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BILL SUMMARY

- Provides that a person is presumed to have acted in self defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.
- Specifies that the presumption described in the preceding dot point is a rebuttable presumption and may be rebutted by a preponderance of the evidence.
- Specifies that the presumption described in the second preceding dot point paragraph does not apply if: (1) the person against whom the defensive force is used has the right to be in, or is a lawful resident of, the residence or vehicle, or (2) the person who uses the defensive force uses it while in a residence and the person is unlawfully, and without privilege to be, in that residence.
- Provides that, for purposes of any Revised Code section that sets forth a criminal offense, 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.

- Provides that, except as described in the next dot point, recovery on a claim in a tort action is barred to any person or the person's legal representative if any of the following apply: (1) the person engaged in conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence and that conduct was a proximate cause of the injury or loss for which the relief is claimed in the tort action, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor, (2) the person suffered the injury or loss for which relief is claimed in the tort action as a proximate result of the victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence acting against the person in self-defense, defense of another, or defense of the victim's residence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor (this provision does not apply if the person who suffered the injury or loss, at the time of the victim's act of self-defense, defense of another, or defense of residence, was an innocent bystander who had no connection with the underlying conduct that prompted the victim's exercise of self-defense, defense of another, or defense of residence), or (3) the claim is against a victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, on a claim for relief in a tort action, and conduct the person engaged in against the victim was a proximate cause of the injury or loss for which relief is claimed in the tort action and that conduct, if prosecuted, would constitute a felony, a misdemeanor offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or the misdemeanor.
- Specifies that the immunity provisions described in the preceding dot point do not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or

alleged violations of statutes of the United States pertaining to civil rights.

- Specifies that, for purposes of the "intentionally tortious conduct" provision described in the preceding dot point, both as it relates to an existing provision that bars recovery in specified circumstances by a person convicted of a felony or a misdemeanor offense of violence and as it relates to the new immunity provisions described in the second preceding dot point, a person's act of self-defense, defense of another, or defense of the person's residence does not constitute intentionally tortious conduct.
- Provides that, 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 that person's residence, and if the person lawfully is an occupant of that person's vehicle or lawfully is an occupant in a vehicle owned by an immediate family member of the person, the person has no duty to retreat before using force in self-defense or defense of another.
- Modifies existing provisions regarding mandatory prison terms for firearms specification convictions by: (1) repealing the existing provision that specifies that a court cannot impose more than one prison term on an offender under the provisions for felonies committed as part of the same act or transaction, and (2) specifying that, if an offender is convicted of two or more felonies and also is convicted of a firearms specification in connection with two or more of the felonies of which the offender is convicted, the sentencing court must impose on the offender the applicable firearms specification prison term for each of the two most serious specifications of which the offender is convicted and, in its discretion, also may impose on the offender the applicable firearms specification prison term for any or all of the remaining specifications.
- Modifies existing provisions regarding mandatory prison terms for "discharge of a firearm at a peace officer or corrections officer" specification convictions by: (1) repealing the existing provision that specifies that a court cannot impose more than one prison term on an offender under the provisions for felonies committed as part of the same act or transaction, and (2) specifying that, if an offender is convicted of

two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of a "discharge of a firearm at a peace officer or corrections officer" specification in connection with two or more of the felonies of which the offender is convicted, the sentencing court must impose on the offender the applicable prison term for each of two of the specifications of which the offender is convicted and, in its discretion, also may impose on the offender the applicable prison term for any or all of the remaining specifications.

