser, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member if, at the time the injury, death, or loss to person or property allegedly is caused, all of the following apply:

(1) The owner, lessee, renter, or family member is inside a building or other structure on the property that is maintained as a permanent or temporary dwelling.

(2) The trespasser has made, is making, or is attempting to make an unlawful entry into the building or other structure.

(3) The owner, lessee, renter, or family member uses reasonably necessary force to repel the trespasser from the building or other structure or to prevent the trespasser from making the unlawful entry into that building or other structure.

For purposes of this immunity, "reasonably necessary force" may include the taking of or attempting to take the trespasser's life, or causing or attempting to cause physical harm or serious physical harm to the trespasser, if the owner, lessee, or renter of real property or family member who resides on the property has a reasonable good faith belief that the owner, lessee, or renter or family member is

in imminent danger of death or serious physical harm to person and that the only means to escape from the imminent danger is to use deadly force or other force that likely will cause physical harm or serious physical harm to the person of the trespasser, even if the owner, lessee, renter, or family member is mistaken as to the existence or imminence of the danger of death or serious physical harm to person (R.C. 2305.40(B)(2)).

In order to qualify for the immunity, an owner, lessee, or renter of real property or family member who resides on the property *is not required to retreat* from the building prior to using reasonably necessary force to repel a trespasser from the building or other structure or to prevent a trespasser from making an unlawful entry into the building or other structure (R.C. 2305.40(B)(3)).

Even if this specified immunity does not apply, the owner, lessee, or renter of real property or family member who resides on the property is still not liable in damages to a trespasser on the property, to a member of the family of the trespasser, or to any other person in a tort action for injury, death, or loss to person or property of the trespasser that allegedly is caused by the owner, lessee, renter, or family member if, at the time the injury, death, or loss to person or property allegedly is caused, none of the following applies (R.C. 2305.40(C)):

(1) The injury, death, or loss to person or property is caused by a physical assault of the owner, lessee, renter, or family member upon the trespasser other than in self-defense or defense of a third person.

(2) Self-defense or defense of a third person is not involved, and the injury, death, or loss to person or property is caused by a vehicle driven or otherwise set in motion, a firearm shot, or any other item of tangible personal property held, driven, set in motion, projected, or thrown by the owner, lessee, renter, or family member with the intent to cause injury, death, or loss to person or property of the trespasser or with the intent to cause the trespasser to believe that the owner, lessee, renter, or family member would cause injury, death, or loss to person or property of the trespasser.

(3) Under circumstances not described in paragraphs (1) or (2), above, self-defense or defense of a third person is not involved, and the owner, lessee, renter, or family member intends to create a risk of injury, death, or loss to person or property of any trespasser by direct or indirect means, including, but not limited to, the use of spring guns, traps, or other dangerous instrumentalities.

This immunity from civil liability is subject to the following limitations (R.C. 2305.40(D)):

(1) This immunity does not create a new cause of action or substantive legal right against the owner, lessee, or renter of real property or a family member who resides on the property.

(2) This immunity does not affect any civil liability under another section of the Revised Code or Ohio common law of an owner, lessee, or renter of real property or a family member who resides on the property with respect to individuals other than trespassers, including, but not limited to, civil liability to invitees or licensees.

(3) This immunity does not affect any immunities from or defenses to civil liability established by another section of the Revised Code or available at common law to which the owner, lessee, or renter of real property or a family member who resides on the property may be entitled with respect to individuals other than trespassers, including, but not limited to, immunities from or defenses to civil liability to invitees or licensees.

(4) This immunity does not affect any criminal liability that the owner, lessee, or renter of real property or a family member who resides on the property may have for injury, death, or loss to person or property of a trespasser, invitee, or licensee on the property.

(5) This immunity does not affect any immunities from or defenses to civil liability established by another section of the Revised Code or available at common law to which an individual other than the owner, lessee, or renter of real property or a family member who resides on the property may be entitled in connection with injury, death, or loss to person or property of a trespasser on real property owned, leased, or rented by another person, including, but not limited to, self-defense or defense of third persons.

Operation of the bill

The bill repeals the provision dealing with civil immunity to a trespasser described above in "**Current law**," and instead enacts a new provision that grants immunity from criminal prosecution or liability and from liability for injury, death, or loss to person or property in any civil action that is based on or related to the use of the force, deadly force, or defensive force. Under the bill, if a person permissibly uses force, deadly force, or defensive force as described above in "**Use of force in defense of person**," "**Use of defensive force in defense of person**," "**Use of force when attacked**," and "**Use of force in defense of property**," that person is generally justified in using the force, deadly force, or defensive force and is immune from criminal prosecution or liability and from liability for injury, death, or loss to person or property in any civil action that is based on or related to

the use of the force, deadly force, or defensive force.⁴ However, a person does not have justification for the use of force or immunity from criminal prosecution or liability or civil liability if all of the following apply (R.C. 2305.65(A)):

(1) The person against whom the force, deadly force, or defensive force was used is a law enforcement officer who was acting in the performance of the officer's official duties.