TABLE OF CONTENTS

Rebuttable presumption of self-defense or defense of others and of reasonable fear of imminent peril of death or serious physical harm, in certain circumstances	4
Existing law	4
Operation of the bill.....	5
No duty to retreat--for purposes of criminal offense.....	6
Barring of recovery of damages in a civil action	6
Existing law	6
Operation of the bill.....	7
No duty to retreat--for purposes of tort action	8
Sentencing regarding multiple gun specifications for multiple felonies.....	8
Prison term for convicted felon also convicted of a firearm specification	8
Prison term for certain convicted felon also convicted of a specification charging discharge of a firearm from a motor vehicle	10
Prison term for certain convicted felons also convicted of a specification charging commission of the offense by discharging a firearm at a peace officer or a corrections officer.....	12

CONTENT AND OPERATION

Rebuttable presumption of self-defense or defense of others and of reasonable fear of imminent peril of death or serious physical harm, in certain circumstances

Existing law

Existing law specifies that, if a person is accused of a criminal offense: (1) the person is presumed innocent until "proven guilty beyond a reasonable doubt" (see **COMMENT 1**), (2) the burden of proof for all elements of the offense is upon the prosecution, and (3) the burden of going forward with the evidence of an

affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused. As used in these provisions, an "affirmative defense" is either a defense expressly designated as affirmative, or 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 (see **COMMENT 2** for a few examples of affirmative defenses). (R.C. 2901.05.)

Operation of the bill

The bill specifies that, subject to the provision described in the next paragraph, a person is presumed to have acted in "self defense" (see **COMMENT 3**) or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process or unlawfully and without "privilege" (see **COMMENT 4**) to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force. The presumption described in this paragraph is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

The bill specifies that the presumption described in the preceding paragraph does not apply in either of the following situations: (1) if the person against whom the defensive force is used has the right to be in, or is a lawful resident of, the residence or vehicle, or (2) if the person who uses the defensive force uses it while in a residence and the person is unlawfully, and without "privilege" (see **COMMENT 4**) to be, in that residence. (R.C. 2901.05(B).)

As used in the provisions described in the two preceding paragraphs (R.C. 2901.05(D)):

(1) "Residence" means a "dwelling" (see (2), below) in which a person resides either temporarily or permanently or is visiting as a guest.

(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 definition, 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.

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

No duty to retreat--for purposes of criminal offense

The bill provides that, for purposes of any Revised Code section that sets forth a criminal offense, a person who lawfully is in that person's "residence" (see below) 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" (see below) 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. As used in this provision, "residence" and "vehicle" have the same meanings as are described above in "**Operation of the bill**" under "**Rebuttable presumption of self-defense or defense of others and of reasonable fear of imminent peril of death or serious physical harm, in certain circumstances.**" (R.C. 2901.09.)

Barring of recovery of damages in a civil action

Existing law

Existing law specifies that recovery on a claim for relief in a "tort action" (see below) is barred to any person or the person's legal representative if the person has been convicted of or has pleaded guilty to a felony, or to a misdemeanor that is an "offense of violence" (see **COMMENT 5**), arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the action. This provision does not apply to civil claims based upon alleged intentionally tortious conduct, alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights. As used in this provision, "tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons; "tort action" includes, but is not limited to, a product liability claim, as defined in R.C. 2307.71, and an asbestos claim, as defined in R.C. 2307.91, an action for wrongful death under R.C. Chapter 2125., and an action based on derivative claims for relief. (R.C. 2307.60(B); see **COMMENT 6** regarding existing immunities from civil liability in certain self-defense and repelling-of-trespasser scenarios.)

Existing law also provides that anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or a Revised Code section or under Ohio common law, and may recover punitive or exemplary damages if authorized by a Revised Code section (R.C. 2307.60(A) and (B)(1)).

Operation of the bill

The bill enacts new bars to recovery in tort actions, in addition to the existing provision that bars recovery on a claim for relief in a tort action if the person injured was convicted of or pleaded guilty to a felony, or to a misdemeanor offense of violence, arising out of criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the action. Under the bill, in addition to the existing bar to recovery, recovery on a claim for relief in a tort action also is barred to any person or the person's legal representative if either of the following applies: (1) the person engaged in conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an "offense of violence" (see **COMMENT 5**), an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence and that conduct was a proximate cause of the injury or loss for which the relief is claimed in the tort action, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor, or (2) the person suffered the injury or loss for which relief is claimed in the tort action as a proximate result of the victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence acting against the person in self-defense, defense of another, or defense of the victim's residence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or misdemeanor. The bill specifies that the provision described in clause (2) of the preceding sentence does not apply if the person who suffered the injury or loss, at the time of the victim's act of self-defense, defense of another, or defense of residence, was an innocent bystander who had no connection with the underlying conduct that prompted the victim's exercise of self-defense, defense of another, or defense of residence.

The bill also provides that recovery against a victim of conduct that, if prosecuted, would constitute a felony, a misdemeanor that is an offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, on a claim for relief in a tort action is barred to any person or the person's legal representative if conduct the person engaged in against that person (the victim) was a proximate cause of the injury or loss for which relief is claimed in the tort action and that conduct, if prosecuted, would constitute a felony, a misdemeanor offense of violence, an attempt to commit a felony, or an attempt to commit a misdemeanor that is an offense of violence, regardless of whether the person has been convicted of or pleaded guilty to or has been charged with committing the felony, the misdemeanor, or the attempt to commit the felony or the misdemeanor.

The immunity provisions added by the bill do not apply to civil claims based upon alleged "intentionally tortious conduct," alleged violations of the United States Constitution, or alleged violations of statutes of the United States pertaining to civil rights. The bill specifies that, for purposes of this provision, both as it relates to the existing provision that bars recovery in specified circumstances and as it relates to the new immunity provisions added by the bill, a person's act of self-defense, defense of another, or defense of the person's residence does not constitute intentionally tortious conduct.

The existing definition of "tort action," described above under "Existing law," and the definition of "residence" the bill enacts regarding its affirmative defense provisions, described above in "Rebuttable presumption of self-defense or defense of others and of reasonable fear of imminent peril of death or serious physical harm, in certain circumstances," apply to the provisions added by the bill. (R.C. 2307.60(B); see COMMENT 6 regarding existing immunity from civil liability in certain self-defense, defense of another, or defense of property scenarios.) (R.C. 2307.60(B)(2), (3), and (4).)

No duty to retreat--for purposes of tort action

The bill provides that, for purposes of determining the potential liability of a person in a "tort action" (see below) 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" (see below), the person has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence, and if the person lawfully is an occupant of that person's "vehicle" (see below) or lawfully is an occupant in a vehicle owned by an immediate family member of the person, the person has no duty to retreat before using force in self-defense or defense of another. As used in this provision: (1) "tort action" has the same meaning as is described above in "Barring of recovery of damages in a civil action," and (2) "residence" and "vehicle" have the same meanings as are described above in "Operation of the bill" under "Rebuttable presumption of self-defense or defense of others and of reasonable fear of imminent peril of death or serious physical harm, in certain circumstances." (R.C. 2307.601.)

Sentencing regarding multiple gun specifications for multiple felonies

Prison term for convicted felon also convicted of a firearm specification

Existing law. Existing law provides that, subject to one exception (described in the next paragraph), if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in R.C. 2941.141 that charges the offender with having a firearm on or

about the offender's person or under the offender's control while committing the felony, in R.C. 2941.144 that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony, or in R.C. 2941.145 that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense, the court must impose on the offender one of the following prison terms: (1) a prison term of six years if the specification is of the type described in R.C. 2941.144, (2) a prison term of three years if the specification is of the type described in R.C. 2941.145, or (3) a prison term of one year if the specification is of the type described in section 2941.141. If a court imposes a prison term on an offender under this provision, the prison term cannot be reduced pursuant to R.C. 2929.20 or 2967.193 (judicial release or earned credits), or any other provision of R.C. Chapter 2967. or Chapter 5120. A court cannot impose more than one prison term on an offender under this provision for felonies committed as part of the same act or transaction. (R.C. 2929.14(D)(1)(a) and (b).)

The court cannot impose any prison term described in the preceding paragraph upon an offender for a violation of R.C. 2923.12 or 2923.123 (the offenses of "carrying concealed weapons," "illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse," and "illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse"). The court cannot impose any prison term described in the preceding paragraph upon an offender for a violation of R.C. 2923.13 (the offense of "having weapons while under disability") unless all of the following apply: (1) the offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree, and (2) less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense. (R.C. 2929.14(D)(1)(e).)