(2) The officer identified himself or herself in accordance with any applicable law, or the person using the force, deadly force, or defensive force knew or reasonably should have known that the person was a law enforcement officer.

If a person is sued in a civil action that is based on or related to the use of force, deadly force, or defensive force and the court finds that the immunity, described above, applies to the person, the court must award to the person reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the person in defense of the civil action (R.C. 2305.65(C)).

Law enforcement investigation of use of force

The bill specifies that a law enforcement agency may use standard procedures for investigating a person for the use of force, deadly force, or defensive force as described above in "**Immunity from liability.**" However, the bill prohibits a law enforcement agency from arresting the person for using the force, deadly force, or defensive force unless the agency determines that there is probable cause to believe that the force, deadly force, or defensive force that was used was unlawful. (R.C. 2305.65(B).)

When there is no justification for the use of force

The bill provides that a person is not justified in the use of force, deadly force, or defensive force if either of the following applies (R.C. 2305.66):

(1) The person is attempting to commit, committing, or escaping after the commission of a forcible felony.

(2) The person initially provokes the use of force against the person's self, unless either of the following applies:

⁴ "Criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant (R.C. 2305.65(A)).

(a) The force directed against the person as a result of the provocation is so great that the person reasonably believes that the person is in imminent danger of death or serious physical harm and that the person has exhausted every reasonable means to escape that imminent danger other than the use of force that is likely to cause death or serious physical harm to the assailant.

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that the person desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Definitions

The bill defines several terms for purposes of the above described provisions (R.C. 2305.61).

"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. "Dwelling" includes any building or conveyance of one of these types, regardless of whether the building or conveyance is temporary or permanent, or mobile or immobile. "Dwelling" also includes any attached porch or tent that has a roof over it and that is designed to be occupied by people lodging in it at night. (R.C. 2305.61(A).)

"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest (R.C. 2305.61(B)).

"Third person" means, in a context in which force, deadly force, or defensive force is used, any person other than the person who uses the force, deadly force, or defensive force and other than the person against whom the force, deadly force, or defensive force is used (R.C. 2305.61(C)).

"Vehicle" means a conveyance of any kind, whether or not motorized, that is designed to transport people or property (R.C. 2305.61(D)).

COMMENT

Under Ohio jurisprudence, if a defendant in a criminal case offers the affirmative defense of self-defense, the defendant must prove all of the following:

(1) The defendant was not at fault in creating the situation giving rise to the affray.

(2) The defendant had a bona fide belief that he or she was in imminent danger of death or great bodily harm and that the defendant's only means of escape from such danger was in the use of force.

(3) *The defendant did not violate any duty to retreat.*⁵

With respect to the duty to retreat, Ohio courts have held that in most circumstances, a person may not kill in self-defense if the person has available a reasonable means of retreat from the confrontation. However, the exception to this general rule is that there is no duty to retreat from one's own home or business.⁶ This exception also applies to a person who uses lethal force in self-defense against a cohabitant with an equal right to be in the house.⁷

Thus, if a defendant can prove that lethal force was used in a home or business or that there were no reasonable means of retreat (meaning that the defendant did not violate a duty to retreat), then the defendant can use the affirmative defense of self-defense if the defendant also proves the first two elements of self-defense.

There is no requirement that a person retreat, even if retreat is possible, before using non-lethal force.⁸ Thus, the defendant need only prove the first two elements of self-defense when using non-lethal force.

HISTORY

ACTION	DATE
Introduced	03-21-06

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⁵ State v. Barnes (2002), 94 Ohio St.3d 21.

⁶ See State v. Williford (1990), 49 Ohio St.3d 247, as applicable in a home and Graham v. State (1918), 98 Ohio St. 77, as applicable in a business. The meaning of "home" has been held to include a tent (State v. Marsh (1990), 71 Ohio App.3d 64) and a prison cell (State v. Cassano (2002), 96 Ohio St.3d 94; defendant was obligated to occupy prison cell, and retreat was impossible).

⁷ State v. Thomas (1997), 77 Ohio St.3d 323.

⁸ Columbus v. Dawson (1986), 33 Ohio App.3d 141.