If a mandatory prison term is imposed upon an offender pursuant to the provision described in the second preceding paragraph for having a firearm on or about the offender's person or under the offender's control while committing a felony, or if a mandatory prison term is imposed upon an offender under both that provision and the provision described below in "**Prison term for certain convicted felon also convicted of a specification charging discharge of a firearm from a motor vehicle**," the offender must serve any mandatory prison term imposed under either provision consecutively to any other mandatory prison term imposed under either provision or under a provision regarding a prison term imposed for a body armor specification, consecutively to and prior to any prison term imposed for the underlying felony pursuant to the Felony Sentencing Law, and consecutively to

any other prison term or mandatory prison term previously or subsequently imposed upon the offender. When consecutive prison terms are imposed as described in this paragraph, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2929.14(E)(1)(a) and (6).)

Operation of the bill. The bill modifies the existing provisions regarding mandatory prison terms for firearms specification convictions, as described above, in two ways: (1) it repeals the existing provision that specifies that a court cannot impose more than one prison term on an offender under the firearms specification provisions for felonies committed as part of the same act or transaction, and (2) it replaces the repealed provision with a provision that specifies that, if an offender is convicted of or pleads guilty to two or more felonies and also is convicted of or pleads guilty to a firearms specification of the type described in R.C. 2941.141, 2941.144, or 2941.145 in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court must impose on the offender the prison term specified above in "**Existing law**" for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified above in "**Existing law**" for any or all of the remaining specifications. (R.C. 2929.14(D)(1)(b).)

Prison term for certain convicted felon also convicted of a specification charging discharge of a firearm from a motor vehicle

Existing law. Existing law provides that, subject to one exception (described in the next paragraph), if an offender who is convicted of or pleads guilty to a violation of R.C. 2923.161 (the offense of "improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function") or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in R.C. 2941.146 that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of R.C. 2923.161 or for the other felony offense under the Felony Sentencing Law, must impose an additional prison term of five years upon the offender that cannot be reduced pursuant to R.C. 2929.20 or 2967.193 (judicial release or earned credits), or any other provision of R.C. Chapter 2967. or Chapter 5120. A court cannot impose more than one additional prison term on an offender under this provision for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under this provision, the court also must impose a prison term under the provision described above in "**Prison**

term for convicted felon also convicted of a firearm specification" relative to the same offense, provided the criteria specified in that provision for imposing an additional prison term are satisfied relative to the offender and the offense. (R.C. 2929.14(D)(1)(c).)

The court cannot impose any prison term described in the preceding paragraph upon an offender for a violation of R.C. 2923.12 or 2923.123 (the offenses of "carrying concealed weapons," "illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse," and "illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse"). The court cannot impose any prison term described in the preceding paragraph upon an offender for a violation of R.C. 2923.13 (the offense of "having weapons while under disability") unless all of the following apply: (1) the offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree, and (2) less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense. (R.C. 2929.14(D)(1)(e).)

If a mandatory prison term is imposed upon an offender pursuant to the provision described in the second preceding paragraph for having a firearm on or about the offender's person or under the offender's control while committing a felony, or if a mandatory prison term is imposed upon an offender under both that provision and the provision described above in "**Prison term for convicted felon also convicted of a firearm specification**," the offender must serve any mandatory prison term imposed under either provision consecutively to any other mandatory prison term imposed under either provision or under a provision regarding a prison term imposed for a body armor specification, consecutively to and prior to any prison term imposed for the underlying felony pursuant to the Felony Sentencing Law, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. When consecutive prison terms are imposed as described in this paragraph, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2929.14(E)(1)(a) and (6).)

Operation of the bill. The bill does not change the existing provisions regarding a prison term for persons convicted of a violation of R.C. 2923.161 or a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, who also are convicted of a specification charging the discharge of a firearm from a motor vehicle (R.C. 2929.14(D)(1)(c)).

Prison term for certain convicted felons also convicted of a specification charging commission of the offense by discharging a firearm at a peace officer or a corrections officer

Existing law. Existing law provides that, if an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in R.C. 2941.1412 that charges the offender with committing the offense by discharging a firearm at a "peace officer" or a "corrections officer" (as defined, respectively, in existing R.C. 2935.01 and 2941.1412, which are not in the bill), the court, after imposing a prison term on the offender for the felony offense under the Felony Sentencing Law, must impose an additional prison term of seven years upon the offender that cannot be reduced pursuant to R.C. 2929.20 or 2967.193 (judicial release or earned credits), or any other provision of R.C. Chapter 2967. or Chapter 5120. A court cannot impose more than one additional prison term on an offender under this provision for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under this provision relative to an offense, the court cannot impose a prison term under the provision described above in "**Prison term for convicted felon also convicted of a firearm specification**" or in "**Prison term for certain convicted felon also convicted of a specification charging discharge of a firearm from a motor vehicle**" relative to the same offense. (R.C. 2929.14(D)(1)(f).)

If a mandatory prison term is imposed upon an offender pursuant to the provision described in the preceding paragraph, the offender must serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under the Felony Sentencing Law or any other Revised Code section, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. When consecutive prison terms are imposed as described in this paragraph, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2929.14(E)(1)(c) and (6).)

Operation of the bill. The bill modifies the existing provisions regarding mandatory prison terms for "discharge of a firearm at a peace officer or corrections officer" specification convictions, as described above, in two ways: (1) it repeals the existing provision that specifies that a court cannot impose more than one prison term on an offender under the "discharge of a firearm at a peace officer or corrections officer" specification provisions for felonies committed as part of the same act or transaction, and (2) it replaces the repealed provision with a provision that specifies that, if an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to

cause the death or physical harm to another and also is convicted of or pleads guilty to a "discharge of a firearm at a peace officer or corrections officer" specification of the type described in R.C. 2941.1412 in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court must impose on the offender the prison term specified above in "Existing law" for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified above in "Existing law" for any or all of the remaining specifications. (R.C. 2929.14(D)(1)(f).)

COMMENT

1. Existing R.C. 2901.05(D) specifies that "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.

2. Many sections of the Revised Code expressly designate affirmative defenses to charges of various criminal prohibitions. In the Criminal Code alone, 39 sections provide one or more affirmative defenses to one or more specified criminal prohibitions (the sections, none of which are in the bill, are R.C. 2903.15, 2903.34, 2903.341, 2905.05, 2905.12, 2907.31, 2907.32, 2907.35, 2907.38, 2907.39, 2913.03, 2913.04, 2913.34, 2913.49, 2919.01, 2919.12, 2919.121, 2919.21, 2919.23, 2919.27, 2921.21, 2921.34, 2921.36, 2921.51, 2921.52, 2923.01, 2923.02, 2923.03, 2923.12, 2923.121, 2923.16, 2925.04, 2925.11, 2925.24, 2925.32, 2925.58, 2927.02, 2927.022, and 2950.05).

In addition, many affirmative defenses to charges of criminal prohibitions have been established or recognized by court decisions. Included among these affirmative defenses are duress, entrapment, necessity, self-defense, and defense of family. The decisions establish criteria that must be satisfied in order to successfully establish the defense.

3. Under Ohio court decisions, if a defendant in a criminal case asserts the affirmative defense of self-defense, the defendant must prove all of the following in order to prevail on the defense: (a) the defendant was not at fault in creating the situation giving rise to the affray, (b) the defendant had a *bona fide* belief that he or she, or a family member, was in imminent danger of death or great bodily harm

and that the defendant's only means of escape from that danger was in the use of force, and (c) the defendant did not violate any duty to retreat. Under R.C. 2901.05, the defendant must prove the affirmative defense of self-defense by a preponderance of the evidence. *State v. Barnes* (2002), 94 Ohio St.3d 21; *State v. Williford* (1990), 49 Ohio St.3d 247; *State v. Robbins* (1979), 58 Ohio St.2d 74; *State v. Johnson* (June 7, 2007), Franklin County App. No. 06AP-878, 2007 Ohio App. LEXIS 2544.

An individual may defend himself or herself by using either deadly or nondeadly force. The degree of force permitted depends upon what is reasonably necessary to protect that individual from the imminent use of unlawful force. *State v. Johnson* (May 12, 2006), Lake County App. Case No. 2005-L-103, 2006 Ohio App. LEXIS 2261; *Akron v. Dokes* (Summit County, 1986), 31 Ohio App. 3d 24.

With respect to the duty to retreat, Ohio courts have held that, in most circumstances, an individual may not use deadly force in self-defense if the individual 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. Thus, if a defendant can prove that deadly 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. *State v. Cassano* (2002), 96 Ohio St.3d 94; *State v. Thomas* (1997), 77 Ohio St.3d 323; *Williford, supra*.

Even when an individual is in his or her home, the individual does not *automatically* have the right to use deadly force in self-defense. Ohio courts have stated that a person, even in his or her own home, may use only that degree of force that is reasonably necessary under the circumstances. They have held that an individual may not use deadly force, even in their own home, unless they have a "reasonable fear" for their safety. *State v. Collins* (January 5, 2001), Greene County App. Case No. 2000 CA 82001 Ohio App. LEXIS 23; *State v. Lawson* (April 30, 2001), Butler County App. Case No. CA99-12-226, 2001 Ohio App. LEXIS 1916; *State v. Napier* (1995), 105 Ohio App. 3d 713; *State v. Catlin* (1990), 56 Ohio App. 3d 75.

There is no requirement that an individual retreat, even if retreat is possible, before using *nondeadly* force. *State v. Perez* (Franklin County, 1991), 72 Ohio App. 3d 468; *Columbus v. Dawson* (Franklin County, 1986), 33 Ohio App. 3d 141. On this point, an Ohio court has stated that, "(s)ince there is no duty to retreat in a case involving nondeadly force, the accused must simply satisfy the two remaining elements of a valid self-defense claim, to wit: he was not at fault in creating the situation, and he had a genuine belief that he was in imminent danger

of great bodily harm." *State v. Johnson* (May 12, 2006), Lake County App. Case No. 2005-L-103, 2006 Ohio App. LEXIS 2261.

4. Existing R.C. 2901.01, not in the bill, provides that, as used in the Revised Code, "privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

5. Existing R.C. 2901.01, not in the bill, provides that, as used in the Revised Code, "offense of violence" means any of the following: (a) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of R.C. 2911.12(A)(1), (2), or (3), of R.C. 2919.22(B)(1), (2), (3), or (4), or of former R.C. 2907.12, (b) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in clause (a) of this paragraph, (c) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (d) a conspiracy or attempt to commit, or complicity in committing, any offense identified in clause (a), (b), or (c) of this paragraph.

6. Ohio law provides a qualified immunity from liability in a civil action that generally recognizes the right of an individual to use force to defend the individual, the individual's family, and the individual's property. The degree of force permitted depends upon what is reasonably necessary to protect the individual from the imminent use of unlawful force or to protect the individual's property. See: *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116; *State v. Williford* (1990), 49 Ohio St.3d 247; *Allison v. Fiscus* (1951), 156 Ohio St. 120; *et al.*

Additionally, existing law provides statutory civil immunity to certain persons who use force to repel a trespasser under qualifying circumstances, as follows:

(a) R.C. 2305.40(B) 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 trespasser's family, 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: (i) 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, (ii) the trespasser has made, is making, or is attempting to make an unlawful entry into the building or other structure, and (iii) 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 taking 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. In order to qualify for this 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.

(b) R.C. 2305.40(C) provides that, even if the immunity described in the preceding paragraph does not apply, the owner, lessee, or renter of real property or family member who resides on the property still 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 allegedly is caused, none of the following applies: (i) the injury, death, or loss 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, (ii) 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, and (iii) under circumstances not described in clause (i) or (ii), 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.

(c) R.C. 2305.40(D) provides that the immunities described in the preceding two paragraphs do not do any of the following: (i) 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, (ii) affect any civil liability under another statute 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, (iii) affect any immunities from or defenses to civil liability established by another statute 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, (iv) 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, or (v) affect any immunities from or defenses to civil liability established by another statute 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.

HISTORY

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